



**New York State
Department of Economic Development**

REQUEST FOR PROPOSALS

New York State Contract Reporter Website

RFP Number: 21-6143

**PROPOSALS DUE: November 23, 2021
BY 3:00 P.M.**

RFP Released: October 8, 2021

Empire State Development
Albany, New York 12245
www.esd.ny.gov

Request For Proposal (RFP) Response Form

RFP # 21-6143

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

/ / Attached is our proposal

/ / We do not intend to submit a proposal for the following reason(s):

Name of Organization: _____

Address: _____

- Is this address your company’s principal place of business? Yes_____ No_____
- The term “principal place of business” is defined as follows:

A company’s principal place of business is generally considered to be the enterprise’s main office, where the regular meetings of its board of directors occurs, and where a company’s business is managed, conducted and directed, regardless of where the administrative departments or the physical property of the business are located. For purposes of determining the principal place of business, a foreign business enterprise’s principal place of business is not necessarily the same as its state of incorporation. In sum, the determinate is where the actual “business” of the corporation takes place.

If the above address is not your principal place of business, please indicate the full address of your principal place of business on the following two lines:

- Will this product or service be substantially produced in NYS: Yes_____ No_____
- Subject to the “Conditions Governing Proposals” article stated in this RFP, proposals must be in agreement with all terms and conditions of this RFP.

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

Signature: _____ **Date:** _____

Type or Print Name and Title: _____

By checking this box, we request that you remove our name from your bidders’ list

Mail this as the first page of your proposal.

****If not submitting a proposal, please e-mail this form to: rpinfo@esd.ny.gov**

**NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT
REQUEST FOR PROPOSAL 21-6143
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SECTION I - ADMINISTRATIVE INFORMATION

1.0 PURPOSE

The New York State Department of Economic Development (“NYSDED”) also referred to as Empire State Development (“ESD”), is seeking the services of a qualified proposer (“Contractor”) to implement the following objectives: host, maintain and enhance when and as necessary, the New York State Contract Reporter Internet Site (referred to hereafter as the “NYSCR” or the “Site”). The Contractor selected will work with NYSDDED to implement the stated objectives and accepts full responsibility for the success of the project discussed in this Request for Proposal (RFP).

If you are interested in bidding on this project we suggest that you visit the existing Site at <https://www.nyscr.ny.gov> and register as a user of the Site to supplement your understanding of the NYSCR as discussed in this RFP.

1.1 DESIGNATED CONTACTS

For the purpose of the Procurement Lobbying requirements of this RFP (see section 3.7 and EXHIBIT D) the Department’s designated contacts shall be Ms. Lisa Sutton, and employees designated by the Department as part of the Department’s Contract Management Unit and all staff designated by the Department to have responsibilities and duties in the Department’s Administration and Counsel’s Office.

1.2 INQUIRES

All questions must be submitted in writing via email to rpfpaq@esd.ny.gov with “**NYS Contract Reporter Website**” in the subject line. **Please do not contact the Department by telephone.** Questions must be received by the Department no later than October 26, 2021 by 5:00 PM. All inquiries must cite the particular RFP section in the questions. Answers to all questions of a substantive nature will be provided to all known recipients of the RFP. They will also be added to the NYS Contract Reporter advertisement for this RFP (<https://www.nyscr.ny.gov/>) will be posted to the ESD website under this RFP title at: <https://esd.ny.gov/doing-business-ny/requests-proposals>

This RFP is being made available by electronic means. If accepted by such means, the bidder acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the bidder’s possession and the version maintained by NYSDDED, the version maintained by the NYSDDED shall govern.

1.3 SCHEDULE OF PERTINENT DATES

Release of RFP	Thursday, October 7, 2021
Pre-Bid Conference	None
Deadline for Receipt of Questions	Tuesday, October 26, 2021 by 5:00 PM EST
Deadline for Answers to Questions	Wednesday, November 3, 2021 by 5:00 PM EST
Submission of Proposals	Tuesday, November 23, 2021 by 3:00 PM EST Late proposals cannot be accepted.
Oral Presentations/Interviews	By appointment at the discretion of NYSDDED
Award of Contract	December/January (estimated)
Projected Contract Start Date	March 1, 2022

1.4 PRE-BID CONFERENCE

There will be no pre-bid conference.

1.5 SUBMISSION OF PROPOSALS

Interested individuals or firms must submit their proposals no later than **3:00 P.M. U.S. Eastern Standard Time, on November 23, 2021**. Appendix B - Budget must be bound separately from the rest of your proposal.

Submit three (3) copies of the proposal to the following address:

NYS Department of Economic Development
Office of Fiscal Management
625 Broadway, 8th floor
Albany, NY 12245
Attention: Lisa Sutton

In addition to the hard copies, **the respondent** must **submit an identical electronic version of their entire proposal**, including budget and completed forms, to rfpinfo@esd.ny.gov with “NYS Contract Reporter – your company name” in the subject line.

Electronic copies are used for administrative purposes and DO NOT fulfill the requirement to submit the hard copies by the deadline.

****** 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.

1.6. FINANCIAL RESOURCES

Prospective bidders must possess adequate property, plant, equipment, financial resources and organizational capacity to perform the services described in this RFP in an efficient and effective manner. You must have the financial resources to pay expenses in advance of the receipt of payment from the Department. The Department will accept your own certification that you have sufficient economic resources. However, we prefer a letter from a Certified Public Accountant (CPA), indicating that your company has sufficient working capital, positive net worth, and has or can obtain a line of credit. We will also accept a letter from a party other than a CPA (such as an attorney, or bank officer) familiar with your company, and attesting to your financial condition.

1.7 ORAL PRESENTATIONS/INTERVIEWS (if required)

Finalists may be required to give an oral presentation/interview to demonstrate their understanding of the objectives of the project. Finalists will be selected from bidders receiving the highest scores, based on the selection criteria identified in Section 2.5 of this RFP. The Department reserves the right to determine whether oral presentations/interviews will be necessary. If the Department decides to conduct oral presentations/interviews, such oral presentations/interviews will occur as outlined in Section 2.5.6 and Section 2.6 of this RFP.

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 BACKGROUND

The NYSCR is a legislatively mandated procurement opportunities newsletter published online by ESD. The newsletter includes bid solicitations from State Agencies, Public Authorities and Public Benefit Corporations; political sub-divisions of the State (e.g. counties, cities, towns and villages) and other entities allowed by law and approved by the Department (referred to hereafter as “Agencies” or “entities”). Solicitations include, but are not limited to: Invitations for Bid (“IFB”), Requests for Proposals (“RFP”), Requests for Information (“RFI”), Requests for Quotations (“RFQ”) and advertisements for single source, sole source and exempt procurements. The Site publishes new solicitations each weekday morning, excluding major holidays, and maintains a searchable archive of all previous notices. The Site also provides information about procurement news and events (workshops and conferences), announcements of a general nature and other procurement resource information (including website links) for the business community and for State Agency Users of the Site. Lastly, a database of businesses called the Business Registry is available for businesses to create a profile. Each business maintains its own Business Registry account. One feature of the Business Registry is the ability for businesses to post Contractor Ads on the website to search for Minority and/or Women-Owned Business Enterprises (“MWBES”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Disadvantaged Business Enterprises (“DBEs”) for projects that need to meet those particular goals. The NYSCR currently utilizes the domain “NYSCR.NY.GOV.”

The Site has two primary functions: input and retrieval. Agency Users input solicitations and other information using online forms; Registered Users and “E”Alert subscribers retrieve this information after publication. Registered Users include members of the business community looking for business opportunities and Agency Users needing copies of their solicitations or wanting to search the archives. Solicitations can be retrieved as *Current* (New) solicitations, as *Open* (still open for bid, including Current) solicitations or as *Archived* solicitations (archives are created immediately upon publication and include “Current” and “Open”). *Closed* (Closed) solicitations are placed in the Closed Ads section the day after the due date, where they remain for 45 days, in case the government entity needs to repost them. Closed ads can only be searched by the government entity that entered the ad. The archived issues of the NYSCR are required as part of the public record of this official state publication. The Open solicitations (which include Current/New and Open) are searchable by keyword, agency, category or contracting goals. Archived solicitations are also searchable by keyword, agency, category or contracting goal and by issue date and date range.

