

# **SAMPLE CONTRACT**

<p align="center"><b>NYS OFFICE OF TEMPORARY &amp; DISABILITY ASSISTANCE</b></p> <p align="center">40 NORTH PEARL STREET ALBANY, NEW YORK 12243</p>	<p align="center"><b>NYS COMPTROLLER'S NUMBER</b></p> <p align="center">ORIGINATING AGENCY CODE: 27000</p>
<p><b><u>CONTRACTOR:</u></b></p>	<p align="center"><b><u>TYPE OF PROGRAM (s):</u></b></p>
<p align="center"><b>STATUS</b></p> <p>Contractor is ( ) is not ( ) a Sectarian entity Contractor is ( ) is not ( ) a Not-for-Profit Org.</p> <p><b>Charities Registration #:</b> __ __ - __ - __ Contractor has ___ / has not ___ timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.</p> <p>Exempt: no / yes, basis: _____</p>	<p align="center"><b><u>INITIAL CONTRACT PERIOD</u></b></p> <p>FROM:</p> <p>TO:</p> <p>FUNDING AMOUNT FOR INITIAL PERIOD</p>
<p>Federal Tax ID #: _____</p> <p>Municipality # (if Gov't.): _____</p>	<p align="center"><b><u>MULTI-YEAR TERM</u></b> (if applicable):</p> <p>FROM: _____</p> <p>TO: _____</p>

**APPENDICES ATTACHED AND PART OF THIS AGREEMENT**

- \_\_\_\_\_ Statement of New York Agreement
- \_\_\_\_\_ APPENDIX A Standard Clauses as required by Attorney General for all State Contracts
- \_\_\_\_\_ APPENDIX A1 Agency Specific Clauses
- \_\_\_\_\_ APPENDIX A2 Agency Program Specific Clauses
- \_\_\_\_\_ APPENDIX C Payment and Reporting Schedule
- \_\_\_\_\_ APPENDIX D Program Work Plan
- \_\_\_\_\_ APPENDIX X Contract Modification
- \_\_\_\_\_ APPENDIX Z OTDA M/WBE-EEO Program Requirements
- \_\_\_\_\_ Attachment Q Notices
- \_\_\_\_\_ Other Certification of Good Faith Efforts

IN WITNESS WHEREOF, The parties hereto executed or approved this AGREEMENT on the dates below their signatures.

**CONTRACT**

**CONTRACTOR SIGNATURE**

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

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

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

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

STATE AGENCY  
NYS OFFICE OF TEMPORARY &  
DISABILITY ASSISTANCE

**Agency Certification**

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

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

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

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

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

STATE OF NEW YORK)  
SS:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the entity described herein which executed the forgoing instrument; and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary) \_\_\_\_\_

ATTORNEY GENERAL'S SIGNATURE:

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

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

NYS OFFICE OF THE STATE COMPTROLLER:

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

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

STATE OF NEW YORK  
MULTI YEAR AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

I. Conditions of Agreement

- A. The period of this AGREEMENT shall be as specified on the face page hereof. Should funding become unavailable, this AGREEMENT may be suspended until funding becomes available. In such event the STATE shall notify the CONTRACTOR immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this AGREEMENT beyond the end date specified on the face page hereof.
- B. Funding for the entire contract period shall not exceed the amount specified as "Funding Amount for Initial Period" on the face page hereof.
- C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- D. To modify the AGREEMENT, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, including any proposed budget modification which results in a change of greater than 10% to any budget item, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.
- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.
- F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and

omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.

- G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

## II. Payment and Reporting

- A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.
- B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services, a sum not to exceed the amount noted on the face page hereof. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.
- C. The CONTRACTOR shall meet the audit requirements specified by the STATE.
- D. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-474-4032. CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the OTDA has expressly authorized payment by paper check as set forth herein.
- E. The CONTRACTOR acknowledges that payment for invoices submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the OTDA, in the OTDA's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices as established by the State Comptroller.
- F. The CONTRACTOR shall also comply with the State Comptroller's requirement to file a Substitute Form W-9. The form and the instructions for completing the form, as well as the Electronic Payment Authorization Form are located at [Electronic Payment and Substitute W-9](#).

## III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms

and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

- C. The STATE may terminate this AGREEMENT without cause by ninety (90) days prior written notice.
- D. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.
- E. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.
- F. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- G. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

#### IV. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

#### V. Property

- A. Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

#### VI. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

- B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.

## APPENDIX A

### STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States

subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the

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

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

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

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

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

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

NYS Department of Economic Development

Division for Small Business

30 South Pearl St -- 7<sup>th</sup> Floor

Albany, New York 12245

Telephone: 518-292-5220

Fax: 518-292-5884

<http://www.empire.state.ny.us>

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

NYS Department of Economic Development

Division of Minority and Women's Business Development

30 South Pearl St -- 2<sup>nd</sup> Floor

Albany, New York 12245

Telephone: 518-292-5250

Fax: 518-292-5803

<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

**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 by reference 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).

# NEW YORK STATE OFFICE OF TEMPORARY & DISABILITY ASSISTANCE

## APPENDIX A-2

### PROGRAM SPECIFIC CLAUSES

#### *DISCRETIONARY TARGETED ASSISTANCE GRANT PROGRAM - MAKING A CONNECTION (MAC) PROGRAM*

## I. AUTHORIZATION

Refugee projects are funded by the U.S. Department of Health and Human Services, Office of Refugee Resettlement, under the authority of Section 412(a)(6)(B) of the Immigration and Nationality Act (INA), as amended by the Refugee Act of 1980 (Public Law 96-211), and further amended by the Refugee Assistance Amendments of 1982 (Public Law 97-363). Entrant projects are funded under this same authority as made applicable to the Cuban and Haitian Entrant Program by Section 501 (a) of the Refugee Education Assistance Act of 1980 (P.L. 96-422). The designated Single State Agency for administering refugee funds in New York State is the Office of Temporary and Disability Assistance.

