



**Office of Temporary  
and Disability Assistance**

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Release Date: 9/3/15

Request for Proposal

# **Language Services**

Submission Deadline: 11/5/15

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# NYS OTDA BRIA LANGUAGE SERVICES RFP

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**SECTION I  
PROCUREMENT INFORMATION AND REQUIREMENTS**

**A. General Requirements**

This RFP is to enhance The Office of Temporary and Disability Assistance (OTDA) efforts to facilitate individual participation in and access to the various benefits and services supervised and/or administered by the OTDA. The organization(s) selected as a result of this RFP will be required to provide translation and other language services as per “Section II – Scope of Work” of this RFP.

**B. Purpose**

The purpose of this Request for Proposals (RFP) is to contract with one qualified organization to perform the tasks and services, described within Section II of this RFP identified as “Scope of Work”.

The initial term of the resultant contract is to be three years, but may be extended beyond this initial phase for one (1) additional two-year period at the sole discretion of OTDA. The contract period, in total, will not exceed sixty (60) months. This Agreement shall commence upon approval by the Office of the State Comptroller.

**C. Issuing Agency**

This RFP is being issued by the Bureau of Refugee and Immigrant Assistance (BRIA) of the New York State Office of Temporary and Disability Assistance. The contract resulting from this RFP will be fully executed by OTDA upon approval by the Office of State Comptroller (OSC).

**D. Timetable**

Issuance of Request for Proposal – 9/3/2015  
Final Date for Receipt of Letter of Intent – 9/27/2015  
Questions Due – 9/24/2015  
Official Responses to Questions (on or about) – 10/11/2015  
Proposal Due Date – 11/5/2015 (3:00p.m. est)  
Approximate Notification of Award(s) – 3/24/2016  
Start Date of Contract – 7/11/16

**E. Letter of Intent**

Any Offeror intending to submit a proposal in response to this RFP may submit a letter of intent to Ruchika Jaggi, as identified in Section I.F, “Questions Regarding this Procurement”, herein. The letter of intent must reference the title

of this RFP and should be submitted in accordance with Section I.D. "Timetable." The letter of intent will allow Offerors to receive official responses to questions related to this RFP.

NOTE: Procurement documents may, from time to time, be amended or addenda issued by OTDA. It is the Offeror's responsibility to become aware of any such amendments and/or addenda prior to submission of a proposal. All amendments and/or addenda to procurement documents will be posted to the OTDA website at [www.otda.ny.gov](http://www.otda.ny.gov). Only the OTDA website will contain all amendments and/or addenda to the procurement documents, including the Responses to Written Questions. Proposers should review the OTDA website prior to submission of a proposal to ensure that they have all information required to submit a complete and responsive proposal.

#### **F. Questions Regarding this Procurement**

All questions regarding this procurement must be submitted in writing (via mail, e-mail or fax) to the following address:

Ruchika Jaggi  
NYS Office of Temporary and Disability Assistance  
Bureau of Refugee and Immigrant Assistance  
40 North Pearl Street, 10th Floor  
Albany, NY 12243  
Phone: (518) 402-3027 Fax: (518) 402-3029  
E-mail: [Ruchika.Jaggi@otda.ny.gov](mailto:Ruchika.Jaggi@otda.ny.gov)

Questions must be received in accordance with the timetable in Section I.D., of this RFP.

Each question should cite the specific RFP section and paragraph number to which it refers. OTDA will disseminate its official answers to the questions by the date indicated in Section I.D to prospective Offerors.

Offerors **MUST** raise any potential assumptions, exceptions, caveats, etc. to the terms and conditions, specifications, and requirements during the questions and answer phase of the procurement. Proposals that contain material changes to the terms and conditions, specifications, and requirements set forth throughout this RFP may be disqualified and/or scored lower.

#### **G. Primary Point of Contact**

New York State Finance Law (SFL) §139-j restricts contact by Offerors with any governmental entity regarding procurement contracts. Subject to certain exceptions set forth in SFL §139-j (3), contacts between Offerors and governmental entity personnel, other than the governmental entity's designated contact person(s), are prohibited during the restricted period of the governmental

procurement. Pursuant to State Finance Law §139-j and §139-k, this procurement includes and imposes certain restrictions on communications between OTDA and an Offeror during the procurement process. An Offeror is restricted from making “contacts” (defined in the law as communications intended to influence the procurement) from the date of the earliest notice of intent to solicit offers/bids through the date of the final award, and, if applicable, approval of the procurement contract by the Office of the State Comptroller (“restricted period”), to other than designated staff (as identified by the agency) unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, are identified in this RFP. OTDA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offeror pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award. In the event of two findings within a four-year period, the Offeror will be debarred from obtaining governmental Procurement contracts. Further information about these requirements can be found on the Office of General Services (OGS) website: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

The following activities are permissible contacts by an Offeror:

- Submission of a written proposal in response to this RFP
- Submission of written questions prior to the proposal due date
- Complaints filed by a potential n Offeror stating that the designated point of contact has failed to respond in a timely manner
- Oral presentations and interviews scheduled by OTDA
- Negotiations following award
- Debriefings to vendors that were not award recipients
- Filing of an appeal or protest
- Any contact initiated by OTDA employees.

State Finance Law also requires that every procurement over \$15,000 include a certification by the Offeror that all information provided to the agency is complete, true, and accurate with regard to prior non-responsibility determinations within the past four years based on (i) impermissible contacts or other violations of State Finance Law Section §139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity. See Appendix C, Forms 7 and 8 which must be included in an Offeror’s proposal.

The primary point of contact for this procurement is:

Ruchika Jaggi  
NYS Office of Temporary and Disability Assistance  
Bureau of Refugee and Immigrant Assistance  
40 North Pearl Street, 10th Floor  
Albany, NY 12243  
Phone: (518) 402-3027; Fax: (518) 402-3029

E-mail Address: [Ruchika.Jaggi@otda.ny.gov](mailto:Ruchika.Jaggi@otda.ny.gov)

The Secondary point of contact (to the Offeror) is:

Laurie Eckert, Bureau of Contract Management  
NYS Office of Temporary and Disability Assistance  
40 North Pearl Street, 12th Floor, Section D  
Albany, NY 12243  
(518) 408-3784; fax (518) 474-3555  
E-mail Address: [Laurie.Eckert@otda.ny.gov](mailto:Laurie.Eckert@otda.ny.gov)

## H. Submission of Proposals

Proposals must be signed by an official authorized to bind the Offeror to its provisions.

To be eligible, each Offeror is required to submit **three separate sections**, as follows:

- Cover Sheet/Executive Summary, including necessary forms from Appendix C
- One original and three (3) copies of the technical proposal,
- One original and three (3) copies of the cost proposal, and
- One original and three (3) copies of the sample translations.
- **Submit ONE original and three copies of EACH of the sections outlined above on SEPARATE CDs/thumb drives**; an acceptable format is Adobe PDF. The CD/thumb drive copies of EACH of the Sections described herein should be representative copies of the original documents, including signatures, and must be in one file on each CD/thumb drive.

**Submittal via fax and/or email is not acceptable.** All proposals and related documentation in response to this RFP (that is, documentation not specifically requested by this RFP but which an Offeror has submitted in support of its proposal) must be transmitted in such a manner as to insure receipt by OTDA no later than 3:00 pm (Eastern Standard Time) of the Proposal Due Date specified in Section I. D.

1. Any Offeror's proposal made in response to this RFP which is not received by 3 pm on the closing date for receipt of proposals may not be considered responsive, at the discretion of OTDA.
2. Offerors mailing their responses must allow sufficient mail delivery time to ensure receipt of their proposals within the time frames indicated in Section I. D. Cost and technical proposals and sample translations must be received in **separate** clearly marked packages or envelopes.

3. All proposals must be received by mail, hand delivery, courier service, FEDEX, DHL, or UPS delivery by 3pm Eastern Standard Time on August 7, 2015.

Proposals should be transmitted with the following information clearly displayed on the exterior of the box or mailer packaging:

Offeror's name and address

"Language Services RFP"

Proposal Due Date

Proposal Type: 1. Cover sheet/Executive Summary, 2. Technical Proposal, 3. Cost Proposal, and 4. Sample Translations

4. Proposals must be mailed to:

**Laurie Eckert, BUREAU OF CONTRACT MANAGEMENT  
NYS OTDA  
40 NORTH PEARL STREET, 12TH FLOOR, SECTION D  
ALBANY, NY 12243  
(518) 408-3784**

5. Proposals may be hand-delivered to:

Laurie Eckert, Financial Chair  
NYS OTDA  
40 North Pearl Street, 12th Floor, Section D  
Albany, NY 12243  
(518) 408-3784

**NOTE: Proposers should request a receipt containing the time and date received and the initials of the receiver for all hand-deliveries and ask that this information also be written on the package(s).**

**Submission of proposals in a manner other than as described in these instructions (e.g., fax, electronic transmission) will not be accepted.**

## **I. OTDA Rights**

OTDA reserves the right to use any and all ideas presented in any response to this RFP. Selection or rejection of any proposals does not affect this right. OTDA shall also have unlimited rights to disclose or duplicate, for any purpose whatsoever, all information or other work product developed, derived, documented or furnished by the Offeror under any Agreement resulting from this RFP, except information that OTDA acknowledges to be proprietary or confidential.

In the event of contract award, all documentation produced as part of the contract will become the exclusive property of OTDA. OTDA reserves a royalty free, non-

exclusive and irrevocable license to reproduce, publish or otherwise use such documentation and to authorize others to do so, except when such material has been proven to be proprietary.

OTDA reserves the right to:

- 1) Reject any or all proposals received in response to this RFP.
- 2) Withdraw this RFP at any time, at OTDA's sole discretion.
- 3) Make an award under this RFP in whole or in part.
- 4) Reissue a modified version of this RFP.

NOTE: OTDA reserves the right to issue modifications, clarifications, permits any addition or deletion of requirements regarding this RFP, as OTDA may deem appropriate, subject only to the bounds set forth in the Contract Reporter.

- 5) Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- 6) Prior to the bid opening, direct Offerors to submit proposal modifications addressing subsequent RFP amendments.
- 7) Change any of the scheduled dates.
- 8) Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent.
- 9) Disqualify any Offeror whose conduct and/or proposal fails to conform to the requirements of this RFP.
- 10) Prior to the opening of proposals, direct any Offeror or number of Offerors to submit proposal modifications addressing subsequent RFP amendments.
- 11) Accept all or part of a selected Offeror's proposal.
- 12) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Offerors. Eliminate any requirement(s) unmet by all Offerors upon notice to all parties submitting proposals.
- 13) Waive any requirements that are not material.
- 14) Change any of the scheduled dates, including start dates, stated herein upon notice to the Offerors.
- 15) Seek clarifications and revisions of proposals.
- 16) Request best and final offers from Offeror which submits a technically acceptable offer proposal.
- 17) Negotiate with any successful Offeror within the scope of this RFP in the best interests of the State.
- 18) Conduct contract negotiations with the next responsible Offeror should OTDA be unsuccessful in negotiating with the selected Offeror.
- 19) Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening.
- 20) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offeror's proposal

and/or to determine an Offeror's compliance with the requirements of the solicitation.

21) Select and award contract to one Offeror.

**J. Oral Presentations**

OTDA, at its discretion, may elect to have all Offerors provide oral presentations of their proposals. If oral presentations are held, the material presented in the oral presentation will supplement the proposal and may be used to re-score the proposal.

**K. Incurred Costs**

The State of New York shall not be liable for any costs incurred by an Offeror in the preparation and production of a proposal. Any work performed prior to the issuance of a fully executed contract or delivery of an order by OTDA to the Contractor will be done only to the degree that the Contractor voluntarily assumes the risk of nonpayment.

**L. Content of Proposals**

To be considered responsive, an Offeror must submit complete proposals which satisfy all the requirements stated in this RFP. Proposals which do not conform to the outline content and sequence as specified in Section IV of this RFP may be rejected as nonconforming.

**M. Period of Validity**

Each Offeror's Proposal must include a statement as to the period during which the provisions of the proposal will remain valid. A minimum of 180 calendar days from the Closing Date for Receipt of Proposals is required.

**N. Public Information Requirements**

All the proposals upon submission will become the property of OTDA. OTDA will have the right to disclose all or any part of a proposal to public inspection based on its determination of what disclosure will serve the public interest. Prospective Offerors are further advised that, except for trade secrets and certain personnel or proprietary information, all parts of proposals must ultimately be disclosed to those members of the general public making inquiry under the New York State Freedom of Information Law (NYS Public Officers Law, Article 6) although proposal contents cannot ordinarily be disclosed by OTDA prior to bid award. Should an Offeror wish to request exception from public access to information contained in its proposal, the Offeror must specifically identify the information and explain in detail why public access to the information would be harmful to the Offeror. Use of generic trade secret legends encompassing substantial portion of the proposal or simple assertions of trade secret interest without substantive

explanation of the basis therefore will be regarded as non-responsive requests for exception from public access and will not be considered by OTDA in the event of a Freedom of Information request for proposal information is received. OTDA's determination of whether the Proposer's claim of proprietary status of the designated information should be granted will be predicated in large measure upon the Proposer's written statement of the necessity for the exemption. Therefore, while not required, Proposers are advised to submit their written statements of the necessity for the claimed proprietary information exceptions at the time of the submission of their proposals. Information relating to Offeror's price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to Offeror.

**O. Notice of Award and Debriefing**

Subsequent to the evaluation of all offers received pursuant to this RFP, all Offerors will be notified of the acceptance or rejection of their proposals. News releases or any other disclosure relating to this contract award shall not be made by the successful Offeror or its agent without the explicit approval of OTDA.