The following terms define the types of users of the NYSCR Site:

- **“Agency Users”** place bid solicitation notices for goods or services and look for copies of their published solicitations to document the procurement process. These users require access to both the input and retrieval functions of the Site. One login should provide access to both functions.
- **“Agency Administrators”** have the rights of Agency Users, plus they assume for their agency some of the Site’s administrative functions. These functions include but are not limited to: editing of published solicitations, adding or modifying user accounts or agency locations for their agency and posting of award information for all Agency Users in their agency.
- **“NYSCR System Administrator(s)”** is a person or persons at NYSDER with permission to perform functions necessary to the operation of the NYSCR Site. System Administrator(s) can view all agency accounts and all solicitations on the Site.
- **“Registered Users”** have access to the whole Site. All users must register using their email address and create a username and a password. Multi-user accounts will be available for corporate subscribers. Registered Users may choose to enter additional information about their business into the Site’s Business Registry database. Participation in the Business Registry is optional. Users may join the Business Registry during their initial Site registration or at a later date. When a new application for registration is received, the system will verify the email address (username) by sending an account verification message to the email address used to secure the account. Registered Users will be purged from the system after one year of inactivity. However, notification will be sent to the Registered User 30 days, seven days and one day prior to purging the account record, thereby permitting the user to reestablish the account.
- **“Advertisers”** for “Advertising by Prime Contractors” are Registered Users who, as prime contractors on a state contract, are seeking NYS subcontractors and/or suppliers to help them fulfill that contract. Prime contractors are businesses that have been awarded a contract to complete a specific project for a state agency. Advertisers may use the Site to solicit subcontractors for such projects. Advertisements must be approved by the System Administrator prior to publication.

2.1 SCOPE OF SERVICES

The current NYS Contract Reporter contract is expiring shortly, therefore the need for an RFP solicitation.

2.1.1 Responsibilities Overview: We are looking for a contractor to continue maintenance of the website as it currently exists. This includes: a database of all active and inactive agency and business users; Business Registry active and inactive accounts; open, closed and archived solicitations; the ability to enter and save bulletins and events and maintain quarterly and semi-annual agency projected procurement reports.

These following redesign elements are anticipated for the website in year one:

1. NYS Branding - a redesign of front facing pages in compliance with New York State’s Branding Guidelines, as written by the Governor’s Office. A link to the guidelines is provided in section 2.1.2 under Design Overview/Branding and Universal Web Navigation.
2. Accessibility Compliance – The website must be brought into compliance with WC3 ADA CAG 2.0. A link to the guidelines is provided under “Other Items of Importance to Review” in section 2.1.2 Design Overview/Accessibility.
3. A responsive design must be implemented for display on IOS, Droid, and tablets. Information can be found in the “Other Items of Importance to Review” in section 2.1.2 Design Overview/ Responsive Design.

Contractor must be available to the system administrator (aka administrator) of the website and various NYS DED staff for the following reasons:

1. To fulfill system administrator’s requests in a timely fashion, such as technical assistance or special access to the website that the administrator does not possess.
2. To meet with administrator and agency staff when requested to discuss website edits, contract issues, enhancements, legislative updates or anything necessary to continue the up-to-date existence of the website.
3. To substitute for the administrator of the Contract Reporter when necessary, including, but not limited to, answering emails related to users’ accounts, Business Registry or technical issues. The administrator will address questions pertaining to procurement.

2.1.2 Design Overview:

Platform - SaaS

NYSDDED is seeking a Software as a Service (SaaS) solution for the next generation of the New York State Contract Reporter. Proposal must provide details on how the candidate’s solution meets or exceeds the current site’s statutory function, logic, flow and administration. It is desired that the existing XML feed retain the same structure developed for 3rd party clients (NYS Agencies).

Current platform

VM Environment: VMware 5.5
OS: Windows Server 2008 R2 Standard Service Pack 1
Webserver: IIS 7
Application Server: Coldfusion 18

Database Server

OS: Windows Server 2008 R2 Standard Service Pack 1
Data Base: MS-SQLServer: 10.50.6000

Target Platform

Software as a Service (SaaS)
OS: Windows 2019 r2
Webserver: IIS 10
Code Base: Microsoft .net aspx (Latest revision), HTML5
5/Responsive Design
Database: MS SQL (Latest revision)

Project requires the awardee to provide hosting and support of the current NYSCR solution, which is based on Windows/Adobe ColdFusion with MS SQL Data Base.

The current solution is hosted in its own MS Active Directory Domain on a dedicated VMware environment and SAN.

Important: Awardee must meet or exceed Empire State Development's Project Deliverable Criteria, please refer to accompanying document (ESD_IT_Project_Deliverables_v7.pdf)

Web Accessibility, Branding & Universal Web Navigation, Personal/Private Information, Responsive Design, Language Access for Individuals with Limited English Proficiency.**Web Accessibility**

Any web-based information and applications development, or programming delivered pursuant to the Contract will conform and comply with New York State Enterprise IT Policy NYS-P08-005 ("Accessibility of Web-Based Information and Applications" - see <https://its.ny.gov/tables/technologypolicyindex>) as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by Contractor and the results of such testing must be satisfactory to ITS before web-based information and applications will be considered a qualified Deliverable under the Contract or relevant Transaction Document.

Ongoing accessibility scanning, reporting, review, and remediation is required.

Branding and Universal Web Navigation

Any public facing web-based information and applications development, or programming delivered pursuant to the Contract will comply with New York State Information Technology Standard, NYS-S16-001 ("New York Universal Web Navigation" - see: <https://its.ny.gov/tables/technologypolicyindex>) and NYS Branding Guidelines as such policy and standard may be amended, modified or superseded, which requires that State

Agency web-based information and applications are accessible to persons with disabilities.

Please refer to accompanying documents:

NYS Branding Guidelines: 2015-04-01-NYS-Branding-Guidelines.pdf

NYSCR NYS Branding Mock-up: 2019-10-29-NYSCR-Mock-Up.pdf

Note: Adjustment may be required to meet accessibility WC3 ADA CAG 2.0 standard.

Personal/Private Information

Must comply with GDPR standards for data collection and protection. For more information about GDPR please visit https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en

Responsive Design

With the overwhelming acceptance and use of mobile digital devices, Responsive Design is a necessity. Presenting, formatting and selection of key elements to be displayed according to device. Using industry best practices, support for iOS, Android and iPad/Android Chrome Notepads are an integral part of this project.

Language Access for Individuals with Limited English Proficiency. NYS Executive Order 26 (EO-26), directs executive New York State agencies that provide direct public services to offer language assistance services (translation and interpretation) to people of Limited English Proficiency (LEP).

Each State agency provides interpretation services between the agency and an individual in his or her primary language with respect to the provision of services or benefits.

Each State agency must also provide translation services in the six most common non-English languages spoken by LEP individuals in the State of New York, based on the United States census data and relevant to services offered by each of such agencies. Currently Spanish, traditional Chinese, Russian, Haitian-Creole, Korean and Italian are the top six languages. Some agencies may also choose to add additional languages based on their experience and other federal requirements.

If applicable, any solution being procured under this Contract which is deemed to provide a “direct public service” must comply with EO-26.

<https://www.governor.ny.gov/news/no-26-statewide-language-access-policy>

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO26_0.pdf

Bandwidth must be scalable and should be dedicated with provisions for burstable as an option.

