



**Empire State
Development**

Andrew Cuomo
Governor

Howard Zemsky
ESD President, CEO & Commissioner

New York State Department of Economic Development

REQUEST FOR PROPOSALS

**EXPERIENTIAL MARKETING ADMINISTRATION
AND MEDIA PLACEMENT**

RFP Number: 17-6121

**PROPOSALS DUE: May 9, 2017
BY 5:00 P.M.**

RFP Released: April 14, 2017

Request For Proposal (RFP) Response Form

RFP # 17-6121

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

/ / **Attached is our proposal**

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

Name of Organization: _____
Address: _____

- Is this address your company's principal place of business? Yes _____ No _____
The term "principal place of business" is defined as follows:

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

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

- _____
- _____
- Will this product or service be substantially produced in NYS: Yes _____ No _____
 - Subject to the "Conditions Governing Proposals" article stated in this RFP, proposals must be in agreement with all terms and conditions of this RFP.

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

Signature: _____ **Date:** _____

Type or Print Name and Title: _____

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

Mail this as the first page of your proposal. If not submitting a proposal, please mail this form to: Lisa Sutton, NYS Department of Economic Development, Office of Fiscal Management, 625 Broadway, Albany, NY 12245.

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
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SECTION I - ADMINISTRATIVE INFORMATION

1.0 PURPOSE

The New York State Department of Economic Development (hereafter referred to as “NYSDED” or “the Department”) requires the services of a qualified contractor (hereafter referred to as the successful bidder or the Contractor) to assist in the creation, production and the ability to negotiate both paid and unpaid media placement advertisements, including, but not limited to, radio and television commercials, Out of household (OOH), digital and newspaper/print advertisements. The Department is seeking an organization with experiential marketing administration, media buying and creative/production services capabilities to assist in planning, purchasing and tracking all media purchases related to marketing the ILOVENY brand. The information and instructions contained in this Request for Proposals (RFP) provides interested individuals or firms with the information necessary to submit a proposal.

1.1. DESIGNATED CONTACTS

For the purpose of the Procurement Lobbying requirements of this RFP (see section 3.6 and Exhibit.D), the Department’s designated contact shall be 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

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed in this RFP. (refer to: <https://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>)

1.2. INQUIRES

All questions must be submitted in writing via email to rpfpaq@esd.ny.gov with **Media Placement in the subject line. Please do not contact the department by telephone. Questions must be received by the department no later than April 24, 2017, 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.

1.3. SCHEDULE OF PERTINENT DATES

Release of RFP	April 14, 2017
Deadline for Receipt of Questions	April 24, 2017 by 5:00 PM EST
Submission of Proposals	May 9, 2017 by 5:00 PM EST Late proposals cannot be accepted.
Oral Presentations/Interviews	By appointment at the discretion of NYSDDED
Award of Contract	May/June 2017 (estimated)

1.4. PRE-BID CONFERENCE

There is no pre-bid conference for this project.

1.5. SUBMISSION OF PROPOSALS

Interested individuals or firms must submit their proposals no later than **5:00 P.M. U.S. Eastern Standard Time**, on **May 9, 2017**. Submit five (5) copies of the proposal to the following address:

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

In addition to the hard copies, the Applicant **must** submit an identical electronic version of their entire proposal, including budget and completed forms, to tourismrfrp@esd.ny.gov with **Media Placement – 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 2.4 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 2.4.5 and Section 2.5 of this RFP.

SECTION II – PROGRAM BACKGROUND AND SCOPE OF SERVICES

2.0 BACKGROUND

The New York State Department of Economic Development (hereafter referred to as NYSDDED or the Department) re-launched the iconic I LOVE NEW YORK campaign – one of the world’s most identifiable and celebrated brands – to reposition New York State Tourism in the 21st century. The campaign was originally developed in 1977 in response to a widespread economic crisis throughout the city and the state and was extremely successful in harnessing travel and tourism as a driver of economic development. The primary objectives of the re-launch were to reassert the I LOVE NEW YORK icon as a statewide brand, put New York State on consumer’s shopping list of places to visit and ultimately, drive more visits and overnight stays across the state. Tourism is critically important to the State, and one of New York’s largest industries with an annual economic impact in the multi-billions of dollars.