## II. ELIGIBLE SERVICES

### A. General Provisions

The Contractor shall establish and carry out the Making A Connection (MAC) Program and shall expend funds and otherwise perform under this AGREEMENT as set forth herein and as described in the approved Work Plan which is annexed hereto and incorporated herein as Appendix D. All program activities in Appendix D shall conform to the descriptions included in this appendix. Any substantive change in the approved Program Work Plan shall be carried out by amendment of this AGREEMENT and shall be at the sole discretion of OTDA upon written application therefore by the Contractor.

### B. Specific Provisions

Eligible payment points may include the following:

- Individual Connection Planning
- MAC Academy Initial Phase
- MAC Academy Final Phase
- MAC Academy Community Service/Volunteer Placement

## III. ELIGIBLE POPULATION TO BE SERVED

Client eligibility is based on the following:

### Eligible Immigration Status

- A *refugee*, admitted under Section 207 of the Immigration Naturalization Act (INA);
- An *asylee*, granted asylum status under Section 208 of the INA;

- A Cuban or Haitian *entrant* as defined in subdivision (e) of Section 501 of the Refugee Education Assistance Act of 1980;
- A Parolee admitted under section 212(d)(5) of the Immigration and Nationality Act (INA);
- An alien admitted into the United States as an *Amerasian immigrant* as described in Section 402(a) 2 (A) (I) (V) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 USC. 1612 (a) 2 (A));
- Children classified as *Special Immigrant Juveniles* (SIJs) receiving services from ORR-funded Unaccompanied Refugee Minor (URM) program;
- A *Certified Trafficking Victim* who has received a certification or eligibility letter from the federal Office of Refugee Resettlement (ORR);
- Certain *family members of a certified trafficking victim* as described in Section 101 (A) (15) (T) (ii) of the INA;
- A citizen or national of Iraq granted *special immigrant status* described in Section 101(a)(27) of the INA for a period of ninety days from the date of entry to the US;
- A citizen or national of Afghanistan granted *special immigrant status* described in Section 101 (a) (27) of the INA for a period of ninety days from the date of entry to the US; and
- *Family members* of Afghan and Iraqi citizens or nationals granted *special immigrant status* described in Section 101(a)(27) of the INA for a period of ninety days from date of entry to the US.

*NOTE: For the purpose of this RFP, eligible persons will hereafter be referred to as “refugees” unless special circumstances apply. In the event of federal regulation changes, which affect the type of immigration status that would be eligible for service, contractors will be notified of the change and required to comply with the new criteria for client eligibility.*

#### **Age**

- Participants must be between the ages of 16 and 21 years of age and not enrolled in or graduated from secondary, technical or post secondary school.

#### **Length of Time in the U.S.**

- Refugee youth and young adults within 24 months of their date of arrival or date of status granted will be a priority focus for recruitment.

**APPENDIX C**  
**PAYMENT AND REPORTING SCHEDULE**

General Schedule and Payment

- a. In consideration of the services to be performed by, the Contractor pursuant to this AGREEMENT, the Office of Temporary and Disability Assistance (OTDA) agrees to pay and the Contractor agrees to accept a sum not to exceed the amount set forth in the Payment Schedule contained in Appendix C.
- b. To the extent permitted by Federal law and regulation, OTDA may, at its own discretion, make an advance payment to the Contractor, up to twenty-five percent (25%) of the initial budget period, upon the submission of sufficient justification therefore. Said advance may be eligible for payment only upon approval of the AGREEMENT by the Attorney General and by the Comptroller of the State of New York and upon the submission to OTDA by the Contractor 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. Each advance shall be recovered by crediting a predetermined percentage of the advance against the quarterly vouchers. If the amount of the quarterly voucher is not sufficient to cover the proportionate advance amount to be recovered, then subsequent vouchers will be reduced until the advance is fully recovered. In the event either party terminates the contract prior to its expiration, the Contractor agrees to refund to OTDA immediately any advance balance then outstanding.
- c. OTDA agrees to pay the Contractor for expenses incurred in behalf of fulfilling this AGREEMENT according to the Payment Schedule contained in APPENDIX C and upon submission of a properly executed State of New York Standard Voucher in a form acceptable to OTDA and to the Comptroller of New York. These vouchers shall be submitted at least quarterly. OTDA agrees to submit each approved voucher to the Comptroller for payment unless it shall have notified the Contractor of its disapproval of payment in writing and together with a justification therefore. The Contractor agrees to submit all vouchers to OTDA no later than sixty (60) days following the completion or termination of this AGREEMENT. For purposes of Article XI-B of the State Finance Law, vouchers other than those for payment of advances are payable on the 45<sup>th</sup> day after the end of the vouchering period (monthly, quarterly or as defined in the payment schedule) if deemed acceptable by OTDA and the Office of the State Comptroller, and if the Contractor's voucher is received within 15 days after the end of said period. If the Contractor's voucher is received later than 15 days after the end of said period, then the voucher will be payable 30 days after receipt if deemed acceptable by OTDA and the Office of the State Comptroller.
- d. OTDA reserves the right to withhold up to ten percent of any payment otherwise due under this AGREEMENT as security for the faithful completion of services under this AGREEMENT. Said amount is to be paid to the Contractor upon the receipt of all required reports, including the final programmatic and fiscal reports, all products of the project as provided in the AGREEMENT and the attachments thereto, a final voucher, the accounting for the advance payment made pursuant to this AGREEMENT, and upon certification by the Contractor that it has completed its obligations and duties under this AGREEMENT.

