

**New York State  
Homeless Housing and Assistance Corporation**

**Audit Services  
Request For Proposals**



***New York State***

***Andrew M. Cuomo, Governor***

Office of Temporary and Disability Assistance  
Homeless Housing and Assistance Corporation

2013

**Homeless Housing and Assistance Corporation  
Audit Services**

***REQUEST FOR PROPOSALS***

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## INTRODUCTION

The New York State Homeless Housing and Assistance Corporation, (“HHAC” or “Corporation”) is requesting the submission of proposals from individuals and corporations to provide audit services to Corporation. The term of the contract will be for five years with HHAC option to terminate at any time and for any reason.

These services shall include an audit of the general purpose financial statements of the Homeless Housing and Assistance Corporation for the Fiscal Year Ending March 31, 2014, and annually thereafter through Fiscal Year ending March 31, 2018, for a total of five (5) years. These audits shall be conducted in accordance with Generally Accepted Auditing Standards, Government Auditing Standards issued by the Comptroller General of the United States, and the Investment Guidelines for Public Authorities issued by the Office of the State Comptroller, State of New York.

In addition, a review of the internal control procedures over financial reporting and tests of compliance shall be performed in accordance with provisions of laws, regulations, contracts, and grants. Upon completion of each audit, and internal controls, reports shall be submitted to the Homeless Housing and Assistance Corporation Board of Directors.

**Proposals submitted in response to this Request for Proposals (RFP) must be received by 3:00 p.m. December 6, 2013. Proposals should be sent to:**

John W. Printup  
Bureau of Contract Management  
New York State Office of Temporary & Disability Assistance  
40 North Pearl Street, 10 A  
Albany, New York 12243  
(518) 486-6352

An original, three copies and an electronic version in Word format of a completed application must be submitted no later than 3:00 p.m. on the specified due date. No faxed material will be accepted.

## BACKGROUND AND PURPOSE OF HHAC AUDIT

The Homeless Housing and Assistance Program (HHAP) was established in 1983, as codified in Social Services Law Section 41 - 44. In June of 1990, the Homeless Housing and Assistance Corporation (HHAC), a public benefit corporation, was established to administer the program, as codified in Private Housing Finance Law Section 45-c. HHAC is a subsidiary of the New York State Housing Finance Agency (HFA), and is staffed by OTDA. HFA issues bonds to finance the costs of developing projects under HHAP.

HHAP provides capital grants and loans to not-for-profit corporations, charitable and religious organizations and municipalities to acquire, construct, or rehabilitate housing for persons who are homeless or at risk of homelessness, and are unable to secure adequate housing without special assistance.

HHAP was created to increase the supply of supportive housing for the homeless in New York State. The program funds a broad range of housing options for the diverse homeless populations in the State’s urban, suburban and rural areas. Program funds are awarded through a competitive Request for Proposals process. Applicants and awardees generally have experience in housing development, management and/or in the provision of social services. HHAP funds

emergency, transitional and permanent supported housing projects serving for both homeless families and singles, which include a variety of special needs populations. Special needs populations that have benefited from HHAP funding include, but are not limited to:

- Victims of domestic violence;
- Elderly;
- Persons with physical disabilities;
- Persons with HIV/AIDS;
- Runaway homeless youth,
- Youth aging out of foster care;
- Persons with mentally illness;
- Ex-offenders; and
- Those with a history of substance abuse and/or chemical dependency.

Currently, the HHAP-funded portfolio of homeless projects under contract consists of over 360 operating projects and 569 sites across New York State.

The purposes of this audit are to:

- 1) Comply with NYS State Public Authorities Law Section 2802, which requires an annual independent audit of the Corporation's finances;
- 2) Provide reasonable assurance as to whether the Corporation's General Purpose financial statements are free of material misstatement;
- 3) To review and report on the internal controls surrounding the financial reporting in order to disclose any matters of material weakness; and
- 4) To ensure compliance with applicable State Law and Governmental Accounting Standards (e.g. GASB statements) with regard to the Corporation's financial practices and financial statements.

**RFP TIMETABLE**

<b>RFP Released</b>	<b>11/1/2013</b>
<b>Application Questions Due</b>	<b>11/15/2013</b>
<b>Official Responses to Questions</b>	<b>11/22/2013</b>
<b>Proposals Due</b>	<b>12/6/2013</b>
<b>Notification of Award</b>	<b>12/27/2013</b>
<b>Contract Start</b>	<b>4/01/2014</b>

NOTE: Any questions concerning this RFP may be submitted in writing by November 15, 2013, to:

Barbara Roff  
 Comptroller  
 Homeless Housing and Assistance Corporation  
 40 North Pearl Street, 10 B  
 Albany, New York 12243  
 Phone: (518) 486-6102 Fax (518) 486-7068  
 E-Mail: Barbara.Roff@otda.ny.gov

Answers to all questions will be posted on OTDA's website ([www.OTDA.ny.gov](http://www.OTDA.ny.gov)).

## EVALUATION CRITERIA

The proposals will be evaluated based on: the total bid for the five (5) year term, and the following qualitative criteria:

- **Expertise** in areas pertinent to the HHAC finances (e.g. GAGAS, State Finance Law, Public Housing Finance Law, bond financing, public authorities, repurchase agreements, etc.);
- **Experience** with entities similar to the HHAC (e.g. government agencies, public authorities, bond financing, housing grant/loan programs, etc.);
- **Staff resources** to be dedicated to the HHAC audit (number, qualification, and position/title of staff conducting and reviewing the HHAC audit, including the identification of staff with extra continuing professional education required through the Yellow Book);
- Proposed **audit process**;
- **Responsiveness** to all aspects of the RFP; and
- **Ability and commitment** to provide the requirements of **the Scope of Services**, including the ability to provide all the required reports by the **established deadlines**.

Each proposal must include a narrative that addresses the above evaluation criteria.

Responses submitted must be from Certified Public Accounting (CPA) firms or individual CPAs which are in good standing Pursuant to the Education Law section 7401, Part 70, Public Accountancy.