NYSDDED is the New York State Agency tasked with creating private-sector job opportunities for New Yorkers by enhancing the State’s economic growth. The Division of Tourism takes the lead in carrying out this mission through the tourism industry, by promoting New York State as the premier location to vacation and visit. The Department’s primary resource is the I LOVE NEW YORK brand, a celebrated and renowned brand first introduced in 1977.

Travel and tourism represents a \$142 billion industry in New York State and accounts for close to 900,000 jobs. As tourism remains an integral part of the New York State economy, the I LOVE NEW YORK campaign represents a vital link to one of the most tested and resilient vehicles for continued economic growth. Now more than ever, in these trying economic times, travel and tourism provides a strong foundation for spurring job creation and development.

The Department’s anticipated five-year budget for media placements is \$7.5 million. NYSDDED is unable to guarantee an annual dollar value for advertising.

2.0.1. Spring/Summer Media Campaign

The Spring/Summer campaign has traditionally consisted of response driven television, print, OOH and digital media campaigns with a call to action. For the past several years, the overall creative theme has been, “It’s All in New York. It’s Only in New York.” Under this creative umbrella, campaigns highlight activities and attractions of New York State often overlooked. The primary target markets will continue to be the “drive to” consumers within a five-hour trip throughout New York State along with adjoining states and Canadian provinces.

2.0.2. Fall Media Campaign

The Fall campaign consists of print, out-of-household, digital and radio media campaigns targeting New York City along with adjoining states and Canadian provinces.

2.0.3. Winter Media Campaign

The Winter campaign consists of out-of-household, digital and radio media campaigns targeting the larger cities of New York City, Philadelphia PA, Washington DC, Montreal and Toronto.

2.1 SCOPE OF SERVICES

2.1.1 Upon receipt of the Project Manager’s written approval of advertising plans, the Contractor shall perform media placement services required to plan, buy, and track all media purchases for I LOVE NEW YORK campaigns as directed by the Department.

2.1.1.1. The Contractor shall provide a pre-buy analyses and evaluations as directed by the Department. Pre-buy analyses and media planning to be provided by the Contractor may include, but is not

limited to: experiential marketing administration; demographic research; targeting media to reach specified audiences; obtaining audited circulation information for newspapers and magazines; obtaining size and format information for print; media purchasing; electronic distribution of spots to the designated stations; negotiating and placing digital ad campaigns and social media outreach efforts, sending print ads electronically or on disk to the selected publications; arranging for printing of out-of-home posting materials; obtaining and submitting affidavits of performance; obtaining tear sheets, either hard copy or electronic, of print ads; obtaining completion photos of out-of-home ads; keeping track of accounts and keeping buys within budget limitations; submitting invoices in a timely manner; and presenting post-buy analyses and evaluations for each campaign.

2.1.1.1.1. Upon the Department's request, the Contractor shall provide station/network programming lists, complete with station profiles, coverage maps and current points/rankers, with proposed times of placement for specific markets, together with reach, frequency and cost per point for the various electronic media proposed in applicable markets. Additionally, upon request by the Department, the Contractor shall provide demographic information, including demographic analysis, by market, demographic profile and time of day, of the proposed electronic media. The Department may request other information standard to the industry.

2.1.1.1.2. The Contractor shall provide, when applicable, print media lists for specific markets, together with recommended dates of placement in specific print media within said markets, together with the circulation and readership figures for each specific print media proposed. Recommended placement dates for print media must have a justified source based upon the Department's marketing strategy, target audience of publication and/or editorial content of the publication.

2.1.1.2. Negotiate both paid and unpaid media placement advertisements, including, but not limited to, radio and television commercials, signage, event sponsorship media deliverables, digital media and newspaper/print advertisements. Placements will be required throughout New York State and adjoining states and Canadian provinces to reach the drive-to-market tourist population. Placements may include in market placements in foreign countries.

2.1.1.2.1. The Contractor shall, when assigned a media buy, negotiate the best rates and times for applicable electronic media. Time placement should be in accordance with the stations current points/rankers, the Department's target audience/budget and/or industry standard for specific media.

2.1.1.2.2. The Contractor shall, when assigned a media buy, negotiate the best placement and rates for applicable print media.

2.1.1.2.3. The Contractor shall consider and advise the Department regarding opportunities such as added value incentives, promotions, giveaways and editorial opportunities in support of the specific media purchased.

2.1.1.2.4. Prior to placement of media, the Contractor shall provide the Department with a written confirmation of specific media placements, and shall obtain prior written approval from the Department authorizing said placements.

