**APPENDIX B**

**PROPOSER AND CONTRACTOR COMPLIANCE REQUIREMENTS AND PROCEDURES**

**FOR PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO OSC CONTRACTS**

In an effort to eradicate barriers that have historically impeded access by minority group members and women in State contracting activities, New York State Executive Law §310–318, (Article 15-A: Participation By Minority Group Members and Women With Respect To State Contracts – hereinafter “the Article”), was enacted to promote equality of employment and economic opportunities for minority group members and women.

To demonstrate its commitment to diversity and non-discrimination, and to remedy disparities caused by discrimination, the New York State Office of the State Comptroller (“OSC”) has enacted the following Executive Orders:

* Equal Opportunity, Non-Discrimination and Affirmative Action;
* Harassment (Including Sexual Harassment), and
* Minority/Women-Owned Business Enterprise (“M/WBE”) Procurements.

In keeping with the Comptroller’s Executive Orders, applicable federal, State and local laws, rules, regulations, and the requirements as set forth under the Article, OSC has developed compliance requirements, forms, and procedures to ensure that (i) all contractors (as defined under §310[3] (to include those who submit bids/proposals in an effort to be selected for contract award [hereinafter “Proposers”] as well as those successful bidders/proposers with whom OSC enters into State Contracts, as defined in §310[13] [hereinafter “Contractors”], as well as proposed or actual “Subcontractors”, as defined in §310[14]) shall comply with requirements to ensure Equal Employment Opportunities (“EEO”) for minority group members and women, and (ii) there are meaningful participation opportunities for certified M/WBEs in the OSC procurement process.

It is the expectation of OSC and the responsibility of all proposers and contractors participating in and/or selected for procurement opportunities with OSC that such proposers and contractors shall fulfill their obligations to comply with applicable federal, State, and local requirements concerning EEO and opportunities for M/WBEs, including but not limited to the Article and its implementing regulations.

1. **EEO Requirements**
   1. **Prior to the Award of a State Contract**

In addition to the requirements stated in Appendix A, Clause 12 (*Equal Employment Opportunities for Minorities and Women*), and to ensure complete compliance with such requirements (and with the Article and the Regulations adopted pursuant thereto), as a precondition to being selected for contract award and entering into a valid and binding State Contract, the Proposer shall provide with its bid/proposal:

* + 1. An **EEO Policy Statement**, as described in Appendix A, Clause 12.
    2. **Form AC 3239-A (Proposer’s EEO Staffing Plan of Anticipated Workforce)**, which should document:
       1. The workforce to be utilized on the State Contract; or
       2. Where the workforce to be utilized in the performance of the State Contract cannot be separated out from the Proposer’s and/or proposed Subcontractor’s total work force (for example, certain commodities contracts), the Proposer’s and/or proposed Subcontractor’s total workforce including apprentices, broken down by specified ethnic background, gender, and federal occupational categories or other appropriate categories specified by OSC.

A Proposer’s failure to submit an EEO Policy Statement and **Form AC 3239-A – Proposer’s EEO Staffing Plan of Anticipated Workforce** shall result in the rejection of the Proposer’s bid/proposal, unless the Proposer provides OSC with a reasonable justification in writing for such failure (e.g., the failure to submit a staffing plan where a Proposer has a work force of 10 employees or less), or makes a commitment to submit an EEO Policy Statement and an EEO Staffing Plan of Anticipated Workforce within the time frame specified in writing by OSC.

If, after scoring, a Proposer is selected for award, before that award is completed (e.g., during contract negotiations), OSC will conduct a review of the substance of the EEO Policy Statement and the EEO Staffing Plan of Anticipated Workforce to determine whether the Proposer appears to be in compliance with Appendix A, Clause 12 and the Article, i.e., whether such documents demonstrate that the Proposer is committed to Equal Employment Opportunity. If, upon review, OSC comes to the conclusion that such commitment to EEO principles is lacking, OSC shall contact the Proposer and make every effort to resolve the deficiencies identified in the bid/proposal and to bring the substance of the bid/proposal into compliance with such requirements. Failure to correct such deficiency within a time frame specified by OSC may result in the rejection of the Proposer’s bid/proposal.

* 1. **After the Award of the State Contract**

After OSC’s award of a State Contract and during the performance of the State Contract, the Contractor shall periodically[[1]](#footnote-1) submit to OSC:

* + 1. **Form AC 3239-B** (**Contractor’s/Subcontractor’s EEO Workforce Utilization Report),** which should document:
       - The workforce to be utilized and, thereafter, actually utilized on the State Contract, broken down by specified ethnic background, gender, and federal occupational categories or other appropriate categories specified by OSC.

In addition to general compliance monitoring of State Contracts, OSC shall conduct in-depth compliance reviews on selected State Contracts during the course of the year, in accord with 5 NYCRR §143.4.

The Contractor’s/Subcontractor’s EEO Workforce Utilization Reports shall be reviewed as part of OSC’s general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce submitted with a bid/proposal and the Contractor’s/Subcontractor’s EEO Workforce Utilization Reports, the Contractor/Subcontractor may be subject to an in-depth EEO compliance review.

If deficiencies are identified during OSC general contract compliance monitoring or during in-depth compliance reviews, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor/Subcontractor into compliance with such requirements.

If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for Human Resources and Administration at OSC agrees that the Contractor/Subcontractor is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development’s Division of Minority and Women’s Business Development (“DMWBD”) regarding the Contractor’s/Subcontractor’s noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Contractor/Subcontractor by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law §316) and regulation (5 NYCRR §143.6).

1. **M/WBE Requirements**

It is the policy of the State of New York and of OSC that M/WBEs (as defined under §310[7] and [15] and as certified pursuant to 5 NYCRR Part 144) shall be given the opportunity for meaningful participation in the performance of State Contracts. Accordingly, **Proposers and Contractors shall make good faith efforts** to solicit active participation by M/WBEs identified in the Empire State Development (“ESD”) directory of certified businesses[[2]](#footnote-2), which can be viewed at: **www.nylovesmwbe.ny.gov/cf/search.cfm**.

**For the purposes of this Appendix B, the question of whether a proposer or contractor has engaged in and documented “good faith efforts” to solicit active participation by M/WBEs in the performance of State Contracts shall be determined by OSC after a thorough consideration of the factors listed in 5 NYCRR §142.8.**

The separate MBE and WBE participation goals established by OSC for this procurement are based on the overall availability of M/WBEs that have been certified to perform the specific scope of work identified in this procurement. **For compliance purposes, these goals should not be construed as rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort** to make all aspects of the entire M/WBE Program work.

