

RFP FOR BOND AND DISCLOSURE COUNSEL

ERIE COUNTY FISCAL STABILITY AUTHORITY

REQUEST FOR PROPOSALS

I. INTRODUCTION

The Erie County Fiscal Stability Authority requests qualified parties to submit proposals for providing advice and assistance regarding matters of public finance and disclosure associated with the issuance of bond, notes and other debt obligations.

II. BACKGROUND

The Erie County Fiscal Stability Authority (referred to hereafter as “the Authority”) is a corporate governmental agency and instrumentality of the State of New York constituting a public benefit corporation. The Authority was created by and operates pursuant to the Erie County Fiscal Stability Authority Act, Chapter 182 of the Laws of 2005. The Authority has the responsibility under the Act to monitor and oversee the finances of the County of Erie (the “County”) and covered organizations (Erie Community College, Buffalo and Erie County Public Library, and any governmental agency, public authority or public benefit corporation which receives or may receive money from the County) to exercise certain advisory and/or control powers. The Act provides for the Authority to be in effect until a date not later than December 31, 2039.

The Authority is vested with control and advisory authority to oversee the budget, financial and capital plans of the County of Erie and covered organizations (as defined in the Act); to issue bonds or other obligations to achieve budgetary savings through debt restructuring and deficit financing; to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the County if the County is unwilling or unable to take the required steps toward fiscal stability.

Section 3962 of the Authority Act empowers the Authority to issue bonds, notes and other obligations in such principal amounts as it may determine to be necessary to pay any defined financeable costs of the County of Erie and its covered organizations, up to an aggregate principal amount of seven hundred million dollars (\$700,000,000) and to fund reserves to secure such debt. Additionally, the Authority is empowered to refund or advance refund any outstanding debt of the County or the Authority.

III. PURPOSE AND SCOPE

The Authority seeks advice and assistance regarding the following services.

Bond Counsel

- i. Negotiation, preparation, review and delivery of any documents and summaries thereof for the official statement and any other documents related to the Authority’s debt issuance and advising on appropriate terms and covenants for inclusion in the issuance documents.
- ii. Advice on federal and state tax and securities law matters and changes thereto pertaining to the issuance of the Authority’s debt.

- iii. Participation in meetings with the Authority staff, directors, consultants, rating agencies, and any other advisors in the debt issuance process.
- iv. Issuance of an opinion of counsel with respect to the authorization and issuance of debt, tax related issues and any other opinion required relating to the official statement or other related documents.
- v. Assisting the Authority in any other related matters as requested.

Disclosure Counsel

The Authority seeks advice and assistance regarding the proper and timely disclosure of information to the public and to investors in the Authority's debt including the following:

- i. Preparation and/or review of preliminary official statements, official statements and other disclosure documents necessary or appropriate to the authorization, issuance, sale or delivery of debt instruments.
- ii. Preparation of the continuing disclosure agreement and assistance in connection with the Authority's ongoing compliance with such agreements.
- iii. Provision of advice relative to the compliance with securities laws
- iv. Participation in meetings with the Authority staff, directors, consultants, rating agencies, and any other advisors in the debt issuance process
- v. Assisting the Authority in any other related matters as requested.

The term of the contract is January 1, 2023 through December 31, 2025. However, the Authority retains the right to terminate the contract at any time.

IV. FILING PROCEDURES

A sealed envelope containing five (5) copies of the proposal should be sent to Kenneth Vetter, Executive Director, ECFSA, 295 Main Street Suite 946, Buffalo, NY 14203 by 4:00 p.m. on September 9, 2022. Firms must submit separately bound technical and cost proposals as set forth in Section V of this RFP. One technical and one cost proposal must be marked "ORIGINAL" and contain transmittal letters with the original signature of an official authorized to bind the firm to its provisions. The remaining copies of the proposals may contain a copy of the official's signature. The proposals should be directed to Mr. Vetter.

The Authority anticipates making a final decision on this matter on or about October 31, 2022.

Written questions concerning this request for proposals must be submitted to Kenneth Vetter, Executive Director of the Authority by August 19, 2022. Questions may be submitted by mail, fax 716-608-2270 or e-mail to kenneth.vetter@ecfsa.ny.gov. Any contact with the Authority Board members or staff, other than as explicitly provided in this Request for Proposals is prohibited.

During the evaluation process, the Authority may require clarifying information from a firm. The response to a request for clarifying information must be submitted in writing, if required by the

Authority, and directed to Mr. Vetter

The Authority reserves the right to conduct oral presentations to clarify proposals, which shall be required at the sole discretion of the evaluation panel

All respondents will be notified in writing of the award decision, if any. The successful firm will be sent notification of a conditional award to be issued on or about October 31, 2022. Any award is subject to the successful negotiation of a contract. Failed negotiations could result in an alternate award. Public discussion or news releases relating to this RFP, or the resulting agreement are prohibited without prior approval of the Authority.

Summary of Proposal Submission and Evaluation Time Schedule

| | | |
|------------------------------------------|-------|-------------------|
| Request for Proposals Dated | | August 5, 2022 |
| Notification of Interest By | | August 19, 2022 |
| Proposal Due Date | | September 9, 2022 |
| Selected Contractor Notified on or about | | October 31, 2022 |
| Contract Executed on or about | | January 1, 2023 |

A contract defining all responsibilities of the Contractor and the Authority will be developed by the Authority. Upon agreement by the bidder and the Authority to the provisions of the contract, it will be submitted for approval of the Authority Board of Directors. This RFP and the successful firm's proposals will be part of the final contract, which should be executed on or about January 1, 2023.