2.1.1.3. Negotiate media placement which achieves maximum promotion opportunities with media and special events, ie. sports programs.

2.1.2 Contractor must be available to meet with the Department's Program Manager, in person, given seventy-two hour notice, and/or be available by telephone, if an emergent situation arises.

2.1.3. Contractor must have the capacity to place media buys within a reasonable time period.

2.1.4. Upon request of the Department, the Contractor shall provide a post-buy analysis which shall include, but not be limited to the following:

2.1.4.1. Complete listing, by market of purchase, including specific stations for electronic media purchases and a complete list of publications for print media buys;

2.1.4.2. Reach and Frequency attained together with the cost rating points, cost per thousand, etc.

2.1.5. Upon request by the Department, the Contractor shall monitor, analyze and report on the Department's cable TV media advertising campaigns (Spring, Summer, Fall, Winter, etc.). At the conclusion of each campaign, if asked by the Department, the Contractor shall prepare in addition to other reports as may be discussed elsewhere in this Agreement, a written analysis of the campaign, including but not limited to statistical analyses of its effect and recommendations for improvement. After the Department has reviewed the analysis, the Contractor may be asked to meet or otherwise discuss with Department staff, the Contractor's recommendations. The Department may, at any time, request further information or analysis concerning the media campaign from the Contractor.

2.2. DELIVERABLES

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

2.3 MINIMUM QUALIFICATION REQUIREMENTS

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

2.3.1 Ability to perform all of the services listed in this RFP;

2.3.2 At least five (5) years experience providing full service capabilities in the following key areas:

- Account Management Services
- Media Planning and Buying
- Event Planning and Execution
- Project Management and Experiential Marketing Administration
- Creative Services and Production Expertise
- Market Research
- Direct Market and Sales Promotion

2.3.2 (a) Additional Capabilities Desired:

In addition to the Minimum Qualifications Requirements stated above, the following capabilities are highly desired in a Media Buyer:

- Experience in developing media strategies for State Tourism entities or high volume tourism destinations.
- Experience placing international, in-market, foreign language advertising
- Experience managing social media vendors, experiential marketing companies, app developers, production companies, and other specialized media providers

2.3.3 At least five (5) years experience negotiating and strategically placing previously developed and/or newly developed commercials/advertisements with radio and television stations and newspapers.

2.3.4 At least five (5) years experience negotiating with media entities for obtaining a number of free airings in the form of unpaid placements.

2.3.5. At least five (5) years experience in market research to support media buy placements in set geographic locations. This market research must include knowledge of target populations and an

understanding of their viewing/listening/reading preferences.

2.3.6. You must provide as part of your proposal, the name and address of at least three (3) business references from corporations, institutions and/or government agencies for which the bidder provided similar services and met similar terms and conditions. Your references will be contacted to determine if they are consistently satisfied with your work and services.

2.3.7. You must have the economic resources to pay expenses in advance of reimbursement from the State, for the services described in Section 2.1 of this RFP. You must provide as part of your proposal, a letter from a Certified Public Accountant (CPA) stating that your company has the economic resources to pay expenses pending reimbursement from the State and that your company has sufficient working capital, positive net worth, and has or can obtain a line of credit, for the work described in this RFP.

2.3.8. This Section 2.3 of the RFP is not intended to itemize all requirements for an award of this project.

2.4. SELECTION CRITERIA

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

Proposals will be scored based on the following criteria:

2.4.1.1 Experience (20 points)

Demonstrated experience that meets the minimum qualification requirements addressed in section 2.3 of this RFP.

2.4.2 Experience working directly with New York State (7 points)

2.4.3 Bidder is a New York State-Certified MWBE (proof of Certification required with bid) (3 points)

2.4.4 Ability to perform the required services (30 points)

Evaluation of the approach proposed to accomplish the Scope of Services (section 2.1) of this RFP. Your proposal must address each item listed in the Scope of Services (section 2.1). Limit your response to accomplishing the Scope of Services to twelve (12) 8 1/2" x 11" pages, 12-point font.

2.4.5 Cost (40 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.

*Appendix B - Budget must be bound separately from the rest of your proposal.

2.4.6 References

Bidders must supply a minimum of three (3) business references that can substantiate the quality of the bidder's work to be considered for an award of this project.

2.4.7 Oral Presentation

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 greatest number of total points 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.