OTDA will notify all unsuccessful Offerors, at or about the time of the contract award, of the fact that their proposals were not selected. Each unsuccessful Offeror may, at that time, request a debriefing by OTDA as to why its proposal was not selected for an award. The scope of such debriefings will ordinarily be limited to the strengths and weaknesses of the individual Offeror's proposal unless the contract resulting from this procurement has been approved by the Office of the State Comptroller.

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

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

**NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145 OTDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women owned business enterprises and the employment of minority group members and women in the performance of OTDA contracts.

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

### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, OTDA hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises ("MBE") participation and 15% for New York State certified women-owned business enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that OTDA may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how OTDA will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OTDA may withhold payment from the Contractor as liquidated damages.

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

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting their contract manager. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

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

A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OTDA.

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

B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OTDA, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OTDA to be inadequate, OTDA shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

OTDA may disqualify a Bidder as being non-responsive under the following circumstances:

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

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

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the OTDA, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit a Minority and Women Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form OTDA 4970, to OTDA with their bid or proposal.

For purposes of this solicitation, OTDA hereby establishes an Equal Employment Opportunity participation goal of 10-20%. To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Form OTDA 4934 - Staffing Plan) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, on a quarterly basis or upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting their contract manager.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim

status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

**Q. Prime Contractor's Responsibility**

In the event the selected Offeror's proposal includes services provided by another firm, it shall be mandatory for the selected Offeror to assume full responsibility for the delivery for such items offered in the proposal. Should the selected Offeror seek external financing, the State reserves the right to approve the assignment of the contract for financing purposes. In any event, OTDA will contract only with an Offeror, not the Offeror's financing institution or subcontractors. OTDA shall consider the selected Offeror to be the sole responsible contact with regard to all provisions of the contract resulting from this RFP.

**R. Contract Execution**

Awards are not final and the resultant contract is not considered executed and binding until approved by the Attorney General and the Office of the State Comptroller as required by New York State Law. The Office of the State Comptroller will not approve the resultant contract until it has received notice from the State's Division of the Budget that sufficient appropriated funds exist for payment.

**S. Anti-Kickback Act**

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).

**T. Procedure for Handling Protest/Appeals of Bid Specifications and Proposed Awards**

**1) Formal Written Protests**

Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any Offeror or prospective Offeror who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to OTDA and request administrative relief concerning such action ("formal protest"). A formal protest must be submitted in writing to OTDA, by ground mail, except where alternate arrangements have been made, to Director of OTDA Bureau of Contract Management (BCM), 40 North Pearl Street, 12th Floor, Albany, NY 12243. A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OTDA specification or purchasing decision; a description of all remedies or relief requested; and copies of all applicable supporting documentation.

## **2) Deadline for Submission of Formal Protests**

OTDA must receive formal protests concerning errors, omissions or prejudice, including patently obvious errors in the bid specifications or documents, at least ten (10) calendar days before the date set in the solicitation for receipt of bids. OTDA must receive formal protests concerning a pending contract award within seven (7) calendar days after the protesting party ("protester") knows or should have known of the facts which form the basis of the protest.

## **3) Review and Final Determination of Protests**

Protests will be resolved through written correspondence. However, either the protester or OTDA may request a meeting to discuss a formal protest, at which time the participants may present their concerns. Where further formal resolution is required, the Director of BCM shall designate an OTDA employee not involved in the procurement action ("designee") to determine and undertake the initial resolution or settlement of any protest. The designee will conduct a review of the records involved in the protest, and provide a memorandum to the Director of BCM summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Director of BCM shall: (a) evaluate the designee's findings and recommendations, (b) review the materials presented by the protesting party and/or any materials required of or submitted by other Offerors, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the protest. A copy of the protest decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the General Counsel of OTDA or his/her designee(s) shall be sent to the protester or its agent within forty-five (45) calendar days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to the Office of the State Comptroller (OSC) upon issue.

## **4) Appeals**

The protest decision shall be deemed a final and conclusive agency decision unless a written notice of appeal is received no more than fifteen (15) calendar days after the date the decision is received by the Offeror. Such notice of appeal must be filed with the General Counsel of OTDA. The General Counsel of OTDA or his/her designee(s) shall hear and make a final decision on all appeals. A formal protest appeal may not introduce new facts unless responding to facts or issues unknown to the Offeror prior to the final protest decision.

**5) Reservation of Rights and Responsibilities of OTDA**

OTDA reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and OTDA. If OTDA determines that there are compelling circumstances, including the need to proceed immediately with the contract award in the best interest of the State, then these protest procedures may be suspended and such decision shall be documented in the procurement record. OTDA will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

**6) Procurement Activity Prior to Final Protest Activity**

Receipt of a formal bid protest shall not stay action on procurement unless otherwise determined by OTDA. If a formal protest or appeal is received by OTDA on a recommended award prior to the underlying contract being forwarded to the Office of the State Comptroller (OSC), notice of receipt of the protest and appeal will be included in the procurement record forwarded to the OSC. If a final protest decision or final decision on appeal has been reached prior to transmittal to the OSC, a copy of the final decision will be included in the procurement record and forwarded with the recommendation for award. If a final protest decision is made after the transmittal of a bid package to the OSC, but prior to the OSC approval under SFL§112, a copy of the final OTDA decision will be forwarded to OSC when issued, along with a letter either: a) confirming the original OTDA recommendation for award and supporting the request for final SFL§112 approval, b) modifying the proposed award recommendation in part and supporting a request for final SFL§112 approval as modified; or c) withdrawing the original award recommendation.

**7) Record Retention of Bid Protests**

All records related to formal Offeror protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.

## SECTION II SCOPE OF WORK

### Contract Requirements and Performance Standards

#### A. Definitions

*Translation* shall mean the act or process of converting written words from one language into their complete, accurate, and intended meaning in another language.

*Source Language* shall mean the language in which a document is written prior to translation.

*Target Language* shall mean the language into which a document is translated from the source language.

*Native Speaker* shall mean a person who has a proficiency equivalent to that of someone who has learned and been educated in a given language from an early age and who has full mastery of that language, including all norms of syntax, grammar, orthography and usage.

*Dialect* shall mean regional or class variations of a given language.

*Interpretation* shall mean oral translation for parties conversing in different languages.

*Simultaneous Interpretation* shall mean real time interpreting. The interpreter speaks at the same time as the speaker, usually in a conference or meeting. The interpreter listens to one language and speaks in another. The voices overlap as they are speaking at the same time.

*Consecutive Interpretation* shall mean that the interpreter is physically present in the room and verbally translates short utterances, normally a sentence or two at a time. Such interpretation is usually bi-directional between two languages.

*Sight Translation* shall mean reading a document during an interpretation session and providing an on-the-spot oral translation of the document.

*Over-the-phone interpretation* normally shall mean consecutive, but in some cases, if the technology is available, it may be simultaneous interpretation.

*Narration* shall mean that while being recorded, one reads aloud a script written in a particular language.

*Editing/Proofreading* shall mean the act or process of reviewing a translated document and of making revisions and/or corrections to the translated copy in order to bring the translation into better agreement with the meaning of the English original.

*Desktop Publishing* shall mean the act or process of designing, re-creating, or formatting electronic documents using a computerized software package to prepare a document for printing or electronic display.

## **B. Languages**

The contractor shall provide language professionals qualified to perform translation and interpretation (into and from English). The required languages will include, but not be limited to, the following (any additional languages will be part of group B):

**GROUP A** - Albanian, Arabic, Bengali, Bosnian, Chinese (Mandarin, Cantonese, Fuzhou dialect), Farsi, French, German, Haitian Creole, Hindi, Italian, Korean, Polish, Portuguese, Russian, Spanish, Ukrainian, Urdu, and Vietnamese.

**GROUP B** - Amharic, Bulgarian, Byelorussian, Burmese, Croatian, Czech, Dzongkha, Greek, Gujarati, Hebrew, Hmong, Hungarian, Japanese, Karen, Khmer, Kunama, Kurdish, Maay-Maay, Pashto, Punjabi, Rundi (Kirundi), Rwanda (Kinyarwanda), Somali, Slovak, Swahili, Tagalog, Thai, Tigrinya (Tigringna), Turkish, Wolof, and Yiddish.

**Offerors must be able to provide services in all of the listed languages and may propose a two tiered pricing methodology for these two groups.**

## **C. Required Services**

This RFP is soliciting proposals from qualified offerors who can show that they have been in the business for a minimum of five years in providing a variety of primary and secondary language services. All contract interactions will be between the contractor and OTDA, which is responsible for coordinating translation for a number of other state agencies, and offices, ensuring the consistency and accuracy of translated documents across these entities.

The **Primary Services** are:

- Translation of written documents (including forms, notices, public information materials, correspondence, web pages, etc.); and
- Desktop publishing of translated materials in a variety of electronic formats.

The **Secondary Services** are:

- Editing/proofreading materials previously translated;
- Interpretation, either on-site in various locations across the state or via telephone;
- Narration in languages other than English for public information materials; and
- Comparison/evaluation of translated documents.

The persons designated by the contractor must possess sufficient education, proficiency level of a native speaker of that language, training, skill and experience to provide the services requested. Those persons must also possess a command of the English language, both written and oral. In addition, a familiarity with U.S. culture is required to understand context and meaning of common terms and language usage.

#### **D. Translation Services (Primary Service)**

At the request of OTDA, the contractor shall provide translations of source texts, with the meaning and intent, and, to the extent possible, the format and layout of the original source text retained. Preferably, a single translator shall be used to complete each document to ensure continuity and consistency in terminology. The contractor shall translate documents in a culturally sensitive manner and at the same reading level as the source material. Unless OTDA requests a translation be written in a specific regional or class dialect, documents must always be translated into standard language.

Accuracy, completeness, consistency, and cultural appropriateness are critical in the published work. The contractor must document how accuracy will be ensured and a quality product delivered. In addition, the contractor shall provide comprehensive support, including project management, consultation, and deliverables. Translated documents shall be delivered in the electronic format specified by OTDA. (See Section E below.)

Services must be provided within the timeframe specified by OTDA at the time of assignment.

The majority of the materials translated are in the area of health and human services, and law, however, content may occasionally be of a highly scientific and/or technical nature. The contractor must be equipped to respond to any request. The types of documents typically translated include, but are not limited to:

- forms, application materials, notices
- manuals, informational booklets
- pamphlets, flyers, posters, signs
- audio scripts
- handwritten correspondence, client-directed correspondence
- court or other legal documents
- press releases

#### **E. Desktop Publishing Services and Other Technical Requirements (Primary Service)**

The contractor must be equipped to deal with all the most commonly used electronic formats and must be able to deliver final products that mirror the layout and form of the English originals and/or other language originals. OTDA may require the contractor to work with either PC or a Mac computer on any given

project. The contractor must have the latest versions, and be competent in the use, of a number of word processing and design software programs, including, but not limited to: Word, Excel, PowerPoint, Publisher, Quark Express, Photoshop, InDesign, Adobe Acrobat and Illustrator, etc. The contractor, and their translators who work on OTDA documents, **must** also use a translation memory software such as MemoQ and be willing and able to deliver to OTDA, upon request, any files related to OTDA-assigned projects, including "clean" and "unclean" files, specialized glossaries and translation memory files in Translation Memory eXchange (.TMX) format. Files translated by the contractor must be maintained and kept by the contractor for the term of the contract. Contractors must be able to handle the translation and production of web-ready formats, such as HTML files.

#### **F. Editing/Proofreading Services (Secondary Service)**

OTDA may call on the contractor to proofread and/or edit materials previously translated elsewhere. The same quality standards that apply to written translation services shall apply to editing/proofreading services.

#### **G. Interpretation Services (Secondary Service)**

The contractor shall provide support services to OTDA on occasion by providing oral interpretation services requested by OTDA. Interpreter services will be provided either over the phone, or at on-site at meetings, conferences, seminars, litigation proceedings, briefings, trainings, etc.

Interpreter services shall be performed by professional and experienced interpreters that possess a high level of proficiency in the language pair, meaning the interpreter can effectively participate in formal and informal conversations on practical, social and professional topics. Interpreters must adhere to professional norms and ethical standards and must maintain a proper level of accuracy and professional neutrality in the interpretation process. The interpreter must maintain professional objectivity and non-judgmental demeanor. Maturity and emotional stability is required. The interpreter must also be proficient in the type of interpretation required by OTDA for each occasion (simultaneous, consecutive, sight translation).

In some instances, oral interpretation services may need to be performed "on-site" at a location within New York State. If interpreters are required to travel to fulfill the interpretation service request, they will be reimbursed for their travel and per diem costs (over and above the cost of the interpretation service) at the State rate prevailing at the time the services are rendered. For current per diem reimbursement rates, visit the GSA Domestic Per Diem Page (currently available at <http://www.gsa.gov/portal/category/21287>), as such rates may be amended from time to time.

## **H. Narration Services (Secondary Service)**

OTDA may request native speakers of languages other than English to provide narration for recorded public information materials, educational videos, etc. Narration services may be performed “on-site” at a location within New York State. If narrators are required to travel to fulfill the narration request, they will be reimbursed for their travel and per diem costs (over and above the cost of the narration service) at the State rate prevailing at the time the services are rendered.

## **I. Comparison/Evaluation of Translated Documents**

OTDA may request that the contractor review and provide a written analysis comparing two or more translations of a given text. The analysis will compare the translations weighing criteria such as: completeness, accuracy, syntax, grammar, orthography, and style.

## **J. Hours of Operation**

It is anticipated that the contractor be available to OTDA, in all but occasional circumstances, during regular business hours: i.e., 8:30 am to 5:00 pm Eastern Standard Time, Monday through Friday. However, the contractor must have the capacity to handle urgent requests after hours and on holidays if needed.