The Authority is not liable for any cost incurred by any firm prior to the approval of an executed contract. Accordingly, no cost will be incurred by the Authority for any firm's participation in any procurement activities.

V. ELEMENTS OF THE PROPOSAL

Interested firms must submit separately written technical and cost proposals. A checklist is included as Attachment 2 for your convenience in preparing the proposal.

TECHNICAL PROPOSAL:

Interested firms are requested to provide a written technical proposal of no more than 10 single-sided pages (excluding resumes, list of references, and required attachments and appendices) and should be prepared on 8 ½ x 11-inch paper using at least 12-point type with standard margins:

A. The technical proposal must contain a transmittal letter signed by an official authorized to bind the firm to its provisions and include the following:

1. The name of the individual responsible for negotiating any contract that might result from this procurement and that individual's mailing address, e-mail address, telephone number, and fax number.

2. A statement that the firm's technical and cost proposals are valid for at least 180 days.
- B.** The history and qualifications of the firm to serve as bond and disclosure counsel for a first-time issuer.
 - C.** A brief description of the public finance and tax departments and the names and qualifications of the partner-in-charge and other attorneys (both partners and associates) who would have direct day-to-day participation in this engagement.
 - D.** Under the term of this contract the Authority intends to sell both new debt and potentially refund outstanding obligations of the County of Erie and its covered organizations. Please provide five (5) references for the firm, the partner-in-charge and other attorneys expected to have major involvement in the engagement. The references should consist of clients for which the individuals have provided services similar to the activities required by this RFP. The references must include the name, organization, e-mail address and telephone number of an individual who can comment on the ability of the individual to perform the services required under this engagement.
 - E.** A description of your proposed services as bond and disclosure counsel as per III above and the firm's ability to provide related services in securities law.
 - F.** A complete set of Appendices (A through A-7, B and C) to be included as part of the contract to this engagement. The Appendices should be completed, signed and executed as required on the various forms.
 - G.** A description of any prior, pending or threatened litigation or administrative or State ethics board or similar body proceedings to which you or any of your partners are a party, and indicate the extent to which such would either materially impair the firm's ability to perform the services enumerated herein and for which this RFP is issued or, if decided in an adverse manner, would materially adversely affect the financial condition of the firm. The nature of the lawsuits and their outcome, if litigation is complete, should be described briefly.
 - H.** A listing of other contracts or work performed for the State of New York, New York State public authorities, the County of Erie, the Buffalo Public Schools, The Buffalo Urban Renewal Agency, the Buffalo Municipal Housing Authority, the County of Erie, and County labor organization or any New York State oversight or control board, including those established for the cities of New York, Yonkers and that established for the County of Nassau and the City of Buffalo. Briefly describe each contract and identify potential conflicts of interest that could arise or be perceived if the firm was to be awarded a contract for this engagement. If applicable, describe how the firm would avoid such conflicts of interest.
 - I.** A letter identifying information in the proposal that the firm believes should be protected from disclosure under New York State's Freedom of Information Law (FOIL). The purpose of the FOIL, which is contained in Public Officers Law, Article 6, sections 84-90, is to promote the public's right to know the process of governmental decision-making and to grant maximum public access to governmental records.

After formal contract approval by the Authority, the proposal of the successful bidder and the proposals of unsuccessful bidders are subject to disclosure under FOIL. However, pursuant to §87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful bidder's contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Please note that all information which the firm may claim as proprietary, copyrighted or rights reserved is not necessarily protected from disclosure under FOIL.

If there is information in the firm's proposal that the firm claim meets the definition set forth above, the firm should so inform the Authority in a letter accompanying its proposal. The letter should contain the following information:

- Identification by page, line or other appropriate designation of that specific portion of the proposal which contains the information; and
- A detailed justification of why disclosure of such information to the public under FOIL would cause substantial injury to the firm's competitive position. Please note that the courts have ruled that a mere conclusory statement that certain information is a trade secret and disclosure would cause injury to the firm's competitive position is insufficient to protect it from disclosure under FOIL.

Failure to identify the information under the above section may result in such information being disclosed if a request is received.

- J.** New York State Executive Order Number 127 provides for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts. You may access the Order and accompanying guidance at www.ogs.state.ny.us/legal/ExeOrder127/overview.asp. You must submit the three (3) forms noted below with your proposal.

Under the Order, the Authority is obligated to obtain identifying information on every person or organization retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process, and whether such person or organization has a financial interest in the procurement. A "Contractor Disclosure of Contacts Form" is included in Appendix A-7 as Form 1 and must be submitted with your proposal. Failure to submit the form shall result in a determination of nonresponsiveness and disqualification of the proposal. You must update the form, as necessary, throughout the procurement period.

In addition, the Authority is obligated to make a determination of responsibility of the proposed awardee for a procurement contract. A "Contractor Disclosure of Prior Non-Responsibility Determinations" form is included in Appendix A-7 as Form 2 and must be submitted with your proposal.

Bidders must certify that all information provided to the Authority with respect to the Order is complete, true and accurate. A "Contractor Certification of Compliance with Executive Order No. 127" form is included in Appendix A-7 as Form 3 and must be

submitted with your proposal.

COST PROPOSAL:

The cost proposal must contain a transmittal letter signed by an official authorized to bind the firm to its provisions. Each firm must complete the cost proposal form in Attachment 3, pages 1 and 2, which requests the information described below for the three (3) years of the engagement.