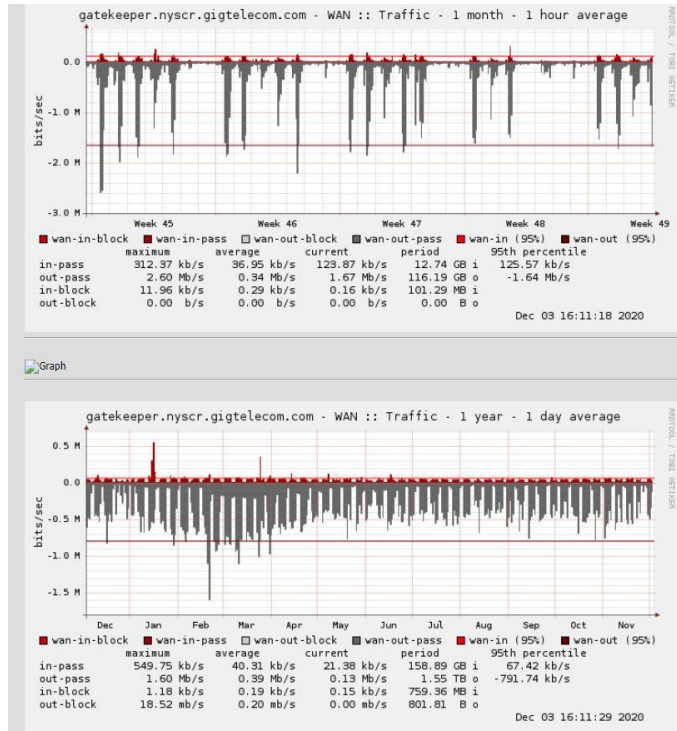
Bandwidth Metrics

Current bandwidth usage

Bandwidth Monthly/Annual metric

Monthly: Inbound -12.74gb | Outbound – 116.19gb

Annual: Inbound – 158.89gb | Outbound – 1.55tb



2.1.3 Tutorials, FAQ's, Help Features, Resources

If the Program Manager requests new tutorials, the Contractor shall provide clear and concise downloadable tutorials detailing all uses of the Site. Information about the procurement process and available technical assistance will be provided, with additional information added as it is developed. Such information is likely to include Power Point presentations, webinars and taped workshop presentations, tool tips (cursor hover), FAQ's and other tutorials. The Site must capture data about the utilization of these resources and make this information available to the NYSCR System Administrator in report form.

2.1.4 Publication Schedule:

Solicitations are published daily, Monday through Friday. Currently, solicitations entered by Agencies on one day are published the morning of the following day ("publication day"), creating the "Current" (New) issue of the publication. Daily means "business days," Monday through Friday, excluding New York State holidays as follows: New Year's Day, Martin Luther King, Jr. Day, Washington's Birthday, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

When the publication day for a solicitation falls on a State holiday, the publication day will be set to the next available business day. Solicitations submitted on Friday, Saturday and Sunday will be captured by the system and published on Monday morning. Solicitations submitted by State Agencies will appear for a minimum of fifteen business days, including the first day of publication. A publication schedule on the Site will advise on the insertion date, publication date and earliest possible due date for bid responses. This publication schedule must show the correlation between the publication date and the earliest possible due date for bid submission.

2.1.5 Fee Based Services

Contractor must be prepared to accommodate for fee-based subscription providing additional functionality in addition to standard account/subscription. These features would provide custom services for users as well as income needed to defray the cost of hosting, improvements, maintenance and marketing of the NYSCR.

Registered Users may purchase one or more fee-based service. Terms of use for a service must be accepted prior to completion and submission of the application for that service. Fees will be collected using a “PayFlow” (PayPal) account system that will activate the NYSCR account or service once the fee is paid. This may include Android/Play Store & iPhone/App Store offerings as well.

2.2 HOSTING, ENHANCEMENTS, MAINTENANCE AND OTHER CONTRACTOR REQUIREMENTS

2.2.1 Hosting

The Site shall be hosted by the Contractor. The Contractor may subcontract the hosting of the Site but will remain fully accountable to the NYSDDED for the hosting services. The Contractor will be responsible to the NYSDDED for resolving any issues relating to hosting of the Site. The annual cost of hosting shall be detailed in the Budget (EXHIBIT B) of this proposal.

2.2.2 Enhancements

Enhancements to be designed and implemented by the Contractor at additional cost may be required in the future if required by legislative, policy or programmatic changes. The Contractor may not make any enhancements to the Site without an approved Change Order, as described below in the section titled “Change Control Management.” Proposals must describe how the Contractor will address future enhancements to the Site and how their proposed design will accommodate such enhancements, including incorporating additional fee-based services. Enhancements will be billed to NYSDDED at the same hourly rates itemized in the Budget (EXHIBIT B) submitted as part of the Contractor’s initial proposal for Site design and development.

2.2.3 Continuing Site Maintenance

In addition to hosting and year one enhancement expenses, bidders shall quote an annual charge, if any, for maintaining the Site. This annual maintenance charge is in addition to the annual charge for hosting the Site and providing any enhancements requested by NYSDDED. Please see the Budget (EXHIBIT B) of this RFP.

2.2.4 Site Compliance Requirements

The site must conform to the standards delineated in all applicable NYS Office for Technology policies, which can be found at <http://www.cio.ny.gov/tables/technologypolicyindex.htm>. The Site must also include the recommendations of the Americans with Disabilities Act Standard for Accessible Design (https://www.ada.gov/2010ADASTandards_index.htm) and the W3C Accessibility Guidelines (<https://w3c.github.io/wai-website/standards-guidelines/#main>). Moreover, the Site must conform to the standards delineated in the NYS Office of Information Technology Services Policy P03-002, which can be found at https://its.ny.gov/sites/default/files/documents/nys-p03-002_information_security_0.pdf. These policies include standards on physical and environmental security, access control, systems development and maintenance and citizens' notification in the event of a breach (or suspected breach) of private information.

2.2.5 Change Control Management

Bidders shall describe the contract Change Control Management process to be implemented. Generally, all Change Requests (CRs) must be approved by designated NYSDDED and Contractor personnel prior to the start of work on any CR tasks. The Project Manager must certify in writing that CR tasks are complete, otherwise NYSDDED will not pay the Contractor for any cost increase associated with a CR for a change or enhancement that causes the Contract to exceed the "Total All Costs Categories" line in the Budget (EXHIBIT B) of this RFP.

2.3 DELIVERABLES

The deliverables for this project are consistent with the Scope of Services discussed above.

2.4 MINIMUM QUALIFICATION REQUIREMENTS

2.4.1

Prior to the proposal due date for this RFP, the proposer must be in business for a minimum of five (5) years,

performing services essentially similar to those described in Site Design Scope of Service of this RFP.

2.4.2

The Proposer must have prior experience developing software and hosting or working with a third party to provide hosting, of internet-based website applications. Public program (State, federal, local) experience developing software and hosting internet-based website applications is preferred. The Proposer must provide a list of prior experience working on government websites including web address(es) of active sites that have been developed, designed and implemented by the Proposer. (Section 2.5 - Selection Criteria)

2.4.3

The Proposer must have the economic resources to pay expenses in advance of reimbursement from the State, for the services described in this RFP, as well as the expenses itemized in your proposal. (Section 1.6 - CPA Letter)

2.4.4

This Section of the RFP is not intended to itemize all requirements for an award of this project.

2.5 SELECTION CRITERIA

Proposals, which meet all the requirements of this RFP, will be evaluated by Department, based on the Selection Criteria stated in this section. Proposals will be scored based on the following criteria:

2.5.1 Experience

(20 points)

How well the bidder meets the qualification requirements addressed in the Scope of Service of this RFP. Particular attention will be given to prior experience in the programming, implementation and maintenance of comparable website-based applications systems and the hosting of such systems. The evaluation will include the resumes and experience of your project team, including subcontractors you would utilize for this project.

2.5.2 Ability to perform the required services

(40 points)

The bidder must demonstrate ability to use design and text to enforce composition and underlying message.

2.5.3 Cost

(30 points)

Please complete EXHIBIT B - Budget in full.

Do not change the budget format. Failure to complete the financial proposal or bidder changes to the format may result in the disqualification of your proposal. Any bidder failing to complete the budget page will be disqualified.

PLEASE DO NOT SUBSTITUTE YOUR OWN BUDGET FORMAT.

Your budget must be separately bound from the rest of your proposal to allow for the cost evaluation to be completed independent of the technical evaluation (see section 2.6 below).

2.5.4 Diversity Practices

(10 points)

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity Practices. Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire Exhibit I, submitted by each Respondent to the RFP.

2.5.5 References

Proposers must supply a minimum of three (3) **letters** of reference (including name and address of the organization, contact name, and telephone number) that can substantiate the quality of the bidder's work to be considered for an award of this project. References must be provided with your proposal.

2.5.6 Oral Presentation

(Re-score of written proposal)

Finalists may be required to give an oral presentation and demonstrate their understanding of the objectives of the project. NYSDDED reserves the right to determine whether oral presentations/interviews will be necessary. Based on information provided at the oral presentation, the Evaluation Committee will re-score the Finalist's written proposals. Based on this re-scoring, the Finalist receiving the highest average score, based on the scores of all evaluators, will be declared the successful proposer. If oral presentations are not required by NYSDDED, the proposer receiving the greatest number of total points based on the scoring described in the Selection Criteria above will be declared the successful proposer.