## Designated Payment Office

Program Manager: Tom Keenan  
Program Office: New York State Office of Temporary and Disability Assistance  
Program Area: Bureau of Refugee and Immigrant Assistance  
Address: 40 North Pearl Street 10C  
Albany, NY 12243

**APPENDIX D  
PROGRAM WORK PLAN**

**Contractor Information**

<p>1. Incorporated Agency Name: _____</p>
<p>2. Street Address: _____ City, State, Zip Code: _____ County: _____</p>
<p>3. Agency Contact: _____ Title: _____ Phone #: _____ FAX #: _____ Email Address: _____ Mailing Address: _____</p> <p>Program Contact: _____ Title: _____ Phone #: _____ FAX #: _____ Email Address: _____ Mailing Address: _____</p>
<p>4. Federal Employer Identification #: _____ State Registered Charitable Organization #: _____ Municipality #: _____ Community District(s): _____ Federal Congressional District(s): _____ State Senate District(s): _____ State Assembly District(s): _____</p>

5. Award Amount: \_\_\_\_\_

6. Organization Information

For statistical purposes, check yes or no for *each* of the following items as it relates to your organization. See the instructions for definitions. LEAVE NO BLANKS.

Non-Profit Organization	Yes <input type="checkbox"/> No <input type="checkbox"/>	Women-Owned Business	Yes <input type="checkbox"/> No <input type="checkbox"/>
Minority Business	Yes <input type="checkbox"/> No <input type="checkbox"/>	Municipality	Yes <input type="checkbox"/> No <input type="checkbox"/>
Small Business	Yes <input type="checkbox"/> No <input type="checkbox"/>		

7. Non-Discrimination/Sectarian Organization Compliance Justification

a. According to your Certificate of Incorporation, are your organization's purposes sectarian? (For example, are you a corporation organized under the religious corporation law or a corporation that has a corporate purpose to serve a particular religious group or promoting the doctrine of a particular religion in general?)	Yes	No
b. Are any of the proposed services in your project sectarian in nature?		
c. Does your organization have as its goal the furthering of any sectarian purpose?		
d. Are the services to be provided by sectarian staff?		
e. Are services being delivered in a building owned by a sectarian organization?		
If no, proceed to letter (f.). If yes, are services educational in nature?		
f. Will the proposed services be provided on the basis of race, religion, color or national origin?		
g. If the contract is with a sectarian organization, is the amount and comprehensiveness of the surveillance necessary to insure the contract does not foster or inhibit religion greater than the contract necessary to administer a similar contract with a non-sectarian agency?		

**If any of the above answers are "Yes", please justify the recommendation for funding below:**

8. LIST OF AUTHORIZED SIGNATORIES

List all individuals who are authorized by the Board of Directors to sign this contract and related documents on behalf of the organization. *Should any individual be added to or removed from the list, inform the Bureau in writing immediately.*

Name _____ Title _____ (Printed)  <b>Signature</b> _____  Restrictions _____
Name _____ Title _____ (Printed)  <b>Signature</b> _____  Restrictions _____
Name _____ Title _____ (Printed)  <b>Signature</b> _____  Restrictions _____

The individuals listed above are authorized to sign on behalf of the Contractor in all matters regarding the Agreement with the NYS Office of Temporary and Disability Assistance except where restrictions are shown. The recipient certifies that to the best of his/her knowledge and belief the information in the contract is true and correct. The recipient certifies that he/she has reviewed the contract, understands the terms, and agrees to be bound by the same.

---

(Signature of Official Authorized to Sign for Applicant)      (Printed Name)      (Date)

APPENDIX X

Agency Code: 27000

Contract No.: \_\_\_\_\_

**Period:**

**Funding Amt. for Period:**

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the **New York State Office of Temporary & Disability Assistance**, having its principal office at 40 N. Pearl Street, Albany, New York 12243 (hereinafter referred to as the STATE), and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR).

Whereas, the State and the Contractor wish to amend said agreement (C00); and the purpose of which is to modify the contract term and/or contract amount as referenced above and as amended in the attached Appendix (ices) -.

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, The parties hereto have executed this AGREEMENT on the dates below their signatures.

**CONTRACTOR SIGNATURE STATE AGENCY SIGNATURE**

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

Printed Name Printed Name  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

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

**State Agency Certification**

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

STATE OF NEW YORK)

SS:

County of \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_, 200\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described herein which executed the forgoing instrument, and that he/she signed his/her name thereto by order of the board of directors of said corporation.

\_\_\_\_\_  
(Notary)

Attorney General's Signature

Approved By: Thomas P. DiNapoli  
Comptroller

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

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

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

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

## APPENDIX Z

### **Minority and Women-Owned Business Enterprise (M/WBE) 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. Introduction**

1. 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. The New York State Office of Temporary and Disability Assistance (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.
2. OTDA has developed compliance requirements, forms and procedures to ensure that (i) all contractors as defined under § 310 (3) (to include those who submit bids/proposals or qualifications, or proposed contracts where a contract will be awarded pursuant to negotiation without solicitation of bids or a request for proposals, in an effort to be selected for contract award as well as those successful bidders/proposers with whom OTDA enters into State Contracts, as defined in § 310 (13) [hereinafter “Contractors”], as well as proposed or actual “Subcontractors”, as defined in § 310 (14) shall comply with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, and, (ii) there are meaningful participation opportunities for certified minority or women-owned business enterprises (M/WBEs) in the OTDA procurement process. 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 M/WBEs, including but not limited to the Statute and its implementing regulations as promulgated by the Empire State Development (ESD) Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144).
3. Copies of the required OTDA Forms are identified in this Appendix and available on OTDA’s Internet site at <http://www.otda.state.ny.us/main/>. These forms are to be submitted without change 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.
4. 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.nylovesmwbe.ny.gov>.

