

**REQUEST FOR PROPOSALS**

**TO PROVIDE**

**INDEPENDENT FINANCIAL AUDIT SERVICES**

**TO THE**

**NASSAU COUNTY INTERIM FINANCE AUTHORITY**

**DUE DATE IS JULY 17, 2024 BY 4:00 PM**

**NASSAU COUNTY INTERIM FINANCE AUTHORITY**  
**1305 FRANKLIN AVENUE, SUITE 302**  
**GARDEN CITY, NY 11530**

## **Proposed Timetable**

- |   |               |
|---|---------------|
| a. Release of Request for Proposals (“RFP”):                  | June 25, 2024 |
| b. Final date for submission of questions:                    | July 10, 2024 |
| c. Final date for submission of proposals:                    | July 17, 2024 |
| d. Oral presentations (selected proposers only, if required): | July 24, 2024 |
| e. Approximate date for selection of vendor:                  | July 31, 2024 |

Dates indicated above are subject to change at the sole discretion of the Authority.

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## **I. Statement of Purpose**

The Nassau County Interim Finance Authority (hereafter referred to as the “Authority” or “NIFA”) is soliciting proposals from accounting firms experienced in public finance and New York State (the “State”) public benefit corporation accounting to perform annual audits of the financial statements of the Authority, as required State Public Authorities Law § 3663, and as further described herein as Standard Annual Audit Services. Additional Audit Services (defined herein) may also be required on an as-needed basis. The required audits are to be performed primarily for the purpose of rendering an opinion by an independent firm of accountants to the Directors of the Authority on the financial statements of the Authority for each fiscal year during this engagement (Authority fiscal years 2024-2028), subject to two one-year renewals through Authority fiscal year 2030 upon mutually agreeable terms.

## **II. Background**

The Authority is a corporate governmental agency and instrumentality of the State, constituting a public benefit corporation. The Authority’s operations are supported entirely through sales tax revenues and investment earnings.

NIFA is a State authority empowered to monitor and oversee the finances of Nassau County, New York (the “County”) and certain covered organizations, and within certain statutory limits had the power to issue bonds and notes for various County purposes. The Authority will continue in existence until its oversight, control or other responsibilities and its liabilities (including the payment in full of Authority bonds and notes) have been met or discharged. The Authority is a component unit of the County for financial reporting purposes.

In its oversight capacity, the Authority imposed a control period on January 26, 2011 over the County (with certain exemptions for statutory covered organizations) and is currently empowered to, among other things, approve certain County contracts, financial plans and proposed borrowings. On February 4, 2020, to the extent that the Nassau Health Care Corporation (“NHCC”) had previously been exempted by NIFA from its statutorily authorized exercise of powers during a control period, NIFA determined that NHCC had become subject to its control powers.

NIFA does not have the statutory authority, except for refunding of bonds or notes previously issued by the Authority, to issue any additional bonds or notes.

Revenues to fund Authority operations and pay Authority debt service are provided by a portion of the sales tax revenues of the County on which the Authority has a first lien and, to a much smaller extent, by investment earnings. The Authority has no operating income or taxing power.

The Authority currently has six employees and its annual operating budget is \$3.1 million for 2024. NIFA currently has \$1,051 million of outstanding bonds consisting of fixed rate debt.

For more information concerning NIFA, including its financial activities and audited financial statements, see the NIFA website at <https://nifa.ny.gov/>.

### **III. Scope of Audit**

The scope of work to be furnished by the selected vendor pursuant to this RFP is to perform the services, provide the deliverables and meet the requirements listed below and discussed in detail in the following sections. The audits and related work under the contract resulting from this RFP must be conducted in accordance with generally accepted auditing standards, as promulgated by the American Institute of Certified Public Accountants, generally accepted government auditing standards, as promulgated by the U. S. Government Accountability Office in its publication, Government Auditing Standards, standards issued by the Governmental Accounting Standards Board, accounting principles generally accepted in the United States (“GAAP”), and with other authoritative auditing guidance in effect. Opinions rendered shall indicate whether financial statements are presented fairly, in all material respects, in conformity with GAAP. The scope of the audits must be planned to preclude the necessity for exceptions arising from scope limitations.