The firm's proposed annual fee structure for the services to be provided for the three-year period ending December 31, 2025, as well as the firm's billing structure regarding non-lawyer expenses (this should specifically address paralegal charges, word processing charges, mark-ups and copying, telefax and related costs) (see Attachment 3, page 3). Firms must provide fee schedules for individuals assigned to the engagement (or use a blended rate, fixed fee, not to exceed, etc.) for which the Authority can be charged by your firm. Both the fee schedules for individuals and the blended rate will be used for purposes of evaluating the proposals.

While the actual titles submitted may vary depending on the specific nomenclature of each firm, the listing must use standard staff classifications comparable to the titles listed below, if applicable:

- Partner
- Associates
- Counsel
- Paralegals

A schedule of out-of-pocket disbursements, which you anticipate will result in a charge to the Authority and the rate for each. Note that the Authority expects that disbursements will be charged at the firm's actual out-of-pocket cost. Indicate the calculation of travel costs for legal staff not stationed in Buffalo, and the extent and/or rate at which travel time to and from Buffalo and lodging expenses will be charged.

State any special considerations with respect to billing or payment of fees and expenses that your firm offers and that you believe would differentiate it from other respondents and make your firm's services more cost effective to the Authority.

State whether the Authority is being charged the lowest rate charged by your firm for its municipal clients.

VI. SELECTION CRITERIA

A selection committee consisting of Authority staff, with possible additional review by certain Authority directors, will evaluate the proposals. This selection committee will make its recommendations to the board of the Authority for final approval. The selection committee will consider the following factors, not necessarily in order of importance:

1. Quality and depth of the firm's expertise and, based on similar services provided previously, its capacity for providing the currently requested services.
2. Anticipated cost of legal services and disbursements, including such factors as hourly rates, discounts, and cost-effectiveness. (Although proposed fees will be given significant weight in the selection process, the Authority reserves the right to negotiate with any firm selected lower fees or a different fee structure than proposed.)

3. Commitment of time (especially by the partner in charge) and resources to the Authority.
4. Information provided by client references.
5. Overall organization and quality of proposal, including cohesiveness, conciseness, and clarity.
6. Minority and Women Owned Business Enterprises (MWBE) and Service-Disabled Veterans Business Development (SDVOD) status/participation.

VII. CONTRACTUAL REQUIREMENTS

The proposal submitted by the successful firm will serve as the basis for and will be included as an appendix to the contract with the Authority.

Important information affecting proposers which should be carefully examined is contained in the following appendices:

- Executed copies of the "Proposer Guarantees" (Appendix B) and "Proposer Warranties" (Appendix C) must be submitted with the firm's proposal.
- The "Standard Clauses for New York State Contracts" (Appendix A) will be included as an appendix to the contract to be entered into between the selected firm and the Authority.
- The Non-Collusive Bidding Certification (Appendix A-2) required by Section 139-D of the State Finance Law must be completed, signed and submitted with the proposal.
- Clauses stating compliance with the Omnibus Procurement Act of 1992 (Appendix A-3) and MacBride Fair Employment Principles (Appendix A-4) must be signed and submitted with the proposal.
- EEO Standard Language in Appendix A-5 should be reviewed and the proposer should be prepared to submit an EEO Policy Statement upon request.
- Appendix A-6 concerning opportunity for minority- and women-owned business enterprises should be reviewed, and the proposer should be prepared to complete the Work Force Employment Utilization Report if selected.
- Failure to submit any of the above-mentioned forms with the proposal will disqualify the firm from consideration.

In addition to the provisions in Appendix A, the contracting firm will be bound by the following general requirements:

A. Relationship between the Authority and Contractor

The relationship of the selected firm to the Authority shall be that of an independent

contractor. In accordance with such status as an independent contractor, the Contractor covenants and agrees to act consistent with such status: to neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof; and not to, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Authority, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.

B. Freedom to Undertake

With respect to any contract or employment as an independent contractor of the Authority, or any New York public corporation as defined in Section 66 of the NYS General Construction Law or any agency or department of either, pursuant to the terms of any other present or future agreement, expressed, implied, entered into with such entity, if any, the firm by submitting a proposal thereby covenants and represents that there is no conflict as to hours required to be worked or duties required to be performed pursuant to the terms of this proposal and any aforesaid contract or employment.

C. Provision for Equal Employment Opportunity

The Authority recognizes the need to take affirmative action to ensure that minority- and women-owned business enterprises and minority and women employees and principals are given the opportunity to participate in the performance of contracts with the Authority. This opportunity for full participation in our free enterprise system by persons traditionally, socially and economically disadvantaged is essential to obtain social and economic equality.

Accordingly, it is the policy of the Authority to foster and promote the participation of such individuals and business firms in contracts with this office.

The Contractor selected for this undertaking will be asked to acknowledge its understanding and support for the social policy herein stated and will be expected to exert a good faith effort to solicit the participation to the extent feasible of such individuals and firms as partners, joint venturers, subcontractors, suppliers and employees and to report the results of such efforts to the Authority.

The Contractor selected for this undertaking shall comply with the requirements of Article 15-A of the Executive Law and shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Appendices A-5 and A-6 contain the applicable Equal Opportunity language, as well as the required reporting forms.

D. Workpaper Retention and Availability

1. The Authority or its authorized representative, and other agencies authorized by State law, shall have access to and the right to examine the books, documents, papers, or records of the Contractor relating to the contract during the progress of the services to be performed by the Contractor and for a period of three (3) years after final payment under the contract. The Contractor will make all

records available to the Authority.