## **K. Guaranteed Minimum**

OTDA is not obligated to request a guaranteed minimum total number of words for translation services or hours for interpretation services over the course of the contract resulting from this RFP.

OTDA is not obligated to reimburse the Contractor a minimum amount for any of the services required in this RFP.

## **L. Performance Standards**

The Contractor must ensure that the performance standards set forth throughout this RFP are met. The Contractor must assure that the translators and interpreters carrying out work under this RFP meet OTDA’s professional standards. Translations must be submitted on time and be accurate, complete, consistent, and culturally appropriate. Failure to meet these standards will result in OTDA withholding payments until such time as the problem is remedied to OTDA’s satisfaction. OTDA also reserves the right to acquire the services from another vendor if the contractor’s performance does not meet the standards listed in this RFP, or for operational needs.

The translated materials must convey the meaning of the original text accurately and completely, using standard and culturally appropriate language. Norms of cultural sensitivity must be observed. OTDA reserves the right to randomly select any documents translated by the contractor, into any language or multiple

languages, and to perform a quality review on such documents, internally or externally. The results of those reviews shall be shared with the contractor and shall form the basis for any further steps to be agreed upon to remedy any deficiency in quality that may be determined by such reviews.

The interpretation must be efficient, accurate and professional. All interactions will be strictly in the role of interpreter and industry standards for ethical behavior must be adhered to.

**Please note that a significant portion of the written translation work requested is due within 24 hours or less and it is imperative that these timeframes are met.**

#### **M. Contractor Compensation**

Payment will be made by OTDA to the Contractor, for full and proper performance of the requirements referred to in this RFP. The contractor will submit vouchers for reimbursement on a monthly basis.

Payment shall be based on the rate structure and pricing schedules contained in Appendix B, Cost Proposal Bid Form in accordance with Section III C of this RFP.

## **SECTION III PROPOSAL REQUIREMENTS**

### **A. Overview**

Deviation from the rules prescribed herein may result in rejection of the proposal. Therefore, Offerors should become familiar with the format requirements.

Offerors must respond to each mandatory specification stated in this RFP and must list and clearly explain any exceptions.

### **B. General Proposal Appearance**

#### **1. Cover Sheet / Executive Summary**

The enclosed cover sheet (Appendix B-1a) must accompany the executive summary and be signed by an official authorized to sign for the Offeror stating that the proposal will remain valid for a minimum of 180 days from the Closing Date for Receipt of Proposals.

#### **2. Binding of Proposals**

Each Offeror must bind its proposal so that updated pages can be easily incorporated into the original proposal. The official name of the Offeror must appear on the outside front cover of each copy.

#### **3. Table of Contents**

Each proposal must incorporate a table of contents.

#### **4. Page Numbering**

Each page of the proposal must be numbered consecutively from the beginning of the proposal (Executive Summary) through all appended material. The proposal should not be numbered by section but consecutively throughout the whole proposal.

#### **5. Updating Proposals**

Updating will be accepted by OTDA as long as they are received prior to the Proposal Due Date defined in Section D.

#### **6. Updating Pages**

Upon written notification by the Proposer and agreement by OTDA, new or updated pages may be placed in the proposal. All new or corrected pages will show the date of the revision and indicate the portion of the page being changed.

## C. Proposal Content

Each Proposer's proposal must include **separate** responses to the following requirements. Such responses shall be placed in the Proposer's proposal in the same order as shown below. All four responses must demonstrate a strong command of the English language by proper use of grammar, spelling, and syntax. **Submit ONE original and three copies of EACH of the sections outlined above on SEPARATE CDs/thumb drives**; an acceptable format is Adobe PDF. The CD/thumb drive copies of EACH of the Sections described herein should be representative copies of the original documents, including signatures, and must be in one file on each CD/thumb drive.

### 1. Cover Sheet/Executive Summary

A completed cover sheet (Appendix B-1a) and Executive Summary (Appendix B-1b) that describes the Offeror's understanding of the requirements presented in the RFP, and how the Offeror can assist in accomplishing this effort.

### 2. Technical Proposal

This section consists of a narrative describing how the Offeror understands OTDA requirements identified in Sections I and III, and how the Offeror proposes to meet those requirements. The narrative must be no longer than 10 pages in length and must:

- State the specific services the applicant proposes to provide under this RFP and the manner in which those services will be provided. Include project management and overall contract management.
- Describe the general roles, responsibilities, and qualifications of both the staff and of freelance translators/interpreters that will be involved in providing these services.
- Describe how the applicant determines the qualifications and skills of freelance individuals to be involved in the work carried out under this RFP. Explain how staff will be monitored and how OTDA will be assured of the ongoing quality of the work done by staff and freelance translators.
- Attach a staffing chart including the percentage of time worked for each of the staff and how long each has worked for the organization.
- Attach an organizational chart.
- Describe the technological capacity of the organization and how that capacity will be used in support of the work to be carried out. Address all technology requirements set forth in this RFP (see Section II, E).
- State previous experience that qualifies the applicant to undertake the functions and activities required by this RFP, including the qualification of staff and/or freelance translators/interpreters to be used on this project.

### 3. Cost Proposal

The information requested will be held in confidence and will not be revealed to or discussed with competitors, except as required by Federal and State Law. Complete the Cost Proposal Bid Form found in Appendix B-3a.

All billing for on-site interpretation or narration services will be on the basis of actual hours worked, plus allowable travel and per diem costs, at the prevailing State rate. Minimum charge is one hour.

Complete the following forms, which are located in Appendices B and C, and include them in the cost proposal:

#### **Appendix B**

Cost proposal Bid Form

#### **Appendix C:**

1. Confidentiality Agreement
2. Non-Collusive Bidding Certification
3. MacBride Fair Employment Principals
4. Procurement Lobbying Act Offerer's Certification and Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j and k PLA
5. Non-Construction For-Profit Vendor Responsibility Questionnaire
6. Disclosure of Prior Non-Responsibility Determinations
7. Contractor Certification to Covered Agency ST-220-CA
8. Contractor Certification ST-220-TD
9. Appendix Z
10. MWBE/EEO Policy Statement
11. MWBE Subcontractor Utilization Plan
12. MWBE Subcontractors or Suppliers Letter of Intent to Participate
13. EEO Staffing Plan
14. MWBE Goal Requirement Certification of Good Faith Efforts
15. Subcontractor and Supplier Identification Form

- 16. M/WBE Contractor Participation Bid/Proposal
- 17. M/WBE Contractor Unavailability Certification
- 18. M/WBE Quarterly Compliance Report
- 19. M/WBE Subcontractor Request for Waiver Form

#### **4. Sample Translations**

Proposers are required to submit each sample translation in four languages:

- Arabic;
- Chinese (Simplified);
- Russian; and
- Spanish.

The sample consists of portions of two (2) distinct documents. Both documents must be translated into all four (4) languages. Proposers should provide a cover page for the sample proposals that identifies the name of the agency, but the pages with the sample translations should contain no identifying information. The Sample Translation Form pages are included in Appendix B.

Sample translations will be reviewed and graded, based on pre-established criteria; and the scores for all four (4) languages will be averaged. The average score will be included in the final total for the overall application.

#### **NOTES:**

**The scoring criteria allows up to 30 points for the translation samples.**

**Each sample will be scored separately by a translation specialist.**

**The total score for each language will be added together to obtain a total score for the translation sample section.**

**The total score for the translation sample section will then be divided by four to arrive at an average score.**

**In order to obtain a passing grade in this scoring section, the average score must equal or exceed 15 points, which is 50% of the total available points for this section.**

**Translations that do not receive a minimum of 15 points (50% of the total available points for this section) will be disqualified.**

## **SECTION IV EVALUATION CRITERIA**

### **A. Evaluation Background**

All proposals received and deemed “qualified” shall be subject to an evaluation by OTDA. OTDA desires to select the Offeror who will provide the “best value” taking into consideration the most beneficial combination of qualifications, services and costs from responsive and responsible Offerors.

The technical and cost components of each Offeror’s proposal will be evaluated by separate review committees. (The criteria against which each proposal will be evaluated are described in Section IV.B. below.) The sample translations will be evaluated by professional translators separately from the technical proposal, without the reviewers’ knowing the source of the translations. The score for this review will become part of the technical score. After the evaluation of the technical and cost components are completed, a composite score will be assigned to each proposal with the technical score weighted at 75 points and the cost score weighted at 25 points.

A selection committee will review the evaluations by the cost and technical committees and will make the contract selection. The basis for award will be the highest composite score.

### **B. Four-Part Evaluation Process Description**

#### **I. Prescreening**

Prior to the complete review and scoring process, a preliminary screening will be conducted to determine if any applications will be disqualified from review. The Offeror will be advised of disqualification by OTDA.

This disqualification will be based on any of the following criteria:

- \*Absence of documentation that the business is at least 5 years old.(DBA or incorporation papers to confirm),
- \*Absence of evidence of full time staff (check box, documented by staffing plan),
- \*Lack of capacity to use MemoQ (documented in work plan narrative describing use of MemoQ),
- \*Absence of evidence that “clean” and “unclean” translations would be provided to OTDA, or

\*OTDA also reserves the right to consider late submissions as non-responsive, and will disqualify for the lack of an M/WBE Subcontracting Utilization Plan.

Once the prescreening is complete, those applications not disqualified or deemed non-responsive will continue through the review and selection process as described below.

## II. Technical Proposal Evaluation

The technical evaluation committee will evaluate proposals as follows:

- a **Qualifications and Experience** – Proposals will be scored based on the qualifications and experience demonstrated by the agency as well as on the qualifications and experience of the personnel dedicated to this project. (10 points)
- b **Quality Control** – Proposals will be scored, based on the Offeror's stated quality assurance protocols and procedures, including the manner in which the qualifications of staff and freelance providers are evaluated and translation work is reviewed and edited as needed. (10 points)
- c **Technical Capacity** – Proposals will be scored based on the level of the firm's technical capacity, as described in Section II- E of this RFP. (12 points)
- d **Responsiveness of Proposed Services** – Proposals will be scored based on the demonstrated understanding of OTDA's requirements and the applicant's ability to successfully accomplish activities necessary to achieve the deliverables referenced in Section II of this RFP. The applicant must be able to provide all primary and secondary services in all the languages specified in Section II. Projected volumes are based on past history and are for evaluation purposes only. It is likely that they will prove fairly accurate but there is no guarantee. Applicants must demonstrate the capacity to increase volume from these projections should the need arise.(13 points)
- e **Sample Translations** – The sample translations, referenced in Section IV of this RFP, will be scored based on overall quality, accuracy and technical proficiency. Translations must completely and accurately convey the meaning of the English texts, while adhering to all grammatical, orthographic, and stylistic standards of the target language. (30 points)

The above technical evaluation will be summarized in the form of a report and presented to the Selection Committee for their use in selecting the winning Offeror.

## III. Cost Proposal Evaluation

The cost committee will evaluate each proposal as follows:

- a The prices provided by the Offeror on the Cost Proposal Form (Appendix B-3a) for primary and secondary services.
- b Word count will be based on Source Language.
- c The Cost Proposals will be ranked with the lowest bid awarded the maximum total of 25 points. The remaining bids will be assigned scores based on the following formula:

Cost points awarded = 25 potential points x (Lowest Cost Proposal / Cost of Proposal Being Evaluated).

The cost evaluation will be summarized in a report presented to the Selection Committee for their use in selecting the Contractor.

#### **IV. Contractor Selection**

The selection committee is responsible for assuring that the requirements of the review process are adhered to in a fair manner. Offerors' scores from the technical and cost evaluations will be combined to arrive at a total combined score. The bids will be ranked based on the total combined score with award made to that Offeror with highest total combined score. If two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. The basis for determining the award shall be documented in the procurement record.

OTDA reserves the right to reject any and all offers. If two or more Offerors receive the same combined score, the Offeror with the highest financial score will be selected.

## **SECTION V CONTRACTUAL PROVISIONS**

### **A. General**

Upon selection, the successful Offeror will be invited to enter into an Agreement with the Office of Temporary and Disability Assistance (hereinafter referred to as "the Agreement"). The contents of the selected Offeror's proposal, together with this RFP and any formal questions and answers passed during the bidding process, will be made a part of the final Agreement. Should the selected Offeror fail to enter into an Agreement with OTDA within one month of notification of the award, OTDA reserves the right to select another firm and commence negotiations.

### **B. Agreement Duration and Amendment**

The Agreement shall commence upon approval of the Offices of the Attorney General and the State Comptroller and shall continue for a period of 3 years subject to the acceptance criteria and the termination provisions contained herein. It shall be understood that OTDA, at its discretion, may extend the Agreement for one two-year period upon written notice to the Contractor sixty (60) days prior to the end of the contract period.

Contract extensions are not subject to rate increases. Pricing submitted on the Cost Proposal Bid Form (Appendix B-3a) will be effective for the term of the contract, including any extensions.

OTDA shall have the right to re-negotiate the terms and conditions of the Agreement in the event applicable New York State (State) or Federal policy, rules, regulations and guidelines are altered from those existing at the time of the Agreement in order to be in continuous compliance therewith. It shall be understood that, in the event OTDA and the Contractor are unable to mutually agree to a set of terms and conditions through re-negotiations, the terms and conditions required to continue the Agreement in compliance with revised State or Federal policy, rules, regulations and guidelines shall be decided by the Commissioner of the Office of Temporary and Disability Assistance or his/her duly authorized representative(s) or designee(s), in accordance with Disputes, Section V.L. of this RFP.

The Agreement is subject to amendment, other than an extension amendment, only upon mutual consent of the parties, reduced to writing and approved by the Comptroller of the State of New York.