The audit must conform to the requirements of Part 201 and Chapter V of Title 2, “Accounting, Reporting and Supervision for Public Authorities” of the Compilation of Codes, Rules and Regulations of the State.

#### **A. Standard Annual Audit Services**

The selected firm must be able to provide “Standard Annual Audit Services” to the Authority, as follows:

1. consultation with Authority staff regarding accounting issues;
2. annual audit of financial statements and communication with those charged with governance;
3. the preparation of a management letter, if necessary;
4. an audit of the Authority’s investment guidelines compliance; and
5. report on the Authority’s internal control over financial reporting and on compliance and other matters.

The auditor must be available for the Authority’s fiscal years ending December 31, 2024 through December 31, 2028. As noted, the Authority is a component unit of the County for reporting purposes. Therefore, the Authority’s auditors must provide preliminary numbers by March 31 of each year subsequent to the end of the fiscal year being audited and deliver the final audit by April 30 of each year subsequent to the end of the fiscal year being audited.

#### **B. Additional Audit Services**

The successful firm must also be able to provide “Additional Audit Services” to the Authority, as follows:

1. provide all reports and other materials requested by the Authority electronically; and

2. update financial statements and reports as necessary and make them and the auditors' opinion available for inclusion in NIFA official statements (or any other similar offering documents) in connection with bond or note issuances.

This list is not meant to be all inclusive as the needs of the Authority cannot be entirely anticipated in advance.

The contract will be reviewed at the conclusion of each year's audit to determine whether the selected firm will continue to provide services for the entire five-year period and for the two possible one-year extensions beyond.

#### **IV. Audit Methods and Programs**

The nature and extent of the services to be performed in the audits of the Authority will be agreed upon between the auditor and the Authority. The contractor will perform such tests of the accounting records and procedures as are deemed necessary, including but not limited to: the examination of supporting evidentiary material; the observation or written confirmation of selected assets; confirmation of certain liabilities and observation and discussion of operating practices. Appropriate techniques must be used to accomplish an effective and efficient audit.

#### **V. Proposal Requirements**

Proposals shall be limited to a maximum of ten (10) pages (12-point type), excluding resumes and cost proposal. All submitted proposals will be reviewed for completeness. Failure to submit a complete proposal can result in disqualification at the discretion of the Authority. The following information must be included with the proposal, in separate parts, as indicated:

##### **A. Technical**

- The names and resumes, including educational background and professional experience, of staff to be assigned to the audits and an indication of their experience and familiarity with State public authorities and municipalities and the accounting and auditing principles, practices, procedures, and methods. Of particular interest will be experience with governmental agencies and authorities that are primarily financing entities. Please specify the name of the individual accountable for the project.
- Equal Employment Opportunity reports on the composition of the firm's workforce and of the staff to be assigned to the engagement.
- At least three references. Please include, if possible, at least one from a municipality, public authority or State entity with which individuals to be assigned to the services have worked (and the name and contact information for the primary contact within each entity). By providing this information you are permitting NIFA to contact those entities or individuals. If your firm's work product for a reference is available, please provide the RFP Contact (defined in Section VI of this RFP) with a link to the information.

- Identify and discuss fully the nature of any conflict, actual or potential, your firm or any individual may have in providing services to the Authority.
- List all material investigations or judgments against your firm or its principals for the past five years.
- A proposed schedule, work plan and allocation of hours for each of the five years of the audit period, including critical dates, time estimates and project management and supervision structure.

**B. Cost**

- Proposers must submit their respective cost proposals for Standard Annual Audit Services which contain all pricing and staffing information relative to fulfilling the scope of services described in Section III. A of this RFP. The proposal must state a flat fee for services. The proposal must also state the normal governmental rates charged by the firm and the discounted or preferred rate for each title/position expected to perform such services, as well as the estimated number of hours for each position used to calculate the fee.
- For Additional Audit Services, as contemplated in Section III. B of this RFP, proposers must submit a separate schedule of the hourly rates for each title/position expected to perform such services. The proposal must also state the normal governmental rates charged by the firm and the discounted or preferred rate to be charged to the Authority, for each title/position expected to perform such services, as well as the estimated number of hours for each position.
- Please indicate whether all the rates or fees cited in this section of the RFP are the lowest charged to your firm’s municipal clients; and, if not, please explain why.
- Out-of-pocket expenses must be separately categorized and shall only be reimbursed in accordance with the lower of the Authority’s standard schedule, if any, or the U.S. General Services Administration’s per diem rates applicable to the County. Such expenses will be reviewed for reasonableness on a continuing basis.
- Proposals must include a statement that the price and/or rates quoted are an irrevocable offer for 120 days from the date of submission.