#### **II. M/WBE Utilization Goal Requirements For NYS OTDA Contracts**

Pursuant to Article 15-A of the New York State Executive Law and Regulations adopted pursuant thereto, NYS OTDA has established separate goals for participation of New York State certified minority and women-owned business enterprises for all State Contracts. NYS OTDA is required to implement the provisions of Article 15-A and 5 NYCRR Part 142 for all State Contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing; (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair of real property renovations and construction; and (3) in excess of \$100,000 whereby the owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project. To the extent that MWBE opportunities are available, goals will be included on contracts for less than \$25,000.

As a condition of the State Contract, the Contractor and NYS OTDA agree to be bound by the provisions of §316 of Article 15-A of the New York State Executive Law regarding enforcement. Successful Contractors must document "good faith efforts" toward meeting certified minority- and women- owned business enterprise utilization plans to provide meaningful participation by New York State Certified M/WBE subcontractors or suppliers in the performance of this contract. For guidance on how OTDA will determine a Contractor's "good faith effort," refer to 5 NYCRR § 142.8.

**ESTABLISHED OTDA GOALS FOR CONTRACTS ARE AS FOLLOWS:**

MINORITY OWNED BUSINESS PARTICIPATION	10%
WOMEN OWNED BUSINESS PARTICIPATION	10%
EQUAL EMPLOYMENT OPPORTUNITY PARTICIPATION	10 to 20%

**ESTABLISHED GOALS FOR THIS PROCUREMENT/CONTRACT ARE AS FOLLOWS:**

MINORITY OWNED BUSINESS PARTICIPATION	10%
WOMEN OWNED BUSINESS PARTICIPATION	10%
EQUAL EMPLOYMENT OPPORTUNITY PARTICIPATION	10 to 20%

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. Work Force Diversity Practices, Bidding and Award Considerations**

- OTDA shall determine whether it is practical, feasible and appropriate to include in the evaluation of bids or proposals the diversity practices, as defined in 5 NYCRR § 140.1(l), of all contractors making submissions in any State Contract that is: awarded on the basis of best value; or otherwise awarded as a response to a request for a proposal and/or a request for qualifications; and anticipated to result in an award of \$250,000 or greater ; and not a contract for commodities, or otherwise based on lowest price. For guidance on how OTDA will determine whether it is practical, feasible and appropriate to assess the diversity practices of all prime contractors making such submissions, refer to 5 NYCRR §142.3(b)(1) - (4).
- Unless otherwise specified in a particular procurement, OTDA will assess the diversity practices of all prime contractors. The assessment will be used as one of the factors in determining the award of OTDA contracts. All prime contractors shall submit diversity practice information for assessment by OTDA, which will include information required in Attachment 1 to Appendix Z and any matrix (numerical guidelines) that may be provided by the Director of DMWBD pursuant to 5 NYCRR § 142.3(10).
- Diversity practice information submitted for assessment by all prime contractors making submissions must be fully documented and subject to audit, if required by the director of DMWBD.

**IV. EEO Requirements**

As to the performance of the State Contract, contractors and subcontractors shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

**A. Prior to the Award of a State Contract**

- In addition to the requirements stated in Appendix A, Clause 12 (Equal Employment Opportunities for Minorities and Women), as a precondition to being selected for contract award and entering into a State Contract, and except where OTDA determines that only the lowest responsible bidder(s) or finalists shall

be required to submit an EEO policy statement and staffing plan or total work force data on the State Contract, the Contractor shall provide the following with its procurement submission:

- (a) An EEO Policy Statement, as described in Appendix A, Clause 12. The OTDA EEO Policy Statement form (OTDA Form 4970) can be used to satisfy this requirement.<sup>1</sup>
- (b) Except for construction contracts, an EEO Staffing Plan of anticipated workforce, should document:
  - (i) The workforce proposed to be utilized on the State Contract; or
  - (ii) Where the work force to be utilized in the performance of this State Contract cannot be separated out from the Contractor's and/or proposed Subcontractor's total work force (for example, certain commodities contracts), submit in lieu of a staffing plan, the Contractor's and/or proposed Subcontractor's total workforce including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by OTDA.

If, after scoring, a Contractor is selected for award, before that award is completed (e.g., during contract negotiations), OTDA's M/WBE Program Management Unit will conduct a review of the substance of the EEO Policy Statement and EEO Staffing Plan of anticipated workforce to determine whether the Contractor appears to be in compliance with Appendix A, Clause 12 and Executive Law Article 15-A, i.e., whether such documents demonstrate that the Contractor is committed to EEO. If, upon review, OTDA comes to the conclusion that such commitment to EEO principles is lacking, OTDA shall contact the Contractor and make every effort to resolve the deficiencies identified in the policy statement and staffing plan and to bring the substance of the policy statement and staffing plan into compliance with such requirements. Failure to submit an EEO Policy Statement and EEO Staffing Plan of anticipated workforce may result in the rejection of the Contractor's procurement submission, unless the Contractor provides OTDA with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where a Contractor has a work force of 10 employees or less), or makes a commitment to submit an EEO Policy Statement and an EEO Staffing Plan of anticipated workforce within the time frame specified in writing by OTDA.