### **C. Executory Provision**

The State Finance Law of the State of New York, Section 112, requires that any contract made by a State department which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The parties recognize that the Agreement is not wholly executed until and unless approved by the Comptroller of the State of New York.

The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York. Additionally, no cost will be incurred by OTDA for the Contractor's participation in any pre-contract award activity.

The Agreement and the Appendices attached to the Agreement constitute the entire agreement between the parties with respect to the subject matter; all other prior agreements, representations, statements, negotiations and undertakings are superseded hereby. The terms, provisions, representations and warranties contained in the Agreement shall survive performance hereunder. It is understood that unless the context clearly indicates otherwise, all references herein to the Agreement shall be deemed to include the Appendices attached hereto.

OTDA and the Contractor acknowledge and agree that time is of the essence in the Contractor's performance hereunder, when and if it is specifically stipulated.

### **D. Standard Contract Provisions**

Standard Clauses for New York State Contracts (January 2014), attached hereto as Appendix A, is hereby fully incorporated into the Agreement.

The parties agree that the Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. The Contractor shall be required to bring any legal proceeding against OTDA arising from the Agreement in New York State courts.

Should any provision of the Agreement be declared or found to be illegal, unenforceable, ineffective, or void, then each party shall be relieved of any obligation arising from such provision; the balance of the Agreement, if capable of performance, shall remain in full force and effect.

No term or provision of the Agreement shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under the Agreement shall not constitute or consent to, a waiver of, or excuse of any other, different or subsequent breach.

## **E. Assurances**

The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.

The Contractor warrants and affirms that the terms of the Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under the Agreement.

Contractor certifies that all information provided to OTDA with respect to the New York State Procurement Lobbying Act is complete, true and accurate.

## **F. Contractor Requirements**

The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under the Agreement. Specifically, the Contractor shall:

- Provide for normal day-to-day communications through the Contractor's project liaison, who shall be responsible for maintaining contact and cooperation with OTDA program manager as necessary for proper performance of all contractual responsibilities.
- Provide the quality language services required by OTDA, within the timeframes mutually agreed upon at the time of each assignment. Failure of the Contractor to comply with this requirement may be deemed a material breach of the Agreement and may result in immediate termination of the Agreement.
- Provide a replacement linguist of equal or better qualifications, in the event that the professionalism or skill level of any linguist is deemed unacceptable by OTDA, in its sole discretion. Notify OTDA in writing of any changes in the persons designated to bind the Contractor.
- Notify OTDA promptly of each problem that threatens the successful completion of the project, including a recommendation for resolution whenever possible.
- Perform in accordance with Section II. Scope of Work of this RFP.

- Recognize and agree that any and all work performed outside the scope of the Agreement shall be deemed by OTDA to be gratuitous and not subject to charge by the Contractor.

### **G. Non-assignability**

Full responsibility for the delivery of services provided by another firm or manufacturer, which is a subcontractor or supplier to the Contractor under the Agreement, shall be assumed by the Contractor. Should the Contractor seek external financing, OTDA reserves the right to approve the assignment of the contract for financing purposes. OTDA shall consider the prime contractor to be sole contact with regard to all provisions of the Agreement.

Nothing contained in the Agreement, expressed or implied, is intended to confer upon any person, corporation or other entity, other than the parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.

It shall be understood that the Contractor is an independent contractor, and the Contractor, its agents, officers and employees, in the performance of the Agreement, shall act in an independent capacity and not as officers or employees of OTDA.

Subcontracting or assignment of the Contractor's duties and responsibilities will not be allowed without prior written approval of OTDA as specified in this RFP. The Contractor shall furnish to OTDA the following:

- A description of the supplies or services to be provided under the proposed subcontract;
- Identification of the proposal subcontractor, including whether the subcontractor is an MBE and/or WBE if so if they are a state Certified M/WBE, or in any other protected class status; and
- Any other reasonable information or documentation requested by OTDA.

### **H. Charges**

OTDA agrees to process for payment the Contractor's monthly invoicing based on the rates set forth in the Contractor's proposal for actual billable services provided to OTDA.

Monthly invoicing will be submitted in arrears by the Contractor. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by the laws of the State. The Business Services Center (BSC) will process contract payments on behalf of the OTDA. To ensure the timely processing and payment of contract vouchers by the BSC, the following instructions must be met:

Vouchers must be submitted via one of the following methods:

- **Preferred Method:** Email a .pdf copy of the signed voucher to the BSC at: [AccountsPayable@ogs.ny.gov](mailto:AccountsPayable@ogs.ny.gov) with a subject field as follows:

Subject: **Unit ID: TDA01 C0XXXX (Contract number)**

(Note: **do not** send a paper copy in addition to your emailed voucher.)

- **Alternate Method:** Mail vouchers to BSC at the following U.S. postal address:

NYS Office of Temporary and Disability Assistance  
**Unit ID: TDA01**  
c/o OGS BSC Accounts Payable  
Building 5, 5<sup>th</sup> Floor  
Albany, NY 12226-1900

**Include all Required Information on Vouchers – your voucher should include:**

- Your organization’s SFS Vendor Number
- Invoice number and date
- Unit ID# **TDA01**
- Name of the NYS Agency to which you provided the services: **NYS OTDA**
- Contract Number
- The period of service for which the claim is made or reference to deliverable completed

Vouchers that do not comply with the above guidelines will be returned to the vendor for corrections. **Do Not** include contractually required supporting documentation with the voucher submitted to the Business Service Center

In order for OTDA to provide BSC with approval to process a voucher for payment, send the OTDA Program Manager identified below a copy of the voucher sent to the BSC and all contractually required supporting documentation, such as reports, receipts, timecards and other schedules.

**Receipt of any required supporting documentation is required to allow timely payment of vouchers. Lack of submission of any contractually required supporting documentation will “stop the clock” in determining the allowed 30 day period for voucher payment.**

**The Contractor will submit a copy of the Data Entry service invoices and the supporting documents required by OTDA to the following address:**

NYS Office of Temporary and Disability Assistance  
Bureau of Refugee and Immigrant Assistance  
40 North Pearl Street, 10<sup>th</sup> Floor  
Attn: Ruchika Jaggi  
Albany, New York 12243

The State shall not be liable for the payment of any taxes, under this Agreement however designated, levied or imposed. No person, firm, or corporation is exempt from paying the State Truck Mileage and Unemployment Insurances Taxes and other Federal, State, and local taxes to which the Contractor is subject.

The State represents that the Contractor is not liable for the payment of any transfer taxes including, but not limited to, sales taxes upon goods or services purchased for or provided for the State. For purposes of tax free transactions under the Internal Revenue Code, the New York State Registration Number is 14740026K.

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. 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.

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 W-9 can be found at the OSC's website: <http://www.osc.state.ny.us/epay>

It shall be further understood that OTDA shall not be liable for any travel/per diem expenditures the Contractor may incur that are not included in the proposal rate except for mandated travel ( by OTDA) reimbursable at the prevailing State travel rates for the Professional, Scientific and Technical bargaining unit.

The Contractor shall also submit detailed backup for its reimbursement of allowable travel expenses. It shall be understood that OTDA will be liable only for travel expressly required and prior approved by OTDA's contract manager.

The Contractor grants the option to extend the terms and conditions of the Agreement to any other State agency in New York as well as local Social Service Districts in New York.

The State of New York has migrated to the Statewide Financial System (SFS). The SFS includes a vendor self-service portal that allow vendors to readily access information on payments. If you have not already signed up for this convenient and helpful tool, information on doing so is available at: [http://www.osc.state.ny.us/vendor\\_management/index.htm](http://www.osc.state.ny.us/vendor_management/index.htm).

### **Electronic Payments**

All vendors that have not already done so should consider signing up for Electronic Payments. Electronic payments ensure that once your invoice is processed by the BSC, funds are transferred to your account quickly and securely. For more information on electronic payments, visit the New York State Comptroller's website at: <http://www.osc.state.ny.us/epay/faq.htm#required>.

## **I. Public Officers' Law**

The Contractor agrees not to engage in any conduct which the Contractor knows would violate or would assist an employee of OTDA in violating Sections 73 and 74 of the New York State Public Officers' Law.

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 days after the Contractor notifies OTDA of such finding or OTDA notifies the Contractor that it has become aware of such finding.

Any termination of the contract by OTDA, per Section V.S. of this RFP, 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.

## **J. Rights of OTDA**

### **LICENSE/OWNERSHIP/TITLE OF PRODUCTS FURNISHED**

Contractor warrants full ownership, clear title or perpetual license rights to any and all tangible or intangible products furnished, used or modified by the Contractor or third parties on behalf of OTDA and Contractor shall be solely liable for the full cost of acquisition associated therewith. Contractor shall provide OTDA with appropriate documentation indicating the vesting of such rights in

Contractor, and/or the right to transfer or transfer of such rights, as requested by OTDA. The cost of obtaining such rights for continued perpetual use of such product(s) by OTDA upon Project completion shall be deemed to have been included by Contractor in its hourly rates. Such products include, without limitation, all hardware, commodities, custom programming or third party software, training modules, printed materials, source codes, or any other products or services furnished pursuant to a project award. The Contractor fully indemnifies OTDA for any loss, damages or actions arising from a breach of said warranty without limitation.

#### **TITLE TO PROPRIETARY INFORMATION FURNISHED**

Any and all proprietary written documentation, information, object or source code and software provided to OTDA shall remain the property of the Contractor. In such event, Contractor hereby grants State and its Authorized Users a personal, non-transferable and non-exclusive license to use all such documentation, technical information, confidential business information and all software and related documentation, in whatever form recorded (all hereinafter designated "property"), which are furnished to OTDA for testing purposes only.

#### **OWNERSHIP/TITLE TO CUSTOM PRODUCTS/PROGRAMMING DELIVERABLES**

All custom products, including custom programming or any other deliverables, including, without limitation: software source code, object code, user or training manuals, programming, reports, and any other materials, preliminary, final and otherwise, prepared, written or developed for OTDA in the performance of services shall be furnished to and shall become the sole and exclusive property of OTDA and shall be treated as confidential with the reciprocal proprietary obligations in Section V. J. of this RFP, imposed upon the Contractor, its subcontractors and partners. OTDA retains ownership rights to modifications developed for OTDA pursuant to project award, including modifications made or incorporating third party proprietary components, or components transferred under perpetual license to OTDA pursuant to Section V.T. of this RFP. In all such events, Contractor shall be deemed to have granted or secured a perpetual license to OTDA for Contractor or third party product being furnished and modified. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the custom products, including custom programming or any other Project Award deliverables, when completed and delivered to OTDA are protected against unauthorized copying, reproduction and marketing by or through the Contractor.

## **K. Document Incorporation and Order of Precedence**

The Agreement resulting from this procurement will consist of:

- The body of the Agreement (i.e., that portion preceding the signatures of the parties in execution);
- The Exhibits attached to the Agreement body; and
- The Appendices attached to or incorporated by reference in the Agreement body.

Conflicts between these documents shall be resolved in the following order of precedence:

1. Appendices A through D:
  - Appendix A - Standard Clauses for NYS Contracts
  - Appendix B – Proposal Forms
  - Appendix C – Required Forms
  - Appendix D – NYS Contractor Insurance Requirements
2. This RFP , including the Questions and Answers; and
3. The Proposal (Cover Sheet, Executive Summary, Technical Proposal, Cost Proposal, including any clarifications thereto.

## **L. Disputes**

This disputes provision shall apply to any dispute of the parties relating to performance under the Agreement except liquidated damages. Any dispute concerning any question of fact or law arising under the Agreement, which is not disposed of, by mutual agreement of the parties shall be initially decided by the adjudicator designee (hereinafter “Designee”) of the Director the Bureau of Contract Management (hereinafter “Director”). The Director shall also designate the person who will present OTDA’s position in the dispute (hereinafter “Advocate”).

Within thirty days of such designations, the Advocate will state and brief the Designee on OTDA’s position on the dispute. The Contractor will then have thirty days to make its submission; the submission may include any material the Contractor deems relevant to the dispute. All documents may be sent either by surface mail, by carrier, or electronically.

The Advocate will have a right to submit a response to the Contractor’s submission. The response must be limited to the material rebutting evidence and

arguments raised by the Contractor in its most recent submission and must be submitted within fifteen days of receipt of the Contractor's submission. If the Advocate submits a response, the Contractor will have thirty days to prepare and submit a response to the Advocate's rebuttal submission; this response shall consist wholly of material which responds to evidence or arguments raised in the Advocate's rebuttal. Any actual submission by the Advocate shall generate a right of rebuttal by the Contractor.

The Advocate and the Contractor will be informed in writing by the Designee when the submission process is deemed complete. The Designee shall have the right to take administrative notice of relevant matters of law and fact as he believes appropriate, in accordance with general principles of Administrative Law.

The Designee will prepare and forward the recommended written decision to the Director. The Director shall: (a) evaluate the Designee's findings and recommendations, (b) review the materials presented by the Contractor and the Advocate, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the dispute either ratifying, modifying, or reversing the recommended decision. The Director's decision will be rendered within 45 days of the date when the submission process is deemed complete.

A copy of the Director's decision stating the reason(s) upon which it is based and informing the Contractor of the right to appeal an unfavorable decision to the General Counsel of OTDA, will be issued to both parties. The dispute decision shall be deemed a final and conclusive agency decision unless a written notice of appeal is received no more than 15 calendar days after the date the decision is received by the Contractor. Such notice of appeal must be filed with the General Counsel of OTDA.

The General Counsel of OTDA or his/her designee(s) shall hear and make a final decision on all appeals. A formal dispute appeal may not introduce new facts unless responding to facts or issues unknown to the Contractor prior to the final dispute decision. The General Counsel's decision will be rendered within 30 calendar days of the date that the notice of appeal is received by the General Counsel.