**VI. Administrative Information and Conditions**

All proposals submitted must include a cover letter signed by a member of the proposing firm duly authorized to execute contracts on behalf of the firm. All responses to this RFP should be in writing and sent by email addressed to:

Carl Dreyer  
 Treasurer  
 Nassau County Interim Finance Authority  
 1305 Franklin Avenue, Suite 302  
 Garden City, NY 11530

[Carl.Dreyer@nifa.ny.gov](mailto:Carl.Dreyer@nifa.ny.gov)

(hereinafter, the “RFP Contact”).

This RFP is a solicitation and not an offer of contract.

Addenda to this RFP may be issued prior to the proposal submission date and will be posted on NIFA’s website at <https://nifa.ny.gov/>. Addenda will be furnished by email to prospective proposers only if they have specifically informed the RFP Contact, in writing, of their interest in receiving addenda. Prospective proposers who have not informed the RFP Contact of their interest are responsible for checking NIFA’s website frequently for addenda.

### **1. Inquiries**

All questions about the RFP must be submitted via email to the RFP Contact: [Carl.Dreyer@nifa.ny.gov](mailto:Carl.Dreyer@nifa.ny.gov) by 4:00 P.M. on July 10, 2024. Any other contact with NIFA regarding this RFP is prohibited. Violation of this requirement may be grounds for eliminating a proposal from consideration. See also Section VIII of this RFP (regarding State law governing permissible communications during the procurement restricted period).

Answers to all substantive questions will be posted on the NIFA website at <https://nifa.ny.gov/request-proposals-and-qualifications> and furnished by email to prospective proposers who have specifically informed the RFP Contact via email of their interest in receiving same.

### **2. Submissions of Proposals**

All proposals must be received by the RFP Contact by email in pdf format no later than 4:00 P.M. on July 17, 2024. NIFA also may request that proposers provide proposals in other electronic format(s) by email to the RFP Contact.

### **3. Vendor Selection**

Proposals will be evaluated by the Authority. An award will be made by the Authority as quickly as possible but shall not be a binding agreement until definitive documentation has been signed by both parties.

### **4. Evaluation Criteria**

Each proposal will be evaluated based upon the following criteria:

- demonstrated understanding of the Authority’s needs and operations;
- overall quality of the proposal, including, but not limited to, thoroughness and thoughtfulness of the proposed approach, including work schedules, task sequences, allocation of staff, and project organization and management;
- experience and qualifications of the proposing firm and the staff (including managerial) to be assigned to the project, evidence of satisfactory, timely performance on similar assignments, and references and interviews, if conducted; and



- cost proposed for the five-year period (please make the cost proposal a separate section).

## **5. Notification of Award and Contract**

All proposers will be notified in writing of the contract award, if any. The successful proposer will be advised by the Authority, which will furnish the contract.

## **VII. Other Conditions and Limitations**

It is the intention of the Authority to fully execute the mandate of Article 15-A of the State Executive Law so as to provide minority and women-owned business enterprises with an equal opportunity to participate in NIFA contracts.

The proposer, by submitting a proposal, acknowledges an understanding of this policy and pledges to cooperate with NIFA in implementing this policy, and further pledges to exert his, her or its best efforts in soliciting and obtaining the participation of minority and women-owned trade persons and subcontractors and suppliers on this contract where possible.

Article 3 of the State Veterans' Services Law provides for more meaningful participation in public procurement by certified service-disabled veteran-owned businesses ("SDVOB's"), thereby further integrating such businesses into the State's economy. NIFA 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 NIFA contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in the State, proposers are strongly encouraged and expected to consider SDVOB's 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.

Proposers are encouraged to make good faith efforts to promote and assist in the participation of SDVOB's on the contract for the provision of services and materials. The directory of State-certified SDVOB's can be viewed at: <https://sdves.ogs.ny.gov/business-search>.

Proposers are encouraged to contact the State Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOB's on the contract.