2. The workpapers prepared by the Contractor during this review are its own property, although copies thereof and access to them will be made available to the Authority upon request. The Contractor shall cooperate with other independent auditors conducting audits of the Authority records and with any subsequent auditors for the examination of the Authority's financial statements upon the specific request of the Authority for a period of three (3) years after final payment under the contract.
3. The firm selected agrees to make personnel available to furnish adequate explanation of all data, materials, and working papers developed during the project at any reasonable time during the period of three (3) years following the date of the final report delivered to the Authority. Reasonable time is defined to be during normal business hours and should not exceed 40 hours per week.

E. Reports and Findings

Any and all reports and findings rendered to the Authority by the Contractor shall be the exclusive property of the Authority and subject to its exclusive use and control. The Contractor herewith waives all rights to such reports and findings and the control thereof.

The Contractor shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during its performance under the terms of the contract.

F. Termination

1. The performance of work under this contract may be terminated in whole or in part by the Authority whenever, for any reason, the Authority shall determine that such termination is in its best interest. Termination of work herewith shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance or work under the contract is terminated and the date upon which such termination becomes effective.

The Authority may terminate the contract in the event that the contractor's certification of compliance with Executive Order No. 127 is found to be intentionally false or incomplete.

2. After receipt of the Notice of Termination, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the Notice.
3. The Contractor shall submit its termination claim to the Authority promptly after receipt of a Notice of Termination, but in no event later than 30 days from the effective date thereof, unless one or more extensions in writing are granted by the Authority upon written request of the Contractor within such 30-day period or authorized extension thereof. Upon failure of the Contractor to submit its

termination claim within the time allowed, the Authority may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of termination and shall thereupon pay to the Contractor the amount so determined.

4. If the termination is brought about as a result of unsatisfactory performance on the part of the Contractor, the value of the work performed by the Contractor prior to termination shall be established by the Authority.
5. The Contractor agrees to transfer title to the Authority and deliver in the manner, at the time, and to the extent, if any, directed by the
6. Authority, such information and items which, if the contract had been completed, it would have been required to be furnished to the Authority.

G. Contractor's Liability

The Contractor shall be liable for and shall indemnify the Authority for all damage to life and property due to the negligent acts, errors or omissions of the Contractor, its subcontractors, agents or employees, in the performance of its services under the contract. Further, it is expressly understood that the Contractor shall be liable for the claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the Contractor under the contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the Contractor's failure to meet professional standards which result in obvious or patent errors in the progression of its work. Nothing in the contract shall create or give to the third parties any claim or right of action against the Contractor or the Authority beyond such as may legally exist irrespective of this Article or Agreement.

H. Disputes and Dissatisfaction

In the event the Authority or the Contractor is dissatisfied with the other's performance under the contract, either party must so notify the other in writing. The other party must then make every good faith effort to solve the problem or settle the dispute amicably, including meeting with a party's representatives to diligently attempt to reach a satisfactory result.

I. Notices

All notices, demands, instructions, claims, approvals and disapprovals are required to be given to either party at the addresses hereinbefore set forth or to such other address as either party shall have notified the other, in writing, to be the proper mailing address.

J. Waiver, Modification, Execution, or Severability

1. No waiver or modification of the contract or any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the parties hereto,

and no evidence of any waiver or modification shall be offered or received in evidence in any action between the parties hereto arising out of or affecting the contract, or the rights or obligations of any party hereunder, unless such waiver of modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of the paragraph may not be waived except as herein set forth.

2. The written contract shall contain the sole and entire agreement between the parties and shall supersede any and all other agreements between the parties.
3. The parties hereto shall execute such other further documents as may be required to effectuate the terms of the contract.
4. The terms, clauses and provisions of the contract are intended to be severable, and the unconstitutionality, illegality or unconscionableness of any term, clause or provision shall in no way affect the enforcement of any other term, clause or provision.

K. Disclosure of Prior or Pending Lawsuits.

Disclosure of any prior or pending lawsuit(s) or litigation between the bidder and any New York State department, agency, board, or commission is required. The nature of the lawsuit and its outcome, if litigation is complete, should be described briefly.

L. Objections

Objections to the requirements stated in this RFP must be submitted in writing or by e-mail by August 19, 2022. Objections submitted after that date will not be considered. Objections should refer to the appropriate section, provide a rationale, and, where feasible, provide alternate language or options for consideration by the Authority. The Authority reserves the right to reject objections or to alter the terms of the RFP accordingly.

DATED: August 5, 2022

Appendix A: 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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 \$15,000 (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 \$30,000 (State Finance Law Section 163.6.a).

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

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

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

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

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (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
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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
625 Broadway
Albany, New York 12245
www.esd.ny.gov

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. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

Appendix A-2: Non-Collusive Bidding Certification

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

SECTION 139-D, Statement of Non-Collusion in bids to the State:

BY SUBMISSION OF THIS BID, 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], [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 _____, 20____ as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAME

LEGAL RESIDENCE

President

Secretary

Treasurer

President

Secretary

Treasurer

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

By _____
Name

Title

Title

Address _____
Street

Address _____
Street

City State

City State

A-3: Bid/Contract Insert Clauses

**BID/CONTRACT INSERT CLAUSES
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
625 Broadway
Albany, NY 12245
Phone: (518) 292-5100

Note: Companies requesting lists of potential subcontractors and suppliers are encouraged to identify the SIC code, size and location of vendors.

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

NYS Department of Economic Development
Minority and Women's Business Development Division
625 Broadway
Albany, NY 12245
Phone: (518) 292-5100

- Bidders located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer to offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the State in efforts to get foreign countries to recognize offset credits created by the procurement contract.