If the Contractor is unwilling to accept the decision rendered through this procedure or if a decision is not made within 90 calendar days after the record is deemed final, it may then pursue its normal legal remedies de novo, but it is specifically agreed that any and all reports rendered through this procedure shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Agreement by the State shall govern operation there under and the Contractor and OTDA shall continue to perform under the Contract.

The Director and General Counsel shall have the power to change any or all of their designees or otherwise alter the rules of proceeding upon written notice to the Contractor.

The Contractor shall be required to bring all legal proceedings relating to this Agreement against OTDA or the State of New York in the Supreme Court of the State of New York in the County of Albany or the New York State Court of Claims.

**M. Indemnification for Damages**

In performance of its duties pursuant to this Agreement, Contractor shall fully indemnify and save harmless OTDA from suits, actions, damages and costs of every name and description relating to personal injury, damage to real or personal tangible or intangible property, or any other claim for direct damages arising as a result of negligent acts or omissions or willful misconduct of Contractor, its officers, employees, subcontractors, partners or agents.

OTDA may, in addition to other remedies available to them at law, retain such monies from amounts due Contractor, or may proceed against any performance and payment bond under the Contract award Definition/Specifications, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them; provided, however, that the Contractor shall not indemnify to the extent that any claim, loss or damage arising hereunder is caused by the negligent act or failure to act of OTDA.

As a condition to the foregoing indemnity obligations under this Article the State shall provide Contractor with prompt notice of any claims for which indemnification may be sought hereunder, shall reasonably co-operate with Contractor in connection with any such claim and, shall be responsible for its compliance with any laws and regulations associated with any deliverables supplied by Contractor hereunder.

**N. Force Majeure**

Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, flood, the elements, acts or omissions of public utilities, or any other causes not reasonably foreseeable or beyond the control of a party. The parties are required to use best efforts to eliminate or minimize the effect of such events during performance of this Agreement.

**O. Record Retention**

The Contractor during the course of this Agreement and for a period of six (6) years following its termination, or final payment hereunder, whichever occurs later, agrees to maintain and make available for audit by duly authorized representatives of OTDA, the individual states, and the United States Government all records or documentation arising hereunder or relating hereto.

Records involving matters in litigation or audit must be kept for a period of not less than three (3) years following the termination of the litigation or audit. Electronic copies of any Agreement-related documents may be substituted for the originals with the prior written approval of OTDA, provided that the copy procedures are accepted by OTDA as reliable and are supported by an adequate retrieval system.

The Contractor shall be responsible for assuring that the provisions of this Article shall apply to any subcontract related to performance under this Agreement.

**P. Disclosure and Audit of Agreement Records**

The responsible New York State agencies, United States Department of Agriculture, Food and Nutrition Service (USDA-FNS), United States Health and Human Services, or any other governmental agency authorized by law, reserve the right to inspect, review, investigate or audit all parts of any services provided herein by the Contractor's or any subcontractors' or vendors' facilities engaged by the prime contractor in performing services in this contract. In such capacity, OTDA or its representative(s) must have access to facilities, records, reports, personnel and other appropriate aspects of services furnished by the Contractor, in accordance with the requirements of the New York State Public Officers Law except for proprietary information for which the disclosure of which would cause substantial injury to the competitive position of the Contractor's enterprise.

All records and information obtained by OTDA pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the State solely for the purpose of performing this Agreement in any manner, at its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such use of such records or information.

Contractor hereby agrees that all documents furnished by Contractor shall be subject to public disclosure by OTDA in the normal course of business in accordance with the requirements of the Public Officers Law, Article 6, except for proprietary information the disclosure of which would cause substantial injury to the competitive position of Contractor enterprise. Information relating to Contractor price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to Contractor. Contractor may otherwise preserve proprietary rights as to confidential or business process information in accordance with procedures established under applicable State laws, provided that (i) Contractor shall inform State prior to or with submission of its bid, in writing, that such records are being

furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor shall state the reasons with specificity why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by OTDA.

The Contractor shall promptly notify OTDA of any request by anyone for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or Contractor's regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, shall not require notification to OTDA provided that rights of confidentiality or proprietary interests are preserved.

**Q. Confidentiality of Information**

The Contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information relating to recipients and providers, which is obtained by it through its performance under the Agreement, as confidential information to the extent required by the Laws of the State of New York and of the United States and any regulations promulgated there under. The Contractor must be in compliance with NYS Cyber Security Policy. A copy of this policy may be obtained on the following website: <http://www.cscic.state.ny.us/lib/policies/>

Individually identifiable information relating to any eligible recipient or provider shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees or subcontractors, without the prior written approval of OTDA.

“Individual identifiable information” shall include Protected Health Information (“PHI”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations, including those at 45 CFR Parts 160 and 164. For purposes of this Agreement, “PHI” means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

The use of information obtained by the Contractor in the performance of its duties under the Agreement shall be limited to purposes directly connected with such duties.

The Contractor shall promptly advise OTDA of all requests made to Contractor for information related to this RFP.

The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or subcontractors contains a provision, which strictly conforms to the provisions of this subsection.

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). 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.

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

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

**NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145 OTDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women owned business enterprises and the employment of minority group members and women in the performance of OTDA contracts.

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

## **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, OTDA hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises (“MBE”) participation and 15% for New York State certified women-owned business enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that OTDA may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how OTDA will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OTDA may withhold payment from the Contractor as liquidated damages.

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

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting their contract manager. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

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

C. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OTDA.

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

D. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OTDA, [address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OTDA to be inadequate, OTDA shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

OTDA may disqualify a Bidder as being non-responsive under the following circumstances:

- e. If a Bidder fails to submit a MWBE Utilization Plan;
- f. If a Bidder fails to submit a written remedy to a notice of deficiency;
- g. If a Bidder fails to submit a request for waiver; or
- h. If OTDA determines that the Bidder has failed to document good faith efforts.

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

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the OTDA, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment,

promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit a Minority and Women Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form OTDA 4970, to OTDA with their bid or proposal.

For purposes of this solicitation, OTDA hereby establishes an Equal Employment Opportunity participation goal of 10-20%. To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Form OTDA 4934 - Staffing Plan) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, on a quarterly basis or upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting their contract manager.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

## **S. Termination of the Agreement**

The Agreement shall be subject to the following termination provisions:

All or any part of the Agreement may be terminated by mutual written agreement of the contracting parties.

All or any part of the Agreement may be terminated by OTDA in the event of failure of the Contractor to perform within the time requirements set forth in the Agreement.

All or any part of the Agreement may be terminated by OTDA for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, including the attachments hereto, provided that OTDA shall give the Contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefore, such written notice to specify the Contractor's failure and the termination of the Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to OTDA, unless the Contractor, in the opinion of OTDA, has cured said failure. The Contractor agrees to incur no new obligations or to claim for any expenses made after receipt of the notification of termination.

The Agreement may be terminated if OTDA deems that termination would be in the best interest of OTDA 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 to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of Contractor's receipt for notice in the case of hand delivery. In the case of termination under this subsection, OTDA agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith. OTDA will not be obligated to pay the Contractor for lost and/or anticipated profits. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.

The Agreement may be deemed terminated immediately at the option of OTDA 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 obligations by OTDA to the Contractor.

Should OTDA determine that Federal and State funds are unavailable, OTDA may terminate the Agreement immediately upon notice to the Contractor. 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.

In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion and the Contractor shall cancel as many outstanding obligations as possible. Contractor shall take all reasonable measures to mitigate any damages for which OTDA may be liable.

If the Agreement is terminated for cause, OTDA shall have the right to award a new contract to a third party. In such event, the Contractor shall be responsible for damages, and for all additional costs incurred in reassigning the contract.

It is understood that OTDA reserves the right to suspend or reduce Contractor services during the term of the Agreement or during a task order period. Such action(s) by OTDA shall not be considered a breach of the Agreement or otherwise give rise to damages on the part of the Contractor, provided, however, that Contractor is given written notification of such action.

OTDA reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Procurement Lobbying Act was intentionally false or intentionally incomplete. Upon such finding, OTDA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

Should OTDA determine that the Contractor/Subcontractor has become non-responsible, or, in the event it is found that the Contractor/Subcontractor Background Questionnaire as submitted was intentionally false or incomplete, OTDA shall advise Contractor or Contractor and Subcontractor of such finding and Contractor/Subcontractor shall have 30 calendar days to provide evidence that the Contractor/Subcontractor is responsible or correct/resolve such issues. If, after the 30 calendar day time period, at OTDA's sole discretion, OTDA determines that the Contractor/Subcontractor is not responsible, OTDA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Agreement. In the event of assignment where the proposed Contractor/Subcontractor does not meet OTDA's responsibility review, OTDA may, after meeting with the Contractor and proposed Contractor/Subcontractor as described above, exercise its termination rights as specified in the Agreement.

#### **T. Patent/Copyright Indemnification**

The Contractor, at its expense, will defend any claim or suit which may be brought against OTDA for the infringement of United States patents or copyrights arising from the Contractor's or OTDA's use of any equipment, materials, or information supplied, prepared or developed by the Contractor in connection with performance of the Agreement and in any suit will satisfy any final judgment for such infringement. OTDA will immediately give the Contractor written notice of such claim or suit and the full right and opportunity to conduct its defense thereof, together with full information and all reasonable cooperation.

If principles of governmental or public law are involved, OTDA may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's prior written consent.

If in the Contractor's opinion the equipment, materials, or information mentioned above, are likely to or do become the subject of a claim of infringement of a United States patent or copyright, then without diminishing Contractor's obligation to satisfy any final award, Contractor may, with OTDA's prior written

consent, which shall not be unreasonably withheld, substitute other equally suitable equipment, materials, and information or at the Contractor's option and expense, obtain the right for OTDA to continue the use of such equipment, materials, and information.

## **U. Limitation**

For damages arising as a result of acts or omissions of Contractor, its officers, employees, subcontractors, partners or agents, Contractor shall be jointly and severally responsible for the actions of its agents, employees, partners, or subcontractors, including losses arising from, but not limited to: (i) providing defective or inadequate specifications; (ii) defective or inadequate performance; (iii) losses incurred in shipping and delivery of products to site; (iv) connection, installation or removal of tangibles or intangibles, including telecommunications; (v) defective or inadequate recommendations inducing detrimental reliance by Issuing Entity; (vi) defective or inadequate maintenance and warranty service; or (vii) removal of existing equipment or acquisition of components resulting from defective specifications. The Contractor remains liable, without monetary limitation, for direct damages for personal injury, death, or damage to real property or tangible personal property attributable to the negligence or other tort of the Contractor, its officers, employees or agents.

The warranties set forth herein are in addition to all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

For any suit, action, claim, damages or costs arising under or connected to the title, patent and copyright actions by third parties, the Contractor shall be fully liable for damages without limitation.

The Contractor's liability under this Agreement for failure to provide adequate services or deliverables, regardless of whether such liability is asserted under a theory of contract breach, default, negligence, or warranty, or otherwise, shall not exceed the greater of the amount of a) \$5 million or b) two times the value of the contract amount as indicated in the State Central Accounting System.

## **V. Lobbying Certification**

Prohibition on Use of Federal Funds for Lobbying – Pursuant to section 1352, title 31, United States Code, no Federal appropriated funds may be expended by the recipient of a Federal grant or a subtier contractor of sub grantee to pay any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of

any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Any person who receives a contract exceeding \$100,000 at any tier under a Federal grant will be required to file a certification that no Federal appropriated funds have been or will be expended in violation of the above prohibition. If any funds other than Federal appropriated funds have been or will be expended by the Contractor to pay any person for influencing any Federal officer, employee or Member of Congress described above in connection with such Federal grant, the Contractor will be required to make a written disclosure on a specified disclosure form.

The Contractor agrees to the above provisions relating to prohibition on use of federal funds for lobbying.

## **W. Notification**

Any notice or other communication required by or pertaining to the Agreement shall be sent to the destinations indicated by OTDA's designated Program Manager or the Contractor's designated Project Director. If no destination has been so indicated, such notices or communications may be directed to the address(es) or destination(s) at which the parties to the Agreement were located when the Agreement was executed or to the last known address or destination for such party. Contractor shall be responsible for notifying OTDA of any change of address or destination to which notices and communications should be sent.

Except as otherwise specified elsewhere in the Agreement, notices or communications may be given orally or in writing and shall be effective when received. To remain effective, oral notifications must be confirmed in writing, transmitted in a manner to be received no later than ten (10) working days after the oral notification. Notices or communications may be transmitted by personal delivery, ordinary U.S. Mail, registered or certified mail, overnight delivery service, telegram, telephone, facsimile device, electronic means or any other means of transmission that results in the fixation of the information transmitted in a tangible medium of expression.

Notice or communications shall be considered received on the day such receipt is acknowledged by a signed receipt or by any other means of verification that is recorded in a tangible medium of expression. Notices or communications from OTDA to the Contractor shall also be considered received as follows:

Oral notifications shall be considered received on the date indicated as the date of conversation in any written confirmation or on the day sworn in an affidavit to be the date of such conversation, unless contested.

Notices or communications by ordinary, registered or certified U.S. Mail shall also be considered received on the first working day after five (5) days following the

day the transmittal is postmarked or following the day sworn in an affidavit to be the date the transmittal was deposited in a post office or an official depository.

Notices or communications dispatched by overnight delivery service shall be considered received one (1) working day after having been dispatched.

Transmissions by facsimile device or electronic means shall be considered received, upon the receipt by OTDA of a signal from the equipment of the Contractor indicating that the transmission was received.