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

Bidders/Proposers shall document and/or demonstrate in their bids/proposals every good faith effort to solicit active M/WBE participation at least equal to the participation goals established by OSC. The M/WBE utilization should be measured by comparing (in detail) the dollar value of the component services/deliverables/materials provided/supplied by M/WBEs to the total dollar value of the services/deliverables/materials required by the State Contract. The following must be submitted with the bid/proposal:

* + 1. **Form AC 3239-C (M/WBE Goal Requirements – Certification of Good Faith Efforts)**, which should document:
       - Actions taken by the Bidder/Proposer to solicit M/WBEs as subcontractors and/or suppliers so that the Bidder/Proposer could achieve the overall prescribed M/WBE participation percentage goals set forth in the procurement in the performance of the contract to be awarded.
    2. **Form AC 3239-D (Proposer’s M/WBE Utilization Plan)**, which should document:
       - Actions taken and/or to be taken to meet established goals and the time frames need to achieve results which could reasonably be expected by putting forth every good faith effort to achieve the overall prescribed M/WBE participation percentage (%) goals set forth in the procurement.
    3. **Form AC 3239-E (Proposer’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate)**, which should document:
       - The names and signatures of certified MBEs and/or WBEs which have agreed to participate as Subcontractors if the Proposer is awarded the State Contract.

When M/WBE participation goals higher than 0% (zero percent) are included in OSC’s procurement documents, a Proposer’s failure to submit a completed **Form AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts**, **Form AC 3239-D – Proposer’s M/WBE Utilization Plan**, and a completed **Form AC 3239-E – Proposer’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate** shall result in the rejection of the Proposer’s bid/proposal, unless the Proposer provides OSC with a completed **Form AC 3239-F (Request for Waiver)** or makes a commitment to submit a completed **Form AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts, Form AC 3239-D – Proposer’s M/WBE Utilization Plan, and Form AC 3239-E – Proposer's M/WBE Subcontractor's/Suppliers Notice of Intent to Participate** within the time frame specified in writing by OSC.

If, after scoring, a Proposer is selected for award, before that award is completed (e.g., during contract negotiations), the “Successful Proposer” will be required to submit **Form AC 3239-G (Contractor’s M/WBE Utilization Plan)**. OSC will review the substance of such Plan and within twenty (20) days from the receipt thereof issue a written notice of acceptance or deficiency.

A Successful Proposer must provide OSC with a written remedy in response to a written notice of deficiency within seven (7) business days of receipt or within a reasonable time frame as specified by OSC to correct the specific deficiency. Failure to correct a deficiency and/or demonstrate compliance can result in (i) the necessity of the Successful Proposer to submit to OSC a completed **Form AC 3239-F (Request for Waiver)**, or (ii) disqualification of the bid/proposal.

* 1. **After the Award of the State Contract**

After OSC’s award of a State Contract and during the performance of the State Contract, except where OSC has granted the Contractor a total waiver[[3]](#footnote-3), the Contractor shall submit to the Program with every invoice:

* + 1. **Form AC 3239-H – M/WBE Expenditure Reports**.

Failure to timely submit a **Form AC 3239-H – M/WBE Expenditure Reports** and/or other reports or information as requested may result in payments under the contract being delayed until such reports or other information have been received[[4]](#footnote-4).

OSC shall review the substance of the Contractor’s **Form AC 3239-H – M/WBE Expenditure Reports** and shall be responsible for evaluating and determining whether the Contractor has demonstrated compliance with its previously approved **Form AC 3239-G – Contractor’s M/WBE Utilization Plan**. In making such determination, OSC may review and investigate whether the participation goals are being achieved with certified minority- and women-owned business enterprises and whether information made available to OSC through monitoring, onsite inspections, progress meetings regarding work required by the State Contract, review of payrolls or other OSC actions provides evidence of compliance.

Where it appears that a Contractor cannot, after a good faith effort, comply with its previously approved **Form AC 3239-G – Contractor’s M/WBE Utilization Plan**, such Contractor may submit a completed **Form AC 3239-F (Request for Waiver)** setting forth the reasons for such Contractor’s inability to meet any or all of the participation requirements, together with an explanation and supporting documentation demonstrating the efforts undertaken by such Contractor to obtain the required M/WBE participation[[5]](#footnote-5).

If OSC determines that the Contractor has not demonstrated compliance with its previously approved **Form AC 3239-G – Contractor’s M/WBE Utilization Plan** and has made no good faith effort to do so, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor into compliance with such requirements.

If OSC is unsuccessful in its efforts, and, upon review, the Deputy Comptroller for Human Resources and Administration agrees that the Contractor is non-compliant, OSC shall either:

(i) submit a written complaint to the New York State Department of Economic Development’s Division of Minority and Women’s Business Development (“DMWBD”) regarding the Contractor’s/Subcontractor’s noncompliance and recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Contractor/Subcontractor by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law §316) and regulation (5 NYCRR §142.12), including potential temporary debarment of the Contractor where the Contractor is found to have engaged in fraudulent or intentional misrepresentation or willful or intentional disregard of the M/WBE participation requirement in the State Contract; or

(ii) withhold payment from the Contractor as liquidated damages in accordance with 5 NYCRR §142.13, if the Deputy Comptroller for Human Resources and Administration determines that the Contractor has breached the State Contract by willfully and intentionally failing to comply with the MWBE participation goals set forth in the State Contract. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the State Contract.

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Nothing herein shall diminish or supersede OSC’s authority and responsibility to enforce the requirements of its contracts.

All Affirmative Action, EEO, and M/WBE compliance forms required to be submitted along with bids and/or proposals for OSC procurements are attached hereto. These forms are to be submitted without change to participation goals specified in the procurement documents.