#### **B. After the Award of the State Contract**

1. The Contractor will designate a Minority/Women Business Enterprise Liaison/Contact person to coordinate implementation of the M/WBE-EEO program between the Contractor and the OTDA M/WBE Program Management Unit, pursuant to Article 15-A, and requirements in furtherance of the Statute that may be established by OTDA.
2. The contractor shall include the provisions of subdivision IV. A. of this section in every subcontract in such a manner that the requirements of the provisions will be binding upon each subcontractor as to work in connection with the State contract, including the requirement that subcontractors shall undertake or continue existing programs of affirmative action 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, and, when requested, provide to the contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State contract.
3. After approval of the award of a State Contract, and during the performance of the State Contract, if a contractor or subcontractor does not have an existing affirmative action program, OTDA may provide to the contractor or subcontractor a model plan of an affirmative action program.
4. After approval of the award of a State Contract, and during the performance of the State Contract, the Contractor shall periodically submit to OTDA EEO Workforce Employment Utilization/Compliance Reports (OTDA Form 4971). OTDA will provide The work force employment utilization report form to

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<sup>1</sup> In the event that a State Contract is entered into on an emergency basis or where an amendment or change order has been added to a State Contract providing for a total expenditure in excess of \$ 25,000, OTDA may require the contractor to submit an EEO policy statement and to comply with the post award requirements of Part 143, Work Force Diversity Requirements and Procedures Regarding Equal Employment Opportunities for Minority Group Members and Women on State Contracts, during the life of the contract.

the contractor at the time of the execution of the contract. The work force utilization report shall include the following information:

- (a) the total number of employees performing work on the State Contract;
- (b) for commodities, services/consulting, and professional construction consultant contracts (including not-for-profit contracts within those industries), the contractor's and all subcontractor's work force on the State Contract broken down by specified ethnic background, gender, and Federal occupational categories; and
- (c) for construction contracts, the hours a contractor's and all subcontractor's employees worked on activities related to that contract, and a breakdown of those hours by ethnic background, gender and the construction related job titles that fall within relevant Federal occupational categories.
- (d) For construction contracts, a contractor shall submit to OTDA a work force utilization report on a monthly basis throughout the life of the contract. For all other contracts where the work force to be utilized in the performance of the State Contract can be separated out from the contractor's and/or subcontractor's total work force, the contracting agency shall require a contractor to submit work force utilization reports on a quarterly basis throughout the life of the contract when the contractor's and/or subcontractor's work force on the State Contract changes.
- (e) 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.
- (f) All forms and reports will be submitted to the OTDA program manager for this contract award and forwarded for review to: Ms. Wilma BrownPhillips, Assistant Commissioner, NYS OTDA, M/WBE Program Management Unit, Harlem Center, 317 Lenox Avenue, NYC, NY 10027; (212) 961-8222; mail to: [Wilma.BrownPhillips@OTDA.State.NY.US](mailto:Wilma.BrownPhillips@OTDA.State.NY.US).
- (g) The EEO Workforce Employment Utilization/Compliance Reports shall be reviewed as part of OTDA's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of anticipated workforce submitted, where applicable, with procurement submission and the Contractor's EEO Workforce Employment Utilization/Compliance Reports, the Contractor/ Subcontractor may be subject to an in-depth EEO compliance review.
- (h) In addition to general compliance monitoring of State Contracts, including a contractor's compliance with the requirements of 5 NYCRR Part 143, OTDA shall conduct in-depth compliance reviews on selected State Contracts during the course of the year, in accord with 5 NYCRR § 143.3.4. If the contractor fails to provide the information requested by the State agency within 10 days of the request, such failure shall be deemed a material breach of contract and subject to an administrative hearing pursuant to 5 NYCRR § 143.6 or any other relief to which OTDA is entitled.

#### 5. Work Force Diversity dispute resolution procedure.

- (a) If deficiencies are identified with the Contractor during OTDA's general contract compliance monitoring or during in-depth compliance reviews, the Contractor and OTDA M/WBE Program Management Unit, and other OTDA staff, as appropriate, shall make every effort to resolve the deficiencies identified to bring the Contractor/Subcontractor into compliance with such requirements.
- (b) If the Contractor and the OTDA M/WBE Program Management Unit, and other OTDA staff, as may be appropriate, are unsuccessful in their efforts, and, upon review, the OTDA Commissioner or his/her designee agrees that the Contractor/Subcontractor is non-compliant, such Commissioner or his/her designee shall submit a written complaint to the Director of DMWBD regarding the Contractor's or Subcontractor's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Commissioner or his/her designee shall serve a copy of the complaint upon the Contractor or Subcontractor by personal service or certified mail, return receipt requested.

- (c) DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a dispute resolution memorandum indicating that the matter has been resolved and stating the terms of the resolution.
- (d) If a resolution is not possible, DMWBD shall refer the matter, within thirty calendar days of the receipt of OTDA's complaint, to the division's hearing officer for a hearing.
- (e) Upon conclusion of the administrative hearing, the hearing officer shall submit to the director of DMWBD a decision regarding the noncompliance dispute and the imposition of sanctions, fines or penalties, as provided for in the relevant sections of the contract, if appropriate, or a dismissal of OTDA's complaint, if appropriate.
- (f) The DMWBD director, within 10 business days of receipt of the decision, shall mail a determination of such matter to OTDA and shall cause a copy of such determination, along with a copy of Article 15-A of the New York Executive Law, to be served upon the Contractor or subcontractor by personal service or by certified mail, return receipt requested.
- (g) The decision of the hearing officer shall be final and may only be vacated or modified as provided in Article 78 of the New York Civil Practice Law and Rules.