Notices or communications transmitted by personal delivery shall be considered received on the day the transmission is delivered to an agent of the Contractor.

Any other transmissions shall be considered received no later than five (5) working days after transmission by OTDA is completed.

#### **X. Conflict of Interest**

For the term of the Agreement, and for three (3) months after its termination, the Contractor agrees not to offer employment to any employee of OTDA, without the express written consent of OTDA.

If during the term of the Agreement and any extension thereof the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Contractor shall notify OTDA in writing immediately. Should the Contractor engage any current or former New York State employee as its own employee or as an independent contractor because of such employee's knowledge of New York State finances, operations or knowledge of OTDA's programs, or any current or former State employee who in the course or his State employment had frequent contact with Management level Contractor employees, the Contractor shall notify OTDA, in writing, immediately; should OTDA thereafter determine that such employment is inconsistent with State or Federal Law, OTDA shall so advise the Contractor, in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be terminated.

#### **Y. Other Agency Use**

The Contractor must extend the terms and conditions to any state agency in New York State. It must also extend the terms and conditions to (1) County Agencies in New York State providing human services such as income maintenance, job training, employment and social services or health related services as well as (2) Local Social Services Districts (LSSD) in New York State including New York City, which is considered a single LSSD, consisting of the Human Resources Administration, The Administration for Children's Services, and the Department of Homeless Services. In the event services are used by an LSSD, upon acceptance by the LSSD of such services, OTDA may accept the resulting bills, consistent with the terms for those services, and process said bills for payment

on behalf of the LSSD. In such event, OTDA will subsequently make the necessary arrangements with the LSSD and the appropriate Agency(s) for reimbursement.

## **Z. Limitation of Liabilities**

For damages arising as a result of acts or omissions of Contractor, its officers, employees, subcontractors, partners or agents, Contractor shall be jointly and severally responsible for the actions of its agents, employees, partners, or subcontractors, including losses arising from, but not limited to: (i) providing defective or inadequate specifications; (ii) defective or inadequate performance; (iii) losses incurred in shipping and delivery of products to site; (iv) connection, installation or removal of tangibles or intangibles, including telecommunications; (v) defective or inadequate recommendations inducing detrimental reliance by Issuing Entity; (vi) defective or inadequate maintenance and warranty service; or (vii) removal of existing equipment or acquisition of components resulting from defective specifications. The Contractor remains liable, without monetary limitation, for direct damages for personal injury, death, or damage to real property or tangible personal property attributable to the negligence or other tort of the Contractor, its officers, employees or agents.

The warranties set forth herein are in addition to all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

For any suit, action, claim, damages or costs arising under or connected to the title, patent and copyright actions by third parties, the Contractor shall be fully liable for damages without limitation.

The Contractor's liability under this Agreement for failure to provide adequate services or deliverables, regardless of whether such liability is asserted under a theory of contract breach, default, negligence, or warranty, or otherwise, shall not exceed the greater of the amount of a) \$5 million or b) two times the value of the contract amount as indicated on the New York State Office of State Comptroller's Open Book website (<http://openbooknewyork.com/>).

## **Federal Requirements**

The Contractor agrees to provide a written document stating compliance with Federal Executive Order 11246, the Copeland "Anti-Kickback Act" (18 USC 874), Section 508 of the Federal Clean Air Act, Section 306 of the Federal Clean Water Act. This document must also certify that neither the Contractor 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).

The Contractor agrees to comply with the provisions of Section 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) attached in appendix C.9.

### **Warranty for Deliverables/Workmanship**

- A. Contractor warrants and represents full ownership, clear title free of all liens, and/or that Contractor has obtained on behalf of OTDA perpetual license rights set forth herein to use the Product for the purposes contained in this Agreement. Contractor shall indemnify OTDA for any loss, damages or actions arising from a breach of this warranty without limitation. OTDA may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. OTDA's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.
- B. Contractor warrants that the System will function as represented in its Proposal and the other documents as incorporated into this Agreement. The Contractor further warrants that all hardware and software procured hereunder, when installed, shall be free of defects in material or workmanship according to the Contractor's standard business practices and in accordance with the warranties expressly set forth in this Agreement.
- C. Contractor warrants and represents that all Products or deliverables specified and furnished by or through Contractor under the contract meet the completion criteria set forth in the contract and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
- D. Contractor further warrants and represents that Products or deliverables specified and furnished by or through Contractor under the contract shall individually, and where specified by Contractor to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for 90 days beyond the life of the contract and for any extensions exercised under Article 1 or any other extensions of the contract as permissible. Defects in the Products or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to OTDA.
- E. In addition to Contractor's warranty, OTDA shall have the benefit of all manufacturers' standard commercial warranties for individual Project Deliverables. It shall be the Contractor's responsibility to insure that such warranties begin conterminously with the commencement of the contract. Any additional cost(s) for having the periods begin conterminously shall be borne by Contractor. During the contract, Contractor shall be responsible for placing and coordinating all manufacturers' warranty claims on behalf of OTDA. Such manufacturer's warranty coverage shall be supplemental to, and not relieve the Contractor from, Contractor's warranty obligations during the life of the contract and any extensions exercised under Article 1 or any other extensions of the contract as permissible.
- F. Where the manufacturer's warranty term is longer than the life of the contract,

Contractor shall notify OTDA and pass through the manufacturer's warranty to OTDA at no additional charge. Contractor shall not be responsible for coordinating services under the manufacturer's warranty after expiration of the contract.

- G. The warranties expressly set forth in this agreement are in lieu of all other warranties, express or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The above warranties do not apply to the extent the problem is caused by misuse, unauthorized modification, unsuitable physical environment, operation in other than the Specified Operating Environment, failure to follow required maintenance by OTDA or failure caused by a product for which Contractor is not responsible.

### **Anti-Kickback Act**

The Contractor agrees to provide a written document stating compliance with Federal Executive Order 11246, the Copeland "Anti-Kickback Act" (18 USC 874), Section 508 of the Federal Clean Air Act, Section 306 of the Federal Clean Water Act. This document must also certify that neither the Contractor 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 the OTDA (see Federal Executive Order 12549 and 7 CFR Part 3017).

### **Drug-Free Workplace**

The Contractor agrees to comply with the provisions of Section 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have their representative execute the certification attached to this Agreement.

### **Vendor Responsibility**

- A. Article XI §163(3)(a)(ii) of the State Finance Law states that "commodities contracts shall be awarded on the basis of lowest price to a responsive and responsible offeror," and §163(4)(d) states that "service contracts shall be awarded on the basis of best value to a responsive and responsible offeror." Article XI §163(9)(f) states that "Prior to making an award of contract, each state agency shall make a determination of responsibility of the proposed contractor." The State and courts have determined that responsibility includes integrity, previous performance, legal authority to do business in New York State, and financial and organizational ability to perform the contract.

As part of the procurement process, the Contractor and subcontractors (valued in excess of \$100,000 over the life of the contract) are required to complete the Vendor Responsibility Questionnaire. OTDA shall conduct reviews for responsibility and responsiveness. OTDA may, at its sole discretion, request additional information, including meeting with the Contractor. If the Contractor is determined by OTDA to be not responsible, the Office shall inform the Contractor of such ruling. Contractor shall have 30 days to request a meeting with OTDA to explain the ruling and to demonstrate the finding to be incorrect or to correct/resolve any issues impacting the Contractor's

responsibility. Contractor shall update the Vendor Responsibility Questionnaire whenever such information changes and prior to any contract extensions and/or amendments. In the case of an assignment, a Vendor Responsibility Questionnaire should be completed for Contractor and its Subcontractors.

- i) OTDA recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System; however, vendors may choose to complete and submit a paper questionnaire.
  - ii) 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>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached 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 file 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 OTDA or the Office of the State Comptroller's Help Desk for a copy of the paper form.
- B. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OTDA or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- C. The Commissioner of OTDA or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract resulting from this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OTDA or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OTDA officials or staff, the Contract may be terminated by the Commissioner of OTDA or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OTDA or his or her designee to be non-responsible. In such event, the Commissioner of OTDA or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

### **Information and Security Breach and Notification Act**

In the event the Contractor has reason to believe that there has been unauthorized access to and/or use of the OTDA's data or the data system, the Contractor must provide immediate written notification to OTDA. The Contractor must cooperate with

activities necessary for OTDA to determine the need for notification and/or to provide the notification(s) required. Within twenty-four (24) hours of the notification by Contractor, the Contractor must report to OTDA the steps taken or proposed to be taken in response to the instance of unauthorized access. The Contractor must also notify OTDA of the steps taken to prevent similar instances in the future as soon as is practicable after the unauthorized access is discovered.

### **Insurance Requirements**

Prior to the start of work the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (“admitted” carriers) with an A.M. Best Company rating of “A-” or better or as acceptable to OTDA. OTDA may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require OTDA to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to OTDA evidence of such policies in a form acceptable to the Agency.

If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OTDA and rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report. OTDA may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require OTDA to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to OTDA evidence of such policies in a form acceptable to OTDA, in accordance with the requirements set forth in Appendix D, as applicable.

## **APPENDIX A**

### STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State

Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a)

discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms,

under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.**

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

audit by the State agency, its representatives, or the State Comptroller.

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin,

sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

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

thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority

and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

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

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such

notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

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

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified

on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the

determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

# **APPENDIX B**

## **PROPOSAL FORMS\***

### **Four Proposal Components:**

- 1. Executive Summary**
  - 1a. Language Service Proposal Cover Sheet**
  - 1b. Brief executive summary  
(not to exceed 1 page)**
  
- 2. Technical Narrative**
  - 2a. Narrative  
(not to exceed 10 pages)**
  
- 3. Financial Proposal**
  - 3a. Cost Proposal Bid Form**
  
- 4. Sample Translations**
  - 4a. Cover sheet (Name of agency)**
  - 4b. Sample Translation 1**
  - 4c. Sample Translation 2  
(No identifying agency information)**

*\*Please refer to Section III.C. of the RFP for detailed instructions on completing these pages.*

# **1a. Language Services Proposal Cover Sheet**

Date Received by OTDA: \_\_\_\_\_

Initials of OTDA staff doing the prescreening: \_\_\_\_\_

## **1. Agency Name:**

\_\_\_\_\_

## **2a. Main Office**

Street Address:

\_\_\_\_\_

City, State, Zip Code:

\_\_\_\_\_

County:

\_\_\_\_\_

## **2b. Normal Business Hours (Eastern Standard Time)**

\_\_\_\_\_

2c. Available for After Hours/Holiday urgent requests:

yes \_\_\_\_\_ no \_\_\_\_\_

## **3. Agency Contact:**

\_\_\_\_\_

Title:

\_\_\_\_\_

Phone #:

---

FAX #:

---

Email Address:

---

Mailing

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

\_\_\_\_\_

---

Language Services Program Contact:

---

Title:

---

Phone #:

---

FAX #:

---

Email Address:

---

Mailing Address:

---

4. Federal Employer Identification #:

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5. Subcontractors to be used (if any):

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**ORGANIZATION INFORMATION**

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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  No

Women-Owned Business      Yes  No

Minority Business      Yes  No

Municipality      Yes  No

Small Business      Yes  No

## 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)
Signature _____
Restrictions _____
Name _____ Title _____ (Printed)
Signature _____
Restrictions _____
Name _____ Title _____ (Printed)
Signature _____
Restrictions _____

### **Assurances**

\*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 RFP understands the terms, and agrees to be bound by the same.

\*The recipient certifies that the offer made as a result of this RFP is good and in effect for 180 days from the date of offer.

\*The recipient agrees to comply with the regulations, specifications, terms and conditions stated throughout this RFP.

\*The recipient is willing to enter into a contractual agreement containing, at a minimum, the State's current Standard Appendix A and those terms and provisions identified herein and in Section VI of this RFP.

\*The recipient assures that the agency can provide services in all languages listed in Groups A and B as well as provide all primary and secondary services.

\*The recipient has not been suspended or debarred from entering into federally funded contracts pursuant to U.S. Executive Order 12549 and/or 41 CFR Part 105-68.

\*The recipient doesn't know any information regarding activity or any investigation that could result in its suspension or debarment.

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

**APPENDIX B 3a**

**COST PROPOSAL BID FORM  
NYS OTDA BRIA Language Services RFP**

Name of Company \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact Person \_\_\_\_\_

Title \_\_\_\_\_

Telephone Number \_\_\_\_\_

<i>Primary Services</i>	<b>Projected Volumes</b>	<b>Price Per Word</b>	<b>Total</b>
<b>Group A:</b> Albanian, Arabic, Bengali, Bosnian, Chinese (Mandarin, Cantonese, Fuzhou dialect), Farsi, French, German, Haitian Creole, Hindi, Italian, Korean, Polish, Portuguese, Russian, Spanish, Ukrainian, Urdu, and Vietnamese	6,700,000 words		
<b>Group B:</b> Amharic, Bulgarian, Byelorussian, Burmese, Croatian, Czech, Dzongkha, Greek, Gujarati, Hebrew, Hmong, Hungarian, Japanese, Karen, Khmer, Kunama, Kurdish, Maay-Maay (Af Maay), Pashto, Punjabi, Rundi (Kirundi), Rwanda (Kinyarwanda), Somali, Slovak, Swahili, Tagalog, Thai, Tigrinya, (Tigringna) Turkish, Wolof, and Yiddish.	500,000 words		
		<b>Hourly Rate</b>	
<b>Desktop Publishing</b>	680 hours		
<i>Secondary Services</i>			
<b>Interpretation Services:</b>		<b>Per Minute Rate</b>	
<b>Telephone</b>	180 minutes		
		<b>Hourly Rate</b>	
<b>On-Site</b>	8 hours		
		<b>Hourly Rate</b>	
<b>Narration</b>	150 hours		
		<b>Price Per Word</b>	
<b>Editing</b>	20,000 words		
<b>Total</b>			

## APPENDIX B 4b

### Sample Translation 1

#### Domestic Resettlement Program

**Refugee Appropriations:** In FY 2012, after an across-the-board rescission, ORR received total appropriations of \$768.3 million to assist refugee populations, victims of trafficking, and unaccompanied alien children (UAC). In addition, ORR received authority to utilize \$24.6 million of carryover funding in FY 2012.