**By submitting a bid/proposal, the Proposer/Contractor agrees to provide to OSC access to all documentation, records, reports, facilities, etc., which OSC may deem necessary to determine Proposer/Contractor compliance.**

**After the award of a State Contract, submit two originals and two copies of all required reports, forms, information, and Requests for Waivers (if applicable) to OSC the following address:**

**New York State Office of the State Comptroller**

**Bureau of Financial Administration**

**110 State Street, Stop 13-2**

**Albany, NY 12236**

**Attn: Director of Financial Administration**

**Requests for technical assistance in meeting these requirements can be obtained by contacting OSC at (518) 474-7574.**

**Forms attached to this Appendix B:**

* **AC 3239-A – Proposer’s EEO Staffing Plan of Anticipated Workforce**
  + **To be submitted with the Administrative Proposal**
* **AC 3239-B – Contractor’s/Subcontractor’s EEO Workforce Utilization Report**
  + **To be submitted as part of post-contract documents**
* **AC 3239-C – M/WBE Goal Requirements – Certification of Good Faith Efforts**
  + **To be submitted with the Administrative Proposal**
* **AC 3239-D – Proposer’s M/WBE Utilization Plan**
  + **To be submitted with the Administrative Proposal**
* **AC 3239-E – Proposer’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate**
  + **To be submitted with the Administrative Proposal**
* **AC 3239-F – Request for Waiver**
  + **To be submitted with the Administrative Proposal (if applicable)**
* **AC 3239-G – Contractor’s M/WBE Utilization Plan**
  + **To be submitted as part of post-contract documents**
* **AC 3239-H – M/WBE Expenditure Reports**
  + **To be submitted as part of post-contract documents on a per-invoice basis**
* **AC 3239-I – Contractor’s Quality Assurance Report/Checklist**
  + **To be submitted as part of post-contract documents**

# APPENDIX B

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-A (Page 1 of 3)**

**PROPOSER’S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE**

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| **INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this form as part of its Administrative Proposal.** | | | | | | | | | | | | | | | | | |
| **Proposer Name:** | | | | | | | **Federal Identification Number:** | | | | | | | | | | |
| **Address:** | | | | | | | **Procurement Number:** | | | | | | | | | | |
| **City, State, Zip Code:** | | | | | | | **M/WBE Participation Goals: MBE \_\_\_\_\_% WBE \_\_\_\_\_%** | | | | | | | | | | |
| **Does the Proposer have an existing affirmative action program?**  **(Check one):  Yes  No (if Yes, attach current copy of EEO Policy Statement.)** | | | | | | | | **Is the Proposer ESD Certified: (Check one):  Yes  No (If Yes, provide ESD Certification Number and Expiration Date.)** | | | | | | | | | |
| **Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that can be separated out from the Contractor’s/Subcontractor’s total workforce.** | | | | | | | | | **Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that cannot be separated out from the Contractor’s/Subcontractor’s total workforce.** | | | | | | | | |
| **Enter in the following Job Categories the total number of staff by race, sex, and ethnic status to be utilized by the Proposer during the performance of this State Contract.** | | | | | | | | | | | | | | | | | |
| **JOB CATEGORIES**  **(as defined in the Instructions attached)** | **RACE/ETHNICITY OF ANTICIPATED WORKFORCE (Report employees in only one category as defined in the Instructions attached.)** | | | | | | | | | | | | | | | | |
| **Hispanic or Latino** | | **(NOT HISPANIC OR LATINO)** | | | | | | | | | | | | | | **Total Columns**  **A – N** |
| **White** | | **Black or African-American** | | **Native Hawaiian or Other Pacific Islander** | | | | **Asian** | | **American Indian or Alaska Native** | | **Two or more races** | |
| **A** | **B** | **C** | **D** | **E** | **F** | **G** | | | **H** | **I** | **J** | **K** | **L** | **M** | **N** |
| **Male** | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | | | **Female** | **Male** | **Female** | **Male** | **Female** | **Male** | **Female** |
| **Executive/Senior Level Officials and Managers** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **First/Mid-Level Officials and Managers** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Professionals** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Technicians** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Sales Workers** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Administrative Support Workers** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Craft Workers** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Operatives** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Laborers and Helpers** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Service Workers** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **TOTAL:** |  |  |  |  |  |  |  | | |  |  |  |  |  |  |  |  |
| **Prepared by (signature):** | | | | | | | | | | | | | | | | | |
| **Name of Preparer** | | | **Title of Preparer** | | | **Date** | | | | **Telephone Number** | | | **Email Address** | | | | |
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**AC 3239-A (Page 2 of 3)**

**PROPOSER’S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE**

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| **Location and Description of Work to be Performed (expand as necessary):** |

**INSTRUCTIONS FOR COMPLETING PROPOSER’S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE FORM**

**AC 3239-A (Page 3 of 3)**

|  |  |
| --- | --- |
| **RACE AND ETHNIC IDENTIFICATION\***  **For the purpose of completing this form, OSC has adapted the race and ethnic designations used and obtained in accordance with the requirements administered by the Equal Employment Opportunity Commission, which do not denote scientific definitions of anthropological origins. Definitions of the race and ethnicity categories are as follows:** | |
| **Hispanic or Latino** | **A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.** |
| **White** | **A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.** |
| **Black or African-American** | **A person having origins in any of the black racial groups of Africa.** |
| **Native Hawaiian or Other Pacific Islander** | **A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.** |
| **Asian** | **A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.** |
| **American Indian or Alaska Native** | **A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment** |
| **Two or More Races** | **All persons who identify with more than one of the above five races.** |
| **Submission of this form constitutes the Proposer’s acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC’s right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the “Article”) and the implementing regulations set forth under 5 NYCRR.**  **By submitting a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.**  **Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.**  **\*The Equal Employment Opportunity Commission’s Description of Job Categories and Instructions for assigning employees can be viewed at** [**www.eeoc.gov/employers/eeo1survey/2007instructions.cfm**](http://www.eeoc.gov/employers/eeo1survey/2007instructions.cfm)**.** | |

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-C (Page 1 of 1)**

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

Bidders/Proposers must document “good faith efforts” to provide meaningful participation by New York State Certified Minority and Women-Owned Business Enterprises (“M/WBE”s) as subcontractors and/or suppliers in the performance of this State Contract.

The undersigned hereby certifies under penalty of perjury that he/she has taken the following actions on behalf of the Bidder/Proposer to demonstrate the aforesaid good faith efforts:

1. The Bidder/Proposer attended any pre-bid meetings that were scheduled by OSC or the NYS Department of Economic Development (“DED”) or its designee to inform M/WBEs of contracting and subcontracting opportunities available on the project;
2. The Bidder/Proposer identified economically feasible units of the project that could be contracted or subcontracted to M/WBEs in order to increase the likelihood of participation by such enterprises;
3. The Bidder/Proposer advertised in general circulation, trade association and trade-oriented, minority and women-focused publications, if any, concerning the contracting or subcontracting opportunity;
4. The Bidder/Proposer solicited and provided written notice to a reasonable number of M/WBEs identified from current certified lists of such business enterprises provided or maintained by the NYS Empire State Development’s (“ESD”) Division of Minority and Women-Owned Business Development (“DMWBD”), or its designee, of the contracting or subcontracting opportunity in sufficient time to allow the M/WBEs to participate effectively;
5. The Bidder/Proposer followed up initial solicitations by contacting the M/WBEs to determine whether the M/WBEs were interested in such contracting or subcontracting opportunity;
6. The Bidder/Proposer provided interested M/WBEs with adequate information about the plans, specifications, and requirements for the contracting or subcontracting opportunity;
7. The Bidder/Proposer used the services of community organizations, contractor groups, State and federal business assistance offices and other organizations identified by DED or its designee that provide assistance in the recruitment and placement of M/WBEs; and
8. The Bidder/Proposer negotiated in good faith with M/WBEs submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals, or quotations prepared by any M/WBE. “Good faith” negotiating means engaging in good faith discussions with M/WBEs about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the M/WBEs, including sharing with them any cost estimates from the procurement documents, if available.