- The Omnibus Procurement Act of 1992 requires that by signing this bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

1. The successful contractor shall document efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project and has retained the documentation of these efforts to be provided upon request to the State.

2. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has:

Solicited bids, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned businesses, or

Contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or

Placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or

Participated in bidder outreach conferences.

If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.

If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.

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

4. 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 Community Services 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.

Signature

Date

A-4: MacBride Fair Employment Principles

**NON-DISCRIMINATION 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 percent or greater ownership interest, or any individual or legal entity that holds a 10 percent or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes ____ or, No ____ if yes;

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

Yes ____ or, No ____

Signature

Date

A-5: EEO Standard Language

State agencies shall include in all State contracts and all documents soliciting bids or proposals for State contracts the following language:

(1) Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national original, sex, age, disability or marital status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading's, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(2) Prior to the award of a State contract, the Contractor shall submit an Equal Employment Opportunity ("EEO") Policy Statement to the contracting agency within the time frame established by that agency.

(3) The Contractor's EEO Policy Statement shall contain, but not necessarily be limited to, and the contractor, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
- b. 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.
- c. 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 original, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

(4) Except for construction contracts, prior to an award of a State contract, the contractor shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State contact or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency.

(5) After an award of a State contract, the Contractor shall submit to the contracting agency a work force utilization report, in a form and manner required by the agency, of the work force actually utilized on the State contract, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the contracting agency.

(Note: The Contractor shall include the language of the above provisions in every subcontract in such a manner that the requirement of the provisions will be binding upon each subcontractor as to work in connection with the State contract, including the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethic background, gender, and Federal Occupational Categories of the employees to be utilized on the State contract.)

A-6: Contractor's Requirement Under Article 15-A

Article 15-A of the Executive Law has been in existence since July 1988. This legislation, in conjunction with Executive Order 21, which was promulgated in August of 1983, provides specific rules, regulations and procedures for minority and women business participation in certain State contracts.

The Division is required to implement the provisions of Article 15-A for all its contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for contracts in excess of \$100,000 for real property renovation and construction. For purposes of this contract, the agency hereby establishes a goal of 3 percent for minority business enterprises (MBE) participation and 13.5 percent for women owned business enterprises (WBE) participation.

In order to be awarded a contract with the Division, every bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

POLICY AND PROVISIONS

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBE's) in State contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE subcontractors or suppliers in the performance of this contract.

For the purpose of determining a contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver therefrom, the contracting agency shall consider:

- (a) Whether the contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,
 - (i) whether or not certified minority or women-owned businesses which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 - (ii) whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and
 - (b) Whether there has been written notification to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and
 - (c) Whether the contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.
1. **GOALS** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBE's currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.
 2. **UTILIZATION** - The Contractor may count as M/WBE participation: subcontracting part of the contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the contract from certified firms.
 2. **MINORITY AND WOMEN-OWNED BUSINESS OFFICER** - The Contractor shall designate a M/WBE business officer and assign the officer the responsibility and authority to monitor the M/WBE program for this contract. This contracting agency's staff is available to help in identifying certified M/WBE's.

4. **REQUIRED REPORTS** - The Contractor is required to submit a Utilization Plan to the contracting agency within 14 days of notification of being the apparent low bidder. The required Utilization Plan requires a list of New York State certified minority and women-owned businesses that have agreed to participate in fulfilling the terms and conditions of this contract. The Contractor must also submit the MBE/WBE Letter of Intent to Participate. The Letter of Intent to Participate is a commitment by the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on this contract are agreed to. Any modifications or changes to the agreed participation by certified M/WBE's, over the term of the contract, must be reported on a revised Utilization Plan.
5. **NONDISCRIMINATION** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this contract.

POST AWARD

The contracting agency will monitor the Contractor's compliance with the Utilization Plan by requiring the Contractor to submit to the Office, the following forms, by the 10th day of each month:

1. Cumulative Monthly Income Statements
2. Monthly Affirmation of Income Payments

All questions regarding compliance to Article 15-A requirements or copies of the forms should be addressed to the contracting agency.

SERVICE AND/OR CONSULTANT FIRMS INSTRUCTIONS FOR COMPLETION

PURPOSE: The *Work Force Utilization Report for Service and/or Consultant Firms* is prepared by all contractors, and subcontractors, if any, providing services (skilled or non-skilled) or professional consulting services to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the contract specific work force can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific work force cannot be separated out, the contractor's total work force is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

GENERAL INFORMATION:

3. *Name of contracting state agency* and state agency code (five- digit code).
4. *Reporting period* covered by report (mm/dd/yy to mm/dd/yy); check to indicate *Quarterly* or *Semi-Annual* Report.
5. *Contractor firm name* (prime contractor on summary report submitted to agency) and *address* (including city name, state and zip code); check if the contractor is NOT-FOR-PROFIT.
6. *Type of Report:* check to indicate whether report covers (i) the *Contract Specific Work Force* or (ii) the *Company's Total Work Force* (in the event the contract specific work force cannot be separated out).
7. *Contractor Federal Employer Identification number* or payee identification number (prime contractor i.d. on summary report); check to indicate prime or subcontractor report.
8. *Contract Amount* is dollar amount based on terms of the contract.
9. *Contract Number* is the agency assigned number given to the contract (seven digits).
10. *Location of work* including county and zip code where work is performed.
11. Indicate *Product or Service provided* by contractor (brief description).
12. *Contract start date* is month/day/year work on contract actually began.
13. *Contractor's estimate of the percentage of work completed* at the end of this reporting period.