In FY 2012, due to a sharp increase in the number of UAC referred from the Department of Homeland Security, ORR experienced a shortfall in the UAC program amounting to approximately \$98.5 million. ORR was able to accommodate this shortfall by reprogramming funds from other ORR refugee programs. This internal reprogramming was possible without loss of benefits for eligible refugees or disruption of services, due to two situations. First, the number of refugees entering the United States was significantly lower than budgeted level. Second, ORR was able to incrementally fund Social Service discretionary grants and Targeted Assistance formula and discretionary grants that are awarded late in the fiscal year.

## APPENDIX B 4c

### Sample Translation 2

#### REQUIREMENTS FOR EVD PREPAREDNESS

##### Purpose

This Attachment to the Order of the Acting Commissioner of Health describes requirements regarding management and treatment of Persons Under Investigation, Confirmed Cases, and bodies of persons who have expired from Ebola Virus Disease (EVD). It contains several sections, and multiple sections may apply to your entity. Accordingly, you must review this document in its entirety and identify all requirements that apply. **If you have any questions regarding these requirements, please submit your questions by email to [Ebola.Preparedness@health.ny.gov](mailto:Ebola.Preparedness@health.ny.gov).**

##### Definitions

As used in this document, the following definitions apply.

1. "Confirmed Case", consistent with current guidance from the Centers for Disease Control and Prevention (CDC), means a case with laboratory-confirmed diagnostic evidence of Ebola virus infection.
2. "Covered Entity" means:
  - a. All general hospitals regulated pursuant to Article 28 of the Public Health Law (PHL);
  - b. All diagnostic and treatment centers and off-campus emergency departments regulated pursuant to Article 28 of the PHL;
  - c. Ambulance and advanced life support first response services, licensed pursuant to Article 30 of the PHL; and
  - d. Funeral Directors and Funeral Establishments, licensed and registered pursuant to Article 34 of the PHL.
3. "Covered Personnel" means all employees, contractors, students, and all other personnel who may:
  - a. come into contact with a Patient, or a laboratory specimen from a Patient; or
  - b. be involved in the cleaning or disinfection of equipment or Patient care areas, including vehicles used to transport Patients.

This includes, but is not limited to, contract nurses, attending physicians and residents.

## **APPENDIX C**

1. Confidentiality Agreement
2. Non-Collusive Bidding Certification
3. MacBride Fair Employment Principals
4. Procurement Lobbying Act Offerer's Certification and Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j and k PLA
5. Non-Construction For-Profit Vendor Responsibility Questionnaire
6. Disclosure of Prior Non-Responsibility Determinations
7. Contractor Certification to Covered Agency ST-220-CA
8. Contractor Certification ST-220-TD
9. Appendix Z
10. MWBE/EEO Policy Statement
11. MWBE Subcontractor Utilization Plan
12. MWBE Subcontractors or Suppliers Letter of Intent to Participate
13. EEO Staffing Plan
14. MWBE Goal Requirement Certification of Good Faith Efforts
15. Subcontractor and Supplier Identification Form
16. M/WBE Contractor Participation Bid/Proposal
17. M/WBE Contractor Unavailability Certification
18. M/WBE Quarterly Compliance Report
19. M/WBE Subcontractor Request for Waiver Form

# SECURITY, NONDISCLOSURE, CONFIDENTIALITY AND PRESS RELEASES AGREEMENT

## SECURITY, NONDISCLOSURE, CONFIDENTIALITY AND PRESS RELEASES

The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under this Agreement.

### **A. SECURITY PROCEDURES:**

Contractor agrees to comply fully with all security procedures of the State in relation to providing services and agrees that its officers, agents, employees and subcontractors shall be required to undergo the same security clearances as are required of the employees of the State. Specifically, each prospective and current employee of Contractor designated to work under this Agreement with the State may be required to submit identifying information and be fingerprinted. The State shall arrange for the scheduling of such fingerprinting activities on State premises. Contractor shall pay the fee prescribed by the Division of Criminal Justice Services for processing such fingerprint card, subject to waiver at the discretion of the State.

### **B. NONDISCLOSURE and CONFIDENTIALITY:**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors have access. This representation shall survive termination of this Agreement. For purposes of this Agreement, all State information of which Contractor, its officers, agents, employees, and subcontractors becomes aware during the course of performing services for the State shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information which falls into any of the following categories shall not be considered Confidential Information:

- (a) information that is previously rightfully known to the receiving party without restriction on disclosure;
- (b) information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
- (c) information that is independently developed by Contractor without use of Confidential Information of the State.

Contractor shall hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information.

**PRESS RELEASES:** Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding this Agreement shall be disseminated in any way to the public, nor shall any presentation be given regarding this Agreement without the prior written approval by the undersigned or the undersigned's designee from the State, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of this Agreement and answer any questions relating thereto to any State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

**PUBLIC INFORMATION:** Disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Section 87 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under that statute. Information constituting trade secrets, for purposes of FOIL, must be clearly marked and identified as such upon submission. If the Contractor intends to seek an exemption from disclosure of these materials under FOIL, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State.

\_\_\_\_\_  
Signature:

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

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY  
SECTION 139-D OF THE STATE FINANCE LAW**

SECTION 1 39-D. Statement of Non-Collusion in bids to the State:

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

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor,

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor, and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ as the act and deed of said corporation or partnership.

**Exhibit 1: Non-Collusive Bidding Certification-3**

Identifying Data

Potential Contractor: \_\_\_\_\_

Address: \_\_\_\_\_  
Street

\_\_\_\_\_  
City, Town, etc.

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

If applicable, Responsible Corporate Officer

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

Signature: \_\_\_\_\_

Joint or combined bids by companies or firms must be certified on behalf of each participant.

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

By \_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Address \_\_\_\_\_  
Street

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State

\_\_\_\_\_  
City State

**Form 3.a.: Non Discrimination in Employment in Northern Ireland**

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

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

(1) has business operations in Northern Ireland;

Yes \_\_\_\_\_ or No \_\_\_\_\_

if yes:

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

Yes \_\_\_\_\_ or No \_\_\_\_\_

---

Signature

**Procurement Lobbying Act**  
**Offeror's Certification and Affirmation of Understanding of and Agreement pursuant to**  
**State Finance Law §139-j and k**

Offeror affirms that it understands and agrees to comply with the New York State procedures relative to permissible contacts as required by State Finance Law §139-j.

By:                      Date:

Name:

Title:

Contractor Name:

Contractor Address:

**Offeror Certification:**

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

---

Authorized Signature

## **New York State Vendor Responsibility Non-Construction For-Profit Questionnaire (Separately Attached)**

The Office of Temporary and Disability Assistance recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System; however, vendors may choose to complete and submit a paper questionnaire.

To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [http://www.osc.ny.gov/vendrep/vendor\\_index.htm](http://www.osc.ny.gov/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Please check *one* of the following:

- A Vendor Responsibility Questionnaire has been filed online and has been certified/updated within the last six months.
- A Vendor Responsibility Questionnaire is attached to this bid/proposal.



Basis of Termination or Withholding: \_\_\_\_\_

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(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

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

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



# Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name			For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code	
Contractor's mailing address (if different than above)			Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number		Covered agency name		
Covered agency address			Covered agency telephone number	

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

(sign before a notary public)

(title)

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
COUNTY OF }
SS.:

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally appeared \_\_\_\_\_
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
he resides at \_\_\_\_\_

Town of \_\_\_\_\_

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

State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

(If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

(If a corporation): he is the \_\_\_\_\_
of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board
of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for
purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on
behalf of said corporation as the act and deed of said corporation.

(If a partnership): he is a \_\_\_\_\_
of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said
partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth
therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said
partnership as the act and deed of said partnership.

(If a limited liability company): he is a duly authorized member of \_\_\_\_\_,
LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument
on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed
the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited
liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain
personal information pursuant to the New York State Tax Law, including but
not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096,
1142, and 1415 of that Law; and may require disclosure of social security
numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities
and, when authorized by law, for certain tax offset and exchange of tax
information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided
to certain state agencies for purposes of fraud prevention, support
enforcement, evaluation of the effectiveness of certain employment and
training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or
criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management,
NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone
(518) 457-5181.

Need help?

Visit our Web site at www.tax.ny.gov
get information and manage your taxes online
check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with
hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the
Americans with Disabilities Act, we will ensure that our
lobbies, offices, meeting rooms, and other facilities are
accessible to persons with disabilities. If you have questions
about special accommodations for persons with disabilities, call the
information center.



# Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-TD

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)			
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )
Covered agency or state agency	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$
Covered agency address		Covered agency telephone number	

### General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006). See *Need help?* for more information on how to obtain this publication.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



#### Telephone assistance

**Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
(name) (title)  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

**Section 1 — Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 — Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 — Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)





## MINORITY AND 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 \_\_\_\_\_

**M/WBE** This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (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 AGENCY 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 enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

### **EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing 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, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organizations' 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



Office of Temporary  
and Disability Assistance

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_

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

**Minority Business Enterprise Liaison**

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

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

**M/WBE Contract Goals**

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ % Female Labor Force Participation

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

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

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



Office of Temporary  
and Disability Assistance

**M/WBE 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) under the contract. Note – A dually certified firm cannot be counted toward both the MBE and WBE participation goals. Attach additional sheets if necessary.

Offeror's Name: \_\_\_\_\_ Federal Identification No.: \_\_\_\_\_ MWBE Certified? \_\_\_\_\_  
 Address: \_\_\_\_\_ Solicitation No.: \_\_\_\_\_  
 City, State, Zip Code: \_\_\_\_\_ Project No.: \_\_\_\_\_  
 Telephone No.: \_\_\_\_\_ M/WBE Goals in the Contract: MBE % WBE %  
 Region/Location of Work: \_\_\_\_\_ Contract No.: \_\_\_\_\_

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.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM - OTDA - 4969.**

<b>PREPARED BY (Signature):</b> <b>DATE:</b>  <b>NAME AND TITLE OF PREPARER (Print or Type):</b>   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. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>
	<b>FOR M/WBE USE ONLY</b>	
	<b>REVIEWED BY:</b>	<b>DATE:</b>
	<b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ Contract No.: _____ Project No. (if applicable): _____  <b>Contract Award Date:</b> <b>Estimated Date of Completion:</b> <b>Amount Obligated Under the Contract:</b> <b>Description of Work:</b>	
<b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ <b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____		

**New York State  
 Office of Temporary and Disability Assistance  
 M/WBE SUBCONTRACTORS AND SUPPLIERS  
 LETTER OF INTENT TO PARTICIPATE**

Recipient/Contractor: \_\_\_\_\_ Contract/Project No.: \_\_\_\_\_

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

Federal ID#: \_\_\_\_\_ Project/Contract # \_\_\_\_\_ Location of Work: \_\_\_\_\_

Dear Recipient/Contractor:

I, \_\_\_\_\_ intend to perform work for \_\_\_\_\_  
 (Name of Subcontractor/Vendor's Firm) (Name of Consultant/Contractor)

located at \_\_\_\_\_ in connection with the above project. My Minority/Women  
 Business Enterprise (M/WBE) status as a MBE ( ) and/or WBE ( ) is certified as of \_\_\_\_\_  
 (Check all as applies) (cert. date)

\_\_\_\_\_ is prepared to do the following:  
 (Name of Subcontractor/Vendor's Firm)

(Describe work to be performed on the above project)	Unit Price	Total Amount

You have projected \_\_\_\_\_ for such work to start.  
 (Commencement Date)

\_\_\_\_\_ will sign a formal contract for the above work conditioned upon the  
 (Name of Subcontractor/Vendor's Firm)

approval of your executed contract with the recipient/contractor.

**MBE: Subcontractor or Supplier (Please circle one)**  
**WBE: Subcontractor or Supplier (Please circle one)**

Company Official's Name \_\_\_\_\_ Title: \_\_\_\_\_

Company Official's Signature: \_\_\_\_\_

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

**Consultant/Contractor (Please circle one)**

Company Official's Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company Official's Signature \_\_\_\_\_ Date: \_\_\_\_\_

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

**STAFFING PLAN**

Submit with Bid or Proposal - Instructions on page 2

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <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) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)	(M) (F)	(M) (F)			
Officials/Administrators													
Professionals													
Technicians													
Sales Workers													
Office/Clerical													
Craft Workers													
Laborers													
Service Workers													
Temporary /Apprentices													
Totals													
<b>PREPARED BY (Signature):</b>						<b>TELEPHONE NO.:</b>				<b>DATE:</b>			
						<b>EMAIL ADDRESS:</b>							
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>						<b>Submit completed with bid or proposal</b>							

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (OTDA – 4934.1) 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 and/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 and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation 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 work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'.
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OM/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated 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 form, 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.
- **GENDE Male or Female** (2)

## **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



## Offeror's ID Form

### COMPANY PROFILE INFORMATION

<u>COMPANY NAME/ HEADQUARTERS ADDRESS RESPONSIBLE FOR SUBMITTING INVOICES AND RECEIVING PAYMENTS:</u> <hr/> <hr/> <hr/> <hr/>	<u>FEDERAL IDENTIFICATION NUMBER:</u> <hr/> <u>TELEPHONE:</u> (    ) _____ <u>FAX NUMBER:</u> (    ) _____ <u>E-MAIL ADDRESS:</u> <hr/>	<u>PRIMARY CONTACT NAME RESPONSIBLE FOR RECEIVING BID REQUESTS</u> <hr/> <u>TITLE:</u> <hr/> <u>ADDRESS:</u> _____ <hr/> <hr/>
---	--	--

**TYPE OF FIRM** (Check one only)

CORPORATION   
  PARTNERSHIP   
  PROPRIETORSHIP   
  JOINT VENTURE

**PREFERRED METHOD OF MINI-BID TRANSMISSION FROM OTDA: (Check one only)**

FAX   
  E-MAIL

Note: Vendors are solely responsible for notifying OTDA of changes to Fax or e-mail addresses.