2.6 EVALUATION PROCESS

Initial evaluation of proposals will be done in two parts – Technical Evaluation and Cost Evaluation. NYSDDED's Evaluation Committee will review the technical portion of each proposal based on the technical criteria listed above. NYSDDED's Evaluation Committee will not be advised of the costs proposed or cost scores (points awarded for cost) prior to the selection of the Finalists. However, the Evaluation Committee may be advised of information contained in each bidder's budget (EXHIBIT B) if such information is deemed by the Department to

be pertinent in assessing the level of effort to be put forth by the bidders in performing the project. Then cost scores, computed by NYSDED's Contract Management Unit based on a weighted average formula, will be added to the technical score resulting in the total score for the written proposal.

NYSDED reserves the right to determine whether oral presentations/interviews will be necessary. If NYSDED decides to conduct oral presentations/interviews, such oral presentations/interviews will occur as follows:

2.6.1

Following the evaluation of proposals as provided above, the finalists will be the firms with the three (3) highest Initial Composite Scores and any firms within 10 percent of the average Initial Composite Score of the top three (3) ranked firms.

2.6.2

Each Finalist will be notified of the date and time of their oral presentation/interview which will be conducted via telephone/video conference. The oral presentation/interview should further document the proposer's ability to provide the required services. Key personnel directly responsible for the project including the Senior Project Consultant should be present and participate in the oral presentation/interview. The purpose of the oral presentation/interview is to provide the Evaluation Committee with an opportunity to obtain a detailed understanding of:

- The extent of your organization's knowledge of the RFP subject matter and understanding of the project requirements; and
- Whether the methods and resources used by your organization are necessary, cost effective, and appropriate.

Further information with regard to the format of this stage of the evaluation may be provided to the finalists prior to their oral presentations/interview. Each presentation will be limited to one (1) hour in duration.

2.7 CONTRACT AWARD

Following the oral presentation/interviews, if any, the Evaluation Committee members will re-score each proposer interviewed on the technical criteria listed above. NYSDED anticipates that the Evaluation Committee will make an award recommendation of one proposer based upon its determination of the best value for NYSDED as the highest total scores (technical and cost).

Upon selection, negotiations will be commenced with the successful proposer to enter into a contract setting forth the general terms that would govern any subsequent contract for services contemplated by this RFP. The Department will not enter into protracted negotiation with the successful bidder over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the successful bidder does not sign and return to the Department the proposed contract including any draft of the proposed contract, within thirty (30) calendar days of receipt by the Contractor, the Department reserves the right to declare the award of the project to the Contractor null (null award). The Department will not be responsible for any cost incurred by the Contractor as a result of a null award. An award will then be made to the next highest scoring proposer.

2.8 DEBRIEFING

A debriefing shall be requested by the unsuccessful applicant within 15 calendar days of receipt of notification by the NYSDED that the applicant's proposal is unsuccessful. Such notification shall be provided by NYSDED to all unsuccessful applicants for this procurement.

NYSDED, upon request made within 15 calendar days of such notice, shall schedule the debriefing to occur within a reasonable time of such request. Debriefings shall be conducted at the NYSDED's Albany or New York City office, or via telephone, video conference or other types of electronic communication. NYSDED personnel participating in the debriefing discussion shall have been involved with and knowledgeable about the procurement and the evaluation and selection of the successful applicant. Such debriefing shall include, but not limited to: (A) the reasons the proposal submitted by the applicant was not selected for award; (B) the qualitative and quantitative analysis employed by NYSDED in assessing the relative merits of the proposal; (C) the application of the selection criteria to the unsuccessful applicant's proposal; and (D) when the debriefing is held after the award has been fully finalized and approved, the reason for the selection of the winning proposal. The debriefing shall also provide, to the extent practicable, general advice and guidance to the unsuccessful applicant concerning potential ways that their future proposals could be more responsive.

To request a debriefing please contact the Department via e-mail at rfpinfo@esd.ny.gov within fifteen (15) calendar days of receipt of the notice that your proposal was not selected for an award.

2.9 PROTESTS AND APPEALS

1. Protests

Any interested party may file a protest, in writing, with the NYS Dept. of Economic Development (DED) within ten (10) business days from the date of the notice of the contract award, except:

- where a protest concerns the terms and conditions of the solicitation (or other matters that would be apparent to an interested party prior to the date set in the solicitation for the receipt of bids), in which case that protest must be filed on or before the date set in the solicitation for the receipt of bids or proposals; or
 - where DED determines that sufficient circumstances exist and has set forth a different time period for filing protests.
- a) Once received by DED the protest shall be referred either to an individual employee or group of employees of DED. No such employee will have been actively involved in the procurement process being protested. DED will provide a copy of any protest filed to the successful bidder.
 - b) DED may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest raises only issues of law that have already been decided.
 - c) DED shall issue a determination within fifteen (15) business days of the filing of the protest. The answer to the protest should address all the factual and legal allegations contained in the protest. A copy of the answer shall be simultaneously delivered to the protester and the successful bidder.
 - d) During the time period in which a protest may be filed, or during the resolution of a pending protest, DED may negotiate terms and conditions of the contract or grant award with the successful bidder. However, a contract or grant award will not be approved by DED prior to the expiration of the time period for filing a protest, or, if a protest has been filed, before DED issues a determination of the protest.
 - e) The person or persons designated by DED to consider the protest shall prepare a written recommendation addressing all of the issues that have been raised by the protest.
 - f) DED may accept, modify or reject such recommendation.
 - g) In making his or her determination with regard to the protest, the DED designee may, in his or her sole discretion, consider any additional information from any source relating to the allegations set forth in the protest.
 - h) All parties that have participated in the protest, as well as the original successful bidder, shall be provided with a copy of the final determination of DED. The determination shall be made part of the procurement or grant award record.

2. Appeals

All parties receiving a copy of the ESD final determination will also receive a copy of the current "[Contract Award Protest Procedure For Contract Awards Subject To The Comptroller's Approval.](#)" This document explains the time periods and procedure for filing a protest with the Office of the State Comptroller.

An interested party has ten (10) business days from the date it receives DED's determination to file an appeal with the Bureau of Contracts in the Office of the State Comptroller.

<https://web.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/17.htm>

2.10 INDEPENDENT EVALUATION

The Department, at its discretion, may retain the services of an independent auditor, consultant or the New

York State Office of Information Technology Services (OITS) to assist its personnel in evaluating responses to this Request for Proposal.

Prospective vendors shall fully cooperate with the Department's auditor, consultant or OITS, providing company, financial, software, system or any other information deemed necessary for the Department to adequately evaluate proposals.

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

Each participating bidder must submit a complete proposal with each element of the Selection Criteria, Section 2.5, addressed. In addition, all proposals must include the following information. Bidders supplying incomplete responses may be deemed non-compliant. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Please follow the format listed below:

3.1.1

Title page, indicating:

Name, address (both mail and email) phone and fax number, contact person, and federal ID number. It must also include a statement that the offer shall be firm and not revocable for a period of 60 days after bid due date unless withdrawn in writing.

3.1.2

Please provide a company overview that outlines your key competencies and demonstrates what sets you apart from other bidders. Please limit to two pages.

3.1.3

A discussion of the relevant experience of your company and your staff proposed to provide the Scope of Services. This shall include a demonstration of how your company and staff meet the experience requirements in Section 2.5.1. Please limit to three pages.

3.1.4

Resumes of the company's key personnel and other staff proposed to provide the Scope of Services.

3.1.5

The methods and processes your company proposes to accomplish the Scope of Services, and industry standard

IT practices for design and application solutions. If any of the tasks associated with the project will be completed by non-company employees (i.e. sub-contractors), the qualifications and experience of those individuals must to be specified.

3.1.5.1

The selected vendor shall be required to provide the following, subject to the approval of NYSDDED:

- a. User Acceptance Test Phase – Test plans and supporting documentation that define the items included in the accompanying Scope of Services. A Stress/Load test report shall be performed at NYSDDED's request.
- b. Setup Development Environment – A formal development environment that will be distinct and separate from Stage and Production.
- c. Setup Training Environment – A training environment to provide for isolated access with the least interruption.
- d. Setup Production Environment - This process shall be completed with adequate lead-time to ensure that all hardware and software is placed and ready to go live.
- e. Deployment Phase – Deployment and rollback instructions for each release. The configuration documentation shall provide instruction on administrative tasks, maintenance tasks and configuration tasks.
- f. Train and Test – Training to end-users for the content management system, including train-the-trainer and front-line user sessions.