2.5. 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 NYSDDED’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.

NYSDDED reserves the right to determine whether oral presentations/interviews will be necessary. If NYSDDED determines that oral presentations/interviews are necessary, such oral presentations/interviews will occur as follows:

2.5.1 Following the evaluation of proposals as provided above, the Evaluation Committee will determine the Finalists to be interviewed as those having the highest combined technical and cost scores. NYSDDED anticipates that three (3) proposers will be selected as Finalists. The Department reserves the right to select any number of firms as finalists.

2.5.2 Each Finalist will be notified of the date, place and time of their oral presentation/interview to be either in person or 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 should be present and participate in the oral presentation/interview. The purpose of the oral presentation/interview is to impart to the Evaluation Committee an understanding of how specific services will be furnished and clarify other information included in the proposal. 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.

2.6. 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. NYSDDED anticipates that the Evaluation Committee will make an award recommendation of one proposer based upon its determination of the best value for NYSDDED as the highest total scores (technical and cost).

Upon selection, negotiations will be commenced with the successful bidder to enter into a contract setting forth the general terms that would govern the 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.

2.7. DEBRIEFING

An unsuccessful bidder has the right to a debriefing regarding the reasons its proposal was not selected for award. Upon request, the Department will provide a debriefing to any unsuccessful applicant as to the reasons that the proposal submitted was not selected for an award. To request a review of an unsuccessful proposal contact via e-mail at: tourismRFP@esd.ny.gov. A review should be requested by an unsuccessful bidder within thirty (30) days of the date of the notice that its proposal was not selected for an award.

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 addressed (Section 2.4.). 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. All proposals must include the following information:

3.1.1 Title page, indicating:

Name, address (both mail and email) phone & 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 unless withdrawn in writing.**

3.1.2. Each element of the Selection Criteria (section 2.4) must be addressed.

3.1.3. A discussion of the relevant experience of your company and your staff proposed to provide the Scope of Services (section 2.1). 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 A discussion on how your company proposes to accomplish the Scope of Services. If any of the tasks associated with the project will be completed by non-company employees, qualifications and experience of those individuals must to be specified. Proposal narrative should be 12 – 15 pages.

3.1.6 References as described in Section 2.4.6.

3.1.7 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. Bidders may not substitute their own budget in place of EXHIBIT B. Proposals received that do not include a budget in the form of EXHIBIT B will be deemed noncompliant and will not be considered for the award of this project. Subcontractor services are those services 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 as noted on EXHIBIT B page 2 of the Budget.

3.1.8. Other:

Financial resources statement (see Section 1.6 of this RFP). Please complete and include EXHIBIT D (Procurement Lobbying Disclosure Pursuant to Sections 139-j and 139-k of State Finance Law), EXHIBIT E (Non-Collusive Bidding Certification), EXHIBIT F (MacBride Fair Employment Principles), EXHIBIT G (Responsibility Info and questionnaire if not filed online), and (applicable M/WBE Utilization Goal Requirements forms For NYSDED Contracts see Section 4.10).

The successful bidder must also 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.](#)

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).
- 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 bidders 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 offerers, 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 in writing. 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 Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by 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 1.4 of this solicitation. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers 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 Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> or by calling the New York State Office of General Services; OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. State Finance Law Sections 139-j and 139-k may be viewed at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

3.7 PROTESTS AND APPEALS

1. Protests

Any interested party may file a protest with the NYS Dept. of Economic Development DED. within fifteen (15) 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 refer 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 the DED prior to the expiration of the time period for filing a protest, or, if a protest has been filed, before the 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 DED 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.

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

The successful bidder shall perform the work and provide the services set forth in this RFP for a period of five (5) years. 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

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 no more frequently than monthly, in the ordinary course of State business upon receipt of duly authenticated invoices/vouchers and upon receipt of reports and/or other documentation, as may be required. Payment including payment for necessary travel shall be made in full compliance with the terms and conditions discussed in Section 4.7. of this RFP. The Department 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.

Payment shall be made as discussed herein and subject to the terms and conditions of Section 4.7 of this

RFP.

Where the media allows cash discount and the Department has provided a timely media payment, the Department shall receive full allowance for each such discount. Contractor shall make every diligent and reasonable effort to furnish media invoices to the Department in a timely manner, so that the Department may take advantage of discounts whenever possible. In the event the Department does not make media payments to the Contractor in sufficient time to permit the Contractor to obtain a cash discount, the Contractor shall have no liability to the Department by reason of any failure to obtain such a discount. Payment for media shall not be billed to the Department until after the Contractor incurs a liability for the media and the media provider has billed the Contractor.