Proposers may be requested to clarify the contents of their proposal. Other than to provide such information as may be requested by the Authority, no proposer will be allowed to alter its proposal or add any new information after the proposal due date.



The Authority will not be responsible for expenses incurred in connection with the preparation of submission of any proposal.



### **Required Submissions**

Upon submission of a proposal, proposers must fully execute and submit the following certifications or forms:

1. *Non-Collusive Bidding Certification Required by Section 139-d of the State Finance Law* (Appendix I);
2. *Non-Discrimination in Employment in Northern Ireland MacBride Fair Employment Principles* certification (Appendix II);
3. *Certification Pursuant to State Finance Law Section 139* (regarding State law governing permissible communications during the procurement restricted period) (attached in Appendix III);
4. *Diversity Practices Questionnaire for Bidders* (only required for best value procurements of \$250,000 or greater) (attached in Appendix III);
5. *Form A - STAFFING PLAN* (attached in Appendix III); and
6. *Attachment E - M/WBE UTILIZATION PLAN/REPORTS* (attached in Appendix III).



In addition, proposers are urged to review the Standard Clauses for NIFA Contracts (Appendix III) as these will only be modified under the most compelling of circumstances.



Only those proposers who furnish complete information will be considered for evaluation. No partial proposals will be considered. The Authority reserves the right to accept or reject any or all proposals, and request some or all respondents to provide oral presentation of their proposals.

### **VIII. Disclosure of Proposal Contents/State Finance Law**

Information submitted to NIFA, including the information contained in proposals submitted in response to this RFP, may be subject to disclosure under the State Freedom of Information Law ("FOIL") and other laws. If a vendor is submitting information that it believes is protected from disclosure under FOIL or similar laws, it should clearly identify, at the time of submission, the information at issue and the basis for non-disclosure. If NIFA receives a request for disclosure of the identified information and NIFA determines that the identified information is required by FOIL or any other law to be disclosed, NIFA will use reasonable efforts to notify the vendor prior to disclosing the information to enable the vendor

to take such action as the vendor deems appropriate. Copies of executed contracts are not exempt from disclosure under FOIL and similar laws.

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements (1) govern permissible communications between potential respondents and NIFA or other involved governmental entities with respect to this RFP; (2) provide 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; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP.

Compliance with the Procurement Requirements requires that (x) all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact person listed below; (y) the completion by respondents of the *Certification Pursuant to State Finance Law Section 139* (see Required Submissions in Section VII of this RFP) as part of their proposal; and (z) periodic updating of such forms during the term of any contract resulting from this RFP.

The Procurement Requirements also require NIFA staff to obtain and report certain information when contacted by prospective bidders during the Restricted Period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. NIFA staff shall review and investigate allegations of impermissible contact during a procurement. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any State governmental procurement contract. For the purpose of compliance with State Finance Law Section 139-j, contacts with Carl Dreyer at NIFA are considered permissible.

**APPENDIX I**

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

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 FORGOING 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 \_\_\_\_\_, 2024 as the act and deed of said corporation or partnership.

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING FOR THE PARTNERS OR PRINCIPALS THAT WOULD PARTICIPATE ON THIS ENGAGEMENT:**

**NAMES OF PARTNERS OR PRINCIPALS**

**LEGAL RESIDENCE**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**NAMES**

**LEGAL RESIDENCE**

\_\_\_\_\_  
President

\_\_\_\_\_

\_\_\_\_\_  
Secretary

\_\_\_\_\_

\_\_\_\_\_  
Treasurer

\_\_\_\_\_

\_\_\_\_\_  
President

\_\_\_\_\_

\_\_\_\_\_  
Secretary

\_\_\_\_\_

\_\_\_\_\_  
Treasurer

\_\_\_\_\_

**Identifying Data:**

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

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

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

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

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

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

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

**APPENDIX II**

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

(1) has business operations in Northern Ireland;

Yes \_\_\_\_ or No \_\_\_\_, and 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

### **APPENDIX III**

*Proposers are urged to review the Standard Clauses for NIFA Contracts in this Appendix III as these will only be modified under the most compelling of circumstances.*

#### **SCHEDULE A**

#### **STANDARD CLAUSES FOR NIFA CONTRACTS**

For the purposes of this Schedule A, the Nassau County Interim Finance Authority is hereinafter referred to as "NIFA."