Proposal narrative should be 12 – 15 pages.

3.1.6 Quality Management Plan

The bidder shall describe the measurement and control methods that will be used to deliver quality products. The Quality Management Plan shall include the following components:

3.1.6.1. Quality Assurance

The bidder shall describe its approach for an ongoing Quality Assurance evaluation process for deliverable, software development activities, and the resulting software products discussed in section 2.1 of this RFP to ensure that all software products have undergone evaluation and testing.

3.1.6.2. Corrective Action

The bidder shall describe its proposed approach for corrective-action procedures to handle each problem detected, to bring performance in line with the requirements of this RFP. The bidder shall describe the manner

in which problems will be logged, categorized, prioritized, tracked, and closed.

3.1.6.3. Communications Management

The bidder shall describe the proposed types of project information and the method used to gather, store and distribute project information.

3.1.7.

References Letters (must be letters not a list of references) as described in Section 2.5.5.

3.1.8. Budget Requirements

EXHIBIT B (Budget) of this RFP must be completed and submitted as part of your proposal. All discussion of proposed costs, rates or expenses must occur only with the budget form. Annual personnel cost shall include all employment-related expenses including payroll taxes, health insurance, employer liability insurance, etc. If any of the personnel duties will be filled with subcontractors, please include their costs under the Subcontractor lines of your budget proposal on the EXHIBIT B (Budget) form provided. Subcontractor services are performed by other organizations or individuals who are not employees of the Contractor. Use of subcontractors must be clearly explained in the proposal and identified by name on EXHIBIT B (Budget). (See Sections 4.8 MWBE and SDVOB Goals, and Section 4.7 Subcontracts).

3.1.9 Other

Please complete and include EXHIBIT D (Procurement Lobbying Disclosure Pursuant to Sections 139-j and 139-k of State Finance Law respectively), EXHIBIT E (Non-Collusive Bidding Certification), EXHIBIT F (MacBride Fair Employment Principles), EXHIBIT G (Vendor Responsibility Questionnaire Information) and hard copy questionnaire if not completing online, forms [OCSD-1](#) and [OCSD-4](#) (per the MWBE and SDVOB Utilization Goal Requirements for NYSDDED Contracts found in section 4.8), and EXHIBIT I (Diversity Practices Questionnaire).

The Successful Respondent may also be required complete the following, but their inclusion is not required at the time of proposal:

- New York State tax forms ST-220-CA and ST-220-TD. The ST-220-CA may be found at: [ST-220-CA doc.](#). The ST-220-TD may be found at: [ST-220-TD doc.](#)
- A State Consultant Services *Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term* (Form A) available at: [Form A doc.](#)
- The State Consultant Services *Contractor's Annual Employment Report* (Form B), to be submitted annually, available at: [Form B doc.](#) More information on the consultant services reporting can be found at: [OSC-GFO.](#)
- All businesses and other parties applying for a government permit, license or contract must prove

compliance with New York State workers' compensation and disability benefits requirements. **The vendor awarded the contract from this solicitation will be required to provide proof of NYS workers' compensation and disability insurance.**

3.2. CONDITIONS GOVERNING PROPOSALS

3.2.1 Only those bidders that have supplied complete information will be considered.

3.2.2 FOIL: 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 3.3 below).

3.2.3 The Department reserves the following prerogatives:

3.2.3.1. to accept or reject any or all proposals received with respect to this RFP;

3.2.3.2. to decline to award a contract resulting from this RFP;

3.2.3.3. to require clarification from any bidder for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;

3.2.3.4. to waive or modify minor irregularities in proposals received;

3.2.3.5. to eliminate mandatory requirements unmet by all bidders;

3.2.3.6. to negotiate with any or all bidders, within the proposal requirements, to best serve the interests of the State of New York;

3.2.3.7. to amend the specifications contained in this RFP after its release, with due notice given to all potential bidders known to the Department to reflect the changed specifications;

3.2.3.8. to utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights and the bidder has so advised the Department in statements contained in the bidder's proposal and in a cover letter annexed thereto;

3.2.3.9. to award contract(s) for any or all parts of a proposal; and

3.2.3.10 to elect to award contract(s) to one or more responsive and responsible offerors, 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 the State.

3.2.4. By submitting a proposal, the bidder 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. FREEDOM OF INFORMATION LAW

The Department is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by the Department (See Public Officers Law, Sections 87 and 89).

Individuals or firms which submit proposals to the Department may request that the Department except all or part of such proposal from public disclosure, pursuant to Section 87(a)(d) of the Public Officers Law, on the grounds that the proposal contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the firm submitting the information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and should state the reasons for the requested exception. It must also specify the proposal or portions thereof for which the exception is requested.

If the Department grants the firm's request for exception from disclosure, the Department shall keep such proposal in secure facilities and shall notify the firm of any request the Department receives for disclosure of the proposal.

3.4. NOTIFICATION OF AWARD

The Department will notify the successful proposer by written confirmation. The Department will notify, in writing, each bidder (companies and individuals who submitted a proposal) whose proposal is not selected for the award of this project.

3.5. COST OF PROPOSAL

The Department is not liable for any and all costs incurred by the bidder or any individual or firm associated with the bidder, for work performed to prepare, explain and submit the bidder's proposal. In addition, the Department is not liable for any and all costs incurred by the bidder or any individual or firm associated with the bidder to discuss, propose, negotiate or otherwise address in any way whatsoever, terms and conditions of any contract resulting from this RFP. Further, the Department is not liable for any costs incurred until the contract has been approved by the Attorney General and the State Comptroller's Office.

3.6. PROCUREMENT LOBBYING

Please note the following and complete the forms provided in EXHIBIT D. Please note that Form 4 of EXHIBIT D must be submitted to the Department whenever you contact us. Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between the Department and an Offeror/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper

of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerers intending to result in a procurement contract with a governmental entity through final award and approval of the Procurement Contract by the Department and Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified in Section 1.1 of this solicitation. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerors/Bidders contact only Department staff identified in the aforementioned section of this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offeror/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offeror/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <https://ogs.ny.gov/acpl>. State Finance Law Sections 139-j and 139-k may be viewed at <https://ogs.ny.gov/acpl>.

SECTION IV - CONTRACTUAL INFORMATION

4.0 CONTRACT PREPARATION

A contract defining all terms and conditions of the parties will be drafted by the Department. The contract may incorporate any or all of this RFP, APPENDIX A - Standard Clauses for All New York State Contracts (attached hereto as EXHIBIT A), and as much of the successful bidder's final proposal as may be appropriate, and other documents as may be deemed suitable by the Department.

After the Department and the successful bidder execute the Contract, it must be submitted for approval to the Attorney General's Office (AG) and the Office of the State Comptroller (OSC) before it will become effective. The Contract will not be considered fully executed until approved by both the AG and OSC.

The Department will not enter into protracted negotiation with the successful bidder over contract terms and conditions or wait an unreasonable amount of time for the return of a signed contract. If the successful bidder does not sign and return to the Department the proposed contract, including any draft of the proposed contract, within thirty (30) calendar days of receipt by the Contractor, the Department reserves the right to declare the award of the project to the Contractor null (null award). The Department will not be responsible for any cost incurred by the Contractor as a result of a null award. Moreover, the Department reserves the right to cancel for cause any proposed amendment to the original contract which is not signed and returned to the Department within thirty (30) calendar days of receipt by the Contractor.

4.1 CONTRACT TERM/TERMINATION/CONSIDERATION ADJUSTMENT

The successful bidder shall perform the work and provide the services set forth in this RFP for a period of five (5) years. The Contract may be extended for five (5) additional years upon mutual agreement of the parties, formal amendment, and approval of the New York State Office of the State Comptroller. The total term of the contract shall not exceed ten (10) years. Pursuant to said amendment, rates itemized in the Budget may be adjusted in accordance with the Consumer Price Index Urban (CPIU), or at other rates as may be documented from authoritative sources at the Department's discretion, not to exceed 5% annually from the previous 5 (year) term. In addition to other termination rights as may be permitted by New York State Law, the Department has the absolute right to terminate any contract resulting from this RFP early for cause, convenience or unavailability of State funds, as more fully described in Section 4.2 of this RFP.