4.4 INTELLECTUAL PROPERTY/PERSONAL PROPERTY

4.4.1. Unless otherwise stated and agreed, all intellectual property is owned by 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. The Department reserves the right to include additional 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.

4.4.2. All information collected or otherwise obtained by the Contractor, the Contractor's staff and all Subcontractors is proprietary and may not be disclosed in perpetuity to any party other than the Department without the Department's express written approval.

4.5 REPORTS

See section 2.1. The Department reserves the right to request additional financial and programmatic reports, from time to time.

4.6 SUBCONTRACTS

The Bidder may subcontract elements of the program for which it lacks location or in-house capabilities. The firm's proposal must identify the subcontracting firm or firms and cite the proposal. The Department is an equal opportunity contractor and reserves the right to review and approve all subcontracting firms.

After the contract resulting from this RFP, if any, is awarded, any subcontractors or purchases in excess of \$50,000 that was not originally identified in the Contractor's proposal must adhere to the following:

- For subcontracts or purchases that are competitively bid the Contractor must request proposals from a minimum of three qualified firms, and the lowest responsible or best value proposer, as appropriate, shall be accepted unless otherwise approved in writing by the Department.
- Subcontracts or purchases that are sole or single source must include a detailed justification and require the written approval of the Department prior to entering into the agreement.

The contractor may not, without written consent of the Department, assign to any party the Contract or any interest herein, or claim hereunder.

4.7 ADMINISTRATIVE AND FISCAL REQUIREMENTS

4.7.1. Media estimates, advanced approval required.

The Contractor shall not incur any obligations or provide any services (hereafter, goods and services) for the Department's account which would exceed \$2,000, without first obtaining written approval from the Department's Project Manager or his/her designee. In order to obtain the Department's approval, the Contractor shall submit written estimates for media and other services to the Department. A unique job number shall be

assigned to each project (media or otherwise) and shall be used on all invoices and estimates submitted to the Department. For media, estimates shall contain a full description of the cost of the media to be placed including ancillary costs, if any, such as postage, duplicate tear sheets, copying costs, etc. The Contractor shall not be responsible for missed deadlines or closing dates caused by the delay of the Department in approving media and production estimates.

4.7.1.1. Media Estimate Approval.

Approvals shall be made by the Department on the face of the Contractor's media and production estimates with a copy of the estimate returned to the Contractor.

4.7.2. Media Estimate Amendment.

Media estimates shall be promptly amended by the Contractor to reflect an increase or decrease in cost. Amended estimates shall be submitted to the Department for review and written approval as described in Section 4.7.1.

4.7.3. Media Placement Industry Recognized Media.

For the placement of advertising in industry-recognized media (including but not limited to network and spot television, network and spot radio, consumer, special interest and trade magazines, and outdoor advertising) the Contractor will receive a media buying commission in accordance with the percentage proposed by the Contractor, in EXHIBIT B (Budget) of this RFP.

4.7.5. Payments and Documentation.

4.7.5.1. Media Invoices.

4.7.5.1.1. Media invoice and payment of media commission. When the Contractor has the necessary documentation (as more fully described below) required by the Department and final actual media costs have been determined, the Contractor shall issue an invoice, as appropriate. The invoice shall include the appropriate commission due to the Contractor for disbursements, as bid by the Contractor in EXHIBIT B (Budget), based upon the final actual media costs and the necessary final documentation. All media invoices shall be accompanied by a copy of the approved estimate(s) and evidence of payment/accounts payable. Necessary supporting documentation includes such items as station affidavits or sworn statements for electronic advertising, and tear sheets showing name and date of publication for print advertising. Media payments must conform to media plans submitted by the Contractor and approved by the Department. Media plans will, at a minimum describe the media to be purchased by campaign (Summer, Winter, Fall, etc.) and by type (electronic, print, outdoor, etc.). The media plan shall also include a cost estimate by campaign and type.

4.7.5.1.2. Where the media allows a cash discount and the Department has provided a timely media payment as aforesaid, the Department shall receive full allowance for each such discount. Contractor shall make every diligent and reasonable effort to furnish media invoices to the Department in a timely manner, so that the Department may take advantage of discounts whenever possible. In the event the Department does not make media payments to the Contractor in sufficient time to permit the Contractor to obtain a cash discount, the Contractor shall have no liability to the Department by reason of any failure to obtain such a discount.

