



**New York State  
Office of Temporary and Disability Assistance**

**REQUEST FOR PROPOSALS**

**2012**

**United States Repatriation Program  
Non-Emergency Services in New York City**

**STATE OF NEW YORK  
ANDREW M. CUOMO  
GOVERNOR**

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# SECTION I

## APPLICATION INFORMATION

Important dates in this Request for Proposal (RFP) process are indicated below:

### PROCUREMENT SCHEDULE/ SUBMISSION INFORMATION

<b>Release Date of the Request for Proposals</b>	<b>July 12, 2012</b>
<b>Deadline for Written Questions</b>	<b>July 20, 2012</b>
<b>Responses to Questions</b>	<b>July 27, 2012</b>
<b><u>Due Date and Time for Proposals</u></b>	<b>August 3, 2012, 4:00 pm</b>
<b>Anticipated Notification of Awards</b>	<b>August 24, 2012</b>
<b>Anticipated Contract Start</b>	<b>October 1, 2012</b>

### QUESTIONS AND ANSWERS REGARDING THIS RFP

Prospective applicants may submit questions via fax, email, or written correspondence to the individual and address below. Questions must be submitted no later than **July 20, 2012**.

Wanda Byrd  
New York State Office of Temporary and Disability Assistance  
Bureau of Refugee and Immigration Assistance (BRIA)  
40 North Pearl Street Section 10C  
Albany, New York 12243  
Fax: 518-402-3029  
EMAIL: wanda.byrd@otda.ny.gov

The Office of Temporary and Disability Assistance (OTDA) - Bureau of Refugee and Immigrant Assistance (BRIA) will respond in writing to questions by **July 27, 2012**. A written copy of the questions and answers will be either mailed or e-mailed to applicants who request a copy of the questions and answers. The questions and answers also will be posted on the OTDA/BRIA *Contracts and Grants* web page, located at <http://otda.ny.gov/contracts/>. Click on the Procurement/Bid Opportunities page and then click the link announcing the REPATRIATION RFP).

OTDA/BRIA reserves the right to respond to questions submitted after the **July 27, 2012** deadline.

### PROPOSAL DUE DATE

**One original and three copies or one original and three CDs (CDs must be labeled clearly with the agency name) of the entire application submission package (not stapled, bound or paper clipped) must be sent to the Bureau of Contract Management at the address listed below.** All proposals *must* be received by mail, hand delivery, courier service, FEDEX or UPS delivery by 4pm on **August 3, 2012**. Any proposal received after the deadline may be reviewed at the discretion of OTDA/BRIA. OTDA/BRIA will not accept faxed proposals, or proposals sent via electronic mail.

NYS OTDA  
Bureau of Contract Management  
Attn: Sal Pamadora  
40 North Pearl Street Section 13B  
Albany, New York 12243-0001  
Phone: (518) 486-6352 For Delivery Questions Only

If selected under this procurement, the proposal or portions of it submitted in response to this RFP will become part of a contract with OTDA/BRIA, subject to approval by OTDA/BRIA, the New York State Attorney General and the Office of the State Comptroller and the availability of funds. At the time of contract development, the awardee will be required to submit additional program information and any revised M/WBE forms and documents for the final contract. Successful grantees will be required to submit all final contract documents electronically, with the exception of documents requiring an original signature. OTDA/BRIA reserves the right to negotiate any aspect of a proposal to ensure that a final contract agreement meets OTDA/BRIA objectives.

# SECTION II

## SUMMARY OF THE REQUEST FOR PROPOSALS (RFP)

### A. AUTHORITY

The United States Repatriation Program (hereinafter USRP) is funded by the United States Department of Health and Human Services (DHHS) and administered by the Office of Refugee Resettlement (ORR). The program was established by Title XI, Section 1113 of the Social Security Act and Public Law 86-571 to provide temporary assistance to U.S. citizens and their dependents who have been identified by the United States Department of State (DOS) as having been brought from a foreign country to the United States because of destitution, illness or other circumstance, and are without available resources.

The program provides temporary assistance to these eligible U.S. citizens and/or their dependents who are without available resources upon their return to the United States. The ORR is authorized to enter into a cooperative agreement with states to provide such assistance, in consultation with ORR, within the United States. The cooperative agreement gives states the authority to contract with public or private service providers to assist ORR and/or its subcontractor with the coordination of non-emergency activities and in delivering such assistance to repatriated individuals.

### B. PURPOSE

The New York State Office of Temporary and Disability Assistance (OTDA) through its Bureau of Refugee and Immigrant Assistance (BRIA), issues this RFP to select one agency/entity to administer repatriation services through a coordinated community based approach and comprehensive case management to repatriates determined eligible and referred by the DOS.

The successful bidder will be expected to serve repatriates in the five counties of New York City (Bronx, Kings, Queens, New York and Richmond).

### C. ELIGIBLE GRANT APPLICANTS

Eligible applicants include public agencies, county or municipal governments, or any subdivision thereof; not-for-profit corporations, including charitable organizations incorporated, registered and in good standing with the Charities Bureau of the Attorney General in the State of New York; faith based organizations and educational institutions.

Prospective applicants who want to verify their status as a charitable organization should contact the Office of New York State Attorney General, Charities Bureau at 1 (800) 771-7755 or on the internet at: <http://www.oag.state.ny.us>.

Eligible applicants must be located in and do business in New York State.

In order to be notified of future requests for proposals, agencies must be registered on the bidders' list. Complete instructions on how to register can be found at the following website: [http://otda.state.nyenet/psqi/bcm/Bidder\\_Form\\_Instructions.asp](http://otda.state.nyenet/psqi/bcm/Bidder_Form_Instructions.asp).

OTDA/BRIA recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form. Please call the OSC Help Desk with any questions at 518-408-4672 or 1-866-370-4672.

#### **D. ELIGIBLE CLIENTS**

Eligible clients are repatriates who meet the following criteria:

- Are determined eligible and referred by the DOS with a need for temporary assistance
- Are U.S. citizens or a dependent of a U.S. citizen
- Are repatriated to the United States from a foreign country because of being destitute, ill (including mentally ill), or because of war, threat of war or similar crisis
- Are without available resources

*For purposes of this program the term **repatriate** will mean U.S. citizens and/or their dependents who are determined by the DOS to have returned or are being returned to the U.S. from a foreign country due to destitution, illness, war, threat of war or similar crisis and are without available resources.*

#### **E. AVAILABLE FUNDS**

Anticipated allocation and continuation of the contract is subject to continued availability of federal funds and State appropriation of the funds thereof. The Repatriation Program is funded entirely by federal funds from ORR. It is anticipated that \$255,000 is likely to be available for this three year, three month contract.

#### **F. CONTRACT TERM**

The USRP service provider selected under this RFP will enter into a three year, three month contract. The contract term is anticipated to begin on October 1, 2012 and end on December 31, 2015.

*Note: Since it is preferred that OTDA maintain a 90-day period within which to receive and process claims, persons who are repatriated after September 30, 2015 will not be served under this contract and services provided to persons who are repatriated after September 30, 2015 will not be reimbursed under this contract. Instead, it is the intention of OTDA to enter into a subsequent contract with a start date of October 1, 2015 so that repatriates on or after October 1, 2015 will be served under that contract and the contractor holding the subsequent contract will be reimbursed under the terms of that new contract.*

# SECTION III

## SPECIFIC PROGRAM INFORMATION AND ALLOWABLE SERVICES

### PROGRAM DESCRIPTION

The HHS through the ORR administers the program through a cooperative agreement with the International Social Services - United States Branch (ISS). The repatriation process begins when the DOS receives a request for repatriation from U.S. embassies and consulates abroad, determines eligibility, and refers the eligible repatriate to ISS.

In New York State, OTDA/ BRIA receives a referral from ISS regarding the arrival of a repatriate into NYC. Upon receipt, OTDA/BRIA forwards the referral to the contracted service provider under this RFP which will plan for the arrival of the repatriate and make any necessary arrangements for assistance that is being requested or needed. As information is needed, the BRIA Repatriation Program Coordinator and the service provider will dialogue with ISS.

Upon the repatriate's arrival, the service provider will directly provide or will arrange for assistance. Please note that most repatriation cases require urgent and immediate action prior to the availability of comprehensive information regarding the repatriate.

### A. DEFINITIONS

- **Referral:** A referral originates from overseas at a U.S. embassy or consular office. It is typically in the form of a telegram that is relayed to the ISS by the U.S. Department of State Bureau of Consular Affairs. The federal Administration for Children and Families guidance document is used by the referring embassy or consulate to constitute the faxed referral. The content of the referral will typically identify the repatriate being referred and the services requested. The referral also has some demographic information and a brief description of the history or the event that prompted the request. It also indicates that there may be other attachments.
- **Privacy Act Waiver (PAW)/Loan Repayment Agreement:** Federal Form ACF-120 combines a Privacy Act Statement and a Loan Repayment Agreement. This Privacy Act Statement addresses confidentiality concerns so that the service provider may proceed with repatriation services without hindrance. The signed Loan Repayment Agreement commits the repatriate to reimburse HHS for repatriation expenses incurred on his/her behalf.
- **Modified Privacy Act Statement:** Some repatriates sign a privacy act statement that allows confidential information to be released *only* to the entity or entities specifically listed in the document. The signed modified privacy act statement is usually attached to the referral document.
- **Certificate of Mental Incompetence:** A Certificate of Mental Incompetence is a federal form signed by a physician and attached to the referral. A substitute document may be used to accomplish the same purpose. This document would identify the repatriate and establish an appropriate diagnosis of the mental condition, including the nature of the treatment that needs to be provided. This certification form may facilitate a service provider's efforts to obtain a mental health evaluation for the repatriate. If a person is mentally incompetent, a Certificate of Mental Incompetence is needed instead of a PAW.
- **Port of Entry:** This is the location, designated by the DOS, in which the repatriate first arrives from a foreign country. In many cases, this is also the final destination. Port of Entry transit services may be provided to a repatriate on his/her way to another location.