4.2 CANCELLATION/TERMINATION

4.2.1. Department Termination

Once a contract or other agreement resulting from this RFP is fully executed and approved, the Department has the right to cancel it early, in whole or in part, for cause or unavailability of State funds at any time or for convenience on thirty (30) calendar day written notice to the Contractor. If cancelled for cause, payment to the Contractor for approved charges incurred will be made at the Department's sole discretion. If cancelled for convenience, the Department agrees to pay the Contractor for charges incurred in the performance of the Contract up to the time of cancellation. If cancelled for unavailability of State funds, the Department will not be liable for payment but will use its best efforts to pay outstanding charges previously approved by the Department to the extent permitted by New York State Law.

Additionally, the Department also reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k (EXHIBIT D) was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

4.3 PAYMENT PROCESS

Payment for services performed to the satisfaction of the Department shall be made in the ordinary course of State business upon receipt of duly authenticated invoices/vouchers and upon receipt of reports and/or deliverables, if required elsewhere in this RFP. Payment shall require the approval of the Department's Project Manager and Director of Management Information Systems. Invoices/vouchers shall be sent to the attention of the Director of Management Information Systems. Receipts (original copies preferred, the Department reserves the right to require original receipts) for all non-personal expenses must be attached as evidence of cost. A detailed accounting of the staff time and effort attributed to complete project tasks is required and must include personnel titles, hourly rates, dates of service, and deliverables. Vouchers or invoices shall detail expenses in a manner essentially similar to the Budget required as part of your proposal and subject to the terms and conditions discussed throughout this RFP.

4.4 ADMINISTRATIVE AND FISCAL REQUIREMENTS

4.4.1. Sole/Single Source Contracts

For purposes of this agreement, sole source contracts are defined as where only one vendor is capable of supplying the required services or properties because such service or property offered is so unique that it cannot be duplicated or obtained elsewhere, or involves creative artistry of a similar nature.

Single source contracts are defined as where, although more than one vendor can supply the required services or properties, circumstances of a material and substantial nature make the awarding of the contract to one vendor over the others appropriate.

The requirement for competitive bidding may be waived upon prior written approval of the Project Manager provided that prior to the acceptance of such services or properties the Contractor provides a detailed written statement to the Department which describes the sole or single source determination, the alternatives considered, and the terms of the proposed contract. In addition, the Contractor must establish, to the satisfaction of the Department, the reasonableness of the proposed expenditure. In general, the price charged to the Department should be no greater than the price charged in the private sector. Sole/single source contracts are to be avoided whenever possible.

4.4.2. Administrative Expenses

Administrative expenses charged up to the annual total proposed by the Contractor in response to EXHIBIT B (Budget) of this RFP, shall be billed at actual cost with no mark-up due the Contractor. Said administrative expenses are deemed to be ordinary and necessary expenses associated with the maintenance of the Department's account by the Contractor

4.4.3. Payments and Documentation

All payments shall be made in the "ordinary course of State business" for services performed upon receipt of duly authenticated invoices/vouchers and agreed upon project statements of work, financial and activity reports. Payment for necessary travel shall be made in full compliance with the terms and conditions discussed in EXHIBIT C (NYS Contractor Travel Reimbursement Guidelines) of this RFP.

Payment in the “ordinary course of State business” may be barred by extraordinary events beyond the control of the Department. The Department shall take all steps necessary for payment to be made as reflected on a duly authenticated invoice with the understanding that payment not made within thirty (30) days receipt of such invoice shall be subject to payment of interest charges in accord with section 179F of the New York State Finance Law.

The Department in its discretion reserves the right to issue written administrative guidelines and controls to supplement or make technical corrections to, the payment process described in this RFP. The Department will consult with the Contractor regarding administrative guidelines and controls, however, the Department reserves the right to implement administrative guidelines and controls at its sole discretion.

Actual dollar amounts itemized in the Budget (see EXHIBIT B) under the Personnel category may be interchanged in any amount upon written approval of the Department’s Project Manager or his/her designee. Line items may be added to and/or removed from the Personnel category of the Budget (EXHIBIT B), with a corresponding reallocation of expenses (hours and totals) if such reallocation is necessary, upon written approval of both parties. Said addition and/or removal of Personnel line items shall only be made after the Contractor obtains written approval from the Department’s Project Manager or his/her designee, with a copy of said approval sent by the Contractor to the Department’s Contract Management Unit.

The release of this RFP by the NYSDDED does not guarantee that a Contract will be entered into. Moreover, if a Contract is entered into (fully ratified) the right to assign work or all services described in this RFP is at the sole discretion of the NYSDDED.

4.4.4. Other Payment and Documentation Provisions

4.4.4.1.

Discounts allowed by suppliers of goods and services purchased by the Contractor on behalf of the Department must be fully disclosed and credited to the Department.

4.4.4.2.

Where Contractor on behalf of the Department makes purchases, all bills and invoices rendered to the Department shall omit any tax (particularly sales tax) from which the State of New York is exempt. Reimbursement of first party subcontractor tax payments will be reimbursed when unavoidable.

4.4.4.3. Shipping Charges

The Contractor shall document such charges by submitting each individual shipping/messenger receipt, along with details determining reasonableness of charges.

4.4.4.4.

NYSDDED will provide no more than \$8,000 travel reimbursement to the Contractor at travel rates not to exceed those available to NYS employees. The training seminars are separate and apart from the training of NYSDDED staff members, which is not eligible for travel reimbursement. Travel expenses will be billed based upon the prevailing New York State per diem rates. All travel authorized by the Department will be billed as incurred. Contractor shall incur no expenditures for travel outside of New York State without the prior written approval of the Project Manager or his/her designee.

4.4.4.5 Budget Reports

The Contractor shall provide monthly budget reports in a format prescribed by the Department. The Department may request that this report be prepared more frequently.

4.5. INTELLECTUAL PROPERTY/PERSONAL PROPERTY

The Department reserves the right to include intellectual/personal property provisions in the Contract, 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, all intellectual property is owned by the Department, including works made or performed for hire. Specifically exempt from the provisions of this paragraph are property, plant, equipment and preexisting software provided by the Contractor to the Department for the purpose of carrying out the provisions of this RFP. Property, plant, equipment and preexisting software may become subject to intellectual/personal property regulation when agreed to in writing by the parties.

4.6. REPORTS

In addition to reports discussed elsewhere in this RFP, the Department reserves the right to request other reasonable programmatic and/or financial reports. When requested to do so, the successful bidder will provide the Department with reports in a reasonable period of time and in an acceptable format.

4.7. SUBCONTRACTS

4.7.1.

Subcontracting is permitted when required by the Contractor to fulfill the terms and conditions of this RFP. Your proposal must identify the name and address of the subcontracting firm or firms and explain which element(s) of the Scope of Service (section 2.1) and Budget (see EXHIBIT B) the subcontractor(s) is responsible for. The Department is an equal opportunity Contractor and reserves the right to review and approve all subcontracting firms (see section 4.8 for details on Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business subcontracting).

4.7.2.

After the contract resulting from this RFP, if any, is awarded, any subcontracts or purchases (except printing see Section 4.4.2 of this RFP) in excess of \$50,000 must adhere to the following:

4.7.2.1.

For subcontracts or purchases which are competitively bid, Contractor must request proposals from a minimum of three (3) qualified firms, and the lowest responsible bidder shall be accepted unless otherwise approved in writing by the Department.

4.7.2.2.

Subcontracts or purchases that are sole or single source (entered into without submission to competitive bid) must be approved in writing by the Department prior to entering into the agreement.

4.7.2.3.

All subcontracts awarded pursuant to this section 4.7. shall adhere to all the terms and conditions set forth in this RFP and the resulting contract.

4.7.3. Sole/Single Source Contracts

For purposes of this agreement, sole source contracts are defined as where only one vendor is capable of supplying the required services or properties because such service or property offered is so unique that it cannot be duplicated or obtained elsewhere or involves creative artistry of a similar nature.

Single source contracts are defined as where, although more than one vendor can supply the required services or properties, circumstances of a material and substantial nature make the awarding of the contract to one vendor over the others appropriate.