## SCOPE OF SERVICES

The successful bidder (“Contractor”) shall, for each year of the contract, thoroughly examine the financial statements of the HHAC for the fiscal year ending March 31. The examination must be made in accordance with generally accepted governmental auditing standards for financial and compliance audits (GAGAS). Such examination must include such tests of the accounting records and other auditing procedures, as it is considered necessary in the circumstances for the purpose of expressing an opinion on such financial statements. The examination must include a review of the Corporation’s internal controls and accounting procedures, and the Contractor must issue a report on internal controls as required by GAGAS. The Contractor must also issue a letter to the Board Directors of the HHAC containing observations regarding the fiscal status, organizational structure, financial procedures of the Corporation or any other recommendations which the Contractor believes are of value to the Corporation.

The Contractor shall also perform those procedures required by Title 2 of the Official Compilation of Codes, Rules and Regulations of the State of New York (2 NYCRR) with respect to the Corporation’s investment practices and issue a report thereon. These procedures are designed to determine whether the Corporation has complied with the State Comptroller’s Investment Guidelines for Public Authorities. Contractor shall also review and advise the Corporation of its compliance with relevant provisions of the Public Authorities Law (PAL). Contractor shall also review and advise the Corporation of its compliance with applicable GASB statements, including any known prospective compliance requirements.

The Contractor shall, in all respects, perform its work in accordance with all applicable statutes, regulations, and industry standards, including the Code of Professional Ethics. The relationship between parties shall be that of independent Contractor, and the Contractor or its

employees shall not be considered for any purpose to be employees of the State of New York or the Corporation.

- Contractor shall issue a report on the Corporation’s financial statements including the Contractor’s opinion thereon.
- Contractor shall issue a report on the Corporation’s internal accounting controls as required by GAGAS and PAL.
- Contractor shall issue a letter to the Corporation’s Board of Directors containing observations which the Contractor believes are of value to the Corporation.
- Contractor shall issue a separate report on the Corporation’s investment practices as required by 2 NYCRR.
- Contractor shall provide a post-audit consultation session with appropriate staff of the Corporation, which session shall be conducted by December 31 of each contract year.

All of the above deliverables, with the exception of the post audit consultation, will be presented to the Corporation for its review in draft form no later than June 1st of the contract year, or sooner if within a reasonable time from the initiation of the audit. All of the above deliverables will be presented in final form to the Corporation by June 15th of each contract year. As it is incumbent upon the Corporation by State Law to have completed and submitted audited financial statements to various oversight entities by June 30<sup>th</sup> annually, it is imperative that the Contractor adhere to these deadlines in the completion of the audit.

**ADDITIONAL PROVISIONS**

The above Scope of Services will be attached as an Appendix to the standard Homeless Housing Assistance Corporation Audit Services Contract, a copy of the sample contract will be posted on the internet at the OTDA website: <http://otda.ny.gov/contracts/procurement-bid.asp>.

The Contractor must submit with their proposal verification of licensure pursuant to the Education Law section 7401, Part 70, Public Accountancy of each partner, staff accountant, and/or reviewer that the Contractor proposes to be involved in conducting the HHAC audit.

The Contractor must submit to the HHAC annually the names of the lead auditor and reviewer, to ensure compliance with PAL, which prohibits the same individuals from performing the audit for more than four (4) consecutive years.

**Proposal submissions must consist of the following in order to merit consideration:**

<input type="checkbox"/>	Narrative addressing Evaluation Criteria as described above, including the firm’s background and history
<input type="checkbox"/>	Exhibit A: Bid Proposal
<input type="checkbox"/>	Exhibit B: Nondiscrimination In Employment In Northern Ireland Form
<input type="checkbox"/>	Exhibit C: Contractor/Subcontractor Background Questionnaire
<input type="checkbox"/>	Exhibit D: Offerer Certification
<input type="checkbox"/>	Documentation of CPA Licensure
<input type="checkbox"/>	Copy of latest Quality Review Report, if available
<input type="checkbox"/>	Appendix A1
<input type="checkbox"/>	Appendix Z
<input type="checkbox"/>	Minority and Women-Owned Business Enterprise (M/WBE) Forms

In the event that the successful bidder fails to meet the contractual requirements set forth, the Corporation's Board of Directors may select an alternate from the list of bidders who responded to this RFP to continue such services on behalf of the corporation for any additional years remaining. Accordingly, the Corporation reserves the right not to accept the lowest priced proposals. The Corporation also reserves the right to reject any and all proposals. A copy of the Corporation's 2012-2013 audit report is available upon request by contacting Barbara Roff by email at [Barbara.Roff@otda.ny.gov](mailto:Barbara.Roff@otda.ny.gov).

**Minority and Women-Owned Business Enterprise (MWBE) and  
Equal Employment Opportunity (EEO) Participation Requirements  
For All NYS Office of Temporary and Disability Assistance  
Contracts and Grants**

Authority: Article 15-A of the Executive Law, 5 NYCRR parts 140-144, Appendix A: Standard Clauses for All New York State Contracts and requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuate the purposes of Article 15-A.

**I. General Provisions**

- A.** New York State Executive Law § 310–318, (Article 15-A: Participation by Minority Group Members and Women with Respect To State Contracts -- hereinafter “the Statute”), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. 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 enterprise 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 the New York State Office of Temporary and Disability Assistance (OTDA) establish goals for maximum feasible participation of New York State Certified minority and women – owned business enterprises (“MWBE”) and the employment of minority group members and women in the performance of New York State contracts. OTDA fully supports the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons, and to promote equality of economic opportunity for minority group members and women who own business enterprises.
- B.** OTDA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. Where deemed appropriate, OTDA will implement the provisions of New York State Executive Law Article 15-A and the MWBE Regulations for all other OTDA contracts. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws. Contractors participating in and/or selected for procurement opportunities with OTDA shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for MWBEs, including but not limited to the Statute and its implementing regulations as promulgated by New York State’s Empire State Development (ESD) Division of Minority and Women’s Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144).
- C.** Copies of the required OTDA Forms are identified in this Appendix and available on OTDA’s Internet site at <http://www.otda.ny.gov>. The Contractor agrees to complete and submit these forms without change in response to goals specified in the RFP or contract. An electronic link to the current list of certified minority- and women-owned business enterprises also is available on OTDA’s Internet site.

- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings allowed by the Contract.
- E. Further information regarding Article 15-A of the New York State Executive Law and the New York State Minority and Women's Business Enterprise Program is available on the DMWBD Internet site at <http://www.esd.ny.gov/ContactUs.asp>

## II. Contract Goals

- A. For purposes of this procurement, the OTDA hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). Additionally, an overall goal of 20% is established for Equal Employment Opportunity ("EEO") participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/ContactUs.asp>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the OTDA for liquidated or other appropriate damages, as set forth herein.
- D. As a condition of the Contract, the Contractor and OTDA agree to be bound by the provisions of §316 of Article 15-A of the New York State Executive Law regarding enforcement.
- E. OTDA reserves the right to establish separate and different goals on any State Contract, as identified in the specified procurement. For guidance on what factors OTDA will consider in determining what goals are appropriate in relation to a specific State Contract, refer to 5 NYCRR § 142.2(a)(1) - (6).

## III. EEO Requirements

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the DMWBD. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
  - 1. Contractor and Subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to the OTDA within seventy two (72) hours after the date of the notice by OTDA to award the Contract to the Contractor.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, the OTDA may provide the Contractor or Subcontractor a model statement (see OTDA 4970 – Minority/Women Business Enterprise (MWBE)/Equal Employment Opportunity (EEO) Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
  - c. 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.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

**C. OTDA Form 4934.1 Equal Employment Opportunity (EEO) Staffing Plan**

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

**D. OTDA Form 4971 Equal Employment Opportunity (EEO) Workforce Employment Utilization/Compliance Report ("Workforce Report")**

1. Once a contract has been awarded and during the term of the Contract, Contractor is responsible for updating and providing notice to the OTDA of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the

information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

4. In the case where the Contractor's and/or subcontractor's work force does not change within the quarterly period, the Contractor shall so notify OTDA in writing.
  5. All forms and reports will be submitted to the OTDA program manager for this contract and forwarded to NYS OTDA, MWBE Program Management Unit, Harlem Center, 317 Lenox Avenue, NYC, NY 10027; (212) 961-8214; e-mail to: [otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov](mailto:otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov).
- E. Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. MWBE Requirements**

- A. The Contractor acknowledges that it is the policy of the State of New York and of OTDA that MWBEs shall be given the opportunity for meaningful participation in the performance of State Contracts. Therefore, Contractors agree to make good faith efforts to solicit active participation to meet established goals under this procurement by MWBEs identified in the ESD directory of certified businesses, which can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.<sup>1</sup>
1. For the purposes of this Appendix Z, the question of whether a Contractor has engaged in and documented "Good Faith Efforts" to solicit active participation to meet established goals under this procurement by MWBEs in the performance of State Contracts shall be determined by the OTDA Commissioner or his/her designee, after a thorough consideration of the factors listed in 5 NYCRR § 142.8.
  2. The separate MBE and WBE participation goals established by OTDA for this procurement are based on the overall availability of MWBEs that have been certified to perform the specific scope of work identified under this procurement. For compliance purposes, these goals should not be construed as rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-owned Business Program work.
- B. The Contractor represents and warrants that Contractor has submitted the following OTDA forms either prior to, or at the time of, the execution of the contract:
1. MWBE Utilization Plan (OTDA Form 4937)
    - a. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix.

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<sup>1</sup> All MWBE firms are required to be certified by Empire State Development (ESD) or must be in the process of obtaining certification from ESD. Should the Contractor identify a minority-owned or woman-owned firm that is not currently certified as an MWBE, the Contractor should request that the firm submit a certification application to ESD for an eligibility determination, with a copy to the OTDA MWBE Program Management Unit. OTDA's MWBE Program Management Unit will work with ESD to expedite the application; however, it is the responsibility of the Contractor to ensure that a sufficient number of certified MWBE firms have been identified in response to this procurement, in order to facilitate full MWBE participation.

- b. If a Contractor seeks modification to its previously approved MWBE Subcontractor Utilization Plan, the Contractor shall first notify OTDA in writing of such change and obtain approval from OTDA.
  - c. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the OTDA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
2. Certification of Good Faith Efforts (OTDA Form 4976) to achieve the overall prescribed MWBE participation percentage (0%) goals set forth in the procurement.
  3. A MWBE Subcontractor's and/or Suppliers' Letter of Intent to Participate (OTDA Form 4938), which should document the names and signatures of certified MBEs and/or WBEs which have agreed to participate as subcontractors on the Contract.

## **V. Waivers**

- A. For Waiver Requests Contractor should use OTDA Form 4969 Minority/Women Business Enterprise (MWBE) Subcontractor Request for Waiver Form.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a request for waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the OTDA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the OTDA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the OTDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## **VI. Quarterly MWBE Contractor Compliance Reports**

- A. Contractor is required to submit the Minority/Women Business Enterprise (MWBE) Subcontractor Quarterly Compliance Report (OTDA Form 4968) to the OTDA by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.
- B. All reports will be submitted to the OTDA program manager for this contract and forwarded to NYS OTDA, MWBE Program Management Unit, Harlem Center, 317 Lenox Avenue, NYC, NY, 10027; (212)961-8214; e-mail to: [otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov](mailto:otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov).
- C. Failure to timely submit a Contractor's MWBE Subcontractor Quarterly Compliance Report and/or other reports or information as requested by OTDA may result in payments under the contract being delayed until such reports or other information have been received by OTDA.<sup>2</sup> OTDA may also deem other noncompliance with requirements under the Statute as a breach of contract and commence any other means of enforcement permitted under the contract and/or by law.

## **VII. Liquidated Damages – MWBE Participation**

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<sup>2</sup> Contractors may be requested to provide additional Compliance Reports and information (i) to verify payments made to MWBEs, (ii) to verify MWBE utilization and/or, (iii) as needed to evaluate any other aspect of Contractor compliance with the requirements set forth herein.