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" or "Consultant" herein refers to any party other than NIFA, whether a contractor, consultant, licensor, licensee, lessor, lessee or other party).

**SUPERVISION BY NIFA.** The services to be performed by Consultant under this contract shall be subject to the general supervision and direction of NIFA provided that neither NIFA's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act pursuant to this contract.

**CONSULTANT'S PERSONNEL.** The Consultant shall designate in writing to NIFA one individual, satisfactory to NIFA, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be NIFA's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon NIFA's written request.

**APPROVAL OF SUBCONSULTANTS.** The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this contract without the prior written consent of NIFA. The Consultant shall inform NIFA in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.

**CONSULTANT AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this contract, the Consultant's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of NIFA. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as, or claim to be acting in the capacity of an employee, or agent of NIFA.

**CONFLICT-OF-INTEREST.** The Consultant represents that:

(a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the contract, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this contract.

(b) No officer, employee, agent or director of NIFA, or any of its subsidiaries shall be admitted to any share or part hereof or to any benefit to arise here from.

(c) No officer, employee, agent or director of NIFA, or any of its subsidiaries shall participate in any decision relating to this contract which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of NIFA, or any of its subsidiaries have any interest, direct or indirect, in this contract or the proceedings thereof.

**CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS.** The Consultant in performing its obligations and in preparing all documents required under this contract shall comply with all material applicable laws and regulations. All provisions required by such laws and regulations to be included in this contract shall be deemed to be included in this contract with the same effect as if set forth in full.

**NO ASSIGNMENT WITHOUT CONSENT.** The Consultant agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this contract, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of NIFA;

(b) If the prohibition of this Section be violated, NIFA may revoke and annul this contract and NIFA shall be relieved from any and all liability and obligations hereunder to the Consultant and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Consultant and such assignee or transferee shall forfeit and lose all the money theretofore earned under this contract.

**ENTIRE AGREEMENT/AMENDMENT.** This contract constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

**CONFIDENTIALITY.** Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and NIFA and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from NIFA, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as NIFA may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

**INDEMNIFICATION.** Notwithstanding anything to the contrary contained herein, Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the work under this contract, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or Subconsultants, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to this contract. Consultant agrees to defend, indemnify and hold the indemnities (the State of New York (the "State") and NIFA)



harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage to property, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or its Subconsultants, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the indemnitaries by reason of claims against Consultant or its Subconsultants, or their employees, agents, servants, independent contractors and subcontracts for any matter whatsoever in connection with the services performed under this contract, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the indemnitaries for reasonable attorneys' fees incurred in connection with the above. Consultant shall be solely responsible for the safety and protection of all its Subconsultants, or the employees, agents, servants, independent contractors, or subcontractors of Consultant or its Subconsultants, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Subconsultants, or their respective agents, employees, servants, independent contractors or subcontractors.

This indemnification provision shall survive the expiration or earlier termination of this contract.

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

**NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the State 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 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..

**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 and shall comply with all requirements set forth in Article 8 or Article 9 of the Labor Law whichever Article applies. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment of any approved sums due and owing for work done upon the project.

**NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 2878 of the State Public Authorities Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under the penalties of perjury:

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 his 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 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.

Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NIFA a non-collusive bidding certification on Contractor's behalf.

**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, Contractor agrees, as a material condition of the contract, that neither 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. Contractor shall so notify NIFA and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**SET-OFF RIGHTS.** NIFA shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, NIFA's option to withhold for the purposes of set-off any moneys due to Contractor under this contract up to any amounts due and owing to NIFA with regard to this contract, any other contract with NIFA, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to NIFA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. NIFA 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 NIFA, its representatives, or the State Comptroller.

**RECORDS.** 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 six (6) years following the expiration or earlier termination of the contract. 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 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. NIFA 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) Contractor shall timely inform NIFA 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, NIFA's right to discovery in any pending or future litigation.

**DISCLOSURE OF NIFA RECORDS OR INFORMATION.** If any third party requests that Contractor disclose NIFA records or information, as defined in subdivision 4 of section 86 of the Public Officers Law, Contractor shall notify NIFA of such request and NIFA shall determine, in accordance with Section 2853 to the Public Authorities Law or other applicable law, whether such NIFA records or information may be disclosed.