The requirement for competitive bidding may be waived upon prior written approval of the Department's Project Manager provided that prior to the acceptance of such services or properties, the Contractor provides a detailed written statement to the Department which describes the sole or single source determination, the alternatives considered and the terms of the proposed contract. In addition, the Contractor must establish to the satisfaction of the Department the reasonableness of the proposed expenditure. In general, the price charged to the Department should be no greater than the price charged in the private sector. Sole/single source contracts are to be avoided whenever possible.

4.8 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations DED is required to promote opportunities for the maximum feasible participation of New York State Certified Minority and Women-Owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of NYSDDED contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, DED hereby establishes an overall goal of **30%** percent for MWBE participation. A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its Good Faith Efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that DED may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how DED will evaluate a Contractor's Good Faith Efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract

resulting from this RFP, such finding constitutes a breach of contract and DED may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at DEDOCSD@esd.ny.gov.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DED for review and approval.

DED will review the submitted MWBE Utilization Plan and advise the respondent of DED acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at DEDOCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DED to be inadequate, DED shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

DED may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If DED determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DED but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a monthly MWBE Contractor Compliance and Payment Report to DED, by the 10th day following each end of month over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions in [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to DED with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by DED on a monthly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article-15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will 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.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at DEDOCSD@esd.ny.gov.

Diversity Practices

DED has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Exhibit I).

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. DED recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of DED contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

- A. DED hereby establishes an overall goal of **3%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in

conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to DED.

- C. DED will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of DED acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to DED a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DED to be inadequate, DED shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by DED, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. DED may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If DED determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DED shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at DED for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by DED at that time, the provisions of clauses II (C), (D) and (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, DED shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to DED but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If DED, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6), determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, DED may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders'/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by DED with certified SDVOBs whom DED determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) 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 SDVOBs.
- (5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to DED during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the DED website and should be completed by the Contractor and submitted to DED, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: DEDOCS@esd.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

4.9 REPRESENTATIONS AND WARRANTIES BY THE DEPARTMENT

The Department represents and warrants that it has the legal competence to grant the rights herein to the Contractor if and when a contract is entered into.

4.10 REPRESENTATIONS, WARRANTIES, AND COVENANTS BY THE CONTRACTOR

The Contractor represents, warrants and covenants that:

4.10.1

It is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which its home office is located, and is duly authorized to conduct business in the State of New York;

4.10.2

It has the legal power and authority to execute and deliver any contract resulting from this RFP and to consummate the obligations and activities contemplated on its part hereby. The execution and delivery of any contract resulting from this RFP has been duly authorized by the Contractor, and no other proceedings by the Contractor are necessary to authorize the execution and delivery of a contract or the performance of the Contractor's obligations hereunder;

4.10.3

All statements of fact contained in the Contractor's proposal are true, complete, and accurate and shall be true, complete, and accurate during the term of the Contract and any extension thereof; and neither it, nor any of its directors, officers, employees, consultants or subcontractors has or will give anything of value to anyone to procure a Contract between the parties or to influence any official act or the judgment of any person in the negotiation of any of the terms of any Contract resulting from this RFP.

SECTION V – PROPOSAL FORMAT AND CONTENTS

5.0 CONTENT OF YOUR PROPOSAL

In preparing your proposal, please follow the format listed below:

5.1. Complete and submit the following forms:

- 5.1.1. Request for Proposal (RFP) Response Form (see second page of the RFP)
- 5.1.2. Procurement Lobbying (see EXHIBIT D of the RFP)
- 5.1.3. Non-collusive Bidding Certification and Bidder's Identifying Data (see EXHIBIT E of the RFP)
- 5.1.4. Nondiscrimination in Employment in Northern Ireland (see EXHIBIT F of the RFP)
- 5.1.5. Responsibility Questionnaire Information form (see EXHIBIT G of the RFP)
- 5.1.6. MWBE and SDVOB Utilization Goal Requirements for NYSDED Contracts (Section 4.8)

5.2. Describe how you will provide the services discussed in Section 2.1 (Scope of Services) of this RFP. Limit your response to no more than ten (10) 8 ½" x 11" pages, 12-point font.

5.3. Organization and Staffing.

- 5.3.1. Describe your organization, including how it is staffed.
- 5.3.2. Identify the individual(s) from your firm who will be the primary contact for NYSDED as well as other key personnel (by title) typically involved in providing the requested services.
- 5.3.3. If subcontracting is proposed, companies must be identified by name. An explanation of the specific function they will perform, and a description of the working arrangement must be provided. Limit your response to five (5) 8 ½" x 11" pages, 12-point font.

5.4. Experience

The NYSDED considers direct, prior experience in providing the services in this RFP highly desirable. Your proposal must cite how your company meets the requirements of this RFP and must identify past projects.

5.5. Website Examples

Please provide the URLs for website examples as explained in Section 2.7.

5.6. Complete EXHIBIT B (Budget)

Appendix B (Budget) of this RFP must be completed and submitted as part of your proposal, following the

budget format provided. All discussion of proposed costs, rates or expenses must occur only with the budget form. Annual personnel cost shall include all employment-related expenses including payroll taxes, health insurance, employer liability insurance, etc. If any of the personnel duties will be filled with subcontractors, please include their costs under the Subcontractor lines of your budget proposal on the Appendix B (Budget) forms provided. Subcontractor services are performed by other organizations or individuals who are not employees of the Contractor. Use of subcontractors must be clearly explained in the proposal and identified by name on Appendix B (Budget).

5.7. Section II

Please review Section II of this RFP carefully to ensure that your proposal contains all information requested in Section II.

RFP Exhibit A

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE**

October 2019

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the true or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid,

effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified

and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or

regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said

records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, 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 and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations 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.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the

State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on

its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business
Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request;

and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING.

To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In

the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is

renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

EXHIBIT B BUDGET

Do not change the budget format. Failure to complete the financial proposal in full, or bidder changes to the format will result in the disqualification of your proposal. Any bidder failing to complete the budget pages will be disqualified.

***The Budget must be bound separately from the rest of your proposal.**

When completing the Budget forms, vendors should adhere to the following instructions:

The one-time and recurring costs the Respondent provides within the Cost Proposal must include ANY AND ALL one-time and recurring fees, charges or costs for the duration of the contract, including: All direct and indirect costs, as well as all overhead, fees, and profit, including, but not limited to:

- labor, parts, shipping, material and equipment cost;
- emergency work; maintenance services as specified herein;
- repairs and replacement of major or minor parts as necessary;
- administrative, reporting or other requirements, overhead costs, and profit;
- travel costs, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc.; and
- services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.

If a vendor indicates compliance with a requirement in the RFP, the costs related to that requirement must be included in the Budget.

Terminology used in the Budget for products and services must be consistent with the terminology used in the rest of the response.

All Budget sheets must be completed in order for the response to be considered complete.

BUDGET - YEAR 2

HOSTING -Annual Cost (see Section 2.0 Definitions) \$ _____
*Sub-contracting for hosting permitted upon review and acceptance by ESD

MAINTENANCE/SUPPORT (see Section 2.0 Definitions) \$ _____

TOTAL YEAR 2 \$ _____

BUDGET - YEAR 3

HOSTING -Annual Cost (see Section 2.0 Definitions) \$ _____
*Sub-contracting for hosting permitted upon review and acceptance by ESD

MAINTENANCE/SUPPORT (see Section 2.0 Definitions) \$ _____

TOTAL YEAR 3 \$ _____

BUDGET - YEAR 4

HOSTING -Annual Cost (see Section 2.0 Definitions) \$ _____
*Sub-contracting for hosting permitted upon review and acceptance by ESD

MAINTENANCE/SUPPORT (see Section 2.0 Definitions) \$ _____

TOTAL YEAR 4 \$ _____

BUDGET - YEAR 5

HOSTING -Annual Cost (see Section 2.0 Definitions) \$ _____
*Sub-contracting for hosting permitted upon review and acceptance by ESD

MAINTENANCE/SUPPORT (see Section 2.0 Definitions) \$ _____

TOTAL YEAR 5 \$ _____

TOTAL BUDGET PROPOSAL SUMMARY

Year 1 Total for all Categories \$ _____

Year 2 Total for all Categories \$ _____

Year 3 Total for all Categories \$ _____

Year 4 Total for all Categories \$ _____

Year 5 Total for all Categories \$ _____

TOTAL 5 YEAR PROPOSAL AMOUNT \$ _____

EXHIBIT C

NYS CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES

Your proposal may contain a budget line for reasonable travel expenses. Any travel related to the project must be approved by DED prior to incurring any travel related costs. Reimbursement for costs related to anticipated travel will be in accordance with the maximum rates permitted by the travel guidelines of the New York State Office of State Comptroller which can be found at the following website:

<https://www.osc.state.ny.us/agencies/travel/travel.htm#>.