- A. Where OTDA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the OTDA liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between: (a) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (b) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. Determinations of compliance or non-compliance with the Contract's MWBE participation requirements shall be based upon the Contractor's Utilization Plan, MWBE Sub-Contractor Quarterly Reports, and any relevant documentation related thereto. The determination of what constitutes the willful and intentional failure to comply with the MWBE participation requirements will be based upon the evaluation of the same criteria considered in evaluating an MWBE subcontractor waiver request.
- D. Upon a determination that a willful and intentional failure to comply with the MWBE participation requirements has occurred, the OTDA shall withhold the amount established in paragraph B from any future payments otherwise required by this Contract. All funds being withheld pursuant to this provision shall be offset as liquidated damages upon the expiration or termination of the contract, unless the Contractor comes into compliance with the MWBE requirements at any time during the term of the Contract but prior to the submission of a request for final payment on the contract. All payments withheld pursuant to this provision shall be released upon OTDA's determination that the Contractor has come into compliance.
- E. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the OTDA, Contractor shall pay such liquidated damages to the OTDA within sixty (60) days after they are assessed by the OTDA unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the OTDA.

## **VIII. Sanctions**

- A. OTDA reserves the right to impose sanctions following a determination of non-compliance by a Contractor. Sanctions may be imposed upon the Contractor whenever EEO and/or MWBE program requirements have not been met in a timely and effective manner. Any/all of the following sanctions may be imposed:
  - Disallowance of costs associated with such noncompliance;
  - Initiation of procedures to suspend or terminate the grant or contract;
  - Withholding of progress payments until such time as corrective actions have been undertaken by the Contractor to the satisfaction of OTDA;
  - Deleting Contractor's name from bid lists for a specified period of time to be determined in the sole discretion of OTDA;
  - Report Contractor as non-responsible to NYS OSC Vendor Responsibility System; and
  - Other sanctions of which a Contractor has notice in writing prior to or during the performance of a contract.

## **M/WBE SUBCONTRACTOR UTILIZATION EXAMPLES**

- A. It is important to note that in addition to direct sub-contracting on State contracts, contractors can also utilize a number of other vendors in support of their overall operations. Using NYS Certified

MWBEs (link to Directory of NYS Certified MWBEs, <http://www.nylovesmwbe.ny.gov>) as providers of these second tier services can be counted in satisfaction of the goals. The following are examples of indirect services that you may want to consider for compliance with MWBE subcontracting participation requirements: Accounting Services, Advertising, Building Maintenance, Car Rental, Cleaning Supplies, Copying, Electrical Services, Furniture, Heating and Cooling, Janitorial Services, Office Supplies, Pest Control, Printing Services, Publishing, Rubbish Removal, Security, Shredding Services, Tax Preparation, Technical Writing, Training, Travel Services, etc.

**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 HHAC's designated contact as defined by the Procurement Lobbying Act is:

John W. Printup  
Bureau of Contract Management  
New York State Office of Temporary & Disability Assistance  
40 North Pearl Street, 10 A  
Albany, New York 12243  
Phone: (518) 486-6352  
Fax: 518-486-7068  
E-Mail: [John.Printup@otda.ny.gov](mailto:John.Printup@otda.ny.gov)

However, any questions regarding the RFP must be submitted in accordance with the process defined on page 4 of the RFP.

## EXHIBITS AND APPENDICES

**EXHIBIT A: BID PROPOSAL**

Proposal for Annual Audit Fiscal Year Ending March 31, 2014 \$

Additional Years

Audit Fiscal Year Ending March 31, 2015 \$

Audit Fiscal Year Ending March 31, 2016 \$

Audit Fiscal Year Ending March 31, 2017 \$

Audit Fiscal Year Ending March 31, 2018 \$

**5 Year Total Bid \$**

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

In accordance with Chapter 807 of the Laws of 1982 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds 10% or greater ownership interest, or any individual or legal entity that holds 10% or greater ownership interest in the bidder either:

(Answer yes or no to one or both of the following, as applicable.)

1. Have business operations in Northern Ireland. yes no

2. Shall take lawful steps in good faith to conduct any business operations they have 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 no

In the event the lowest responsible bidder has not agreed to stipulate to the conditions set forth above and another bidder who has agreed to stipulate to such conditions has submitted a cost proposal which is within five percent (5%) of the lowest responsible bidder, the Department shall refer such bids to the Commissioner of General Services, who may determine, in the State that this contract be awarded to other than the lowest responsible bidder.

**Authorized Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date** \_\_\_\_\_

# EXHIBIT C: CONTRACTOR/SUBCONTRACTOR BACKGROUND QUESTIONNAIRE

## General Information

Federal Identification Number: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Actual Location: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip code: \_\_\_\_\_

Fax Number: (\_\_\_\_\_) \_\_\_\_\_

Telephone Number: (\_\_\_\_\_) \_\_\_\_\_

<b>Background Questionnaire</b>	
<p>The following section must be fully completed by the Bidder or bid will be deemed non-responsive. Where appropriate, provide additional details using space provided or by inserting additional sheets following this part. Any proposed subcontractor must also complete this form if the value of that subcontract will be in excess of \$10,000.</p>	
<p>1a. If you, the bidder, are a natural person, are you a New York State resident?</p> <p>1b. If you are a corporation, are you a New York State corporation?</p> <p>1c. Are you registered with the New York State Department of State (DOS) to do business in New York State?</p> <p>If no, you will be required to comply with the New York State Department of State guidelines for doing business in New York State before you will be eligible for a Contract award. Do you agree to these conditions?</p>	<p><input type="checkbox"/> NO    <input type="checkbox"/> YES</p>
<p>2. How many years has the bidder been in business?</p>	<p>_____ Years</p>
<p>3a. Are you a certified minority owned business enterprise, certified by the NYS Department of Economic Development? (Your company is eligible to be certified if it is at least 51% owned and controlled by minority group members (i.e. Black, Hispanic, Asian, Pacific Islander, American Indian or Alaskan Native)?</p> <p>3b. Are you a woman owned business enterprise, certified by the NYS Department of Economic Development? (Your company is eligible to be certified if it is at least 51% owned and controlled by women)</p>	<p><input type="checkbox"/> NO    <input type="checkbox"/> YES</p> <p><input type="checkbox"/> NO    <input type="checkbox"/> YES</p>
<p>4. How many people are employed by the bidder?</p>	<p>_____ Employees</p>
<p>5. Total number of people employed by the bidder:</p> <p>* Within New York State?</p> <p>* Outside of New York State?</p> <p>* Outside of United States?</p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>6. Is the bidder independently owned and operated?</p>	<p><input type="checkbox"/> NO    <input type="checkbox"/> YES</p> <p>(If no, provide details)</p>