4.7.5.1.3. Tear sheets for print advertisements, scripts for radio, storyboards for television, brochures, promotional materials, etc., are required and must be provided when invoicing the Department. Invoices must contain sufficient details to determine reasonableness and propriety of charges.

4.7.5.2. Other Payment and Documentation Provisions

4.7.5.2.1. The Contractor may invoice the Department for all actual and reasonable expenses for the purchase of information (statistical, research or otherwise), presentation materials, and other materials necessary for the implementation of the research, plans and statistical analysis mentioned in this RFP.

4.7.5.2.2. 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.

4.7.5.2.3. Travel expenses will be billed based upon the prevailing New York State per

diem rates (EXHIBIT C). 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. Revised rates will become effective upon notification to the Contractor by the Department's Director of Fiscal Management or designee.

4.8. 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.

4.9. REPRESENTATIONS, WARRANTIES, AND COVENANTS BY THE CONTRACTOR

The Contractor represents warrants and covenants that:

4.9.1 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;

4.9.2 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;

4.9.3 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.

4.10. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR 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 5 NYCRR §§140-145 DED recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of DED contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establish goals for maximum feasible participation of New York State Certified minority- and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, DED hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises (“MBE”) participation and 15% for New York State certified women-owned business enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that DED may withhold payment 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 determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and DED may withhold payment from the Contractor 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 bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs 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 Bidder may arrange to provide such evidence via a non-electronic method by contacting DED’s Office of Contractor and Supplier Diversity at OCSD@esd.ny.gov. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

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

1. An MWBE Utilization Plan, [Form OCSD-4](#), with their bid or proposal. Any modifications or changes to the 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.

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

2. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Department of Economic Development, Office of Contractor and Supplier Diversity, 633 Third Avenue, New York, NY 10017, OCSD@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 Bidder and direct the Bidder 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 Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE 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.

The Contractor 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 Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to DED, by the 10th day following each end of quarter 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 Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, 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 Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, [Form OCSD-1](#), to OCSD with their bid or proposal.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan, [Form OCSD-2](#), identifying the anticipated work force to be utilized on the Contract. If awarded a Contract, Bidder shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, [Form OCSD-3](#), in such format as shall be required by ESD on a quarterly basis during the term of the contract.

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:

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf

Form OCSD-2: http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf

Form OCSD-3:

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_WorkforceUtilizationReport.xlsx

Form OCSD-4: http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4MWBEUtilizationPlan.pdf

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

General inquiries or questions relating to aforementioned policies, SDVOB participation and the goals specified herein may be addressed to OCSD at OCSD@ESD.NY.GOV.

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 and Bidder's Identifying Data form
 - 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 either electronic or paper version (see EXHIBIT G of RFP)
 - 5.1.6. M/WBE Utilization Goal Requirements forms: OCSD 1, 2 & 4 (see section 4.10 of RFP)
- 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 NYSDDED 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 NYSDDED 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. Bidders must supply a minimum of three (3) references (including contact name and telephone number) that can substantiate that your company meets the requirements of this RFP. At least two of these references must be a customer who you performed services for similar to those discussed in Section 2.1 (Scope of Services) of this RFP.
- 5.5. Complete and submit EXHIBIT B (Budget). Budget pages are to be separately bound from all other pages of your proposal.
- 5.6. Section II and III
Please review Sections II and III of this RFP carefully to insure that your proposal contains all information requested.

RFP EXHIBIT A

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE 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 value or reasonably estimated value of such consideration exceeds \$10,000, 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 Section 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 because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. 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 (2NYCRR 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 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 section. 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 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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.

January 2014

EXHIBIT B
BUDGET

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

<u>Media Commission</u> % will be applied to net media expenditure	_____ %
<u>Production Expense</u> All production expenses incurred in-house (except with respect to the hourly rate below) or out-of-house, shall be billed at actual cost with no mark-up due the Contractor.	
<u>Hourly Rate for Projects</u> Estimated Number of Hours Annually: 1200	Billing Rate per Hour \$ _____
<u>Travel</u> Travel expense incurred shall be reimbursed in accordance with State rates, as identified in EXHIBIT C of this RFP.	