I have provided information on the above as requested for (Procurement #) in Attachment A, Proposer’s Certified Statements, Section 4.

Signature Printed or Typed Name and Title

Procurement Number Date

**STATE OF NEW YORK)**

**) ss:**

**COUNTY OF )**

**On the \_\_ day of \_\_ in the year 202\_\_\_\_ before me personally came to me known, who, being by me duly sworn, did depose and say that (s)he resides in ; that (s)he is the of which executed the above instrument; and that (s)he signed his/her name thereto as the thereof.**

**Notary Public**

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-D (Page 1 of 2)**

## PROPOSER’S M/WBE UTILIZATION PLAN

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| INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this M/WBE Utilization Plan as part of its Administrative Proposal. Proposers must submit a separate M/WBE Utilization Plan for each M/WBE utilized. | |
| Contractor Name: | Federal Identification Number: |
| Address: | Procurement Number: \_\_\_\_\_\_\_ |
| City, State, Zip Code: | M/WBE Participation Goals: MBE \_\_\_\_\_% WBE \_\_\_\_\_% |
| LIST ALL M/WBE SUBCONTRACTORS AND/OR SUPPLIERS TO BE UTILIZED (ATTACH ADDITIONAL SHEETS IF NECESSARY). | |

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| M/WBE Name, Address, Email Address, and Telephone Number | | | | | | Certification Classification (check all that apply.) | | | | Federal ID No. | | Estimated Dollar Value of Work/Supplies | | | | Please provide a brief description of services or supplies to be provided by each M/WBE identified here on Page 2. |
| A. | | | | | | NYS ESD Certified:  **MBE**  **WBE** | | | |  | |  | | | |
| B. | | | | | | NYS ESD Certified:  **MBE**  WBE | | | |  | |  | | | |
| C. ESD Certification Number: | | |  | | | | D. ESD Certification Expiration Date: | | | | | |  | | |
| If Contractor will not be utilizing an M/WBE, check here  and attach Form AC 3239-F, Request for Waiver, and supporting documentation.  **If Contractor has previously submitted AC 3239-F, Request for Waiver, for this procurement, check here  and enter date submitted: \_\_\_\_\_\_\_\_\_\_\_\_\_.** | | | | | | | | | | | | | | | | |
| Prepared by (Signature): | | | | | | | | | | | | | | | | |
| Name of Preparer | | Title of Preparer | | | | Date | | | | | Telephone Number | | | | Email Address | |
|  | |  | | | |  | | | | |  | | | |  | |
| **Submission of this form constitutes the Contractor’s/Subcontractor’s acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC’s right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the “Article”) and the implementing regulations set forth under 5 NYCRR.** | | | | | | | | | | | | | | | | |
| *THIS SECTION FOR OSC USE ONLY* | | | | | | | | | | | | | | | | |
| Reviewed by: | | Date Received: | | | Utilization Plan Approved | | | | Date Approved: | | | | | M/WBE Certification Status: | | |
|  | |  | | | Yes  No | | | |  | | | | | MBE Certified  Yes  No  **WBE Certified  Yes  No** | | |
| Deficiencies Identified: | | | | Notice of Deficiency Issued: | | | | Date of Notice of Deficiency: | | | | | | Waiver Requested: | | |
| MBE  Yes  No / WBE  Yes  No | | | | Yes  No | | | |  | | | | | | Yes  No (Partial  Total ) | | |
| Waiver Granted | If Waiver Granted | | | | | | | Waiver Approved by (Signature): | | | | | | | | |
| Yes  No | Total Waiver  Yes  No  Partial Waiver  Yes  No | | | | | | |  | | | | | | | | |
| NOTES: | | | | | | | | | | | | | | | | |

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-D (Page 2 of 2)**

## PROPOSER’S/CONTRACTOR’S M/WBE UTILIZATION PLAN

|  |
| --- |
| **Provide a brief description of the services or supplies to be identified by the subcontractor(s) identified above:**  **Submission of this form constitutes the Contractor’s/Subcontractor’s acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this procurement and OSC’s right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the “Article”) and the implementing regulations set forth under 5 NYCRR.**  **By submitting a bid/proposal, the Proposer/Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Proposer/Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.** |

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-E (Page 1 of 2)**

## PROPOSER’S M/WBE SUBCONTRACTORS/SUPPLIERS NOTICE OF INTENT TO PARTICIPATE

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this form as part of its Administrative Proposal. Part A must be completed and signed by the Proposer. Parts B and C must be completed and signed by each of the M/WBE subcontractors/suppliers identified on Form AC 3239-D (Proposer’s M/WBE Utilization Plan).** | | | | | | | | | | |
| **PART A – TO BE COMPLETED BY THE PROPOSER FOR EACH M/WBE IDENTIFIED ON AC 3239-D** | | | | | | | | | | |
| **Proposer Name:** | | | | **Federal Identification Number:** | | | | | | |
| **Address:** | | | | **Procurement Number:** \_\_\_\_\_\_\_ | | | | | | |
| **City, State, Zip Code:** | | | | **M/WBE Participation Goals: MBE \_\_\_\_\_% WBE \_\_\_\_\_%** | | | | | | |
| **Telephone Number:** | | | | **Email Address:** | | | | | | |
| **Name of Proposer’s Preparer** | | **Title of Preparer** | | **Date** | **Telephone Number** | | | **Email Address** | | |
|  | |  | |  |  | | |  | | |
| **PART B – TO BE COMPLETED BY EACH MBE/WBE IDENTIFIED ON AC 3239-D ACKNOWLEDGING THAT THE NAMED VENDOR INTENDS**  **TO PROVIDE SERVICES OR SUPPLIES IN CONNECTION WITH THE ABOVE CONTRACTOR AND PROCUREMENT.** | | | | | | | | | | |
| **Name of Subcontractor/Supplier:** | | | | **Federal Identification Number:** | | | | | | |
| **Address:** | | | | **NYS ESDC Certification Status (Check one):**  **MBE  WBE (attach copy of ESD Certification)**  **Have applied to ESDC for certification as  MBE  WBE** | | | | | | |
| **City, State, Zip Code:** | | | | **Provider type (Check one):  Subcontractor  Supplier** | | | | | | |
| **ESD Certification Number:** | |  | | **ESD Certification Expiration Date:** | | | | |  | |
| **Please provide a brief description of services or supplies to be provided on Page 2.** | | | | | | | | | | |
| **The undersigned is prepared to provide the services or supplies described on Page 2 and will enter into a formal agreement to do so with the Proposer named above upon execution of a State Contract between the Proposer and the Office of the State Comptroller.** | | | | | | | | | | |
| **Signature of Authorized Representative of the M/WBE Firm:** | | | | | | | | | | |
| **Name of Preparer** | | **Title of Preparer** | | **Date** | **Telephone Number** | | | | **Email Address** | |
|  | |  | |  |  | | | |  | |
| **Estimated Total Dollar Value of the Agreement to be entered into with the Subcontractor/Supplier: $** | | | | | | | | | | |
| *THIS SECTION FOR OSC USE ONLY* | | | | | | | | | |
| Reviewed by | Date | | Utilization Plan Approved | | | Date | Certification Verified | | |
|  |  | | Yes  No | | |  | MBE Certified  Yes  No  **WBE Certified  Yes  No** | | |
| NOTES: | | | | | | | | | |