<p>7. List and describe any liquidated damages assessed, and/or liens or claims over \$25,000 filed against the bidder and remaining undischarged or unsatisfied for more than 90 days, on any contracts within the past five years.</p>	<input type="checkbox"/> NO <input type="checkbox"/> YES
<p>8. Within the past five years has the bidder, any affiliate, any predecessor company or entity, any owner of 5.0% or more of the bidder's equity, or any director, officer, partner, or employee, or other agent of the bidder who either routinely or frequently acts for the bidder, or has acted for the bidder at any time in conjunction with the pending contract, or any similar contract with New York State, been the subject of:</p> <p>a) A judgment of conviction for any business-related conduct constituting a crime under state or federal law?</p> <p>b) A currently pending indictment for any business-related conduct constituting a crime under state or federal law?</p> <p>c) A grant of immunity for any business-related conduct constituting a crime under a state or federal law?</p> <p>d) A federal suspension or debarment, New York rejection of any bid or disapproval of any proposed subcontract for lack of responsibility, denial or revocation of pre-qualification in any state, or a voluntary exclusion agreement?</p> <p>e) A civil or criminal investigation of the New York State Ethics Commission involving a violation(s) of Section 73 and/or Section 74 of the Public Officer's Law?</p> <p>f) Any bankruptcy proceeding?</p> <p>g) Any suspension or revocation of any business or professional license?</p> <p>h) Is anyone whose license to provide health care services under investigation, citation, suspension (including suspension stayed on compliance with compulsory terms) and/or conviction by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity?</p> <p>i) Has anyone failed to notify the OTDA of any investigation, citation, suspension (including suspension stayed on compliance with compulsory terms) and/or conviction by a State agency of a matter within its jurisdiction?</p> <p>j) Any citations, Notices, violation orders, pending administrative hearings or proceedings or determinations for violations of:</p> <ul style="list-style-type: none"> <li>* federal, state or local health laws, rules or regulations;</li> <li>* unemployment insurance or workers compensation coverage or claim requirements;</li> <li>* ERISA (Employee Retirement Income Security ACT);</li> <li>* federal, state or local human rights laws; or,</li> <li>* federal, state security laws?</li> </ul> <p>k) A grant of immunity for any business-related conduct constituting a crime under a state or federal law?</p> <p>l) Any federal determination of a violation of any labor law or regulation, or any OSHA serious violation?</p> <p style="padding-left: 20px;">Was violation willful?</p> <p>m) Any state determination of a violation of any labor law or regulation?</p> <p>n) Any state determination of a Public work violation?</p> <p style="padding-left: 20px;">Was violation deemed willful?</p>	<p>Check any that apply. If "yes", describe using additional pages if necessary)</p> <p><input type="checkbox"/> NO    <input type="checkbox"/> YES</p>

o) Has there been a revocation of MBE or WBE certification?	<input type="checkbox"/> NO <input type="checkbox"/> YES
p) Was there a rejection of a low bid on a state contract for failure to meet statutory affirmative action or MWBE requirements?	<input type="checkbox"/> NO <input type="checkbox"/> YES
q) Has there been a consent order with the NYS Department of Environmental Conservation, or a federal or state enforcement determination involving a construction-related violation of federal or state environmental laws?	<input type="checkbox"/> NO <input type="checkbox"/> YES
9. Does your company retain partnership or reciprocal agreements with hardware and/or software companies, or with associated manufacturers in this industry?	<input type="checkbox"/> NO <input type="checkbox"/> YES
10. Does the bidder hold any current contracts with the State of New York, its departments or political subdivisions, valued in excess of \$100,000?	<input type="checkbox"/> NO <input type="checkbox"/> YES (If yes, provide details)
11. Does the bidder hold any current contracts with governmental entities outside of New York State, valued in excess of \$100,000:	<input type="checkbox"/> NO <input type="checkbox"/> YES (If yes, provide details)
12. Your firm is responsible for providing worker's compensation insurance pursuant to state law. The State has the option to require proof of current worker's compensation insurance or proof of exemption if applicable. Do you comply with this requirement?	<input type="checkbox"/> NO <input type="checkbox"/> YES
13. Your firm is responsible for providing disability insurance pursuant to state law. The State has the option to require proof of current worker's compensation insurance or proof of exemption if applicable. Do you comply with this requirement?	<input type="checkbox"/> NO <input type="checkbox"/> YES
14. Does your firm employ any non-U.S. citizens or resident legal aliens?	<input type="checkbox"/> NO <input type="checkbox"/> YES
15. If yes, are the forms on file and available for inspection?	<input type="checkbox"/> NO <input type="checkbox"/> YES

**CERTIFICATION**

The undersigned: 1) recognizes that this questionnaire is submitted for the express purpose of inducing the New York State Office of Temporary of Disability Assistance to award a contract or approve a subcontract; 2) acknowledges that the Office may in its discretion, by means which it may choose, determine the truth and accuracy of all statements made herein; 3) acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law 210.40 or a misdemeanor under Penal Law 210.35 or 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. 1001; 4) states that the information submitted in this questionnaire and any attached pages is true, accurate and complete; and, 5) acknowledges that submission of false or misleading information will constitute grounds for the Office to terminate its contract (or revoke its approval of a subcontract) with the undersigned or the organization of which s/he is an officer.

**Authorized Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date** \_\_\_\_\_

**EXHIBIT D: OFFERER CERTIFICATION**

In compliance with the State Finance Law §§139-j (3) and 139-j (6) (b), the Offerer hereby affirms that it understands and agrees to comply with the procedures of the NYS Homeless Housing and Assistance Corporation (HHAC) and the NYS Office of Temporary and Disability Assistance (OTDA), and their successors and/or assigns relating to permissible contacts during and with regard to this RFP process.

Offerer further certifies that all information provided by Offerer to the HHAC and the OTDA is complete, true and accurate and in compliance with State Finance Law §139-k.