## B. REQUIRED PROGRAM ACTION

The repatriation process requires the service provider to perform the following actions:

- Receive the referral from OTDA/BRIA and designate staff, or their agents, to provide services and to liaison and consult with OTDA/BRIA and with ISS for the duration of the case.
- Determine necessary actions based on the needs of the individual.
- Contact the repatriate's family in the U.S. if necessary and appropriate.
- Provide assistance at the port-of-entry or intermediate location as necessary to newly arriving repatriates who are in transit to a final destination. Assistance may include emergency medical services and food, lodging, and incidentals on a per capita basis (not to exceed the federal per diem allowance for that locality).
- Arrange to meet repatriates who are destined for residence locally. Meet upon arrival at the airport or at another transportation terminal and transport the repatriate to the facility or residence where the repatriate will stay.
- Obtain the signature of the repatriate on the ACF-120, if not already on file and mail the original ACF-120 to OTDA/BRIA. We recognize that not all cases will have a signed ACF-120, but the service provider should provide to OTDA/BRIA a brief explanation for the lack of a repatriate's signature on the repayment statement.
- Provide allowable repatriation services for up to ninety (90) days. Assist the repatriate to relocate into the area and assist with other service needs.
- Provide USRP cash benefits to the eligible repatriate from date of arrival. The repatriate may receive cash benefits through the USRP for up to 90 days. In special circumstances, cash benefits may be extended *only* with the written prior approval of ORR, in response to a written request submitted by the service provider to OTDA/BRIA.

*Please note:* USRP assistance is not provided retroactively.

## C. ALLOWABLE SERVICES

Once repatriated individuals are identified and processed, service providers must meet their needs. Given their situation, these needs will likely range from reception upon arrival to emergency assistance. Allowable services include:

- Case Management
- Shelter
- Cash Assistance
- Food Assistance
- Transportation
- Medical/Psychiatric Evaluation and Treatment
- Other Identified Service Needs (as approved by OTDA/BRIA)

*Note: All Case Management Services must be provided directly by the Contractor.*

## **Case Management**

The USRP service provider must provide case management for all eligible repatriates. Case management includes, but is not limited to: assessing the scope of need, developing a plan of action to meet those needs, preparing a work plan which will include all the services provided by the USRP providers or by the agencies/organizations that the repatriate will be referred to for these services, and provide follow-up with the repatriate.

## **Shelter**

Many repatriates will lack adequate shelter arrangements upon arrival into the United States. Safe and secure shelter is a crucial component of their reintegration. Free shelter is the preferred option for placement; however, if free shelter is unavailable or not appropriate, the service provider must consult with OTDA/BRIA and ORR on other acceptable options. The Service Provider must demonstrate the experience and ability to provide or place a repatriate into safe and secure emergency temporary housing. Facilities providing shelter must be operated in accordance with all applicable State and local laws, regulations, codes, and ordinances.

## **Cash Assistance**

Most repatriates will not have access to any monies upon their return to cover rent, security and utility deposits, clothing, household and personal items. The service provider must demonstrate experience and ability to provide cash assistance to cover these costs for up to ninety days and/or to assist the repatriate in accessing public benefits. If eligible, cash assistance will be administered in accordance to need utilizing comparable procedures employed by the local social services districts (SSD), (i.e., disbursed in two week increments). In no instance can it exceed the TANF rate.

## **Food Assistance**

Food is an essential part of a repatriate's survival. The service provider must demonstrate experience and ability to provide access to food.

## **Transportation**

Often repatriates have been outside the United States for long periods of time and are unfamiliar with the various transit systems available in the region. Even if they do have this knowledge, they will lack funds to use these transit options. The service provider must demonstrate experience and ability to provide transportation to the repatriate as needed upon arrival to the United States and for the duration of the case. Reimbursement of actual expenses will be according to the US General Service Administration's published reimbursement rates (see <http://www.gsa.gov/portal/content/100715>).

## **Medical/Psychiatric Evaluation and Treatment**

Repatriates often present with mental health issues and it is critical that these issues are addressed as soon as possible. The service provider must demonstrate experience and the ability to provide and/or to refer necessary mental health counseling, or demonstrate a relationship with a recognized medical provider that has experience and resources to provide mental health counseling.

The service provider must demonstrate experience and ability in providing and/or facilitating necessary medical/psychiatric evaluation and treatment services. Reimbursable costs and services are limited to those that are allowable under the Medicaid program.

#### **Other Identified Service Needs (As approved by BRIA)**

The service provider may suggest to OTDA/BRIA the need for any other specific services not listed, including, but not limited to: drug/alcohol addiction screening and treatment, vocational/occupational training and assistance for victims of domestic violence.

*Other Identified Services will not be reimbursable to the Contractor unless and until the Contractor has received written approval from OTDA to provide such services.*

#### **D. SPECIAL CIRCUMSTANCES**

The USRP may also include cases that require special attention such as those involving unaccompanied children, individuals who have immediate health and safety issues or cases that the U.S. DOS determines to be of national interest.

##### Involuntary repatriation:

- a. When a United States citizen is hospitalized overseas for mental or physical illness and cannot pay the medical costs but does not wish to return to the United States: If the individual does not have health care benefits, funds, or supports in the country in which they residing, the foreign government may request repatriation.
- b. If a person is mentally ill: The referral from ISS will have a final or preliminary diagnosis to that effect. Such documentation can be used to compel the repatriate to undergo a mental health examination upon arrival in the United States. A repatriate who is diagnosed with mental illness cannot be detained against his/her will for more than 48 hours without a legal hearing or review. If a person is deemed mentally incompetent and has a Certificate of Mental Incompetence upon arrival, he/she is not required to sign the PAW.
- c. When a United States citizen finishes a jail/prison sentence and is later deported by the foreign government: Deportees may be transported to the United States by way of a host country arrangement or the United States government may fund their return on a non-loan basis. *The repatriated person is not required to sign the ACF -120 (re-payment agreement) because she/he is not obligated to repay the expenses incurred on his/her behalf.* For convicted deportees, the service provider will be given sufficient information to assess the level and type of law enforcement support that will be requested from the local authority. Under certain circumstances the criminal deportee may no longer be under the control of law enforcement and therefore cannot be compelled to accept repatriation services.

##### Unaccompanied children:

- a. Repatriating a child to a relative in New York City: The DOS generally requests ISS to repatriate a minor child into the county where there appears to be a capable relative willing to care for the child. The USRP will request that the service provider verify the viability of the proposed home. ISS will rely on the findings of the service provider in conjunction with ACS to effect the physical

movement of the child from abroad to the United States. This process is predicated on the basis of a voluntary desire of the relative to care for the child. The voluntary nature of the process should produce full cooperation on the part of the relative to complete the steps needed to relocate the child into the relative's home.

- b. Repatriating a child who has no relative available in New York State: If the service provider, in working with ACS does not find a suitable relative in the United States, the child is returned to the state of last residence with a request that the child be considered for foster care placement.

Unaccompanied children may be repatriated for various reasons, including, but not limited to the following: abandonment of the child, the death of the parent while traveling/living abroad, the arrest or incapacitation of the parent, or other circumstances that lead to a citizen child found alone or unaccompanied in a foreign country. Repatriation of unaccompanied children requires an immediate response because the child is most likely in very temporary caretaking arrangements in the foreign country.

If the service provider identifies a potential risk of harm to the child that is beyond the service provider's ability to prevent, such findings must be communicated immediately to OTDA/BRIA to allow the OTDA/BRIA and ISS to consider an alternative placement for the child. Absent the risk of harm, the service provider must take the necessary steps to receive the child and facilitate the relocation of the child into an appropriate, nurturing environment. In cases where a child is repatriated due to abandonment or destitution, the service provider must take required emergency action.

New York State Social Services Law (Section 422) does not give a service provider the authority to share Child Protective Services (CPS) information with ISS without specific consent. Therefore, no communication should disclose this type of information. The need for confidentiality on CPS matters notwithstanding, the service provider must facilitate the process of bringing or returning these children back to the United States.

The service provider may elect to delegate the responsibility for services to an authorized agency such as the Administration for Children's Service (ACS), with notification to OTDA/BRIA in each case. *The submission of reports and claims to OTDA/BRIA may only be done by the contracted service provider.* A formal home study is required to be handled through ACS. The service provider must notify OTDA/BRIA of the decision to proceed with the arrangements to place a child and must provide assurances to OTDA/BRIA consistent with local department of social services practices that ensure the best interest of the child.

The repatriation process follows the same procedures as previously described plus some additional actions and information relevant to the repatriate status as a minor. Although minor children do not need an ACF-120, the following information must be included with the referral:

- Child's age (date of birth)
- Present location of the child
- Child's ability to speak English
- Child's condition and special needs and educational problems
- Circumstances under which the child is unaccompanied
- Child's medical evaluation
- Location of child's parents or legal guardian
- Reason why the parents/legal guardian are not able to care for the child
- Parents'/legal guardians' custodial rights
- Identified relatives in the United States

In most cases, unaccompanied children will be escorted by a DOS designated individual until the escort delivers the child to the service provider or to an approved relative. The service provider should accompany the relative or other caretaker representative to where the transfer of the child takes place, typically at the airport terminal that is the point of entry. The service provider is required to notify the escort in advance of the names of the persons who will be meeting them and/or whom to contact upon arrival. Prior to arrival the service provider must identify the individual to whom the child is being turned over.

**E. PAYMENT METHOD**

*Federal funds must be used only to supplement existing funds for program activities and cannot replace, or supplant, non-federal funds that have been appropriated for the same purpose.*

1. The service provider will be reimbursed at a rate not to exceed \$87.00 per hour per case for case management as described below. Case management expenses that exceed the cap will not be reimbursed.