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-E Page 2 of 2**

## PROPOSER’S M/WBE SUBCONTRACTORS/SUPPLIERS NOTICE OF INTENT TO PARTICIPATE

|  |
| --- |
| **Description of Services or Supplies to be Provided (expand as necessary):** |

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-F (Page 1 of 2)**

## REQUEST FOR WAIVER

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **INSTRUCTIONS AND SUBMISSION REQUIREMENTS: PROPOSERS/CONTRACTORS MUST FOLLOW THE INSTRUCTIONS ON PAGE 2**  **OF THIS FORM TO REQUEST A WAIVER OF THE M/WBE PARTICIPATION GOALS INCLUDED IN THIS PROCUREMENT.**  **THIS FORM MAY BE USED PRIOR TO AND/OR AFTER AWARD OF A STATE CONTRACT.** | | | | | | | |
| **Proposer/Contractor Name:** | | | | **Federal Identification Number:** | | | |
| **Address:** | | | | **Procurement/Contract Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | |
| **City, State, Zip Code:** | | | | **M/WBE Participation Goals: MBE \_\_\_\_\_% WBE \_\_\_\_\_%** | | | |
| **COMPLETE THIS SECTION ONLY IF THIS WAIVER IS REQUESTED AFTER AWARD OF A STATE CONTRACT.** | | | | | | | |
| **Contract Award Date: Contract Start Date: Contract End Date:** | | | | | | | |
| **All Requests for Waiver (AC 3239-F) submitted prior to or after award of a State Contract must be accompanied by the information requested on Page 2 of this form, Instructions and Submission Requirements.** | | | | | | | |
| **Proposer/Contractor is requesting a Waiver of the following M/WBE participation goals as follows (check as appropriate):**  **MBE Waiver – A waiver of the MBE participation goal for this procurement is requested.**  **Total Waiver**  **Partial Waiver**  **WBE Waiver – A waiver of the WBE participation goal for this procurement is requested.  Total Waiver  Partial Waiver** | | | | | | | |
| **Prepared by (Signature):** | | | | | | | |
| **Name of Preparer** | | **Title of Preparer** | | **Date** | **Telephone Number** | **Email Address** | |
|  | |  | |  |  |  | |
| **SUBMISSION OF THIS FORM CONSTITUTES THE PROPOSER’S ACKNOWLEDGMENT AND AGREEMENT TO ADHERE TO THE M/WBE REQUIREMENTS AND PROCEDURES SET FORTH UNDER THIS PROCUREMENT AND OSC’S RIGHT TO EVALUATE AND DETERMINE CONTRACTOR/SUBCONTRACTOR ADHERENCE OR COMPLIANCE DURING THE BID AND AWARD OF SAID STATE CONTRACT, PURSUANT TO NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A AND THE IMPLEMENTING REGULATIONS SET FORTH UNDER 5 NYCRR. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN NON-COMPLIANCE AND PROPOSAL DISQUALIFICATION.** | | | | | | | |
| *THIS SECTION FOR OSC USE ONLY* | | | | | | | |
| Date Waiver Request Received | | | Reviewed by | | | | Date |
|  | | |  | | | |  |
| Waiver Requested | Waiver Granted | | If Waiver Granted | | | | |
| Yes  No  **MBE  WBE** | Yes  No  MBE  WBE | | Total Waiver  Yes  No  MBE  WBE  Partial Waiver  Yes  No  MBE  WBE | | | | |
| Signature of OSC Reviewer: | | | | | | | |

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**AC 3239-F (Page 2 of 2)**

**REQUEST FOR WAIVER**

**PLEASE READ THESE INSTRUCTIONS AND DOCUMENT SUBMISSION REQUIREMENTS CAREFULLY.**

|  |
| --- |
| **REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS FOR REQUEST FOR WAIVER OF M/WBE PARTICIPATION GOALS**  **PART 1. INSTRUCTIONS FOR PROPOSER/CONTRACTOR REQUEST FOR WAIVER (AC 3239-F):**   1. **(PRIOR TO AWARD OF A STATE CONTRACT): Proposers requesting a waiver of M/WBE Participation Goals must submit the information listed in PART II as part of its Administrative Proposal.** 2. **(AFTER AN AWARD OF A STATE CONTRACT): Contractors may request a waiver of M/WBE Participation Goals at any time during the term of the contract but prior to the submission of a request for final payment on that contract. Contractors requesting a waiver of M/WBE Participation Goals must submit the information listed in PART II.**   **All waiver requests must be submitted to:**  **New York State Office of the State Comptroller**  **Bureau of Financial Administration, Attn: M/WBE Specialist**  **110 State Street, Stop 13-2**  **Albany, NY 12236**  **PART II. DOCUMENTATION SUBMISSION REQUIREMENTS FOR REQUESTING WAIVERS**   1. **The names of general circulation, trade association, and minority and women oriented publications in which bids/proposals were solicited for purposes of complying with participation goal requirements established for certified M/WBE participation;** 2. **The dates bid solicitations for certified M/WBE participation were published in any of the publications listed in #1;** 3. **List of certified M/WBEs appearing in the directory which were solicited in writing to provide bids/proposals for purposes of complying with participation goal requirements established for certified M/WBE participation;** 4. **Proof of dates on which such solicitations were made in writing and copies of solicitations made, or a sample copy of the solicitation if an identical solicitation was made of all certified M/WBEs;** 5. **Copies of responses made by certified M/WBEs to solicitations made by the Proposer/Contractor;** 6. **A description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids/proposals, and the dates and manner in which these documents were made available;** 7. **Documentation of any negotiations between the Proposer/Contractor and certified M/WBEs undertaken for the purposes of complying with participation goal requirements established for certified M/WBE participation;** 8. **Any other information determined relevant by OSC; and** 9. **A statement setting forth the Proposer’s/Contractor’s basis for requesting a partial or total waiver of M/WBE participation goals.** |