## **V. M/WBE Requirements**

The Contractor acknowledges that it is the policy of the State of New York and of OTDA that M/WBEs 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 M/WBEs identified in the ("ESD") directory of certified businesses<sup>2</sup>, which can be viewed at: [http://www.empire.state.ny.us/Small\\_and\\_Growing\\_Businesses/mwbe.asp](http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp).

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 M/WBEs 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 M/WBEs 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. Prior to the Award of a State Contract**

1. Contractors shall document and/or demonstrate in their procurement submissions every good faith effort to solicit active M/WBE participation, at least equal to the goals established by OTDA. The M/WBE utilization should be measured by comparing (in detail) the dollar value of the component services/deliverables/materials provided/supplied by M/WBEs to the total dollar value of the services/deliverables/materials available under the State Contract.
2. The Contractor shall provide with its procurement submission:

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<sup>2</sup> All M/WBE 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 M/WBE, the Contractor should request that the firm submit a certification application to ESD for an eligibility determination, with a copy to the OTDA M/WBE Program Management Unit. OTDA's M/WBE 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 M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

- a. A signed Certification of Good Faith Efforts (OTDA-4976) form, to achieve the overall prescribed M/WBE participation percentage (%) goals set forth in the procurement.
  - b. A M/WBE Subcontractor Utilization Plan (OTDA-4937) form, which should document actions taken and/or to be taken to meet established goals and the time frames needed to achieve results which could reasonably be expected by putting forth every good faith effort to achieve the overall prescribed M/WBE participation percentage (%) goals set forth in the procurement.
    - (i) In the case of a request for proposals, request for qualifications, or negotiated State Contract, OTDA may waive or modify this requirement by sending a written notice to the Director of DMWBD, with an explanation ten (10) days before solicitations are issued.
    - (ii) In the case of any bid submission, utilization plans shall be submitted after the opening of bids, but in any case no more than ten business days after the contractor receives notice from OTDA that the contractor has submitted a low bid, provided OTDA may adopt a longer time period for submission of utilization plans as to all or particular categories of its contracts upon filing of such period and any supporting justification with the Director of DMWBD/ESD, and subject to rejection or modification by the Director. Any such modification or rejection shall apply to contract solicitations on or after the date of the rejection or modification.
  - c. A M/WBE Subcontractor's and/or Suppliers' Letter of Intent to Participate (OTDA-4938) form, which should document the names and signatures of certified MBEs and/or WBEs which have agreed to participate as subcontractors if the Contractor is awarded the State Contract.
3. When M/WBE goals higher than 0% (zero percent) are included in OTDA's procurement document, a Contractor's failure to submit a Certification of Good Faith Efforts, M/WBE Subcontractor Utilization Plan, and a M/WBE Subcontractor's and/or Suppliers' Letter of Intent to Participate, where applicable, may result in noncompliance with submission requirements, unless the Contractor provides OTDA with a completed M/WBE Subcontractor Request for Waiver (OTDA-4969) form, within the timeframe specified in writing by OTDA.
  4. If, after scoring, a Contractor is selected for award, before that award is completed (e.g., during contract negotiations), OTDA's M/WBE Program Management Unit will review the substance of the Subcontractor Utilization Plan submitted by the Contractor and within twenty (20) days from the receipt thereof by the OTDA MWBE Program Management Unit, and prior to the execution of the contract resulting from said procurement, issue a written notice of acceptance or deficiency. OTDA may accept a utilization plan if it complies with the requirements of 5 NYCRR § 142.6(c) and Attachment 2.
  5. If a notice of deficiency is warranted, the notice shall include the information identified in 5 NYCRR § 142.6(d).
  6. Unless otherwise specified in the information, instructions or requirements and any addenda provided to contractors for purposes of soliciting bids or proposals, a Contractor must provide OTDA with a written remedy in response to a written notice of deficiency within seven (7) business days of receipt or within a time frame as specified by OTDA to correct the specific deficiency. If the Contractor's remedy to a notice of deficiency is not timely provided or if it is found by OTDA to be inadequate, OTDA shall so notify the Contractor and request the Contractor to submit a waiver form within five business days. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid for non-responsiveness. Failure to comply with the requirement to provide a written remedy in response to a notice of deficiency may result in the disqualification of the Contractor, after the Contractor has been given notice and opportunity to be heard in accordance with 5 NYCRR § 142.9. The time requirement of this paragraph shall apply unless otherwise agreed to in writing by OTDA and the Contractor. If the Contractor changes its utilization plan after submission, it shall be required to notify OTDA in writing of such change and obtain approval from OTDA in accordance with this paragraph and 5 NYCRR §142.8 and the Contractor's documented good faith efforts.
  7. Disqualification of a Contractor based on a deficient utilization plan or failure to provide a utilization plan.

- (a) Where OTDA determines, after having given notice of deficiency pursuant to paragraph five and 5 NYCRR § 142.6(c), that a Contractor has failed to submit an acceptable utilization plan or satisfactorily document its good faith efforts, OTDA may proceed with the next ranked bidder: (i) 12 days after sending a written notice of deficiency, as specified in paragraph 5 and 5 NYCRR § 142.6 to the Contractor, and OTDA has not received a request for an administrative hearing from the Contractor; (ii) after the mailing of a notice of disqualification, specifying the grounds for such disqualification, based on OTDA's record of an administrative hearing; or (iii) after receiving a written notification of a resolution from the director, or a decision of DMWBD's hearing officer. OTDA shall serve a copy of its complaint upon the Contractor by personal service or certified mail, return receipt requested.
- (b) A contractor who has received a written notice of disqualification may, within 5 days of receipt of such a notice, file a complaint with the director of DMWBD pursuant to Section 316 of the Executive Law. The contractor shall serve a copy of its complaint upon the director and OTDA by personal service or certified mail, return receipt requested.