Please DO NOT change the format of this budget.

Notes:

- A. If you are using subcontractors please list the name and address of the subcontractor as an attachment to this budget. In addition, explain which elements of the Scope of Service the subcontractor(s) is responsible for. All other subcontractors must be obtained in accordance with the procedures described in Section 4.6 of the RFP.
- B. See section 4.7 for additional information on administrative and fiscal requirements.

EXHIBIT C

NYS CONTRACTOR TRAVEL REIMBURSEMENT GUIDELINES

Any travel related to the project must be approved by DED prior to incurring any travel related costs. The maximum per diem rates permitted by the Travel Guidelines of the New York state office of state comptroller can be found at the following web site: <http://www.osc.state.ny.us/agencies/travel/manual.pdf>

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

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

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

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

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

The maximum reimbursement for lodging and meal expenses may not exceed the lodging and meal allowances for the area of travel. If the cost of lodging exceeds the maximum allowance for lodging in the area of travel, the traveler's meal allowance must be used to offset the higher lodging rate.

No reimbursement will be allowed for lunch.

To be entitled to full meal allowances, traveler must be in travel status overnight and eligible for reimbursement for breakfast and dinner.

Meal Allowance for Non-Overnight Travel - When a traveler is in travel status for less than a day and lodging charges are not incurred, reimbursement will be made for breakfast and dinner with receipts, at the allowed rates.

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

Transportation Costs:

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

Receipts/air passenger coupons are required for reimbursement.

Transportation by personally owned automobiles will be reimbursed at the IRS rate in effect at the time of travel unless the Department agrees to an alternative rate.

All taxi charges must be substantiated by a receipt.

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

EXHIBIT D

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

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

Statutory Summary

Changes to the New York State Finance Law (referred to as the “new State Finance Law”) effective January 1, 2006, significantly alter the administrative process for the development of State procurement contracts¹. The procedures discussed herein are put in place to address the new State Finance Law. The New York State Department of Economic Development recognizes the considerable additional responsibility that the new State Finance Law places on potential bidders (“Offerers”) as well as on the Department and we regret any inconvenience. The Department assures you that we are interested in receiving a proposal from your company. Among other things, the new law:

- Makes the States lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by the Department.
- Requires the Department to record all contacts made by lobbyists and contractors (you) about a governmental procurement so that the public knows who is contacting the Department about procurements.
- Requires the Department to designate persons who generally may be the only staff contacted relative to the Department’s procurement in a restricted period.
- Authorizes the imposition of fines and penalties against persons/organizations engaging in impermissible contacts about a Department procurement and provides for the debarment of repeat violators.
- Directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website.
- Expands the definition of lobbying to include procurement contracts.

Generally speaking, two related aspects of procurements were affected: (i) activities by the business and lobbying community seeking procurement contracts and (ii) activities involving governmental agencies establishing procurement contracts. The obligations imposed by State Finance Law Sections 139-j and 139-k are collectively referred to as the “new State Finance Law”. State Finance Law Sections 139-j and 139-k may be viewed at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

The following contains language and forms (these forms must be completed and returned as part of your proposal, and when indicated at other times during this procurement process) to be reviewed and completed by you the bidder (“Offerer”), in compliance with sections 139-J and 139-k of the State Finance Law.

NYS Department of Economic Development Policy Language

Pursuant to State Finance Law §§139-j and 139-k, this Invitation for Bid includes and imposes certain restrictions on communications between the Department and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by 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, are any member of the Department’s Contract Management or Publications Unit. To avoid conflicts and other issues concerning statutory exceptions, the Department requires that Offerers 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 Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> or by calling the New York State Office of General Services; Ms. Anne Phillips, OGS Legal Services, Empire State Plaza, 41st Floor Tower Building, Empire State Plaza, Albany NY 12242. Telephone: (518) 474-5607. E-mail: Anne.Phillips@OGS.State.NY.US.

Termination Provisions

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

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

Form 1 - Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

State Finance Law §139-j(6)(b) provides that: Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

The Department must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k.

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

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

Form 2 - Offerer's Certification of Compliance with State Finance Law §139-k(5)

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

The Department must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity.