**APPENDIX E**

**Contractor’s CertificationS/Acknowledgements**

|  |  |  |
| --- | --- | --- |
| **SIGNATURE AUTHORITY** | | |
| The Contractor\* and the person signing on behalf of the Contractor certify that such person is authorized to sign on behalf of the Contractor and has the express authority to contractually bind the Contractor. | | |
| **ACKNOWLEDGEMENT OF RECEIPT OF OSC’S POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT** | | |
| The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Policy on Discrimination and Harassment, Including Sexual Harassment (Appendix C), and each agrees to abide by the terms of Appendix C. | | |
| **CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(L) REGARDING SEXUAL HARASSMENT POLICY AND ANNUAL TRAINING** | | |
| “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.” | | |
| **NON-COLLUSIVE BIDDING CERTIFICATION** | | |
| “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of [such persons] knowledge and belief:   1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other 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, directly or indirectly, to any other 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.” | | |
| **CONTRACTOR’S ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY** | | |
| The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures (Appendix D). By submission of this bid, the Contractor and the person signing on behalf of the Contractor each affirms, under penalty of perjury, that they understand and will comply with the terms of Appendix D. | | |
| \* All reference to “bidders” within this Appendix E includes proposers and Contractors. Reference to “bids” includes proposals and other responses to solicitations.  **THE SIGNATURE(S) BELOW INDICATES AGREEMENT WITH EACH OF THE ABOVE CERTIFICATIONS/ ACKNOWLEDGEMENTS** | | |
|  |  |  |
| **Proposer Name** |  | **Joint Proposer Name (if any)** |
|  |  |  |
| **Signature** |  | **Signature** |
|  |  |  |
| **Printed or Typed Name** |  | **Printed or Typed Name** |
|  |  |  |
| **Title** |  | **Title** |
|  |  |  |
| **Date** |  | **Date** |
| *Add additional signature lines below for additional Joint Proposers, as necessary.*  October 24, 2023 | | |

**APPENDIX F**

**DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

Have you been found by any governmental entity to be non-responsible within the past four years from the date of this bid due to:

1. Impermissible contacts or other violations of New York State Finance Law Section 139-j (e.g., conduct prohibited by the ethics provisions of the New York State Public Officers Law)?

Yes  No

1. Intentional provision of false or incomplete information to a governmental entity?

Yes  No

**If your answer to either of the above is “Yes,” please attach a written explanation indicating the date of the non-responsibility finding, the entity that found you to be non-responsible, and the circumstances surrounding such finding (including any written finding of non-responsibility issued by such entity).**

**By my signature on this form, I certify that all information disclosed to the State is complete, true, and accurate with regard to prior non-responsibility findings within the past four years based on (i) impermissible Contacts or other violations of New York State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.**

Signature

Printed or Typed Name

Title

Procurement Number

Date

August 15, 2014

**APPENDIX G**

**OSC CONSULTANT DISCLOSURE REPORTING REQUIREMENTS**

**Contractor Instructions**

**Background:**

Pursuant to New York State Finance Law Section 163(4)(g), state agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors selected for award on the basis of a procurement issued by OSC (Request for Proposals, Request for Quotations, Mini-Bid, or Invitation for Bids) must complete **Form A, State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term** upon notification of award. The completed **Form A** must include information for all employees that will be providing services under the contract, whether employed by the contractor or by a subcontractor.

Contractors selected for award are also required to complete **Form B, State Consultant Services Contractor’s Annual Employment Report** annually for each year of the contract term, on a State fiscal year basis. The first report is due May 15 for the period April 1 through March 31 of the most recently concluded State fiscal year or portion thereof.

Form A must be submitted to OSC as the contracting agency, and Form B must be submitted to OSC (as the contracting agency), the Department of Civil Service, and the Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

**Instructions:**

**FORM A:**

**Upon notification of contract award, use Form A, State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term,** attached to these instructions, to reportthe necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

Complete **Form A** for contracts for consulting services in accordance with the following:

* **Employment category:** the specific occupations, as listed in the O\*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract. (Note: Access the O\*NET database, which is available through the US Department of Labor’s Employment and Training Administration website at [www.online.**onet**center.org](http://www.online.onetcenter.org/).)
* **Number of employees:** the total number of employees in the employment category employed anticipated to provide services under the contract, including part time employees and employees of subcontractors.
* **Number of hours to be worked:** the total number of hours anticipated be worked by the employees in the employment category.
* **Amount payable under the contract:** the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services to be provided during the Report Period.

**Submit completed Form A within 48 hours of notification of selection for award to OSC (as the contracting agency) at the address listed below.**

**FORM B:**

Use **Form B, State Consultant Services Contractor’s Annual Employment Report**, attached to these Instructions, to report the annual employment information required by the statute. This form will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit **Form B** to OSC (as the contracting Agency), the Department of Civil Service (DCS), and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

Complete **Form B** for contracts for consulting services in accordance with the following:

* **Scope of Contract:** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
* **Employment Category:** the specific occupations, as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O\*NET database, through the US Department of Labor’s Employment and Training Administration website at [www.online.**onet**center.org](http://www.online.onetcenter.org/).)
* **Number of Employees:** the total number of employees in the employment category employed that provided services under the contract during the Report Period, including part time employees and employees of subcontractors.
* **Number of hours worked:** the total number of hours **worked** during the Report Period by the employees in the employment category.
* **Amount Payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

**Submit the completed Form B by May 15 for the period April 1 through March 31, and annually by May 15th thereafter for each State fiscal year (or portion thereof) the contract is in effect, as follows:**