Case Management Reimbursement Payment Cap

Case Management not to exceed \$87.00 per hour per case for direct services provided to eligible clients.

*Case Management Services must be documented by case notes that show hours of work performed.*

2. The service provider will be reimbursed for actual, reasonable service expenses up to a per case cap as described below or up to the date of when Public Assistance benefits have been obtained.

Line Item Services Expenditures

<i>Service</i>	<i>Anticipated Average Cost</i>
Shelter	If free shelter is unavailable, receipts for hotel/motel stays excluding tips are required with prior approval from ORR or its grantee
Cash Assistance	Not to exceed the standard of need for the applicable household size TANF Rates
Food Assistance	Not to exceed the prorated share of the Federal Food Stamp Guidelines for applicable household size. In no instance can it exceed the TANF rate.
Transportation	Reimbursement of actual expenses according to the US General Service Administration’s published reimbursement rates (see <a href="http://www.gsa.gov/portal/content/100715">http://www.gsa.gov/portal/content/100715</a> )
Medical/Psychiatric Evaluation and Treatment	Reimbursement of medical benefits at the Third Party Rate (Medicaid/Medicare) if there is no other medical insurance available

Other identified service needs

Reimbursement of actual expenses based on agreed and coordinated case management plan with ORR or its grantee

*All services provided must be documented by a receipt. Households that will exceed an overall cost of \$1,500 per case per week must have prior approval from OTDA/BRIA.*

## **F. SELECTION PROCESS**

Proposals should contain *all* required items as listed on the Application Checklist of Required Forms, located in the Application Package (see page 54). Pay particular attention to the Minority and Women Owned Business (M/WBE) requirements. Failure to provide all required items will result in the decrease of the total score.

OTDA/BRIA will select contractors based on several considerations:

The applicant's demonstrated understanding of OTDA/BRIA requirements;

The applicant's general organizational qualifications as documented in the proposal;

The content of the applicant's proposal that demonstrates the applicant's ability to perform under a contract;

The applicant's experience with, and knowledge of, specific needs of the eligible population and the quality of the proposal in addressing those needs;

The applicant's experience with working with vulnerable populations similar to the repatriated population who have faced destitution, illness, war, threat of war, or a similar crisis, and are without available resources;

The applicant's established relationship with critical partners including other service providers, the Human Resources Administration, the Department of Homeless Services, and others;

Proposed project staff that is sufficient in number and qualifications;

The applicant's fiscal viability as reflected in the audited financial statements;

Appropriateness and reasonableness of costs reflected in payment points; and

Each proposal will be read and scored by two reviewers from OTDA/BRIA. Each proposal will be scored on an established evaluation form. Proposals will be reviewed in accordance with the scoring criteria referenced below.

	<b>Maximum Points</b>
<b>Technical Evaluation</b>	
Application Documentation	5
<b>Program Evaluation</b>	
Agency Information	25
Program Description	50
<b>Financial Evaluation</b>	
Financial Statements	20
<b>TOTAL</b>	<b>100</b>

OTDA/BRIA reserves the right to conduct site visits and solicit the opinion of applicants' other funding sources prior to making a funding decision.

**G. MAINTENANCE OF EFFORT**

This provision prohibits using USRP funds to replace existing government or non-profit funding of services. Applicants must clearly demonstrate that they have not supplanted existing funds.

# SECTION IV

## CONTRACT INFORMATION

### A. CONTRACT DEVELOPMENT PROCESS

OTDA will begin the contract development process with the successful applicant when the award is announced. The successful applicant may be asked to provide updated work plans and payment schedules that specify the services to be delivered, project goals, payment points, claiming process, and other information. The contract will include, but not be limited to, standard terms and conditions such as confidentiality of records, publications, and contract termination. The contract will constitute a legal agreement between the selected applicant and OTDA/BRIA and will be in force for the full period of the contract.

The contract will have a term of three years, three months and will contain a work plan for a 39 month time period.

### B. PAYMENT

The contractor will be reimbursed in part for case management and line item services expenditures as specified in this RFP and subsequent contract, and up to fixed caps. Payment will be made only for services that are documented and for which vouchers are timely submitted (by the required due date). No payments will be made until the contract is fully executed by OTDA/BRIA (signed and approved by OTDA/BRIA, the State Attorney General and the Office of the State Comptroller). Contractors will work at their own risk if they conduct program activities before the contract is executed.

### C. RECORD KEEPING

The Contractor must maintain current and accurate fiscal and accounting controls to support the claims for expenditures claimed under the contract. Records must adequately identify revenue sources and expense items for all contract activities. Accounting records must be supported by clear documentation for all funds received and disbursed. Records must be retained and be accessible for a period of six years from the end of the contract or last payment or last contract transaction.

If any claim, audit, litigation, or State/Federal investigation is commenced before the expiration of the aforementioned record retention period, the records must be retained by the contractor until all claims or findings regarding the records are finally resolved. OTDA or its designee shall have access to any records relevant to the project (including books, documents, photographs, correspondence, and records), for audits, examinations, transcripts, and excerpts. If OTDA determines that such records possess long-term or historic value, they must be transferred, upon request, to OTDA.

If a selected 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 OTDA. Appendix A1 of the Contract document reviews specific audit requirements.

#### **D. REPORTING AND VOUCHERING**

Due to the nature of this program, the contractor will not be required to use the BRIA Information Network (BIN) System to report services and create vouchers. Instead, a paper reporting and claiming process will be used.

The contractor shall prepare and submit a separate Standard Voucher (AC-92) in accordance with instructions, for each case for which expenditures were made during a month. In addition to other backup documentation required by OTDA, the contractor shall also prepare and submit one *RF-7 Expenditure Statement for Reimbursement – Assistance to U.S. Citizens Returned from Foreign Countries* (LDSS-931) to accompany each voucher.

The contractor will receive detailed reporting and claiming instructions during the contract development process.

#### **E. CASE RECORDS**

The contractor must adhere to OTDA/BRIA instructions regarding case records as stated in the contract and in related OTDA/BRIA manuals, directives, and other forms of notification

#### **F. MONITORING**

OTDA/BRIA will monitor projects on a regular basis throughout the life of the contract. Monitoring may include, but not be limited to, site visits, regular telephone contact and/or discussions of monthly progress reports. The goals of project monitoring are to ensure that the terms of the contract are being met and to provide technical assistance, where necessary, to help the contractor meet the terms of this RFP and contract. OTDA/BRIA reserves the right to conduct site visits and make telephone contact to subcontractors as a means of monitoring the prime contractor's performance.

Monitoring activities will concentrate on proper documentation of claims in the contractor's case records for each client claimed.

#### **G. AMENDMENTS TO THE CONTRACT**

Amendments and modifications of executed contracts are sometimes necessary to accommodate the needs of both the contractor and OTDA/BRIA. These changes, which must be by mutual written agreement, may include modification to reimbursement schedules, time and money amendments, or no-cost extensions as necessary. Contract modifications, including amendments and no-cost time extensions, will be made at the discretion of OTDA/BRIA with the approval of the Attorney General and the Office of the State Comptroller.

#### **H. GENERAL TERMS AND CONDITIONS**

NYS OTDA/BRIA reserves the right to terminate in whole or in part, or modify the contract at its discretion or due to the unavailability of funds.

The terms and conditions for all funded projects are specified in a detailed contract which must be signed by OTDA/BRIA and approved by OTDA/BRIA, the New York State Attorney General Office and the Office of the State Comptroller before any work has begun or payments are made. The successful applicant will be sent the complete standard contract for execution. The Applicant is encouraged to review sections of the contract that are attached before submitting an application.

It is the policy of OTDA/BRIA to encourage the employment of qualified applicants/recipients of public assistance by both public organizations and private enterprises that are under contractual agreement with OTDA/BRIA for the

provision of goods and services. OTDA/BRIA may require the Contractor to demonstrate how the Contractor has complied or will comply with the aforesaid policy.

The contractor will be required to comply with all applicable Federal and State laws and regulations.

The contract award will be made to the applicant whose proposals are determined to best meet the criteria for proposal evaluation and selection set forth in this RFP.

Any contract awarded pursuant to this RFP will be subject to the Office's processing procedures for contracts of this type, including approval as to form by the State's Attorney General, and as to award by the NYS Division of Budget and by the NYS Office of the State Comptroller.

This RFP does not commit OTDA/BRIA to award any contracts to pay the costs incurred in the preparation of a response to this RFP, or to procure or contract for services.

OTDA/BRIA reserves the right to amend, modify or withdraw this RFP and to reject any proposals submitted, and may exercise such right at any time and without notice and without liability to any applicant or other parties for any expenses incurred in the preparation of a proposal.

This RFP and any contract resulting from this RFP is subject to all applicable laws, rules and regulations promulgated by any Federal and State authority having jurisdiction over the subject matter thereof.

OTDA/BRIA reserves the right to award contract(s) to as many or as few applicants as it may select, and reject all proposals which do not conform to the instructions given in the RFP.

The proposal of the successful applicant will serve as the basis for the contract, the terms of which will be modified within the context of this RFP.

All plans and working documents prepared by the applicant under the contract to be awarded will become the property of the State of New York.

Submission of a proposal will be deemed to be the consent of the applicant to any inquiry made by OTDA/BRIA of third parties with regard to applicant's experience or other matters relevant to the proposal. OTDA/BRIA reserves the right to request and consider additional information from any applicant beyond that presented in the initial proposal. The award of the contract, if any, may be made in reliance on additional information requested. Such information may include budget justification, program information, operation details, personnel information, or other funding source information.

All products, deliverable items, and working papers resulting from this contract will be the sole property of OTDA/BRIA and the applicant is prohibited from releasing these documents to any persons other than the Commissioner of the Office of Temporary and Disability Assistance or his designee unless authorized by the Office to do so.