**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 Schedule A, the terms of this Schedule A shall control.

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

**LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Section 2880 of the Public Authorities Law and the guidelines adopted by NIFA thereto.

**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 NIFA's receipt of the return thereof by the United States Postal Service as refused or

undeliverable. Contractor must promptly notify NIFA, in writing, of each and every change of address to which service of process can be made. Service by NIFA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** 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 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, 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 NIFA; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of Contractor to meet with the approval of NIFA.

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the New York Laws of 1992), Contractor hereby stipulates that Contractor either (i) has no business operations in Northern Ireland, or (ii) 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 Article 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**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 and Technology Development  
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  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879 (3)(n)–(p)) requires that by signing this contract, Contractor certifies that whenever the contract amount is greater than \$1 million:

- (a) Contractor has made commercially reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and woman-owned business enterprises, on this contract, and has retained the documentation of these efforts to be provided upon request to NIFA;
- (b) Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92–261), as amended;
- (c) Contractor agrees to make commercially reasonable efforts to provide notification to New York State residents of employment opportunities on this contract 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. Contractor agrees to document these efforts and to provide said documentation to NIFA upon request; and
- (d) Contractor acknowledges 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.

**RECIPROCITY AND SANCTIONS PROVISIONS.** Contractor is hereby notified that if its 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 it offers will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that Contractor be denied contracts which it would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact the NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

**CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the State Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in

accordance with the terms of the contract, if the covered agency determines that such action is in the best interest of the State.

**IRAN DIVESTMENT ACT.** In accordance with State Public Authorities Law § 2879-c, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. See “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>.

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

**CONTINGENT FEES.** Contractor hereby certifies and agrees that (a) Contractor has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any NIFA contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and (b) Contractor will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by NIFA.

**COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb; State Technology Law § 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor’s agents, officers, employees or subcontractors.

**ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, regardless of whether the original of said contract is in existence.

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO NIFA CONTRACTS: REQUIREMENTS AND PROCEDURES.**

**I. General Provisions**

- A. NIFA is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NIFA, to fully comply and cooperate with NIFA in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this clause and such other remedies as are available to NIFA pursuant to the Contract and applicable law.

## **II. Contract Goals**

- A. For purposes of this Contract, NIFA hereby establishes an overall goal of 30 percent for MWBE participation, in any percentage between New York State certified minority-owned business enterprises (“MBE”) participation and New York State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II.A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
  - 1. Evidence of outreach to MWBEs;
  - 2. Any responses by MWBEs to the Contractor’s outreach;

3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by NIFA with MWBEs; and
5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

### **III. Equal Employment Opportunities for Minorities and Women**

A. The provisions of Article 15-A of the State Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

B. In performing the Contract, the Contractor shall:

1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to NIFA within seventy-two (72) hours after the date of the notice by NIFA to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, NIFA may require the Contractor or subcontractor to adopt a model statement (see Attachment C hereto, M/WBE and EEO Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - (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 EEO programs 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. For these purposes, EEO shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - (b) The Contractor shall state, in all solicitations or advertisements for employees that, in the performance of the 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) 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.
- (d) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 (except as provided in State Executive Law § 312(6)) and Paragraph E of this Section III of this clause, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- (e) NIFA 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 clause. 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 State Executive Law § 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

#### C. Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan (Form A) to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of its bid or proposal or within a reasonable time, but no later than the time of award of the contract.

#### D. Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report (see Attachment E hereto), and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by NIFA on a quarterly basis during the term of the Contract.
  2. Separate forms shall be completed by the Contractor and any subcontractors.
  3. Pursuant to New York State Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis. Contact NIFA for additional information.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability,

predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan (see Attachment E hereto), or shall submit an MWBE Utilization Plan at such time as shall be required by NIFA, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to NIFA, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NIFA shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

#### **V. Waivers**

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by NIFA. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NIFA shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If NIFA, upon review of the MWBE Utilization Plan, updated Quarterly MWBE Contractor Compliance Reports described in Section VI of this clause, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, NIFA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI. Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report (see Attachment D hereto) through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to NIFA by the 10th day following the end of each quarter during the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **VII. Liquidated Damages - MWBE Participation**

- A. Where NIFA determines that the Contractor is not in compliance with the requirements of this clause and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to NIFA liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NIFA, the Contractor shall pay such liquidated damages to NIFA within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

**PARTICIPATION BY SERVICE-DISABLED VETERAN-OWNED BUSINESSES WITH RESPECT TO STATE CONTRACTS.** Article 3 of the New York State Veterans' Services 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. NIFA 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 NIFA's 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, Contractors 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. NIFA hereby establishes an overall goal of 6 percent for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the 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 NIFA designated contact for the contract. Additionally, following contract execution, the 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](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the contract.