**To OSC (as the contracting Agency):**

By mail: Director of Financial Administration

Office of the State Comptroller

110 State Street, Stop 13-2

Albany, NY 12236-0001

By email: rfp@osc.ny.gov

**To the Consultant Reporting Section of the Bureau of Contracts at OSC:**

By mail: NYS Office of the State Comptroller

Bureau of Contracts

110 State Street, 11th Floor

Albany, NY 12236

Attn: Consultant Reporting

By fax: (518) 474-8030 or (518) 473-8808

**To DCS:**

By mail: NYS Department of Civil Service

ESP, Agency Building 1

20th Floor

Albany, NY 12239

**APPENDIX G**

**OSC CONSULTANT DISCLOSURE REPORTING REQUIREMENTS**

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **FORM A** | | | | | | | | | | | | |
| New York State Consultant Services  **Contractor's Planned Employment** | | | | | | | | | | | | |
| From Contract Start Date Through the End of the Contract Term | | | | | | | | | | | | |
|  |  |  |  |  |  | | |  | |  | |  | | |
| State Agency Name: **Office of the State Comptroller** | | | | | |  | | | | | | |
| State Agency Department ID: 3050000 | | | | Agency Business Unit: OSC01 | | | | | | | | |
| Contractor Name: | | | | Contract Number: | | | | | | | | |
| Contract Start Date:   /  / | | | | Contract End Date:   /  / | | | | | | | | |
|  |  |  |  |  |  | | |  | |  | |  | | |
| **Employment Category** | | | **Number of Employees** | **Number of hours to be worked** | | | | | **Amount Payable Under the Contract** | | | | |
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| Preparer's Signature: | | | | | | | | | | | | |
| Date Prepared:   /  / | | | |  | | |  | |  | |  | | |
| (Use additional pages, if necessary) | | | |  |  | | |  | | Page     of | | | | |

**APPENDIX H**

FORM AC3322

**PROPOSER/CONTRACTOR COMPLIANCE REQUIREMENTS AND PROCEDURES**

**FOR PARTICIPATION BY SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

**Use of Service-Disabled Veteran-Owned Businesses in Contract Performance**

Article 3 of the Veterans’ Services Law seeks to encourage and support eligible service-disabled veteran-owned businesses (SDVOBs) to play a greater role in the State's economy by providing for meaningful participation in New York State's contracting opportunities. It is the policy of the Office of the State Comptroller (OSC) to make every effort to use SDVOBs in accordance with State laws in the purchasing and contracting activities of OSC.

Article 3 sets a Statewide participation goal of 6% for SDVOBs on all contracts for commodities, services, and technology valued over $25,000 and for all construction contracts valued over $100,000. 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, proposers/contractors are expected to consider SDVOBs in the fulfillment of the requirements of this procurement. Such participation may be as subcontractors, suppliers, consultants, joint ventures, or other type of partnering or supporting roles.

SDVOBs can be readily identified on the directory of certified businesses at:

<https://online.ogs.ny.gov/SDVOB/search>

Proposers/contractors are reminded that they must continue to use small, minority- and women-owned businesses consistent with current State law and with the goals set forth in the attached procurement.

* 1. **SDVOB Participation Requirements**

The SDVOB participation goals established by OSC for this procurement are based on the current availability of qualified SDVOBs able to perform the specific scope of work identified in this procurement. Questions for technical assistance in meeting these requirements can be obtained by contacting OSC at (518) 474-7574.

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

As a precondition to being selected for contract award and entering into a valid and binding State contract, a proposer must submit Form AC3322-1 (Proposed Use of SDVOBs in Contract Performance or the “Utilization Plan”) with its proposal. The Utilization Plan must document the SDVOBs that will perform work under the State contract.

**Failure to submit a Utilization Plan will result in the rejection of a proposal, unless the proposer provides OSC with a reasonable justification in writing for such failure, or makes a commitment to submit a Utilization Plan within the timeframe specified in writing by OSC.**

1. OSC will review the proposed Utilization Plan and issue a written notice of acceptance or deficiency before the contract award is complete.

If a notice of deficiency is issued, proposer must submit a written remedy to OSC. If the written remedy is inadequate or not timely, OSC will notify the proposer and work with the proposer to resolve the deficiency identified or direct the proposer to submit a request for either a partial or total waiver of the SDVOB participation goals. Failure to exercise good faith efforts, correct the deficiency, or file the waiver in a timely manner may be grounds for disqualification of the proposal.

1. Requests for Waivers (if applicable) may be sent to OSC at the following address:

New York State Office of the State Comptroller

Bureau of Finance: SDVOB Specialist

110 State Street, Stop 13-2

Albany, NY 12236

* 1. **After the Award of the State Contract**

1. Contractor certifies that if awarded a contract, it will follow the submitted Utilization Plan for the performance of SDVOBs on the contract.
2. Contractor agrees to provide OSC access to all documentation, records, reports, facilities, etc. that OSC may deem necessary to determine Contractor compliance.
3. Contractor must include Form AC3322-2 (Contractor’s SDVOB Utilization Report) with each invoice submitted to OSC during the contract term. Form AC3322-2 documents SDVOBs *actually used* on the Contract.

Failure to timely submit Form AC3322-2 and/or other reports or information as requested may result in payments under the contract being delayed until such reports or other information have been received.

* 1. If deficiencies are identified during OSC general contract compliance monitoring or during in-depth compliance review, OSC will attempt to resolve the deficiencies identified and may request that the Division of Service-Disabled Veterans’ Business Development (DSDVBD) within the New York State Office of General Services review and attempt to resolve the noncompliance matter.
  2. If OSC determines that Contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals for participation by SDVOBs as established in the contract, OSC may, after giving Contractor an opportunity to be heard, make a determination that the Contractor has failed to meet contract goals and may withhold payment from the Contractor as liquidated damages, if the Deputy Comptroller for Finance and Administration determines that the Contractor has breached the contract by failing to comply with the SDVOB participation goals set forth in the contract. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to SDVOBs had the Contractor achieved the contractual SDVOB goals; and (2) all sums actually paid to SDVOBs for work performed or materials supplied under the contract. In addition, where a Contractor willfully and intentionally fails to comply with SDVOB requirements, the Contractor shall be liable to OSC for damages; such damages shall be calculated based on the actual cost incurred by OSC related to OSC’s expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing SDVOB programmatic goals.
  3. 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, OSC shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Nothing herein shall be deemed to diminish or supersede OSC’s authority and responsibility to enforce the requirements of its contracts.