The proposal shall be signed by an official authorized to bind the applicant and shall contain a statement to the effect that the proposal is a firm offer for a 180-day period. The proposal shall also provide the name, title, address, telephone number, and area code of individuals with authority to negotiate and contractually bind the corporation or municipality and who may be contacted during the period of proposal evaluation.

## **Minority and Women-Owned Business Enterprise (M/WBE) and Equal Employment Opportunity (EEO) Participation**

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.

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 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 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). Please refer to Appendix Z in the Sample Contract, attached and incorporated by reference herein, for the specific EEO/MWBE requirements and associated forms required by this procurement. These forms are to be submitted without change to goals specified in the RFP or contract, unless otherwise authorized by OTDA. Copies of the required OTDA Forms are identified in this Appendix and available on OTDA’s Internet site at <http://otda.ny.gov/contracts/mwbe/forms.asp>.

It is important to note that in addition to direct sub-contracting on State contracts, contractors can also utilize a number of other vendors in support of their overall operations. Using NYS Certified MWBEs (link to Directory of NYS Certified MWBEs, <http://www.nylovesmwbe.ny.gov>) as providers of these second tier services can be counted in satisfaction of the goals. The following are examples of indirect services that you may want to consider for compliance with MWBE subcontracting participation requirements: Accounting Services, Advertising, Building Maintenance, Car Rental, Cleaning Supplies, Copying, Electrical Services, Furniture, Heating and Cooling, Janitorial Services, Office Supplies, Pest Control, Printing Services, Publishing, Rubbish Removal, Security, Shredding Services, Tax Preparation, Technical Writing, Training, Travel Services, etc.

**NEW YORK STATE  
OFFICE OF TEMPORARY & DISABILITY ASSISTANCE**

**United States Repatriation Program  
Non-Emergency Services in New York City**

**APPLICATION PACKAGE**

**Section I**

**GENERAL INFORMATION**

**U.S. Repatriation Program Non-Emergency Services in NYC APPLICANT PROJECT INFORMATION  
INDICATE TYPE OF ORGANIZATION CARRYING OUT THE ACTIVITY:**

PUBLIC AGENCY     FAITH BASED NON-PROFIT     OTHER NON-PROFIT

APPLICANT NAME: \_\_\_\_\_

EXECUTIVE DIRECTOR: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

PHONE: (\_\_\_\_) \_\_\_\_\_ FAX :(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

PROJECT ADDRESS (if other than business address):  
\_\_\_\_\_

PROGRAM CONTACT: \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

PHONE: (\_\_\_\_) \_\_\_\_\_ FAX :(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

What is your organization's Federal Employer Identification number? \_\_\_\_\_

Applicant Fiscal Year: (Example: July 1 - June 30)? \_\_\_\_\_

**Please provide the following identifying information regarding the project:**

Community District(s) *NYC only*: \_\_\_\_\_

Federal Congressional District(s): \_\_\_\_\_

State Assembly District(s): \_\_\_\_\_

State Senate District(s): \_\_\_\_\_

What is your organization's **six digit** State Registered Charitable Organization number? \_\_\_\_\_

Is your organization current with the NYS Office of the Attorney General Charities registration filing requirements?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If not, why? \_\_\_\_\_

COUNTY/ COUNTIES (WHERE SERVICES ARE TO BE PROVIDED) \_\_\_\_\_

## Section II

### PROGRAM NARRATIVE (8 page limit excluding charts and attachments)

Please provide us with a comprehensive narrative explanation of your proposed program. This narrative is NOT limited to the questions asked. If there are other points that are pertinent to your application and will serve to strengthen or explain statements, they should be included. Narrative portions of the proposal must be written in a legible, size 12 font, double spaced and with margins of no less than one inch on each side of the document and may not exceed eight pages.

#### A. AGENCY QUALIFICATIONS

1. AGENCY INFORMATION: Describe your agency, how the proposed program will be operated within your organization, and what your organization will bring to the targeted population. Your description should address the following:

- Describe the agency's experience in providing services to repatriates or vulnerable populations similar to the repatriated population who have faced destitution, illness, war, threat of war, or a similar crisis, and are without available resources.
- Describe how you will utilize your current expertise and capacity to implement services under this program.
- Describe the agency's relationship with critical service partners including the Human Resources Administration, the Department of Homeless Services, and others.
- Are there other programs or services that your organization operates? How will these other programs be used to enhance the effectiveness of your proposed program?
- Describe your organization's working relationships with other local agencies. What specific resources will participants gain through these relationships?
- Describe the role of your organization's Board of Directors in the operation of this program.
- Please attach a detailed agency organizational chart.

2. PROGRAM DESCRIPTION:

*How will the services be provided?* (Statement of ability to provide services)

- Describe how your agency will provide the required actions that are listed under Section III Part B & C of this contract to effectively meet the needs of a repatriate.
- Who will be the contact person that will receive all referrals from BRIA?
- Who will be the contact person that will coordinate all communication with BRIA and ISS?
- Who will meet the Repatriate at his/her point of entry?
- Who will be providing the case management by assessing the needs and developing a plan of action to meet the needs upon arrival and follow-up for the repatriate?
- Who will be responsible for assisting the repatriate in immediately applying for public benefits upon arrival?
- Describe how your agency will obtain/provide transportation upon the repatriate's arrival.
- Describe how your agency will obtain/provide adequate shelter upon the repatriate's arrival.
- Describe your agency's ability to provide cash assistance to the repatriate for immediate needs upon the repatriate's arrival.
- Describe how your agency will obtain/provide adequate food upon the repatriate's arrival.
- Who will be responsible for assisting and monitoring the repatriate if hospitalization is required?
- Describe how your agency will obtain/provide medical and/or psychiatric evaluation and treatment if required upon the repatriate's arrival.

- Describe how your agency will assist repatriates who are in domestic violence situations.
- Describe how your agency will assist repatriates who are in need of drug/alcohol treatment.
- Describe how your agency will handle cases involving unaccompanied minors.
- Who will be responsible for performing a home study for a relative placement?
- Who will be responsible for initiating contact with HRA to establish custody or foster care placement for the unaccompanied minor?

*Where will the project operate? (Location)*

- Describe the physical location(s) of the project.
- Describe the qualifications necessary for any potential subcontractors, including the types of services they would be expected to provide.

*When will the project operate? (Days and Hours of Operation)*

- State the hours and days of operation.

*Other:*

- Include a flow chart depicting your agency's method of providing services to clients to be served under the proposed program including potential sub-contractual services (spell out which services are provided directly and which by subcontract/MOU).
- If applicable, please include a list of these sub-contractors.
- Discuss how you will train and/or prepare your staff for accommodating language and cultural differences of eligible repatriates (i.e. Sensitivity and Diversity Training, etc), if necessary.
- Describe any existing or planned resources such as partnerships with other agencies.
- Describe the operation and management of the project. State how management will 1) ensure no duplication of services, 2) monitor progress towards goals, 3) maintain agency and staff accountability, 4) supervise cash flow, and 5) assure timely submission of reports and vouchers.
- Describe any issues that may affect service delivery and how they will be addressed.
- Describe how staff will receive regular training and updates on the latest repatriation issues.
- Describe how staff will provide services in a linguistically and culturally appropriate manner.

***After reading the above section, a reviewer should have a clear and specific picture of how your project will run.***

3. **KEY PERSONNEL PROFILE:** The purpose of this section is to demonstrate the staffing levels for the project as well as the amount of time the organization's key personnel will spend on the project. Attach a chart that depicts the staff involved with the project. For each staff member listed, include the person's name and job title, the responsibilities of the position, the required qualifications for the position, their ethnicity and the name and title of the supervisor, and the full time equivalent (FTE) of the person's position.

**ADDITIONAL REQUIRED APPLICATION FORMS**



## **BOARD OF DIRECTORS PROFILE**

List the names, addresses, phone numbers, places of employment and number of years as a board member of each member of your agency's Board of Directors. Also indicate if any Board of Directors member is on your agency's payroll. It is the contractor's responsibility to ensure there are no conflicts of interest.

**ORGANIZATIONAL STATUS (For Reporting Purposes)**

Please identify all of the items below that apply to your organization. Definitions are as follows:

**YES**                      **NO**                      **LOCAL DEPARTMENT OF SOCIAL SERVICES**  
                             

**YES**                      **NO**                      **NOT-FOR-PROFIT ORGANIZATION**  
                             

To meet the definition of a Not-for-Profit Organization, an organization must be incorporated as a not-for-profit corporation or Religious Corporation or public agency under the laws of this state or provide care and services in this state and have been granted federal tax exempt status.

**YES**                      **NO**                      **MINORITY ORGANIZATION**  
                             

An ethnic Minority Organization is characterized by majority representation of Native American or Alaskan Native, Asian and/or Pacific Islander, Blacks and/or Hispanics in policy formulation and decision-making regarding management, service delivery and staffing reflective of the catchment area it serves. Identify type as appropriate:

**YES**                      **NO**                      **WOMEN-OWNED ORGANIZATION**  
                             

Any business enterprise which is at least fifty-one percent owned by, or in the case of publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent aliens who are women, and such ownership interest is real, substantial and continuing.

**If Minority Organization, please check one of the following:**

- Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
- Black persons having origins in any of the black African racial groups not of Hispanic origin;
- Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; and
- American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification.

**Non-Discrimination/Sectarian Organization Compliance Justification**

	Yes	No
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?)		
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, age, 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 request for funding below:**

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

It is important to note that in addition to direct sub-contracting on State contracts, contractors can also utilize a number of other vendors in support of their overall operations. Using NYS Certified MWBEs (link to Directory of NYS Certified MWBEs, <http://www.nylovesmwbe.ny.gov>) as providers of these second tier services can be counted in satisfaction of the goals. The following are examples of indirect services that you may want to consider for compliance with MWBE subcontracting participation requirements: Accounting Services, Advertising, Building Maintenance, Car Rental, Cleaning Supplies, Copying, Electrical Services, Furniture, Heating and Cooling, Janitorial Services, Office Supplies, Pest Control, Printing Services, Publishing, Rubbish Removal, Security, Shredding Services, Tax Preparation, Technical Writing, Training, Travel Services, etc.