**CHECK ONE ANSWER AS IT PERTAINS TO YOUR COMPANY FOR EACH QUESTION:**  
 (see following page for definitions)

For-Profit:  Not-For-Profit Provider

Meets definition of "Small Business Concern" Yes  No

MBE or MCBO \*  Women-Owned Business \*  Neither

**IF MBE or MCBO: Please check one of the following:**

Black:  Hispanic:  Asian/Pacific:  American/Alaskan Indian:

\* If checked, is your organization certified as a For Profit Minority or Women-Owned business by New York State ? (Yes/No) \_\_\_\_\_

Bidders are hereby notified that if their principal place of business is located in a state that penalizes New York vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 (Chapter 684, Laws of 1994) requires that they be denied placement on bidders mailing lists.

## **Instructions:**

A **Not for Profit Corporation** is defined as an incorporated organization chartered for other than Profit-making activities. Most such organizations are engaged in charitable, educational, or other civic or humanitarian activities although they are not restricted to such activities.

A **Small Business Concern** is defined as a business which is resident in New York State, Independently owned and operated, not dominant in its field, and employs one hundred or less persons. A Not for profit organization may considered a Small Business Concern if it meets the preceding criteria.

A **Minority Business Enterprise (MBE)** is defined as any business which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by, **United States (U.S.)** citizens or permanent residents aliens who are:

- a) Black persons having origins in any of the black African racial groups; and/or
- b) Persons of Mexican, Puerto Rican, Dominican, Cuban, other Caribbean island, Central or South American origin and/or national or community identification, whether of indigenous, Hispanic, Portuguese, French, Dutch, or other descent, and regardless of race; and/or
- c) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; and/or
- d) 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 or community identification; and such ownership interest is real, substantial and continuing. The minority ownership must have and exercise the authority to independently control the business decisions of the entity.

A **Minority Community Based Organization (MCBO)** is defined as a Not-for-Profit, local human service organization that has its origins in the geographic area comprised of one or more neighborhoods that it serves. A representative MCBO is therefore keenly aware of community needs as well as local resources to meet those needs. Generally, the governing bodies and personnel of community-based organizations reflect the racial, ethnic and cultural make-up of the community being served. A MCBO is characterized by majority representation of American Indians, Asian Americans, Blacks and/or Hispanics in both policy formulation and decision-making regarding management, service delivery and staffing reflective of the area that it serves.

A **Women-owned Business Enterprise (WBE)** is defined as 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. Such ownership interest must be real, substantial and continuing. The women-owned ownership must have and exercise the authority to independently control the business decisions of the entity.

(To meet the definition of an MBE or WBE, a non-profit organization must be controlled by a Board of Directors consisting of at least fifty-one percent minority individuals or women, respectively.)

**NEW YORK STATE CERTIFIED MINORITY or WOMEN OWNED BUSINESS** - Limited to for Profit organizations which have been certified by the New York State Department of Economic Development as meeting the criteria for a Minority or Women Owned Business. Contact the Department of Economic Development, Division of Minority and Women Business Development at 212-383-1718 or 518-474-6346 for certification assistance.

**M/WBE CONTRACTOR PARTICIPATION BID/PROPOSAL**

Prime Contractor \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

Re: CONTRACT # \_\_\_\_\_  
COUNTY \_\_\_\_\_  
Project Title \_\_\_\_\_

TO: \_\_\_\_\_  
(Name of Prime Contractor)

\_\_\_\_\_ proposes to perform the work as follows:  
(Name of M/WBE Firm)

(Specify in detail the particular work items to be performed thereof and associated dollar amounts)

TYPE OF WORK	UNIT PRICE	DOLLAR AMOUNT

\_\_\_\_\_  
NAME OF M/WBE CONTRACTOR

\_\_\_\_\_  
SIGNATURE OF M/WBE CONTRACTOR

DATE:

**M/WBE CONTRACTOR UNAVAILABILITY CERTIFICATION**

PROJECT/CONTRACT # \_\_\_\_\_

I, \_\_\_\_\_  
(Principal or Prime Consultant/Contractor)

\_\_\_\_\_ of \_\_\_\_\_  
(Title) (Name of Consultant's/Contractor's Firm)

\_\_\_\_\_ (Address) \_\_\_\_\_ (Telephone Number)

I certify that on (Date) \_\_\_\_\_ I contacted the following New York State Certified Minority/Women Business Enterprises by registered mail to obtain bids for work to be performed on the above-mentioned contract.

List of names of M/WBEs, and type of work that bids were requested

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

To the best of my knowledge and belief, said New York State Certified Minority/Women Business Enterprise contractor(s) was unavailable for work on this project, or unable to prepare a bid for the following reasons: Please check appropriate reasons given by each MBE/WBE firm contacted above.

- \_\_\_\_\_ I did not have the capability to perform the work
- \_\_\_\_\_ Contract too small
- \_\_\_\_\_ Remote location
- \_\_\_\_\_ Received solicitation notices too late
- \_\_\_\_\_ Did not want to work for this contractor
- \_\_\_\_\_ Other (give reason) \_\_\_\_\_

\_\_\_\_\_  
Signature of Prime Consultant/Contractor

\_\_\_\_\_  
Title Date

Failure to submit this form will result in non-compliance

Is this a final report? Check One

**M/WBE Quarterly Compliance Report**

NYS OTDA Contract No. \_\_\_\_\_ Project No. \_\_\_\_\_

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project. The payments as shown made are in compliance with contract documents for the above referenced project.

<b>Contractors Name and Address</b>		<b>Federal ID#</b>	<b>Goals/\$ Amt.</b> MBE ___% = _____ WBE ___% = _____		<b>Contract Type</b> _____ <b>Paid to Contractor This Quarter</b> _____ <b>Total Paid to Contractor To Date</b> _____					
<b>Expenditure Code</b>		<b>Project Completion Date</b>	<b>Work Location</b>		<b>REPORTING PERIOD (BEGINNING 10 DAYS FOLLOWING THE END OF THE FIRST CALENDAR QUARTER):</b> ___ 1 <sup>st</sup> Quarter (4/1-6/30) ___ 3 <sup>rd</sup> Quarter (10/1-12/31) ___ 2 <sup>nd</sup> Quarter (7/1-9/30) ___ 4 <sup>th</sup> Quarter (1/1-3/31)					
<b>M/WBE Subcontractor/Vendor</b>	<b>Product Code*</b>	<b>Work Status This Report</b>	<b>Total Subcontractor Contract Amount</b>		<b>Payments this Quarter</b>		<b>Previous Payments</b>		<b>Total Payment Made to Date</b>	
			<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>
<b>Name:</b> <b>FED ID#</b>		___ Active ___ Inactive ___ Complete								
<b>Name:</b> <b>FED ID#</b>		___ Active ___ Inactive ___ Complete								
<b>Name:</b> <b>FED ID#</b>		___ Active ___ Inactive ___ Complete								
<b>Name:</b> <b>FED ID#</b>		___ Active ___ Inactive ___ Complete								
<b>Total</b>										

QUARTERLY REPORTS MUST BE SUBMITTED TO OTDA's PROGRAM/CONTRACT MANAGER

Date \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_ Signature \_\_\_\_\_

**\* EXPENDITURE CODE:**

**C** – Commodities, **SC** – Services/Consultants, **CC** – Construction Consultants, **CN** – Construction

**\*PRODUCT KEY CODE**

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



## 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.**

## **APPENDIX D**

# NEW YORK STATE CONTRACTOR INSURANCE REQUIREMENTS

- A. Prior to the start of work the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (“admitted” carriers) with an A.M. Best Company rating of “A-” or better or as acceptable to OTDA. OTDA may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require OTDA to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to OTDA evidence of such policies in a form acceptable to OTDA.
- B. If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OTDA and rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report. OTDA may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require OTDA to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to OTDA evidence of such policies in a form acceptable to OTDA, in accordance with the requirements set forth below, as applicable.

C. Contractor’s Insurance Requirements

1. Conditions Applicable to Insurance. All policies of insurance required by the Contract resulting from this Agreement must meet the following requirements:
  - a. Coverage Types and Policy Limits - The types of coverage and policy limits required from the Contractor are specified in Paragraph A.3.
  - b. Policy Forms - Except as may be otherwise specifically provided herein or agreed in writing by OTDA, policies must be written on an occurrence basis.
  - c. Certificates of Insurance/Notices - Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OTDA, before commencing any work under this Contract. Certificates shall reference the Contract Number. Certificates shall be mailed to:

NYS Office of Temporary and Disability Assistance  
40 North Pearl Street, 12D BCM  
Albany, NY 12243

- d. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially

changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to OTDA. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OTDA updated replacement Certificates of Insurance, and amendatory endorsements.

- e. Certificates of Insurance shall:
  - 1. Be in the form approved by OTDA.
  - 2. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
  - 3. Specify the Additional Insured and Named Insured as required herein.
  - 4. Refer to the Contract by number and any other attachments on the face of the certificate.
  - 5. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and
  - 6. Be signed by an authorized representative of the insurance carrier or producer.
  - 7. Only original documents (Certificates of Insurance and other attachments) will be accepted.
  
- f. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OTDA for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OTDA shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in OTDA or OTDA's own policy of insurance.
  
- g. Policy Renewal/Expiration. At least two weeks prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OTDA than the expiring policies shall be delivered to OTDA in the manner required for service of notice in Paragraph A.1.C Certificates of Insurance/Notices above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OTDA, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OTDA. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the

- Contract or not providing proof of same in a form acceptable to OTDA, shall not give rise to a delay claim or any other claim against OTDA. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OTDA may withhold further contract payments, treat such failure as a breach or default of the contract.
- h. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OTDA. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
  - i. Subcontractors. Should the Contractor engage a Subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OTDA.
  - j. Acceptance and/or approval by OTDA does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.
2. Insurance Requirements: The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):
- a. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per job basis.
  - b. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included. The Alternate Employer Endorsement WC 00 03 01A

must be included on the policy naming The People of the State of New York as the alternate employer for this contract.

- c. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- d. If providing professional occupation job titles, the Contractor shall maintain errors and omissions liability insurance with a limit of not less than \$2,000,000 per loss.
- e. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
- f. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OTDA prior to the policy's expiration or cancellation.
- g. Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OTDA, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OTDA or (ii) any other form of permission for the release of OTDA.

3. Workers' Compensation Insurance And Disability Benefits Requirements  
Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract.

**ACORD** forms are **NOT** acceptable proof of workers' compensation coverage.

Proof of Compliance with Workers' Compensation Coverage Requirements:

1. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:
  - a. Be legally exempt from obtaining Workers' Compensation insurance coverage, or
  - b. obtain such coverage from an insurance carrier, or
  - c. be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of Temporary and Disability Assistance.

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us))
- Certificate of Workers' Compensation Insurance:
  - Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of Temporary and Disability Assistance, or
  - Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of Temporary and Disability Assistance.
  - Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
  - Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

2. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:
  - a. Be legally exempt from obtaining disability benefits coverage, or
  - b. obtain such coverage from an insurance carrier, or
  - c. be a Board-approved self-insured employer.

Contractors seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of Temporary and Disability Assistance.

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable RFP and Group #s on the form.)
- Certificate of New York State Disability Insurance
  - Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of Temporary and Disability Assistance, or
  - Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at:

<http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>

ALL OF THE FORMS REFERENCED IN PARAGRAPHS A.1 AND A.2, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: The Office of Temporary and Disability Assistance, 40 North Pearl Street, Albany, NY 12243, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

#### Requirements related to Contractor Debarments

2. Contracting entities must ensure that for any public work contract subject to Article 8 of the New York State Labor Law, including amendments or renewals that extend the term of an existing contract, no bid is accepted from, or contract or subcontract awarded to, a vendor or any substantially owned affiliate of a vendor, that is debarred pursuant to WCL Section 141-b. The contracting entity must check the Workers' Compensation Board Debarment List at <http://dbr.labor.state.ny.us/EDList/searchPage.do> to verify that no contractor or subcontractor is debarred pursuant to WCL Section 141-b.
3. Contracting entities should include in all public work contracts subject to WCL Section 141-b, a provision that provides notice to the contractor that the contract may be terminated if it is later determined that at the time of either the bid submission or contract award, the contractor was, in fact, debarred by WCL Section 141-b, or was the substantially owned affiliate of a debarred contractor. Additionally, the contract should include a provision that allows the State to require the contractor to replace, at no

additional charge to the State, any subcontractor who the State or the contractor subsequently learns was debarred.

4. Note: For contracts which are subject to the prevailing wage laws, the contracting entity is also reminded to check the debarment list maintained by the New York State Department of Labor at <http://dbr.labor.state.ny.us/EDList/searchPage.do> to ensure that bids are not accepted from, nor awards made to, vendors who have been debarred for violations of those laws. Although WCL debarment applies only to public work contracts covered by Article 8 of the Labor Law, prevailing wage debarments apply to public work contracts governed by Articles 8 and 9 of the Labor Law.