Pursuant to Chapter 429 of the Laws of 2009, which amends § 313 of the Statute, and 5 NYCRR Part 142.5, OTDA is required to post information concerning contractor utilization plans, and any applicable waivers on the agency website.

## **B. After the Award of the State Contract**

1. In accordance with regulations under 5 NYCRR Part 142, after the awarding of the Contract, and during the performance of the State Contract, except where OTDA has granted the Contractor a total waiver<sup>3</sup>, the Contractor shall, as required by OTDA, periodically submit to OTDA: M/WBE Subcontractor Quarterly Compliance Reports.
2. Failure to timely submit a Contractor's M/WBE 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.
3. OTDA shall review the substance of the Contractor's M/WBE Subcontractor Quarterly Compliance Report and shall be responsible for evaluating and determining whether the Contractor has demonstrated compliance with its previously approved Contractor's M/WBE Subcontractor Utilization Plan. In making such determination, OTDA may review and investigate whether the goals are being achieved with certified **minority-** and women-owned business enterprises and whether information made available to OTDA through monitoring, on-site inspections, progress meetings regarding work required by the State Contract, review of payrolls or other OTDA action provides acceptable evidence of compliance.
4. Where it appears that a Contractor cannot, after a good faith effort, comply with the goals established in the contract, such Contractor may submit a completed M/WBE Subcontractor Request for Waiver, setting forth the reasons for such Contractor's inability to meet any or all of the participation goal requirements, together with an explanation and supporting documentation demonstrating the good faith efforts undertaken by such Contractor to obtain the required M/WBE subcontractor participation goal requirements. OTDA will not grant any automatic waivers of goal requirements on a State contract, but may grant a partial or total waiver of goal requirements established on a State Contract, only if the Contractor provides appropriate written justification, after execution and before the final payment. For guidance on what additional factors OTDA will consider in determining whether to grant a partial or total waiver, refer to 5 NYCRR §142.7(a)(1) - (7).<sup>5</sup>

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<sup>3</sup> If OTDA has granted a partial waiver to the Successful Contractor, prior to award OTDA must have approved a Contractor's M/WBE Utilization Plan and a completed Contractor's M/WBE Subcontractor's Notice of Intent to Participate. Please note that after award the Contractor must still submit Contractor's M/WBE Compliance Reports.

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

<sup>5</sup> Requests for a partial or total waiver made subsequent to award of a State Contract may be made at any time during the term of the State Contract but prior to the submission of a request for final payment on that State Contract.

5. If a Contractor seeks modification to its previously approved M/WBE Subcontractor Utilization Plan, the Contractor shall first notify OTDA in writing of such change and obtain approval from OTDA.
6. If OTDA determines that the Contractor has not demonstrated compliance with the goals established in the contract and has made no good faith effort to do so, OTDA and the Contractor shall make every effort to resolve the deficiencies identified and to bring the Contractor into compliance with such requirements.
7. OTDA will determine whether the Contractor is in non-compliance. The Contractor will be found to be not in compliance when it is non-responsive, in whole or in part, to the EEO and/or M/WBE program requirements or requests.
8. 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 M/WBE 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 non-compliance;
  - 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.
9. If OTDA is unsuccessful in its efforts, and, upon review, the OTDA Commissioner or his/her designee agrees that the Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals for participation by certified minority- and/or women-owned business enterprises established in the State Contract, the Commissioner or his/her designee shall submit a written complaint within 20 days of OTDA's determination to the Director of DMWBD), pursuant to Executive Law, section 316, by personal service or certified mail, return receipt requested, accompanied by the reasons for OTDA's determination for which the complaint is filed, together with a demand for relief, such as disbarment, damages or fines pursuant to the terms.
10. Subsequent to the award of a State Contract to a Contractor who becomes deficient with regard to its utilization plan, the Contractor may file a complaint with the director pursuant to Executive Law, section 316, by personal service or certified mail, return receipt requested, provided that the complaint is filed within 20 days following (i) the Contractor's receipt of a written determination by OTDA that the Contractor is not entitled to a partial or full waiver of the goals established in the State Contract for participation by certified minority- and women-owned business enterprises; or (ii) the Contractor's receipt of a written determination by OTDA that the Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals; or (iii) 20 days have passed from the date of OTDA's receiving a written request from the Contractor, sent by certified mail, return receipt requested, for a partial or total waiver of goal requirements for participation by certified minority- and women-owned business enterprises, and no written determination has been issued by OTDA. The complaint should state the reasons for the complaint, together with a demand for relief.

A copy of any complaints filed with the director by the Contractor or OTDA shall either be personally served or mailed certified mail, return receipt requested, by the party making the complaint to the party against whom the complaint is being filed.

11. Upon receipt by the DMWBD director of a complaint, the party against whom the complaint has been filed shall be provided with an opportunity to respond to the complaint. If within 30 days of receipt of the complaint, the director is unable to resolve the complaint to the satisfaction of OTDA and the Contractor, the complaint shall be referred to the DMWBD's hearing officer for a hearing. The hearing shall be held in accordance with the procedures outlined in section 145.1 of DMWBD's regulations.