### M/WBE SUBCONTRACTOR UTILIZATION PLAN

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

**Offeror's Name:**

**Address:**

**City, State, Zip Code:**

**Region/Location of Work:**

**Federal Identification Number:**

**Solicitation Number:**

**Telephone Number:**

**M/WBE Goals in the Contract:** MBE    %            WBE    %

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies/Services and intended performance dates of each component of the contract.
A.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
<b>PREPARED and APPROVED BY:</b>  NAME AND TITLE OF PREPARER (Print or Type):			<b>FOR AGENCY USE ONLY</b>	
			REVIEWED BY:	DATE:

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

**DATE:**

**TELEPHONE NO:**

**EMAIL ADDRESS:**

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION.

**UTILIZATION PLAN APPROVED:**  YES  NO Date:

**Contract No:**

**Contract Award Date:**

**Estimated Date of Completion:**

**Amount Obligated Under the Contract:**

**NOTICE OF DEFICIENCY ISSUED:**  YES  NO Date: \_\_\_\_\_

**NOTICE OF ACCEPTANCE ISSUED:**  YES  NO Date: \_\_\_\_\_

**MINORITY/WOMEN OWNED BUSINESS ENTERPRISE (M/WBE)  
MWBE SUBCONTRACTORS AND /or  
SUPPLIERS LETTER OF INTENT TO  
PARTICIPATE**

To: _____ Federal ID Number: _____ (Name of Contractor)																					
Proposal / Contract number: _____																					
Contract Scope of Work: _____																					
The undersigned intends to perform services or provide material, supplies or equipment as follows: _____ _____																					
At the following price: \$ _____																					
Name of MWBE: _____																					
Address: _____																					
Federal ID Number: _____																					
Telephone Number: _____																					
Designation:																					
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:40px; text-align: center;"><input type="checkbox"/></td> <td>MBE - Subcontractor</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>WBE – Subcontractor</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>MBE – Supplier</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>WBE - Supplier</td> </tr> </table>	<input type="checkbox"/>	MBE - Subcontractor	<input type="checkbox"/>	WBE – Subcontractor	<input type="checkbox"/>	MBE – Supplier	<input type="checkbox"/>	WBE - Supplier	<table style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2">Joint venture with:</td> </tr> <tr> <td colspan="2">Name: _____</td> </tr> <tr> <td colspan="2">Address _____</td> </tr> <tr> <td colspan="2">Fed ID Number: _____</td> </tr> <tr> <td style="text-align: center;">MBE</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">WBE</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Joint venture with:		Name: _____		Address _____		Fed ID Number: _____		MBE	<input type="checkbox"/>	WBE	<input type="checkbox"/>
<input type="checkbox"/>	MBE - Subcontractor																				
<input type="checkbox"/>	WBE – Subcontractor																				
<input type="checkbox"/>	MBE – Supplier																				
<input type="checkbox"/>	WBE - Supplier																				
Joint venture with:																					
Name: _____																					
Address _____																					
Fed ID Number: _____																					
MBE	<input type="checkbox"/>																				
WBE	<input type="checkbox"/>																				
Are you a New York State Certified M/WBE?	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:40px; text-align: center;"><input type="checkbox"/></td> <td style="width:30px; text-align: center;">Yes</td> <td style="width:40px; text-align: center;"><input type="checkbox"/></td> <td style="width:30px; text-align: center;">No</td> </tr> </table>	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No																
<input type="checkbox"/>	Yes	<input type="checkbox"/>	No																		

The contractor proposes, and the undersigned agrees to, the following beginning and completion dates for such work.

Date Proposal/ Contract to be started: \_\_\_\_\_

Date Proposal/ Contract to be completed: \_\_\_\_\_

Date Supplies ordered: \_\_\_\_\_

Delivery date: \_\_\_\_\_

The above work will not be further subcontracted without the express written permission of the contractor and notification of the Office. The undersigned will enter into a formal agreement for the above work with the contractor ONLY upon the Contractor's execution of a contract with the Office.

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

Signature of M/WBE Contractor: \_\_\_\_\_

Printed/Typed Name of M/WBE Contractor: \_\_\_\_\_

**INSTRUCTIONS FOR M/WBE SUBCONTRACTORS AND SUPPLIERS' LETTER**

This form is to be submitted with bid attached to the Subcontractor's Information Form in a sealed envelope for each certified Minority or Women-Owned Business enterprise the Bidder/Awardee/Contractor proposes to utilize as subcontractors, service providers or suppliers.

If the MBE or WBE proposed for portion of this proposal/contract is part of a joint or other temporarily-formed business entity of independent business entities, the name and address of the joint venture or temporarily- formed business should be indicated.

Contact: Wilma Brown Phillips, M/WBE Director  
[Wilma.BrownPhillips@otda.state.ny.us](mailto:Wilma.BrownPhillips@otda.state.ny.us)

## **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;
- (i) The Contractor submitted a completed, acceptable utilization plan in accordance with applicable requirements to meet goals for participation of certified minority-and women-owned business enterprises established in the State contract;



MWBE SUBCONTRACTOR REQUEST FOR WAIVER FORM

<b>INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.</b>		
<b>Offeror/Contractor Name:</b>	<b>Federal Identification No.:</b>	
<b>Address:</b>	<b>Solicitation/Contract No.:</b>	
<b>City, State, Zip Code:</b>	<b>M/WBE Goals: MBE      %      WBE      %</b>	
<b>By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</b>		
<b>Contractor is requesting a:</b>		
1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial		
2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial		
3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.)      Date of such filing with Empire State Development: _____		
<b>PREPARED BY (Signature):</b>	<b>Date:</b>	
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.		
<b>Name and Title of Preparer (Printed or Typed):</b>	<b>Telephone Number:</b>	<b>Email Address:</b>
<b>Submit with the bid or proposal or if submitting after award, submit to the MWBE Program Unit:</b>  NYS OTDA ATTN: Ms. Wilma BrownPhillips, MWBE Director M/WBE Program Management Unit Harlem Center 317 Lenox Avenue New York, New York 10027  Email to: <a href="mailto:Wilma.BrownPhillips@OTDA.State.NY.US">Wilma.BrownPhillips@OTDA.State.NY.US</a> .	<b>***** FOR AGENCY USE ONLY *****</b>	
	<b>REVIEWED BY:</b>	<b>DATE:</b>
	<b>Waiver Granted:</b> <input type="checkbox"/> YES <b>MBE:</b> <input type="checkbox"/> <b>WBE:</b> <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ <b>*Comments:</b>	

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note:

Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by the contracting entity, to determine M/WBE compliance.

CONTRACTOR QUARTERLY COMPLIANCE REPORT

**INSTRUCTIONS:** BEGINNING TEN DAYS FOLLOWING THE END OF THE FIRST CALENDAR QUARTER (March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>) AFTER A CONTRACT IS AWARDED; QUARTERLY COMPLIANCE REPORTS WILL BE DUE FOR THE PRECEDING QUARTER'S ACTIVITY.

**Expenditure Code:** C – Commodities, SC – Services/Consultants, CC –Construction Consultants, CN – Construction, GM – Grants Material/Equipment, GC – Grants in Construction, GS – Grants In Services/Consultants

Contract Number: C _____  Contractor: _____	<b>REPORTING PERIOD:</b> From: ____/____/____ To: ____/____/____	<b>MWBE Goal</b> MBE ____ % WBE ____ % M/WBE ____ %
---	--	--

A	B	C	D
Amount of Actual Expenditures in Reporting Period	Minority-Owned Business Enterprise (MBE) Subcontracting Expenditures in Reporting Period	Women-Owned Business Enterprise (WBE) Subcontracting Expenditures in Reporting Period	Dual Minority and Women-Owned Business Enterprise (MWBE) Subcontracting Expenditures in Reporting Period
\$ _____ <small>(If none, enter 0)</small>	\$ _____ <small>(If none, enter 0)</small>	\$ _____ <small>(If none, enter 0)</small>	\$ ____0_____ <small>(If none, enter 0)</small>

Payee ID	Payee Name, Address, City, Zip	Service Location	MBE or WBE or Dual MWBE	Expenditure Code	Product Code	Amount

NAME AND TITLE OF PREPARER (Print or Type):	TELEPHONE NO.:	EMAIL ADDRESS:
QUARTERLY REPORTS SHOULD BE SUBMITTED TO: Please submit completed form to the Contract Manager or if you are not sure who it is, please contact the Bureau of Contract Management (BCM) at (518) 486-6352.		<b>FOR AGENCY USE ONLY</b> REVIEWED BY: _____ DATE: _____

**CREDIT WILL NOT BE GIVEN WITHOUT COMPLETE INFORMATION**

**INSTRUCTIONS:**

List all M/WBEs used during the quarter, providing all requested information in appropriate columns. In the event that an M/WBE is used more than one time during a quarter, list the M/WBE only once for each expenditure category. Use the **Expenditure Code** defined at the top of the form to indicate the category of expenditures for which the M/WBE was used.

**TOTALS FOR REPORT PERIOD**

- Column A**      Total Amount of Actual Expenditures in Report Period: Enter the amount (\$) for each Expenditure Code made during report period under this contract.
- Column B**      MBE Subcontracting Expenditures: Enter the amount for each Expenditure Code with registered Minority Owned Business Enterprises made during the report period under this contract.

**Column C** WBE Subcontracting Expenditures: Enter the amount of expenditures for each Expenditure Code with registered Women Owned Business Enterprises made during the report period under this contract.