FEDERAL OCCUPATIONAL CATEGORIES: The contractor's work force is broken down and reported by the nine *Federal Occupational Categories (FOC's)* consistent with the Federal government's EEO-1 categories for the private sector

labor force. These are: *Officials and Managers, Professionals, Technicians, Sales, Office and Clerical (Administrative support), Craft Workers, Operatives, Laborers and Service Workers*. The categories are general in nature and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

TOTAL NUMBER OF EMPLOYEES: Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total work force, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) thru (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- *Black (not of Hispanic origin):* all persons having origins in any of the Black African racial groups;
- *Hispanic:* all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian of Hispanic origin, regardless of race;
- *Asian or Pacific Islander:* all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;
- *Native American or Alaskan Native:* all persons having origins in any of the original peoples of North America.

TOTAL % MINORITY = sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

TOTAL % FEMALE = total number of female employees in the FOC (column 2) divided by the total number of all employees in that FOC (column 1 + column 2).

TOTALS: column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

SUBMISSION: The work force utilization report is to be completed by both prime and subcontractors and signed and dated by an *authorized representative* before submission. This Company Official's name, official title and telephone number should be printed or typed where indicated on the bottom of the form.

The *prime contractor* shall complete a report for its own work force, collect reports completed by each subcontractor, and prepare a summary report for the entire combined contract work force. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR pursuant to Article 15-A of the Executive Law*.

**WORK FORCE EMPLOYMENT UTILIZATION REPORT
SERVICE AND/OR CONSULTANT FIRMS**

Agency _____ /Code _____ Reporting Period _____
 Check one: Quarterly Report Semi-Annual Report

Contractor Firm Name _____ Address _____ City _____ State _____ Zip _____

Type of Report: Contract Specific Work Force Total Work Force Check if NOT-FOR-PROFIT

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal ID/Payee ID No. _____ Check One <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor Contract Amount: \$ _____ | Contract No. _____ Location of Work _____ County _____ Zip _____ Product/Service Provided: _____ Contract Start Date: _____ Percent of Job Completed _____ |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Number of Employees | | | | | | | | | | | | Total Percent Minority Employees | Total Percent Female Employees |
|-------------------------------------|------------------------------|--------|--------------------------------------|--------|----------|--------|------------------------------|--------|------------------------------------|--------|--|----------------------------------------|--------------------------------------|
| Federal Occupational Category | Total Number of Employees | | Black (Not of Hispanic Origin) | | Hispanic | | Asian or Pacific Islander | | Native American/ Alaskan Native | | | | |
| | Male | Female | Male | Female | Male | Female | Male | Female | Male | Female | | | |
| Officials/Admin | | | | | | | | | | | | | |
| Professionals | | | | | | | | | | | | | |
| Technicians | | | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | | | |
| Office and Clerical | | | | | | | | | | | | | |
| Craft Workers | | | | | | | | | | | | | |
| Operatives | | | | | | | | | | | | | |
| Laborers | | | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | | | |
| TOTALS | | | | | | | | | | | | | |

Company Official's Name _____ Title _____ Company Official's
 Signature _____ Date _____ Telephone Number _____

A-7 State Procurement Disclosure (Executive Order # 127)

**NEW YORK STATE EXECUTIVE ORDER NUMBER 127
PROVIDING FOR INCREASED DISCLOSURE
IN THE PUBLIC PROCUREMENT PROCESS**

Form 1 - Contractor Disclosure of Contacts

Instructions:

New York State Executive Order Number 127 (EO 127) provides for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions.

In general, a procurement contract is defined as a contract, agreement or subsequent amendment involving an annualized expenditure in excess of \$15,000.00, but does not include those contracts that by law must be awarded to the lowest responsible bidder or based on the lowest price.

In the first instance, Section II, paragraph 1 of EO 127 obligates a covered agency or authority to obtain identifying information on every person or organization retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process. The covered agency or authority is also obligated to collect information on whether such person or organization has a financial interest in the procurement.

Thereafter, Section II, paragraph 2 of EO 127 continues to obligate a covered agency or authority to obtain such identifying information on every person or organization subsequently retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process. A covered agency or authority shall ensure that a contractor informs such agency or authority of persons or organizations subsequently retained, employed or designated by or on behalf of the contractor before the agency or authority is contacted.

Contractor Disclosure of Contacts Form

This form shall be completed and submitted with your bid/proposal or offer in accordance with Executive Order Number 127 (EO 127). Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid/proposal or offer.

Name of Contractor:

Address:

Name and Title of Person Submitting this Form:

This an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127? (Please circle):

Initial filing

Updated filing

The following person or organization was retained, employed or designated by or on behalf of the Contractor to attempt to influence the procurement process:

Name: _____

Address: _____

Telephone Number: _____

Place of Principal Employment: _____

Occupation: _____

Does the above named person or organization have a financial interest in the procurement? (Please circle) yes no

Form 2 - Contractor Disclosure of Prior Non-Responsibility Determinations

Instructions:

New York State Executive Order Number 127 (EO 127) obligates a covered agency or authority to make a determination of responsibility of the proposed awardee for a procurement contract. EO 127 mandates consideration of whether a contractor has intentionally provided false or incomplete information under such Order within the last five years, and whether a contractor has failed to timely disclose accurate and complete information or otherwise cooperate in the implementation of the Order. For more information on responsibility determinations, please see the New York State Procurement Bulletin entitled "*Best Practices - Determining Vendor Responsibility*" issued by the New York State Procurement Council, May 1999. This Bulletin includes an updated Standard Vendor Responsibility Questionnaire presenting this inquiry as question 14(s) (see page 6 of the Bulletin). See <http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf>.