**[PLEASE NOTE: the NYS HHAC and the NYS OTDA, their successors and/or assigns reserve the right to terminate the Audit Services agreement that may result from this RFP in the event that this certification is intentionally false or intentionally incomplete. Upon such finding, the HHAC and the OTDA, their successors and/or assigns may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of the Audit Services agreement.]**

By: \_\_\_\_\_

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

## **NYS OFFICE OF TEMPORARY & DISABILITY ASSISTANCE APPENDIX A1**

### **1. PERSONNEL**

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel, which shall be as shown in the APPENDICES. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable Federal and State Laws and Regulations.
- b. It is the policy of Office of Temporary & Disability Assistance (OTDA) to encourage the employment of qualified applicants/recipients of public assistance by both public organizations and private enterprises that are under contractual agreement to OTDA for the provision of goods and services. Contractors will be expected to make best efforts in this area. OTDA may require the Contractor to demonstrate how the Contractor has complied or will comply with the aforesaid policy.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from OTDA, to the degree that such change is within the reasonable control of the Contractor.

### **2. OFFICE SERVICES**

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the APPENDICES.
- b. Title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies provided under this AGREEMENT shall be determined between the Contractor and OTDA, in Federally funded contracts, pursuant to Federal regulations 45 CFR Part 74, Subpart O, unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of OTDA. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to OTDA, unless OTDA has given direction for or approval of an alternative means of disposition in writing.
- c. Upon written direction by OTDA the contractor shall maintain an inventory of those properties which are subject to the provisions of paragraph b.

### **3. GENERAL TERMS AND CONDITIONS**

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the APPENDICES. Any modifications to the tasks or work plan contained in Appendix D must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.

- b. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, (including where relevant, timely completion of milestones) the Contractor agrees to submit to OTDA within three days of occurrence (or perception) of such problem, a written description thereof together with a recommended solution thereto.
- c. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize Federal financial participation to OTDA under the Federal Social Security Act.
- d. OTDA will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated thereunder. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- e. Except where OTDA otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts for the performance of the obligations contained herein until it has received the prior written approval of OTDA, which shall have the right to review and approve each and every subcontract prior to giving written approval to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by bona fide written contract. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, (2) that nothing contained in the subcontract shall impair the rights of OTDA under this AGREEMENT, and (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and OTDA. The Contractor specifically agrees that the Contractor shall be fully responsible to OTDA for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.
- f. If the Contractor intends to use materials, equipment or personnel paid for under this contract in a revenue generating activity, the Contractor shall report such intentions to OTDA forthwith and shall be subject to the direction of OTDA as to the disposition of such revenue.
- g. An initial advance, if determined to be payable to the contractor, shall be payable thirty days from the start date of services within the contract period or thirty days from the submission of a properly executed State of New York Standard Voucher in a form acceptable to OTDA and to the Comptroller of the State of New York, whichever is later.
- h. Any interest accrued on funds paid to the Contractor by OTDA shall be deemed to be the property of OTDA and shall either be credited to OTDA at the closeout of this Agreement or expended on additional services provided for under this Agreement.
- i. Non-Discrimination, Equal Employment Opportunity (EEO) and Minority and Women-Owned Business Enterprise (M/WBE) All work conducted under this contract must be in compliance with the specifications set forth in the applicable Request for Proposal and OTDA's policies and procedures set forth in Appendix A, Standard Clauses for NYS Contracts, and as may be amended from time to time. By submission of its bid/proposal, the successful Contractor agrees that it will not discriminate against any employee or applicant for employment 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, and as more fully set forth in paragraph five of Appendix

A. By submission of its bid/proposal, the successful Contractor further agrees that it will comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144), and as more fully set forth in paragraph twelve of Appendix A. The successful Contractor further agrees that it will comply with OTDA's Appendix Z, attached and incorporated herein, for the specific EEO/MWBE requirements and associated forms required for this procurement.

#### **4. REPORTS AND DELIVERABLES**

- a. The Contractor shall prepare and submit all reports, documents and projects required, and especially those reports, documents and products contained in the APPENDICES, to OTDA's Contract Manager for review and approval. These reports shall be in such substance, form and frequency as required by OTDA in order to meet State and Federal requirements.
- b. Should the Contractor fail to submit, to the extent required by the Office, any reports or documents as required in the above paragraph (a), the Office reserves the right to suspend any payments due until such time as the reports or documents are submitted by the Contractor to the Office.
- c. If the Contractor expends \$500,000 or more in Federal funds during any one fiscal year, the Contractor will be subject to the Audit Requirements and provisions of OMB Circulars: A-110; A-122, A-133; and, all other audit requirements determined applicable by the OTDA. The audit shall be completed on an annual basis and the audit report submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the OTDA. The audit shall be conducted in accordance with generally accepted government auditing standards by an independent auditor and submitted in a form determined by the OTDA. The OTDA will report its finding and any recommendations to the Contractor and may impose any sanctions as determined appropriate. The cost of audits made in accordance with these provisions are allowable charges to the Contract, charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars.

#### **5. CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS**

- a. The Contractor agrees to safeguard the confidentiality of information relating to individuals who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such information with regard to services authorized by the Social Services Law in conformity with the provisions of applicable State and Federal laws and regulations (e.g. Sections 136 and 372 of the Social Services Law, 18NYCRR 357). Recipients of services other than those which are authorized by Social Services Law shall have their confidentiality protected as directed by OTDA. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 889-aa; State Technology Law Section 208). In the event of an information security breach, the Contractor must immediately notify the Office's Information Security Officer, and adhere to State and Office procedures regarding information security incident reporting and management. The Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

## **6. PUBLICATIONS AND COPYRIGHTS**

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of OTDA, which results (1) shall acknowledge the support of OTDA and the State of New York and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of OTDA or the State of New York.
- b. OTDA and the State of New York expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge OTDA's right to such license.
- c. All of the license rights so reserved to OTDA and the State of New York under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR Part 74, Subpart O.

## **7. PATENTS AND INVENTIONS**

The Contractor agrees that any and all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to OTDA. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to 45 CFR Part 74.36 and any amendments thereto.

## **8. TERMINATION**

- a. This AGREEMENT may be terminated by OTDA, if OTDA deems that termination would be in the best interest of the State, provided that OTDA shall give written notice to the Contractor not less than thirty (30) days prior to the date upon which termination shall become effective. Such notice is to be made via registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivered by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. OTDA agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith.
- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT for the purposes set forth in this AGREEMENT, or if at any time during the term of this AGREEMENT the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, OTDA may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter. Said notice of breach shall be sent via registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefor. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, OTDA may, upon written notice

similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to OTDA. Upon such termination, OTDA may require a) the repayment to OTDA of any monies previously paid to the Contractor, or b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of a) and b), at OTDA's option.

- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of OTDA terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by OTDA to the Contractor.
- d. Should OTDA determine that Federal or State funds are unavailable; OTDA shall deem this contract terminated immediately. OTDA agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, OTDA shall follow this up immediately with written notice. OTDA will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from OTDA. If State or federal funds become unavailable prior to completion of a performance-based contract, the contractor is entitled to receive reimbursement in an amount equal to the amount the contractor would otherwise have received for the payment points that have been completed at the time that the funds become unavailable.

## **9. ADDITIONAL ASSURANCES**

- a. The Contractor agrees to observe all applicable Federal Regulations, including those contained in 45 CFR Part 84 and 28 CFR Part 41.
- b. OTDA and Contractor agree that Contractor is an independent Contractor, and not an employee of OTDA. Contractor agrees to indemnify the State of New York for any loss the State of New York may suffer when such losses result from claims of any person or organization (excepting only OTDA) injured by the negligent acts or omission of Contractor, its officers and/or employees or subcontractors. Furthermore, Contractor agrees to indemnify, defend, and save harmless the State of New York, and its officers, agents, and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the contract, and from all claims and losses occurring or resulting to any person, firm, corporation who may be injured or damaged by Contractor in the performance of the contract, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under the contract or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this contract.
- c. The Contractor agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights Laws with reference to equal employment opportunities and the provision of services.
- d. The Contractor agrees that Modifications and/or Budget Revisions which do not effect any change in the amount of consideration to be paid, or change the term, will be in accordance with Appendix C.
- e. Upon request by a local social services district or its designated purchasing agent, the contractor shall enter into an agreement with such district or agent for the purchase of the goods and services which are the subject of this agreement. Such new agreement shall provide that the cost of such

goods and services to the district / agent entering into such agreement shall be the same as charged to OTDA under this agreement except that the contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the act that the municipality constituting the social services district requires contractor to be obligated to standard contractual provisions in lieu of Appendix A of this agreement, which standard contractual provisions are more onerous than those contained in Appendix A.

- f. The contractor understands that it must comply with federal Executive Order 11246, the Copeland "Anti-Kickback Act" (18 USC 874), Section 306 of the federal Clean Air Act, Section 306 of the federal Clean Water Act, and that it must certify that neither it nor its principals are debarred or suspended from federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by OTDA (see federal Executive Order 12549 and 7 CFR Part 3017).

## APPENDIX Z

### **Minority and Women-Owned Business Enterprise (MWBE) and Equal Employment Opportunity (EEO) Participation Requirements** **For All NYS Office of Temporary and Disability Assistance** **Contracts and Grants**

Authority: Article 15-A of the Executive Law, 5 NYCRR parts 140-144, Appendix A: Standard Clauses for All New York State Contracts and requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuate the purposes of Article 15-A.

#### **I. General Provisions**

- A.** New York State Executive Law § 310–318, (Article 15-A: Participation by Minority Group Members and Women with Respect To State Contracts -- hereinafter “the Statute”), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. 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 enterprise 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 the New York State Office of Temporary and Disability Assistance (OTDA) establish goals for maximum feasible participation of New York State Certified minority and women – owned business enterprises (“MWBE”) and the employment of minority group members and women in the performance of New York State contracts. OTDA fully supports the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons, and to promote equality of economic opportunity for minority group members and women who own business enterprises.
- B.** OTDA is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. Where deemed appropriate, OTDA will implement the provisions of New York State Executive Law Article 15-A and the MWBE Regulations for all other OTDA contracts. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws. Contractors participating in and/or selected for procurement opportunities with OTDA shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for MWBEs, including but not limited to the Statute and its implementing regulations as promulgated by New York State’s Empire State Development (ESD) Division of Minority and Women’s Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144).
- C.** Copies of the required OTDA Forms are identified in this Appendix and available on OTDA’s Internet site at <http://www.otda.ny.gov>. The Contractor agrees to complete and submit these forms without change in response to goals specified in the RFP or contract. An electronic link to the current list of certified minority- and women-owned business enterprises also is available on OTDA’s Internet site.

- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings allowed by the Contract.
- E. Further information regarding Article 15-A of the New York State Executive Law and the New York State Minority and Women's Business Enterprise Program is available on the DMWBD Internet site at <http://www.esd.ny.gov/ContactUs.asp>

## II. Contract Goals

- A. For purposes of this procurement, the OTDA hereby establishes an overall goal of [TO BE INSERTED AS DIRECTED BY MWBE UNIT %] for Minority and Women-Owned Business Enterprises ("MWBE") participation, [XX]% for Minority-Owned Business Enterprises ("MBE") participation and [XX]% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). Additionally, an overall goal of 10-20% is established for Equal Employment Opportunity ("EEO") participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/ContactUs.asp>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the OTDA for liquidated or other appropriate damages, as set forth herein.
- D. As a condition of the Contract, the Contractor and OTDA agree to be bound by the provisions of §316 of Article 15-A of the New York State Executive Law regarding enforcement.
- E. OTDA reserves the right to establish separate and different goals on any State Contract, as identified in the specified procurement. For guidance on what factors OTDA will consider in determining what goals are appropriate in relation to a specific State Contract, refer to 5 NYCRR § 142.2(a)(1) - (6).

## III. EEO Requirements

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the DMWBD. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
  - 1. Contractor and Subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The Contractor shall submit an EEO policy statement to the OTDA within seventy two (72) hours after the date of the notice by OTDA to award the Contract to the Contractor.

3. If Contractor or Subcontractor does not have an existing EEO policy statement, the OTDA may provide the Contractor or Subcontractor a model statement (see OTDA 4970 – Minority/Women Business Enterprise (MWBE)/Equal Employment Opportunity (EEO) Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
  - c. 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.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

**C. OTDA Form 4934.1 Equal Employment Opportunity (EEO) Staffing Plan**

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

**D. OTDA Form 4971 Equal Employment Opportunity (EEO) Workforce Employment Utilization/Compliance Report ("Workforce Report")**

1. Once a contract has been awarded and during the term of the Contract, Contractor is responsible for updating and providing notice to the OTDA of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
4. In the case where the Contractor's and/or subcontractor's work force does not change within the quarterly period, the Contractor shall so notify OTDA in writing.