**Column D** MWBE Dual Subcontracting Expenditures: Enter the amount of expenditures for each Expenditure Code with registered Minority and Women Owned Business Enterprises made during the report period under this contract.

Use the following codes in the Product Code column to indicate the category of work for which the M/WBE was utilized:

**PRODUCT CODE KEY:**

<b>A</b>	<b>Agriculture/Landscaping (e.g., all forms of landscaping services)</b>
<b>B</b>	<b>Mining (e.g., Geological Investigation)</b>
<b>C</b>	<b>Construction</b>
<b>C15</b>	<b>Building Construction – General Contractors</b>
<b>C16</b>	<b>Heavy Construction (e.g., highway, pipe laying)</b>
<b>C17</b>	<b>Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)</b>
<b>D</b>	<b>Manufacturing (production of goods)</b>
<b>E</b>	<b>Transportation, Communication and Sanitary Services (e.g., Delivery services, warehousing, broadcasting and cable systems)</b>
<b>F/G</b>	<b>Wholesale/Retail Goods (e.g., gravel, hospital supplies and equipment, food stores, computer stores, office supplies)</b>
<b>G52</b>	<b>Construction Materials (e.g., lumber, paint, lawn supplies)</b>
<b>H</b>	<b>Financial, Insurance and Real Estate Services</b>
<b>I</b>	<b>Services</b>
<b>I73</b>	<b>Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)</b>
<b>I80</b>	<b>Health Services</b>
<b>I81</b>	<b>Legal Services</b>
<b>I82</b>	<b>Educational Services (e.g., AIDS education, automobile safety, tutoring, public speaking)</b>
<b>I83</b>	<b>Social Services (e.g., counselors, vocational training, child care)</b>
<b>I87</b>	Engineering, architectural, accounting, research, management and related services

**Expenditure:** An expenditure is an actual payment which has been made by an agency, either through the Office of the State Comptroller or by the agency's finance office directly, including subcontractor/supplier payments made by a prime contractor and verified by the agency.

**Grants:** For the purposes of this report, grants are monies dispensed by a contracting governmental agency to a person or institution to accomplish a public purpose authorized by law. According to Article 15-A, grants are considered to be State contracts. For the purpose of compliance reporting, the recipient of the grant is considered to be the "contractor". These contracts are subject to MWBE goals and reported in the same fashion as any other contract. Grant dollars expended should be reported on the form most appropriate for the majority of the grant (e.g. if the grant dollars are generally spent for construction, the monies should be reported on the construction form; if for training, the monies should be reported on the services/consultant form).

**Not-for-Profit:** An entity organized as a not-for-profit corporation pursuant to State Law. According to Article 15-A, not-for-profit entities are considered to be "contractors". These contractors are subject to MWBE goals and should be treated and reported in the same fashion as any other contractor. The expenditure of dollars by a not-for-profit entity should be reported on the form most appropriate to the majority of the funding (e.g. if the dollars are generally spent to provide training and/or rehabilitation services, then the monies should be reported on the services/consultant form; if the expenditures are made on a contract for low-income housing, the dollars should be reported on the construction form).

Subcontract: a) For construction, a subcontract is any portion of the contract or any service performed or supplies provided relative to that contract by any party other than the prime contractor;

b) For commodities and consultant/services, a subcontract is that portion of the total value of a contract portioned out to another consultant/individual or vendor. This is also known as second tier spending;

c) For grants/not-for-profits contracts, a subcontract is that portion of funding expended for supplies, equipment, printing, consultants, trainers, services, etc.

d) It is important to provide all information as requested or credit may not be allowed.

e). It is critical that you provide the detailed information requested on the CONTRACTOR QUARTERLY COMPLIANCE REPORT. List each M/WBE firm you have included in the MBE and WBE totals (for prime and subcontract expenditures) in each expenditure category. Missing information may result in the firm/dollars not counting toward agency MWBE participation goals.

## MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

### M/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at

\_\_\_\_\_

This organization will require its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals and provide Equal Employment Opportunities set by NYS OTDA for the State-funded project by taking the following steps:

#### **M/WBE**

#### **EEO**

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

(2) Request a list of State-certified M/WBEs from NYS-OTDA and solicit bids from them directly.

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

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

(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain, or, where appropriate, require its subcontractors to maintain and submit, as required by OTDA, records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

(6) Ensure that project payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and/or other credit requirements may, in the sole discretion of OTDA, be waived and/or appropriate alternatives are developed to encourage M/WBE participation.

(7) This organization will include the provisions of sections (1) through (6) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

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

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status,

(c) At the request of the contracting agency, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, religion/creed, color, national origin, sex, age, disability, sexual orientation, military status, predisposing genetic characteristics, victim of domestic violence status or marital status, and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

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

**Minority/ Women Business Enterprise Liaison**

\_\_\_\_\_ is designated as the Minority/Women Business Enterprise Liaison  
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

\_\_\_\_\_  
(Authorized Representative)

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

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

Contact:

NYS OTDA  
ATTN: Ms. Wilma BrownPhillips, MWBE Director  
M/WBE Program Management Unit  
Harlem Center  
317 Lenox Avenue  
New York, NY 10027  
[Wilma.BrownPhillips@otda.state.ny.us](mailto:Wilma.BrownPhillips@otda.state.ny.us)

**EQUAL EMPLOYMENT OPPORTUNITY  
STAFFING PLAN**  
Submit with Bid or Proposal – Instructions on page 2

<b>Solicitation/Program Name:</b>	<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor’s total work force
<b>Offeror’s Name:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor <b>Subcontractor’s name</b> _____
<b>Offeror’s Address:</b>	

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

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran		
		Total Male (M)	Total Female (F)	White (M) (F)	Black (M)	Black (F)	Hispanic (M)	Hispanic (F)	Asian (M)	Asian (F)	Native American (M)	Native American (F)	Disabled (M)	Disabled (F)	Veteran (M)	Veteran (F)
Officials/Administrators																
Professionals																
Technicians																
Service Maintenance Workers																
Office/Clerical																
Skilled Craft Workers																
Paraprofessionals																
Protective Service Workers																
Totals																

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	

**NAME AND TITLE OF PREPARER (Print or Type):**

**SUBMIT COMPLETED WITH BID OR PROPOSAL**

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (04-10) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form for the contractor's or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number or RFP number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Designated Contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

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

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

**OTHER CATEGORIES**

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

**EQUAL EMPLOYMENT OPPORTUNITY  
WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT**

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Offeror's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Offeror's Address:</b>		

Enter the total number of employees in each classification in each of the EEO-Job

Categories identified.

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran	
		Male (M)	Female (F)	White (M) (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)	(M) (F)	(M) (F)					
Officials/ Administrators															
Professionals															
Technicians															
Service Maintenance Workers															
Office/Clerical															
Skilled Craft Workers															
Paraprofessionals															
Protective Service Workers															
<b>Totals</b>															

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	<b>EMAIL ADDRESS:</b>	
	Submit completed form to M/WBE Program Unit: NYS OTDA ATTN: Ms. Wilma BrownPhillips, M/WBE Director M/WBE Program Management Unit Harlem Center 317 Lenox Avenue New York, NY 10027	

**General Instructions:** The work force utilization/compliance report (**EEO Workforce Utilization report04-10**) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's or subcontractor's total work force, the contractor or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's or subcontractor's total work force, information on the contractor's total work force shall be included in the Utilization Report. Utilization reports are to be completed each quarter and submitted to OTDA within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a written statement of no change or submit a copy of the previously submitted report with the date and reporting period updated.

**Instructions for completing:**

9. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
10. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
11. Check off the box that corresponds to the reporting period for this report.
12. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
13. Enter the total work force by EEO job category.
14. Break down the total work force by gender and enter under the heading 'Work force by Gender'
15. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'.
16. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
17. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

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

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

**OTHER CATEGORIES**

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

## CONTRACTOR/SUBCONTRACTOR BACKGROUND QUESTIONNAIRE

Name of Agency: \_\_\_\_\_ Federal Identification# \_\_\_\_\_

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

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

<u>Background Questionnaire</u> The following section must be fully completed by the Bidder or bid will be deemed non-responsive. Where appropriate, provide additional details using space provided or by inserting additional sheets following this part. Any proposed subcontractor must also complete this form if the value of that subcontract will be in excess of \$10,000.	
1a. If you, the bidder, are a natural person, are you a New York State resident?  1b. If you are a corporation, are you a New York State corporation?  1c. Are you registered with the New York State Department of State (DOS) to do business in New York State?  If no, you will be required to comply with the New York State Department of State guidelines for doing business in New York State before you will be eligible for a Contract award. Do you agree to these conditions?	_____ NO    _____ YES  _____ NO    _____ YES  _____ NO    _____ YES  _____ NO    _____ YES
2. How many years has the bidder been in business?	_____ # of Years
3a. Are you a certified minority owned business enterprise, certified by the NYS Department of Economic Development? (Your company is eligible to be certified if it is at least 51% owned and controlled by minority group members (i.e. Black, Hispanic, Asian, Pacific Islander, American Indian or Alaskan Native)?  3b. Are you a woman owned business enterprise, certified by the NYS Department of Economic Development? (Your company is eligible to be certified if it is at least 51% owned and controlled by women)	_____ NO    _____ YES  _____ NO    _____ YES
4. How many people are employed by the bidder?	_____ Employees
5. Total number of people employed by the bidder: * Within New York State? * Outside of New York State? * Outside of United States?	_____ _____ _____
6. Is the bidder independently owned and operated?	_____ NO    _____ YES (If no, provide details)
7. List and describe any liquidated damages assessed, and/or liens or claims over \$25,000 filed against the bidder and remaining undischarged or unsatisfied for more than 90 days, on any contracts within the past five years.	_____ NO    _____ YES    _____ N/A



9. Does your company retain partnership or reciprocal agreements with hardware and/or software companies, or with associated manufacturers in this industry?	_____ NO _____ YES
10. Does the bidder hold any current contracts with the State of New York, its departments or political subdivisions, valued in excess of \$100,000?	_____ NO _____ YES (If yes, provide details)
11. Does the bidder hold any current contracts with governmental entities outside of New York State, valued in excess of \$100,000:	_____ NO _____ YES (If yes, provide details)
12. Your firm is responsible for providing worker's compensation insurance pursuant to state law. The State has the option to require proof of current worker's compensation insurance or proof of exemption if applicable. Do you comply with this requirement?	_____ NO _____ YES
13. Your firm is responsible for providing disability insurance pursuant to state law. The State has the option to require proof of current worker's compensation insurance or proof of exemption if applicable. Do you comply with this requirement?	_____ NO _____ YES
14. Does your firm employ any non-U.S. citizens or resident legal aliens?	_____ NO _____ YES
15. If yes, are the forms on file and available for inspection?	_____ NO _____ YES

## CERTIFICATION

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

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

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

**Title**

**Date**

## **Two Additional Requirements**

Please include the following in the application submission. You must submit one copy of each.