In accordance with section II, paragraph 6 of EO 127, a covered agency or authority is precluded from awarding a procurement contract to a contractor with a finding of non-responsibility under the Order unless it makes a finding, on the record, that such contract is in the best interests of the State, notwithstanding the prior finding of non-responsibility. Such agency or authority must prepare a statement describing the basis of such determination and include it in its procurement record.

Contractor Disclosure of Prior Non-Responsibility Determinations

Name of Contractor:

Address:

Name and Title of Person Submitting this Form:

Has any covered agency or authority made a finding of non-responsibility regarding the Contractor in the last five years? (Please circle):

No

Yes

If yes, was the basis for the finding of the Contractor's non-responsibility due to the intentional provision of false or incomplete information required by Executive Order Number 127? (Please circle):

No

Yes

If yes, please provide details regarding the finding of non-responsibility below.

Covered Agency or Authority: _____

Year of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

Has any covered agency or authority terminated a procurement contract with the Contractor due to the intentional provision of false or incomplete information required by Executive Order Number 127? (Please circle):

No

Yes

Form 3 - Contractor Certification of Compliance with Executive Order 127

Instructions:

New York State Executive Order Number 127 (EO 127), section II, paragraph 7 requires that every procurement contract subject to its provisions contain a certification that all information provided to the soliciting agency or authority regarding EO 127 is complete, true and accurate. There are several ways the certification can be obtained. One way is through the addition of the certification language to the miscellaneous clauses portion of the contract. A second way is through an addition to an appendix that sets forth agency-specific clauses. A third way is by adding a contractor certification to the existing signature page of the contract. For the purposes of this model language, a contractor certification has been added to the recommended signature page set forth in Bulletin Number G-111 (revised May 20, 2003) from the Office of the State Comptroller. For ease of use, the contractor certification language is indicated in italics within that Bulletin. Regardless of the means selected by the covered agency or authority, the language is fundamentally the same.

The form contains language suggestions for inclusion in either a miscellaneous section of a proposal or of the contract or within an appendix setting forth agency-specific terms and conditions (depending on whether the organization incorporates the terms of its solicitation into the contract).

Contractor Certification of Compliance with Executive Order 127

Language suggestion for inclusion in either a miscellaneous section of the proposal, a miscellaneous section of the contract or within the appendix setting forth agency-specific terms and conditions:

Contractor certifies that all information provided to the Agency with respect to Executive Order Number 127 is complete, true and accurate.

Language suggestion for a Signature page:

Contract Number _____

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

By: _____

Date: _____

Name: _____

Title: _____

Contract Certification:

I certify that all information provided to the Agency with respect to Executive Order Number 127 is complete, true and accurate.

By: _____

Date: _____

Name: _____

Title: _____

Contractor: _____

Address: _____

Attorney General's Signature

Approved:
Thomas P. DiNapoli
Comptroller

By: _____

By: _____

Date: _____

Date: _____

Form 4 - Model Contract Termination Provision

Instructions:

New York State Executive Order Number 127 (EO 127), section II, paragraph 7 provides that every procurement contract shall contain a provision authorizing the covered agency or authority to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This contract language authorizes termination but does not mandate termination.

Instructions:

New York State Executive Order Number 127 (EO 127), section II, paragraph 4 obligates every covered agency and authority to record any contacts that reasonably appear to be an attempt to influence the procurement process by persons or organizations not identified in the bid or proposal documents or supplemental bid or proposal documents. The covered agency and authority must make a written record of the contact. In the event that a person or organization does not disclose whether such person or organization has a financial interest in the procurement, in the interests of complying with the requirements of EO 127, good practice indicates that a financial interest should be presumed, and the record of contact form marked as "yes".

Form 6: Compiled Record under Executive Order Number 127

Instructions:

New York State Executive Order Number 127, section II, paragraphs 4 and 5, obligates every covered agency and authority to record any contacts that reasonably appear to be an attempt to influence the procurement process by persons or organizations identified in the contractor's bid or proposal documents and to record any contacts that reasonably appear to be an attempt to influence the procurement process by persons or organizations not retained, employed or designated by the contractor. The covered agency and authority must make a written record of the contact and this record must be open to public inspection.

As part of the procurement record, the covered entity should compile a list of all those persons or organizations that were retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process or who contacted the covered agency or entity in an attempt to influence the procurement process. All records of contacts should be forwarded to the official responsible for the preparation of the procurement record for inclusion in the compiled record, as appropriate. Such official can discard duplicate records of contacts. Please use as many sheets as are necessary for each category of contacts.

B. PROPOSER GUARANTEES

The proposer certifies it can and will provide and make available, as a minimum, all services set forth in the RFP.

The proposer has read Section VII, Contractual Requirements, and agrees that the rights and prerogatives as detailed in that Section are retained by the Division.

The proposer agrees to be bound by the Contractual Requirements delineated in Section VII.

Signature of Official: _____

Name (Typed): _____

Title: _____

Company: _____

Date: _____

C. PROPOSER WARRANTIES

Proposer warrants that it is willing and able to comply with New York laws with respect to foreign (non-New York) corporations.

Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.

Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the written permission of the Division.

Proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature of Official: _____

Name (Typed): _____

Title: _____

Company: _____

Date: _____

ATTACHMENT A
SOLICITATION AND CONTRACT TEXT WHEN SETTING SDVOB GOALS

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. Erie County Fiscal Stability Authority recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Erie County Fiscal Stability Authority contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. Contract Goals

- A. Erie County Fiscal Stability Authority hereby establishes an overall goal of 6 % for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the Erie County Fiscal Stability Authority Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to

meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to Erie County Fiscal Stability Authority.

- C. Erie County Fiscal Stability Authority will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of Erie County Fiscal Stability Authority acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to Erie County Fiscal Stability Authority a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by Erie County Fiscal Stability Authority to be inadequate, Erie County Fiscal Stability Authority shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by Erie County Fiscal Stability Authority, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. Erie County Fiscal Stability Authority may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB 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 Erie County Fiscal Stability Authority determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Erie County Fiscal Stability Authority shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at Erie County Fiscal Stability Authority for guidance.**
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by Erie County Fiscal Stability Authority at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, Erie County Fiscal Stability Authority shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 Erie County Fiscal Stability Authority but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If Erie County Fiscal Stability Authority upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, Erie County Fiscal Stability Authority may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to Erie County Fiscal Stability Authority

IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any,

scheduled by Erie County Fiscal Stability Authority with certified SDVOBs whom Erie County Fiscal Stability Authority determined were capable of fulfilling the SDVOB goals set in the Contract.

(4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

V. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

ATTACHMENT C SOLICITATION AND CONTRACT TEXT FOR SET-ASIDE PROCUREMENTS

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. Erie County Fiscal Stability Authority recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Erie County Fiscal Stability Authority contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Erie County Fiscal Stability Authority established this procurement as a set aside contract pursuant to 9 NYCRR § 252.2(j). Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of other SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

NOTICE OF INTEREST

Mr. Kenneth Vetter, Executive Director
Erie County Fiscal Stability Authority
295 Main Street, Suite 946
Buffalo NY, 14203

Fax: (716) 608-2270

Name of Firm: _____

_____ OUR FIRM INTENDS TO SUBMIT A PROPOSAL for Bond and Disclosure Counsel set forth in the Request for Proposals dated August 5, 2022.

_____ Please keep our name and address on your mailing list for future procurements.

Signature of Official: _____

Name (typed): _____

Title: _____

Date: _____

Contact Person: Name _____

Title _____

Phone _____

**ERIE COUNTY FISCAL STABILITY AUTHORITY
BOND/DISCLOSURE COUNSEL**

PROPOSAL CHECKLIST

NOTICE OF INTEREST - Attachment 1 (optional and submitted separately)

TECHNICAL PROPOSAL

- Transmittal letter
 - State understanding of work/commitment to perform within time frames
 - Name, title, address, phone and fax number, and e-mail address of contact person

- Title page
 - RFP subject
 - Firm name
 - Name, title, address, phone and fax number, and e-mail address of contact person
 - Date of proposal

- Table of contents
 - Identify material by section and page number

- Items noted in Section V, subsections B through J
 - Five (5) Copies of the Technical Volume

SEALED DOLLAR COST BID

- Items Noted in Section V
 - Transmittal letter
 - Estimates for 2023, 2024 and 2025 Engagements (Attachment 4)
 - Billing structure for non-lawyer expenses

- Five (5) copies of the Dollar Cost Bid (in a separate, sealed envelope).

ATTACHMENT 3 – COST PROPOSAL

Page 1 of 2

**2023 ERIE COUNTY FISCAL STABILITY AUTHORITY BOND COUNSEL/DISCLOSURE COUNSEL
COST EVALUATION**

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

| | Partner | Counsel | Associate | Paralegal | Other (specify)* | Blended Rate |
|----------|---------|---------|-----------|-----------|------------------|--------------|
| Rate | \$ | \$ | \$ | \$ | \$ | \$ |
| Subtotal | \$ | \$ | \$ | \$ | \$ | \$ |

**2024 ERIE COUNTY FISCAL STABILITY AUTHORITY BOND COUNSEL/DISCLOSURE COUNSEL
COST EVALUATION**

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

| | Partner | Counsel | Associate | Paralegal | Other (specify)* | Blended Rate |
|----------|---------|---------|-----------|-----------|------------------|--------------|
| Rate | \$ | \$ | \$ | \$ | \$ | \$ |
| Subtotal | \$ | \$ | \$ | \$ | \$ | \$ |

ATTACHMENT 3 – COST PROPOSAL

Page 2 of 2

**2025 ERIE COUNTY FISCAL STABILITY AUTHORITY BOND COUNSEL/DISCLOSURE COUNSEL
COST EVALUATION**

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

| | Partner | Counsel | Associate | Paralegal | Other (specify)* | Blended Rate |
|----------|---------|---------|-----------|-----------|------------------|--------------|
| Rate | \$ | \$ | \$ | \$ | \$ | \$ |
| Subtotal | \$ | \$ | \$ | \$ | \$ | \$ |

Note: *Fees for the "Other" titles will not be used as part of the cost evaluation. The cost evaluation will be scored as follows; each firm will be scored both on the basis of the fees for the individual titles and the fees for the blended rate, with the lowest score used as a rating for the firm.

Provide details on the firm's billing structure regarding non-lawyer expenses, specifically paralegal charges, word processing charges, mark-ups and copying, telefax and related costs, and rules for taxi utilization. These costs are for informational purposes only and will not be included as part of the cost evaluation. Out-of-pocket expenses for staff travel, lodging and subsistence should be estimated at the per diem rates granted by the State for its Management/Confidential employees, which can be found on the U.S. General Services Administration's website at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. Click on Per Diem Rates, 2022 Domestic Rates, and New York State.