12. Upon conclusion of the administrative hearing, the hearing officer shall submit to the director his or her decision regarding the alleged violation of the contract or the refusal of OTDA to grant a waiver request by the Contractor. The decision of the hearing officer with respect to an alleged violation of the State Contract or the refusal of OTDA to grant a waiver shall be final.
13. Upon conclusion of the administrative hearing and the rendering of a decision, the hearing officer shall also recommend to the director a remedy, including, if appropriate, the imposition of sanctions, fines or penalties.
14. The director, within 10 days of receipt of the decision, shall file a determination of such matter and shall cause a copy of such determination to be served upon the Contractor by personal service or by certified mail, return receipt requested. The decision of the director shall be final and may only be vacated or modified as provided in article seventy eight of the civil practice law and rules upon an application made within the time provided by such article. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the Contractor shall be ineligible to submit a bid to any contracting State agency or be awarded any State contract for a period not to exceed one year following the final determination; provided however, if a Contractor has previously been determined to be ineligible to submit a bid pursuant to this section, the penalties imposed for any subsequent violation, if such violation occurs within five years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting State agency or be awarded any State contract for a period not to exceed five years following the final determination. DMWBD shall maintain a website listing all contractors that have been deemed ineligible to submit a bid pursuant to this section and the date after which each contractor shall once again become eligible to submit bids.
15. Nothing herein shall diminish or supersede OTDA's authority and responsibility to enforce the requirements of its contracts.
16. The Contractor agrees (i) to provide OTDA access to all documentation, records, reports, facilities, etc, which OTDA may deem necessary to determine Contractor compliance, and (ii) to be bound by the provisions of the Statute (§ 316) regarding possible fines, sanctions and penalties for violations of the Statute.
17. M/WBE Performance Standards - Violations
  - (a) The parties herein agree that, any failure by the Contractor to comply with the established M/WBE goals of the Agreement may constitute a material breach of the Agreement. Without prejudicing any of its other rights or remedies for such breach under the terms of the Agreement, if it is determined by the OTDA that the Contractor has willfully and intentionally failed to comply with the M/WBE participation requirements set forth in the Agreement, and in Appendix A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS, then the Contractor shall be liable for liquidated damages, as specified herein, for each finding of such willful and intentional failure.
  - (b) The parties herein agree that, inasmuch as the damages caused by any material breach of the Agreement for the willful and intentional failure to comply with the M/WBE participation requirements set forth in the Agreement will be difficult to precisely calculate, that instead liquidated damages will be imposed in an amount equaling the difference between (1) the dollar value of the component services/deliverables/materials to be provided/supplied by M/WBEs set forth in the approved M/WBE Subcontractor Utilization Plan had the Contractor achieved the goal for M/WBE participation set forth in this Agreement, and (2) such sums actually paid to M/WBEs under this Agreement.
  - (c) Determinations of compliance or non-compliance with the Agreement's M/WBE participation requirements shall be based upon the Contractor's approved Utilization Plan, M/WBE Sub-Contractor Quarterly Compliance Report, and any relevant documentation related thereto. The determination of what constitutes the willful and intentional failure to comply with the M/WBE participation requirements will be based upon the evaluation of the same criteria considered in evaluating an M/WBE subcontractor waiver request.

- (d) Upon a determination that a willful and intentional failure to comply with the M/WBE participation requirements has occurred, the OTDA shall withhold the amount established in subparagraph (b) from any future payments otherwise required by this Agreement. 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 M/WBE requirements at any time during the term of the State 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.

## **M/WBE GOAL REQUIREMENTS CERTIFICATION OF GOOD FAITH EFFORTS**

**Contractors** (to include those who submit bids/proposals in an effort to be selected for contract award as well as those successful bidders/proposers with whom OTDA enters into State contracts) must document “good faith efforts” to provide meaningful participation by New York State Certified M/WBE subcontractors or suppliers/vendors in the performance of this contract.

The undersigned hereby acknowledges that he/she took or may need to take the following actions on behalf of the Contractor to demonstrate, and upon request by OTDA, to provide written verification to document the aforesaid good faith efforts:

- (a) The Contractor attended any pre-bid, pre-award, or other meetings scheduled by the contracting agency or the NYS Department of Economic Development or its designee to inform certified minority- or women-owned business enterprises of contracting and subcontracting opportunities available on the project, for purposes of complying with contract participation goal requirements;
- (b) The Contractor identified economically feasible units of the project that could be contracted or subcontracted to certified minority- and women-owned business enterprises in order to increase the likelihood of participation by such enterprises on the contract;
- (c) The Contractor undertook efforts to reasonably structure the contract scope of work for purposes of subcontracting with certified minority- and- women-owned business enterprises;
- (d) The Contractor advertised in a timely fashion and in appropriate general circulation, trade and minority- and women-oriented publications, if any, concerning the contracting or subcontracting opportunity;
- (e) The Contractor made written solicitations in a timely fashion to a reasonable number of certified minority- and women-owned business enterprises identified from current certified lists of such business enterprises provided or maintained by the NYS Empire State Development’s Division of Minority and Women Owned Business Development, or its designee, of the contracting or subcontracting opportunity. The directory of certified businesses can be viewed at:  
<http://esd.ny.gov/index.html>
- (f) The Contractor can document if any timely responses to any such advertisements and solicitations were provided by certified minority- and women-owned business enterprises;
- (g) The Contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity;
- (h) The Contractor provided interested certified minority- and women-owned business enterprises in a timely fashion with adequate information about the plans, specifications or terms and conditions of the State contract and requirements for the contracting or subcontracting opportunity so as to prepare an informed response to a contractor solicitation;



## Attachment Q Notices

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - (a) via certified or registered United States mail, return receipt requested;
  - (b) by facsimile transmission;
  - (c) by personal delivery;
  - (d) by expedited delivery service; or
  - (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

***State of New York [Agency Name]***

**Name:**

**Title:**

**Address:**

**Telephone Number:**

**Facsimile Number:**

**E-Mail Address:**

**[Contractor Name]**

**Name:**

**Title:**

**Address:**

**Telephone Number:**

**Facsimile Number:**

**E-Mail Address:**

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.