1. A copy of your agency's most recent Certification of Incorporation and any amendments and a copy of your agency's current by-laws.
2. A bound copy of your agency's most recent audited financial statements. Recent means statements that have been audited within the last 12 months. If your agency receives federal funds, please include a copy of the A-133 audit statements.

## 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.

**AGREEMENT**

It is understood and agreed to by the applicant that (1) This RFP does not commit the New York State Office of Temporary and Disability Assistance (OTDA) to award any contracts, pay the costs incurred in the preparation of response to this RFP, or to procure or contract services. (2) OTDA reserves the right to amend, modify or withdraw this RFP and to reject any proposals submitted, and may exercise such right at any time and without notice and without liability to any Offeror or other parties for their expenses incurred in the preparation of a proposal or otherwise. Proposals will be prepared at the sole cost and expense of the Offeror. (3) OTDA reserves the right to accept or reject any or all proposals that do not completely conform to the instructions given in the RFP, including time frames for submission thereof. (4) Submission of a proposal will be deemed to be the consent of the applicant to any inquiry made by OTDA of third parties with regard to the applicant's experience or other matters deemed by OTDA relevant to the proposal. (5) Funds granted for this project will be used only for the conduct of the project as approved. (6) The contract may be terminated in whole, or in part, by OTDA. Such termination shall not affect obligations incurred under the contract prior to the effective date of such termination. (7) When funds are advanced any unexpended balance or funds unaccounted for at the end of the approved period must be returned. (8) Any significant revision of the approved project proposal must be requested in writing by the contractor prior to enactment of the change. (9) Progress reports must be submitted as required by OTDA. The final program and financial reports must be submitted within a specified time period after the project terminates. Necessary records and accounts including financial and property controls will be maintained and made available to OTDA for audit purposes. (10) All reports of investigations, studies, and publications made as a result of this proposal must acknowledge the support provided by OTDA. (11) All personal information concerning individuals served or studies conducted under the project are confidential and such information may not be disclosed to unauthorized persons, corporations, or agencies. (12) OTDA reserves a royalty free non-exclusive license to use and to authorize others to use all copyrighted material resulting from this project. (13) Successful applicants will be subject to the State's prompt contracting law. (14) Selected contractors agree to be bound by the Equal Opportunities/Affirmative Action anti-discrimination provisions as more fully set forth in Section IV. (D) Equal Employment Opportunity.

OTDA reserves the right, if funds become available, to reconsider additional proposals submitted in response to this RFP at that time, using the same scoring criteria and award methodology, in lieu of releasing a new RFP, if deemed to be in the best interest of the State.

OTDA anticipates making an award to administer projects for a 36 month contract term.

The applicant certifies that to the best of his/her knowledge and belief the information in this application is true and correct, that he/she will comply with the above agreement if the grant is received, and that this constitutes a firm offer for 180 days.

---

(Signature of official authorized to sign for applicant)

(Date)

---

(Typed name and title)

<b>APPLICATION CHECK LIST of Required Forms</b>	<b>Included</b>	<b>Not Included (Explain)</b> Missing documents will adversely affect the overall competitive score of your proposal.
<b>Section I General Information</b>		
General Information		
<b>Section II Program Narrative</b>		
A. Agency Qualifications		
1. Agency Information		
• Agency Organizational Chart		
2. Program Description		
• Client flow chart		
3. Key Personnel Profile		
<b>Additional Required Application Forms</b>		
Funding Agency Contact Information Form		
Board of Directors Profile		
Organizational Status		
M/WBE Subcontractor Utilization Plan (OTDA-4937)		
M/WBE Subcontractors and/or Suppliers Letter of Intent to Participate (OTDA-4938)		
M/WBE Goal Requirements Certification of Good Faith Efforts (OTDA-4976)		
M/WBE/Equal Employment Opportunity Policy Statement (OTDA-4970)		
Equal Employment Opportunity Staffing Plan (OTDA-4934.1)		
Contractor/Subcontract Background Questionnaire		
Copy of your most recent Certificate of Incorporation and any amendments		
Bound copy of your most recent audited financial statements (within the last 12 months, if not attach letter explaining why; and A-133 audit statement if applicable		
Attachment Q		
Agreement		
<b>APPLICATION SUBMISSION CHECKLIST</b>		

# Sample Contract

<p align="center"><b>NYS OFFICE OF TEMPORARY &amp; DISABILITY ASSISTANCE</b></p> <p align="center"><b>40 NORTH PEARL STREET</b></p> <p align="center"><b>ALBANY, NEW YORK 12243</b></p>	<p align="center"><b>NYS COMPTROLLER'S NUMBER</b></p> <p align="center"><b>ORIGINATING AGENCY CODE: 27000</b></p>
<p><b><u>CONTRACTOR:</u></b></p>	<p align="center"><b>TYPE OF PROGRAM (s):</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> _ _ - _ _ - _ _</p> <p align="center">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>INITIAL CONTRACT PERIOD</b></p> <p>FROM:</p> <p>TO:</p> <p align="center">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>
<p align="center"><b>APPENDICES ATTACHED AND PART OF THIS AGREEMENT</b></p> <p>_____ Statement of New York Agreement</p> <p>_____ APPENDIX A Standard Clauses as required by Attorney General for <u>all</u> State Contracts</p> <p>_____ APPENDIX A1 Agency Specific Clauses</p> <p>_____ APPENDIX A2 Agency Program Specific Clauses</p> <p>_____ APPENDIX C Payment and Reporting Schedule</p> <p>_____ APPENDIX D Program Work Plan</p> <p>_____ APPENDIX X Contract Modification</p> <p>_____ APPENDIX Z OTDA M/WBE-EEO Program Requirements</p> <p>_____ Attachment Q Notices</p> <p>_____ Other Certification of Good Faith Efforts</p>	

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: \_\_\_\_\_

## 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.

**VII. Public Officers' Law**

- A. The Contractor agrees not to engage in any conduct which the Contractor knows would violate or would assist an employee of OTDA in violating Section 73 or 74 of the Public Officers Law.
- B. The Contractor further recognizes that an administrative or judicial finding that a Contractor has violated any of the statutes specified in the Contractor/Subcontractor Background Questionnaire completed prior to the award of this contract may entitle OTDA to terminate the contract, at its discretion, within thirty (30) days after the Contractor notifies OTDA of such findings or OTDA notifies the Contractor that it has become aware of such finding.
- C. Any termination of the contract by OTDA under this subdivision (Article VII) shall be deemed to be a termination of the contract for cause. The remedies set forth in this section shall be in addition to any other remedy available to OTDA under this contract or under any other provisions of law.

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to

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

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict

with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

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

**20. OMNIBUS PROCUREMENT ACT OF 1992.**

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

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

NYS Department of Economic Development  
Division for Small Business  
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 -- 2nd 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.

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**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

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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

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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

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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.

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- 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,

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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).

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**NEW YORK STATE OFFICE OF TEMPORARY & DISABILITY ASSISTANCE**  
**APPENDIX A-2**  
**PROGRAM SPECIFIC CLAUSES**  
***NEW YORK STATE U.S. REPATRIATION PROGRAM***  
***Non- Emergency Component***

## **I. AUTHORIZATION**

The United States Repatriation Program (hereinafter USRP) is funded by the United States Department of Health and Human Services (DHHS) and administered by the Office of Refugee Resettlement (ORR). The program was established by Title XI, Section 1113 of the Social Security Act and Public Law 86-571 to provide temporary assistance to U.S. citizens and their dependents who have been identified by the United States Department of State (DOS) as having been brought from a foreign country to the United States because of destitution, illness or other circumstance, and are without available resources.

The program provides temporary assistance to these eligible U.S. citizens and/or their dependents who are without available resources upon their return to the United States. The ORR is authorized to enter into a cooperative agreement with states to provide such assistance, in consultation with ORR, within the United States. The cooperative agreement gives states the authority to contract with public or private service providers to assist ORR and/or its subcontractor with the coordination of non-emergency activities and in delivering such assistance to repatriated individuals.

## **II. ELIGIBLE SERVICES**

### **A. General Provisions**

The Contractor shall establish and carry out the US Repatriation Program and shall expend funds and otherwise perform under this AGREEMENT as set forth herein and as prescribed 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**

#### **1. Case Management**

The USRP service provider must provide case management for all eligible repatriates. Case management includes, but is not limited to: assessing the scope of need, developing a plan of action to meet those needs, preparing a work plan which will include all the services provided by the USRP providers or by the agencies/organizations that the repatriate will be referred to for these services, and provide follow-up with the repatriate.

#### **2. Shelter**

Many repatriates will lack adequate shelter arrangements upon arrival into the United States. Safe and secure shelter is a crucial component of their reintegration. Free shelter is the preferred option for placement; however, if free shelter is unavailable or not appropriate, the service provider must consult

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with OTDA/BRIA and ORR on other acceptable options. The Service Provider must demonstrate the experience and ability to provide or place a repatriate into safe and secure emergency temporary housing. Facilities providing shelter must be operated in accordance with all applicable State and local laws, regulations, codes, and ordinances.