B. The Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the contract (see Section IV of this clause below).

## **II. SDVOB Utilization Plan**

A. In accordance with 9 NYCRR § 252.2(i), Contractors 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 Contractor intends to use to perform the contract, a description of the work that the Contractor 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 Contractor 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 NIFA.

C. NIFA will review the submitted SDVOB Utilization Plan and advise the Contractor of NIFA's acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, the Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to NIFA a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by NIFA to be inadequate, NIFA shall notify the Contractor and direct the Contractor to submit, within five business days of notification by NIFA, 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. NIFA may disqualify a Contractor's bid or proposal as being non-responsive under the following circumstances:

- (a) If a Contractor fails to submit an SDVOB Utilization Plan;
- (b) If a Contractor fails to submit a written remedy to a notice of deficiency;
- (c) If a Contractor fails to submit a request for waiver; or
- (d) If NIFA determines that the Contractor has failed to document good faith efforts.

F. If awarded a contract, the 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. The 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, NIFA 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, the Contractor shall speak to the designated contacts at NIFA for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in Section IV if this clause below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Contractor 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 NIFA at that time, the provisions of Sections II (C), (D) & (E) of this clause will apply. If the documentation included with the Contractor's waiver request is complete, NIFA shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. The 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 NIFA, but must be made no later than prior to the submission of a request for final payment on the contract.

D. If NIFA, 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, NIFA 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 NIFA.

#### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document its 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 Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by NIFA with certified SDVOBs whom NIFA 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. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), the Contractor is required to report Monthly SDVOB Contractor Compliance to NIFA during the term of the contract for the preceding month's activity, documenting progress made towards achieving the contract's SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by the Contractor and submitted to NIFA, by the 10th day of each month during the term of the contract, for the preceding month's activity.

## **VI. 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 Agreement, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

ALL SDVOB FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/veterans/division-service-disabled-veterans-business-development-compliance-and-reporting>.

**Attachment A (For Proposals)**

## ***Certification Pursuant to State Finance Law §139***

This form shall be completed and submitted with your proposal. Failure to complete and submit this form may result in a determination of non-responsiveness and disqualification of the proposal.

**I. Affirmation relating to procedures governing permissible contacts:**

(Proposer must check applicable box)

Proposer:       affirms       does not affirm

that it understands and has to date and agrees hereinafter to comply with the Authority's procedures relative to permissible contacts for this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b).

**II. Disclosure of Findings of Non-Responsibility and Prior Contract Terminations or Withholdings under the 2005 Procurement Lobbying Law:**

1. Has any "governmental entity," as defined by State Finance Law §139-j and §139-k, made a finding in the last four years that the firm was not responsible?

No                       Yes

2. If yes, was the basis for any such finding(s) the intentional provision of false or incomplete information required by State Finance Law § 139-j and §139-k, and/or the failure to comply with the requirements of State Finance Law §139-j (3) relating to permissible contacts?

No                       Yes

If yes, please provide details regarding each finding of non-responsibility below. (Attach additional pages, if necessary)

Governmental Entity: \_\_\_\_\_

Date of Finding: \_\_\_\_\_

Basis of Finding: \_\_\_\_\_

3. Has any "governmental entity" as defined in State Finance Law §139-j and §139-k terminated or withheld a procurement contract with the firm due to the intentional provision of false or incomplete information required by such Laws and/or the failure to

comply with the requirements of State Finance Law §139-k(3) relating to permissible contacts?