**APPENDIX H**

AC3322-1

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**PROPOSED USE OF SDVOBS IN CONTRACT PERFORMANCE**

|  |
| --- |
| **INSTRUCTIONS** |
| Article 3 of the Veterans’ Services Law seeks to encourage and support eligible service-disabled veteran-owned businesses (SDVOBs) to play a greater role in the State’s economy by providing for meaningful participation in the State’s contracting opportunities. Proposers are expected to consider certified SDVOBs in fulfillment of the requirements of the attached contract. Such participation may be as subcontractors, suppliers, consultants, joint ventures, or other type of partnering or supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:  <https://online.ogs.ny.gov/SDVOB/search> |
| **Use of SDVOBs for non-commercially useful functions may not be counted towards contract SDVOB participation goals.** |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **All Proposers must complete and submit this form with their proposals.** | | | | | | | | |
| **Proposer Name** |  | | | | | | | |
| **Address** |  | | | | | | | |
| **City, State, Zip Code** |  | | | | | | | |
| **Federal Identification Number**  (do not use Social Security Number) |  | | | **NYS Vendor ID Number**  (do not use Social Security Number) | |  | | |
| **Is Proposer a NY Certified SDVOB?** | **Yes  No** | **If Yes, provide DSDVBD Certification Number** | |  | **Expiration Date** | | |  |
| **Will NYS-certified Service-Disabled Veteran-Owned Businesses (SDVOBs) be used in the performance of this contract?** | | **Yes**  **No** | **If Yes,** *identify below the SDVOBs that will be used*  ***If No,*** *see below re Request for Waiver* | | **Contract or Procurement #:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | |
| **SDVOB Utilization Goals for this Procurement:** | | **\_\_\_\_\_\_\_\_\_ %** | |  | | |  | |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **SDVOB Company Name** | **Business Address** | **DSDVBD Certification #** | **% of Total Contract Work to SDVOB** | | **Nature of SDVOB Participation:**  Describe commodities, services or technology | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
|  |  |  |  | |  | |
| **TOTAL** | | |  |  | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Preparer** | **Title of Preparer** | **Date** | **Telephone Number** | **Email Address** |
|  |  |  |  |  |
| **Preparer signature:** |  | | | |

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| **If Proposer will not use SDVOB in the performance of this contract, attach Form AC3322-3, Request for Waiver, and include supporting documentation.** |

Additional information about the Veterans’ Services Law can be found at:<https://ogs.ny.gov/veterans>

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

AC3322-3

**PROPOSER’S/CONTRACTOR’S SDVOB REQUEST FOR WAIVER**

|  |  |  |  |
| --- | --- | --- | --- |
| **Part I:**  **INSTRUCTIONS** | | | |
| 1. Proposers responding to a solicitation and requesting a waiver of SDVOB participation goals must complete Part II and submit AC3322-3, the Request for Waiver form, as part of their solicitation response. 2. Contractors may request a waiver of SDVOB participation goals at any time during the term of their contract with OSC, but prior to the submission of a request for final payment on that contract. Contractors requesting a waiver of SDVOB participation goals must complete Part II and submit the Request for Waiver form to.   New York State Office of the State Comptroller  Bureau of Finance, Attn: SDVOB Specialist  110 State Street, Stop 13-2  Albany, NY 12236 | | | |
| **Part II: DOCUMENTATION** | | | |
| **Proposer/Contractor Name:** |  | | |
| **Address:** |  | | |
| **City, State, Zip Code:** |  | | |
| **Federal Identification Number**  (do not use Social Security Number) |  | **NYS Vendor ID Number**  (do not use Social Security Number) |  |
| **SDVOB Utilization Goals on this Contract:** | **\_\_\_\_\_\_\_\_\_\_\_\_ %** | **Contract or Procurement #:** |  |
|  | | | |
| Proposer/Contractor must provide:   1. A list of certified SDVOBs appearing on the Division of Service-Disabled Veterans’ Business Development (DSDVBD) directory who were solicited in writing for the purpose of complying with SDVOB participation goal requirements; 2. Proof of dates on which such written solicitations were made and copies of solicitations made, or a sample copy of the solicitation if an identical solicitation was made to all certified SDVOBS on the DSDVBD directory; 3. Copies of responses made by certified SDVOBs to solicitations made by the Proposer/Contractor; 4. A description of any contract documents, plans or specifications made available to certified SDVOBs for purposes of soliciting their participation, and the dates and manner in which those documents were made available; 5. Documentation of any negotiations between the Proposer/Contractor and certified SDVOBs undertaken for the purposes of complying with SDVOB participation goal requirements; 6. A statement setting forth the Proposer’s/Contractor’s basis for requesting a partial or total waiver of SDVOB participation goal requirements; and 7. Any other information determined relevant by OSC or by the Proposer/Contractor. | | | |

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| --- | --- | --- | --- | --- |
| ***THIS SECTION FOR OSC USE ONLY*** | | | | |
| **Reviewed by:** | **Date Received:** | **Deficiencies Identified:** | **Utilization Plan Approved:** | **Date Approved:** |
|  |  | **Yes**  **No** | **Yes**  **No** |  |
| **Waiver Requested:** | **Waiver Granted:** | | **Waiver Type:** | |
| **Yes**  **No** | **Yes**  **No** | | **Partial**  **Total** | |
|  | **Name** | | **Signature** | |
| **Waiver Approved by:** |  | |  | |
| **NOTES:** | | | | |

1. If the workforce utilized in the performance of the contract can be separated out from the Contractor’s and/or Subcontractor’s total workforce, quarterly reports are required. If the workforce utilized in the performance of the contract cannot be separated out from the Contractor’s and/or Subcontractor’s total workforce, semi-annual reports are required. [↑](#footnote-ref-1)
2. All M/WBE firms to be utilized are required to be certified by ESD or must be in the process of obtaining certification from ESD. Should the Proposer/Contractor identify a minority-owned or woman-owned firm that is not currently certified by ESD, the Proposer/Contractor should request that the firm submit a certification application to OSC for eligibility determination. OSC will work with ESD to expedite the application; however, it is the responsibility of the Proposer/Contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement in order to facilitate full M/WBE participation. [↑](#footnote-ref-2)
3. If OSC has granted a partial waiver to the Successful Proposer, prior to award OSC must have approved a Contractor’s M/WBE Utilization Plan and a completed Contractor’s M/WBE Subcontractor’s/Supplier’s Notice of Intent to Participate, and after award the Contractor must still submit the Contractor’s Quality Assurance Report/Checklist. [↑](#footnote-ref-3)
4. Contractors will be requested to provide additional compliance reports and information (i) to verify payments made to M/WBEs, (ii) to verify M/WBE utilization and/or, (iii) as needed to evaluate any other aspect of Contractor compliance with the requirements set forth herein. [↑](#footnote-ref-4)
5. Requests for a partial or total waiver made subsequent to award of a State Contract may be made at any time during the term of the State Contract but prior to the submission of a request for final payment on that State Contract. [↑](#footnote-ref-5)