### **3. Cash Assistance**

Most repatriates will not have access to any monies upon their return to cover rent, security and utility deposits, clothing, household and personal items. The service provider must demonstrate experience and ability to provide cash assistance to cover these costs for up to ninety days and/or to assist the repatriate in accessing public benefits. If eligible, cash assistance will be administered in accordance to need utilizing comparable procedures employed by the local social services districts (SSD), (i.e., disbursed in two week increments). In no instance can it exceed the TANF rate.

### **4. Food Assistance**

Food is an essential part of a repatriate's survival. The service provider must demonstrate experience and ability to provide access to food.

### **5. Transportation**

Often repatriates have been outside the United States for long periods of time and are unfamiliar with the various transit systems available in the region. Even if they do have this knowledge, they will lack funds to use these transit options. The service provider must demonstrate experience and ability to provide transportation to the repatriate as needed upon arrival to the United States and for the duration of the case. Reimbursement of actual expenses will be according to the US General Service Administration's published reimbursement rates (see <http://www.gsa.gov/portal/content/100715>).

### **6. Medical/Psychiatric Evaluation and Treatment**

Repatriates often present with mental health issues and it is critical that these issues are addressed as soon as possible. The service provider must demonstrate experience and the ability to provide and/or to refer necessary mental health counseling, or demonstrate a relationship with a recognized medical provider that has experience and resources to provide mental health counseling.

The service provider must demonstrate experience and ability in providing and/or facilitating necessary medical/psychiatric evaluation and treatment services. Reimbursable costs and services are limited to those that are allowable under the Medicaid program.

### **7. Other Identified Service Needs (As approved by BRIA)**

The service provider may suggest to OTDA/BRIA the need for any other specific services not listed, including, but not limited to: drug/alcohol addiction screening and treatment, vocational/occupational training and assistance for victims of domestic violence.

***Other Identified Services will not be reimbursable to the Contractor unless and until the Contractor has received written approval from OTDA to provide such services.***

## **III. ELIGIBLE CLIENTS**

Eligible clients are repatriates who meet the following criteria:

- Are determined eligible and referred by the DOS with a need for temporary assistance

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- Are U.S. citizens or a dependent of a U.S. citizen
  - Are repatriated to the United States from a foreign country because of being destitute, ill (including mentally ill), or because of war, threat of war or similar crisis
  - Are without available resources

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**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. 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 on a monthly basis. 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.
  
- c. 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.

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Designated Payment Office

Program Manager: Wanda Byrd  
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

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**APPENDIX D**  
**PROGRAM WORK PLAN**

**Contractor Information**

1. Incorporated Agency Name: \_\_\_\_\_

2. Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

County: \_\_\_\_\_

3. Agency Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Phone #: \_\_\_\_\_ FAX #: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

Program Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Phone #: \_\_\_\_\_ FAX #: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

4. Federal Employer Identification #: \_\_\_\_\_

State Registered Charitable Organization #: \_\_\_\_\_

Municipality #: \_\_\_\_\_

Community District(s): \_\_\_\_\_

Federal Congressional District(s): \_\_\_\_\_

State Senate District(s): \_\_\_\_\_

State Assembly District(s): \_\_\_\_\_

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

	Yes	No
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?)		
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:**

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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.

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

APPENDIX X

Agency Code: 27000

Contract Number: \_\_\_\_\_

Period: \_\_\_\_\_

Funding Amt. for Contract: \_\_\_\_\_

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 principle 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(CO \_\_\_\_\_); 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 \_\_\_\_\_, \_\_\_\_\_, 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:  
Thomas P. DiNapoli, State Comptroller

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

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

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

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

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**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: Federal and State statutes specifically Article 15-A of the Executive Law, 5 NYCRR parts 140-144, and Appendix A: Standard Clauses for All New York State Contracts)**

**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 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 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.
4. Further information regarding Article 15-A of the New York State Executive Law and the New York State Minority and Women’s Business Enterprises Program is available on the New York State Division of Minority and Women-Owned Business Development Internet site at <http://www.nylovesmwbny.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 143 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. 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" to provide meaningful participation by New York State Certified M/WBE subcontractors or suppliers in the performance of this contract. For guidance on how NYS OTDA will determine a Contractor's "good faith effort," refer to 5 NYCRR §143.8.

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

MINORITY OWNED BUSINESS PARTICIPATION	10%
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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%

**III. EEO Requirements**

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

1. 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, 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.
  - b. Except for construction contracts, an EEO Staffing Plan of anticipated workforce, which 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), 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.
2. 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 or fewer employees), 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.
3. If, after scoring, a Contractor is selected for award, before that award is completed (e.g., during contract negotiations), OTDA 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 correct such deficiency within a timeframe specified by OTDA shall result in noncompliance.

**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. 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) which

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must document: The workforce actually utilized, on the State Contract, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by OTDA. All forms and reports will be submitted to the OTDA program manager for this contract award and forwarded for review to: Ms. Wilma BrownPhillips, M/WBE Director, 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).

3. In addition to general compliance monitoring of State Contracts, including a contractor's compliance with the requirements of 5 NYCRR Part 142, OTDA shall conduct in-depth compliance reviews on selected State Contracts during the course of the year, in accord with 5 NYCRR § 142.3.
4. 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.
5. 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.
6. 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: New York State Empire State Development (ESD), Division of Minority and Women's Business Development ("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.
7. 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 document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall refer the matter, within thirty days of the receipt of the complaint, to the American Arbitration Association for proceeding thereon, pursuant to statute (Executive Law § 316) and regulation (5 NYCRR § 142.5).

#### **IV. M/WBE Requirements**

- A. 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 New York State Empire State Development ("ESD") directory of certified businesses<sup>1</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).
- B. 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 § 143.8.
- C. 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.

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<sup>1</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.

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## **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/deliverable/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:
  - a. A Certification of Good Faith Efforts, to achieve the overall prescribed M/WBE participation percentage (%) goals set forth in the procurement.
  - b. A M/WBE Subcontractor Utilization Plan, 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.
  - c. A M/WBE Subcontractor's and/or Suppliers' Letter of Intent to Participate, 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 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, 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 will review the substance of the Subcontractor Utilization Plan submitted by a Contractor and within twenty (20) days from the receipt thereof by the OTDA MWBE Unit, issue a written notice of acceptance or deficiency.
5. If a notice of deficiency is warranted, the notice shall include:
  - i. The name of any M/WBE which is not acceptable for the purpose of complying with the M/WBE participation goals and the reasons why it is not acceptable;
  - ii. Elements of the contract scope of work which OTDA has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the contract by M/WBEs; and
  - iii. Other information which OTDA determines to be relevant to the M/WBE Subcontractor Utilization Plan.
6. 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. Failure to correct a deficiency and/or demonstrate compliance shall result in the necessity of the Contractor to submit to OTDA a M/WBE Subcontractor Request for a partial or total waiver of M/WBE participation goals on forms provided by the OTDA. Failure to submit the waiver form in a timely manner may be grounds for noncompliance.

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

1. In accordance with regulations under 5 NYCRR Part 140, 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>2</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

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<sup>2</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.

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information have been received by OTDA.<sup>3</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.<sup>4</sup>
5. 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.
6. 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.
7. 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.
8. If OTDA is unsuccessful in its efforts, and, upon review, the OTDA Commissioner or his/her designee agrees that the Contractor is non-compliant, the Commissioner or his/her designee shall submit a written complaint to: The New York State Department of Economic Development, Division of Minority and Women's Business Development ("DMWBD"), regarding the Contractor's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. The Commissioner or his/her designee shall serve a copy of the complaint upon the Contractor by personal service or certified mail, return receipt requested.
9. 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 document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall refer the matter, within thirty days of the receipt of the complaint, to the American Arbitration Association for proceeding thereon, pursuant to statute (Executive Law § 316) and regulation (5 NYCRR § 142.5).
10. Nothing herein shall diminish or supersede OTDA's authority and responsibility to enforce the requirements of its contracts.

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<sup>3</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>4</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.

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11. 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 (Section 316) regarding possible fines, sanctions and penalties for violations of the Statute.

**NOTE: Pursuant to Chapter 429 of the Laws of 2009, which amends Section 313 of the Statute, OTDA is required to post contractor utilization plans, and any applicable waivers on the agency website.**

## **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:

- (j) 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;
- (k) 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;
- (l) The Contractor undertook efforts to reasonably structure the contract scope of work for purposes of subcontracting with certified minority- and- women-owned business enterprises;
- (m) 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;
- (n) 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>
- (o) The Contractor can document if any timely responses to any such advertisements and solicitations were provided by certified minority- and women-owned business enterprises;
- (p) The Contractor followed-up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity;
- (q) 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;

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- (r) The Contractor submitted a completed, acceptable utilization plan in accordance with applicable requirements to meet goals for participation of certified minority-and women-owned business enterprises established in the State contract;
- (j) The Contractor used the services of community organizations, contractor groups, state and federal business assistance offices and other organizations identified by the NYS Department of Economic Development or its designee that provide assistance in the recruitment and placement of minority and women business enterprises;
- (k) The Contractor negotiated in good faith with certified minority- and women-owned business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any certified minority- or women-owned business enterprise. "Good faith" negotiating means engaging in good faith discussions with certified minority- or women-owned business enterprises about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the minority or women businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available; and,
- (l) The Contractor undertook efforts to make payments for any work performed by certified minority- and women-owned business enterprises in a timely fashion so as to facilitate continued performance by certified minority- and women-owned business enterprises.

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Signature

Date

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Print Name

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Title

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Company

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Contract Number

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Program/Solicitation Name

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## 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.