No             Yes

If yes, please provide details below. (Attach additional pages, if necessary)

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding of Contract:

The undersigned acknowledges and states that all information provided to the Authority with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address



**Attachment B**

**NON-DISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

During the term of the Contract, the Contractor agrees as follows:

1. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, sexual orientation, or color discriminate against anyone who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the contract on account of gender, race, creed, sexual orientation, or color.
3. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor shall not discriminate by reason of gender, race, creed, sexual orientation, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
7. The Nassau County Interim Finance Authority may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

## Attachment C

# *EEO and MWBE Required Forms*



Division of Minority  
and Women's  
Business Development

### Your MWBE Utilization and Reporting Responsibilities

#### Under Article 15-A

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your incentive proposal or contract documents.

The New York State Contract System ("NYSCS") is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the

Help & Tools



icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the Knowledge Base through the Forum link, and submit feedback to help improve future enhancements to the system.

Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.

**A Division of Empire State Development**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

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

---

**NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY**

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

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(c) At the request of NIFA, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) The organization shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

**MWBE PARTICIPATION**

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from the New York State Contract System (<https://ny.newnycontracts.com/>) and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

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

By \_\_\_\_\_

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

**Minority & Women-owned Business Enterprise-Equal Employment Opportunity Liaison**

\_\_\_\_\_ (Name of Designated Liaison) is designated as the Minority & Women-owned Business Enterprise Liaison responsible for administering the Minority and Women-owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_30\_\_\_ % Minority and Women’s Business Enterprise Participation

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

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

(Authorized Representative)

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

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

## Diversity Practices Questionnaire for Bidders

*Required for best value procurements of \$250,000 or greater per 5 NYCRR §142.3*

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

---

<sup>1</sup>Do not include onsite project overhead.

<sup>2</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan.

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature  
of Owner/  
Official

\_\_\_\_\_

Printed  
Name of  
Signatory

\_\_\_\_\_

Title

\_\_\_\_\_

Name of  
Business

\_\_\_\_\_

Address

\_\_\_\_\_

City,  
State, Zip

\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 202\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_  
Notary Public

**Form A - STAFFING PLAN**

Submit with Bid or Proposal – Instructions on page 2

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor <b>Subcontractor's name</b> _____
<b>Offeror's Address:</b>		

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

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

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	<b>Submit completed with bid or proposal M/WBE 101 (Rev 11/08)</b>	

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

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

**RACE/ETHNIC IDENTIFICATION**

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

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

**OTHER CATEGORIES**

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



Is this a final report? Check One

**Attachment D**  
**Contractor M/WBE Quarterly Report**  
of  
**NYS AGENCY Contract No. \_\_\_\_\_ Project No. \_\_\_\_\_**

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project.

The payments as shown made are in compliance with contract documents for the above referenced project.

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

\*See Reverse Side for Product Codes

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

## PRODUCT KEY CODE

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

## Attachment E - M/WBE UTILIZATION PLAN/REPORTS

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

Offeror's Name:

Federal Identification No.:

Address:

Solicitation No.:

City, State, Zip Code:

Project No.:

Telephone No.:

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

Region/Location of Work:

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
<b>6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).</b>				
<b>PREPARED BY (Signature):</b>  <b>DATE:</b>  <b>NAME AND TITLE OF PREPARER (Print or Type):</b>			<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>
			<b>FOR M/WBE USE ONLY</b>	
			<b>REVIEWED BY:</b>	<b>DATE:</b>

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

**UTILIZATION PLAN APPROVED:**  YES  NO Date: \_\_\_\_\_  
**Contract No.:** \_\_\_\_\_ **Project No. (if applicable):** \_\_\_\_\_

**Contract Award Date:** \_\_\_\_\_

**Estimated Date of Completion:** \_\_\_\_\_

**Amount Obligated Under the Contract:** \_\_\_\_\_

**Description of Work:** \_\_\_\_\_

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

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



## **Collection and Submission of Workforce Utilization Reports**

Workforce utilization reports are to be collected from each contractor and subcontractor performing work on state contracts. Contractors and subcontractors performing work on construction contracts with a total value in excess of \$100,000 are to submit workforce utilization reports to agencies and authorities on a monthly basis. Contractors and subcontractors performing work on commodities and services contracts with a total value in excess of \$25,000 are to submit workforce utilization reports to agencies and authorities on a quarterly basis. Agencies and authorities are to submit to the Division of Minority and Women's Business Development (the "Division") all workforce utilization reports collected in any quarter within fifteen (15) days of the end of that quarter as described below.