EXHIBIT D
VENDOR OBLIGATIONS UNDER
NEW YORK STATE FINANCE LAW §§139-J AND 139-K

PROJECT NO:	AGENCY:
NAME OF VENDOR:	
VENDOR ADDRESS:	

Overview:

All Governmental Procurements conducted by Empire State Development ("ESD") in excess of \$15,000 annually are subject to the requirements of New York State's State Finance Law Sections 139-j and 139-k. Pursuant to these requirements, all Contacts during the Restricted Period of a Governmental Procurement must be made only with one or more designated contacts and a record must be made of all Contacts so that the record can be included in the procurement record for the Governmental Procurement. ESD will provide vendors with notification of the designated contacts for a Governmental Procurement at the start of the procurement process. New York State Finance Law Section 139-j does include exceptions to the requirement that Contacts only be made to a designated contact, but there are penalties for violations of the statutes. Violations of the policy regarding permissible Contacts must be reported to the ESD Ethics Officer and investigated accordingly. The first violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. Any determinations of non-responsibility or debarments due to violations of the Procurement Lobbying Law are posted on the ESD website in accordance with statutory requirements. In addition, the statutes require ESD to obtain certain affirmations and certifications from proposers. This document contains the forms with which to comply, together with additional information and instructions.

Definitions:

"Contacts" any oral, written or electronic communication with a Governmental Entity under circumstances where a reasonable person would infer that the communication was intended to influence the Governmental Entity's conduct or decision regarding the Governmental Procurement.

"Governmental Entity" (1) any department, board, bureau, commission, division, office, council, committee or officer of the State, whether permanent or temporary; 2) each house of the State Legislature; (3) the Unified Court System; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the Public Authorities Law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the Governor or who serves as a member by virtue of holding a civil office of the State; (6) a municipal agency, as that term is defined in paragraph (ii) of Subdivision (s) of Section One-C of the Legislative Law; or (7) a subsidiary or affiliate of such public authority.

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

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

"Procurement Contract" Any contract or other agreement, including an amendment, extension, renewal or change order to an existing contract (other than amendments, extensions, renewals or change orders that are authorized and payable under the terms of the contract as it was finally awarded or approved by the Comptroller, as applicable), for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, Article Eleven-B State Finance Law contracts, program contracts between not-for-profit organizations, as defined in Article Eleven-B of this Chapter, and the Unified Court System, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, contracts governing organ transplants, contracts allowing for State participation in trade shows, and eminent domain transactions shall not be deemed Procurement Contracts.

"Restricted Period" The period of time commencing with the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article Four-C of the New York State Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerers intending to result in a Procurement Contract with a Governmental Entity and ending with the final contract award and approval by the Governmental Entity and, where applicable, the State Comptroller.

Instructions: New York State Finance Law §139-k(2) obligates ESD 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 New York State Finance Law §163(9). In accordance with New York State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of New York State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. As part of its responsibility determination, New York State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the 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 extenuating circumstances apply. **ESD reserves the right to terminate a Contract (including any lease, license, entry permit, or sale documents) in the event it is found that the certification filed by the Proposer, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, ESD may exercise its termination right by providing written notification to the Proposer in accordance with the written notification terms of the Contract.**

Section I: The Empire State Development ("ESD") must obtain an affirmation of understanding and agreement to comply with the requirements of New York State Finance Law §§139-j and 139-k. In accordance with this requirement, please complete the following section:

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

Signature: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Section II: ESD must obtain a certification from every Offerer indicating that all information provided to it with respect to State Finance Law §139-k, regarding any prior findings of non-responsibility, is complete, true and accurate. In accordance with this requirement, please complete the following section:

Offerer Certification:

I certify that all information provided to ESD with respect to State Finance Law §139-k is complete, true and accurate.

Signature: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Section III: ESD must obtain disclosure of whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the Restricted Period of a Governmental Procurement (for example, Contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions set forth in State Finance Law §139-j). As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above referenced 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. In accordance with this requirement, please complete the following section:

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If the answer to Question 1 is yes, please answer the following 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 the answer to Questions 2 or 3 is yes, please provide the following details regarding the finding of non-responsibility:

Name of the Governmental Entity That Made the Finding of Non-Responsibility:

Date of the Finding of Non-responsibility:

Basis of the Finding of Non-Responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If the answer to Question 5 is yes, please provide details below.

Name of the Governmental Entity that Terminated or Withheld the Procurement Contract:

Date of the Termination or Withholding of the Contract:

Basis of the Termination or Withholding:

(Add additional pages as necessary)

The 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:

EXHIBIT E

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW
SECTION 139-D, Statement of Non-Collusion in bids to the State

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

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE 1, 2, 3 ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[BIDDERS AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 20__ as the act and deed of said individual, corporation or partnership.

Person Legally Responsible for Binding Bidder

Name _____ Title _____

Signature _____

Joint or combined bids must be certified on behalf of each participant

Legal name of person, firm or corporation

Legal name of person, firm or corporation

Person(s) Legally Responsible for Binding Participant

Name _____ Name _____

Title _____ Title _____

Business Address _____

Business Address _____

Bidder's Identifying Data

Bidder's Name _____

Business Address _____

Street _____

City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Federal id. Number _____

If Bidder is a Partnership complete the following:

Name of Partners or Principals

Business Address

If Bidder is a Corporation complete the following:

Name

Business Address

President

Secretary

Treasurer

EXHIBIT F

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

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

- (1) has business operations in Northern Ireland;

Yes ____ or No ____

if yes:

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

Yes ____ or No ____

Signature

Date

EXHIBIT G

Vendor Responsibility Information

Applicant Business Name: _____

NYS Vendor ID # (if one has been assigned) _____

Effective January 1, 2005, the Office of the State Comptroller has conveyed that all requests for NYS contract approval must include information regarding Vendor Responsibility for the Contractor. **In addition any subcontractor on a state contract receiving over \$100,000 must also complete a Vendor Responsibility Questionnaire.** The NYS Department of Economic Development recommends that vendors file the required questionnaire online via the NYS VendRep System. To enroll in and use the system, see the instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <http://portal.osc.state.ny.us>.

Failure to submit a completed questionnaire may result in either a grant or designation being rescinded or delayed. In addition, the NYS Department of Economic Development reserves the right to rescind upon a finding that the recipient is deemed not responsible to receive funds.

Please check one of the following:

- A Vendor Responsibility Questionnaire has been filed online and has been certified/updated within the last six months. Date Certified: _____

- A Vendor Responsibility Questionnaire **is attached hereto**. Paper version can be found at: <http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3290s.pdf>.

EXHIBIT H

MANDATORY REQUIREMENTS CHECKLIST
(items to be submitted with your proposal)

Please submit checklist with your proposal

Company Name: _____

- _____ Request for Proposals Response Form
- _____ Bidder's Identifying Data
- _____ Full Proposal (see section 3.1 of the RFP for details)
- _____ Exhibit B – Budget Forms (**Bound Separately**)
- _____ Exhibit D – Procurement Lobbying Disclosure
- _____ Exhibit E– Non-Collusive Bidding Certificate
- _____ Exhibit F – Nondiscrimination: MacBride Fair Employment Principals
- _____ Exhibit G – Vendor Responsibility Information (also paper questionnaire if not completed online)
- _____ Appendix I – Diversity Practices Questionnaire
- _____ Form OCSD-1, MWBE and SDVOB Participation/EEO Policy Statement
- _____ Form OCSD-4, MWBE and SDVOB Utilization Plan
- _____ Financial Resources Letter (section 1.5)
- _____ 3 References (section 2.4)

Signature: _____

EXHIBIT I

DIVERSITY PRACTICES QUESTIONNAIRE

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 noncontract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² 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? Yes or No

¹ Do not include onsite project overhead.

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, 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
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 _____, 202_, 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