Offerer Certification:

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

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

Form 3 - Offerer Disclosure of Prior Non-Responsibility Determinations

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The Department must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

Offerer Disclosure of Prior Non-Responsibility Determinations

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

Address: _____

Name and Title of Person Submitting this Form: _____ Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):
No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):
No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.
Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):
No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

OFFERER CERTIFIES THAT ALL INFORMATION PROVIDED TO THE GOVERNMENTAL ENTITY WITH RESPECT TO STATE FINANCE LAW §139-K IS COMPLETE, TRUE AND ACCURATE.

By: _____ Date: _____
Signature: _____

Form 4 - Report of Contact under State Finance Law §139-k(4)

THIS FORM TO BE COMPLETED AND RETURNED TO THE DEPARTMENT WHENEVER YOU CONTACT US DURING THE DESIGNATED PERIOD. ATTEMPTS TO CONTACT THE DEPARTMENT WILL NOT BE ACKNOWLEDGED UNLESS YOU PROVIDE THIS FORM. THIS INCLUDES THE SUBMISSION OF QUESTIONS REGARDING THIS IFB.

New York State Finance Law §139-k(4) obligates every Governmental Entity during the Restricted Period of a Procurement Contract to make a written record of any Contacts made. The term "Contact" is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the Governmental Procurement. In addition to obtaining the required identifying information, the Governmental Entity must inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the Governmental Entity.

It should be noted that State Finance Law §139-k(6) provides: [a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a "contact" within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

Offerers and those designated, employed or retained by Offerers are hereby advised of the Department's intention to record all Contacts.

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

To: The New York state Department of Economic Development

Regarding Procurement Project No.: _____ (See first page of this document) Date: _____

From: _____
(Name and title of Offerer)

Subject: Record of Contact under State Finance Law §139-k(4). In accordance with State Finance Law §139-k(4), the following information is provided).

Address of Offerer: _____
_____ Telephone Number: _____

Offerer's Place of Principal Employment (Name and Address of your Employer, may be different from the Offerer's name and address, if not state same as above).

Your Occupation: _____

1. Is the above named person or organization the "Offerer" in this governmental procurement? Please circle Yes or No
2. If no, was the above named person or organization retained, employed or designated by the "Offerer" to:
 - Appear before the governmental entity about the governmental procurement? Please circle – Yes or No
 - Contact the governmental entity about the governmental procurement? Please circle – Yes or No

Form 4 - Report of Contact under State Finance Law §139-k(4)

THIS FORM TO BE COMPLETED AND RETURNED TO THE DEPARTMENT WHENEVER YOU CONTACT US DURING THE DESIGNATED PERIOD. ATTEMPTS TO CONTACT THE DEPARTMENT WILL NOT BE ACKNOWLEDGED UNLESS YOU PROVIDE THIS FORM. THIS INCLUDES THE SUBMISSION OF QUESTIONS REGARDING THIS IFB.

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Offerers and those designated, employed or retained by Offerers are hereby advised of the Department's intention to record all Contacts.

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To: The New York state Department of Economic Development

Regarding Procurement Project No.: _____ (See first page of this document) Date: _____

From: _____
(Name and title of Offerer)

Subject: Record of Contact under State Finance Law §139-k(4). In accordance with State Finance Law §139-k(4), the following information is provided).

Address of Offerer: _____

_____ Telephone Number: _____

Offerer's Place of Principal Employment (Name and Address of your Employer, may be different from the Offerer's name and address, if not state same as above).

Your Occupation: _____

1. Is the above named person or organization the "Offerer" in this governmental procurement? Please circle Yes or No

2. If no, was the above named person or organization retained, employed or designated by the "Offerer" to:

- Appear before the governmental entity about the governmental procurement? Please circle – Yes or No
- Contact the governmental entity about the governmental procurement? Please circle – Yes or No

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 _____, 2011 as the act and deed of said individual, corporation or partnership.

Person Legally Responsible for Binding Bidder

Name _____ Title _____

Signature _____

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

Legal name of person, firm or corporation

Legal name of person, firm or corporation

Person(s) Legally Responsible for Binding Participant

Name _____

Name _____

Title _____

Title _____

Business Address _____

Business Address _____

Bidder's Identifying Data

Bidder's Name _____

Business Address _____

Street

City

State

Zip

Telephone _____ Fax _____ E-mail _____

Federal id Number _____

If Bidder is a Partnership complete the following:

Name of Partners or Principals

Business Address

If Bidder is a Corporation complete the following:

Name

Business Address

President

Secretary

Treasurer

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

Vendor Name: _____

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. Can be found at: <http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3290s.pdf>.