5. All forms and reports will be submitted to the OTDA program manager for this contract and forwarded to NYS OTDA, MWBE Program Management Unit, Harlem Center, 317 Lenox Avenue, NYC, NY 10027; (212) 961-8214; e-mail to: [otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov](mailto:otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov).
- E. Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. MWBE Requirements

The Contractor acknowledges that it is the policy of the State of New York and of OTDA that MWBEs shall be given the opportunity for meaningful participation in the performance of State Contracts. Therefore, Contractors agree to make good faith efforts to solicit active participation to meet established goals under this procurement by MWBEs identified in the ESD directory of certified businesses<sup>3</sup>, which can be viewed at: <https://ny.newycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>

1. For the purposes of this Appendix Z, the question of whether a Contractor has engaged in and documented "Good Faith Efforts" to solicit active participation to meet established goals under this procurement by MWBEs in the performance of State Contracts shall be determined by the OTDA Commissioner or his/her designee, after a thorough consideration of the factors listed in 5 NYCRR § 142.8.
  2. The separate MBE and WBE participation goals established by OTDA for this procurement are based on the overall availability of MWBEs that have been certified to perform the specific scope of work identified under this procurement. For compliance purposes, these goals should not be construed as rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-owned Business Program work.
- A. The Contractor represents and warrants that Contractor has submitted the following OTDA forms either prior to, or at the time of, the execution of the contract:
1. MWBE Utilization Plan (OTDA Form 4937)
    - a. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix.
    - b. If a Contractor seeks modification to its previously approved MWBE Subcontractor Utilization Plan, the Contractor shall first notify OTDA in writing of such change and obtain approval from OTDA.
    - c. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the OTDA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
  2. Certification of Good Faith Efforts (OTDA Form 4976) to achieve the overall prescribed MWBE participation percentage (0%) goals set forth in the procurement.

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<sup>3</sup> All MWBE firms are required to be certified by Empire State Development (ESD) or must be in the process of obtaining certification from ESD. Should the Contractor identify a minority-owned or woman-owned firm that is not currently certified as an MWBE, the Contractor should request that the firm submit a certification application to ESD for an eligibility determination, with a copy to the OTDA MWBE Program Management Unit. OTDA's MWBE Program Management Unit will work with ESD to expedite the application; however, it is the responsibility of the Contractor to ensure that a sufficient number of certified MWBE firms have been identified in response to this procurement, in order to facilitate full MWBE participation.

3. A MWBE Subcontractor's and/or Suppliers' Letter of Intent to Participate (OTDA Form 4938), which should document the names and signatures of certified MBEs and/or WBEs which have agreed to participate as subcontractors on the Contract.

## V. Waivers

- A. For Waiver Requests Contractor should use OTDA Form 4969 Minority/Women Business Enterprise (MWBE) Subcontractor Request for Waiver Form.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a request for waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the OTDA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the OTDA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the OTDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## VI. Quarterly MWBE Contractor Compliance Reports

- A. Contractor is required to submit the Minority/Women Business Enterprise (MWBE) Subcontractor Quarterly Compliance Report (OTDA Form 4968) to the OTDA by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.
- B. All reports will be submitted to the OTDA program manager for this contract and forwarded to NYS OTDA, MWBE Program Management Unit, Harlem Center, 317 Lenox Avenue, NYC, NY 10027; (212) 961-8214; e-mail to: [otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov](mailto:otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov)
- C. Failure to timely submit a Contractor's MWBE Subcontractor Quarterly Compliance Report and/or other reports or information as requested by OTDA may result in payments under the contract being delayed until such reports or other information have been received by OTDA.<sup>4</sup> OTDA may also deem other noncompliance with requirements under the Statute as a breach of contract and commence any other means of enforcement permitted under the contract and/or by law.

## VII. Liquidated Damages – MWBE Participation

- A. Where OTDA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the OTDA liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between: (a) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (b) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. Determinations of compliance or non-compliance with the Contract's MWBE participation requirements shall be based upon the Contractor's Utilization Plan, MWBE Sub-Contractor Quarterly Reports, and any relevant documentation related thereto. The determination of what constitutes the willful and intentional failure to comply with the MWBE participation requirements will be based upon the evaluation of the same criteria considered in evaluating an MWBE subcontractor waiver request.

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<sup>4</sup> Contractors may be requested to provide additional Compliance Reports and information (i) to verify payments made to MWBEs, (ii) to verify MWBE utilization and/or, (iii) as needed to evaluate any other aspect of Contractor compliance with the requirements set forth herein.

- D. Upon a determination that a willful and intentional failure to comply with the MWBE participation requirements has occurred, the OTDA shall withhold the amount established in paragraph B from any future payments otherwise required by this Contract. All funds being withheld pursuant to this provision shall be offset as liquidated damages upon the expiration or termination of the contract, unless the Contractor comes into compliance with the MWBE requirements at any time during the term of the Contract but prior to the submission of a request for final payment on the contract. All payments withheld pursuant to this provision shall be released upon OTDA's determination that the Contractor has come into compliance.
- E. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the OTDA, Contractor shall pay such liquidated damages to the OTDA within sixty (60) days after they are assessed by the OTDA unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the OTDA.

## **VIII. Sanctions**

OTDA reserves the right to impose sanctions following a determination of non-compliance by a Contractor. Sanctions may be imposed upon the Contractor whenever EEO and/or MWBE program requirements have not been met in a timely and effective manner. Any/all of the following sanctions may be imposed:

- Disallowance of costs associated with such noncompliance;
- Initiation of procedures to suspend or terminate the grant or contract;
- Withholding of progress payments until such time as corrective actions have been undertaken by the Contractor to the satisfaction of OTDA;
- Deleting Contractor's name from bid lists for a specified period of time to be determined in the sole discretion of OTDA;
- Report Contractor as non-responsible to NYS OSC Vendor Responsibility System; and
- Other sanctions of which a Contractor has notice in writing prior to or during the performance of a contract.