



# Office for People With Developmental Disabilities

**Developmental Disabilities State Operations Office (DDSOO) 3**

**Capital District**

## **INVITATION FOR BIDS**

### **PLUMBING REPAIR SERVICES COMMUNITY**

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NYS OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES  
Central Office Contract Management Unit  
44 Holland Avenue  
Albany, NY 12229

June 8, 2015

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## I. Overview

This Invitation for Bids (IFB), officially named Capital District DDSOO Plumbing Repair Services – Community IFB is being issued by the New York State Office for People with Developmental Disabilities (OPWDD).

The Office for People With Developmental Disabilities (OPWDD) is a New York State executive agency responsible for the provision, regulation and oversight of services to individuals with developmental disabilities in New York State. The OPWDD is responsible for coordinating services for more than 126,000 New Yorkers with developmental disabilities, including intellectual disabilities, cerebral palsy, Down syndrome, autism spectrum disorders, and other neurological impairments. It provides services directly and through a network of approximately 700 nonprofit service providing agencies, with about 80 percent of services provided by the private nonprofits and 20 percent provided by state-run services.

Developmental Disabilities State Operations Offices (DDSOOs) administer and oversee state operations for the OPWDD, including the direct delivery of services and supports to people with developmental disabilities by state staff.

The purpose of this IFB is to establish Contracts, in accordance with the New York State Finance Law, with vendors for the provision of plumbing repair services specified in Section III, Statement of Work, of this IFB.

The Office for People With Developmental Disabilities (OPWDD) will receive bids pursuant to the provision of Article XI of the State Finance Law. To be eligible for contract award, Bidders must submit a complete response to this IFB in conformance with Section IV, Instructions for Bid Submission, of this IFB.

### Definitions

“Bidder” shall refer to any business entity who submits a response to this IFB. At the time that the Bidder executes a contract with the OPWDD for their services, a Bidder shall become a “Contractor.” “Contractor” shall refer to a responsive and responsible Bidder who has submitted the lowest bid and is working under an executed contract with the OPWDD. All references made to the contract resulting from this IFB will be referred to as “the Agreement” or “the Contract” hereinafter.

### Designated Contact

New York State Finance Law (SFL) §139-j restricts contact by Bidders with any governmental entity regarding procurement contracts. Subject to certain exceptions set forth in SFL §139-j (3), contacts between Bidders and governmental entity personnel, other than the governmental entity’s designated contact person(s), are prohibited during the restricted period of the governmental procurement. Pursuant to State Finance Law §§139-j and 139-k, this procurement includes and imposes certain restrictions on communications between the OPWDD and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of the Procurement contract by the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3)(a). Designated staff, as of the date hereof, is identified in this IFB. OPWDD employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutory provisions. Certain findings of non-responsibility can result in rejection for contract award. In the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement contracts. Further information about these requirements can be found on the Office of General Services (OGS) website: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

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The following activities are permissible contacts by a Bidder:

- Submission of a written Bid in response to this IFB
- Submission of written questions prior to the “Bid Due Date / Bid Opening”
- Complaints filed by a Bidder stating that the designated point of contact has failed to respond in a timely manner
- Negotiations following award
- Debriefings to vendors that were not award recipients
- Filing of an appeal or protest
- Any contact initiated by OPWDD employees

State Finance Law also requires that every procurement over \$15,000 include a certification by the Bidder that all information provided to the agency is complete, true, and accurate with regard to prior non-responsibility determinations within the past four years based on (i) impermissible contacts or other violations of State Finance Law §139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity. See the **Attachment** to this IFB for Contractor Disclosure of Contacts and Bidder Disclosure of Prior Non-Responsibility Determinations forms.

The **Designated Contact** for this procurement is:

Amanda Mitchell  
NYS Office for People With Developmental Disabilities  
Contract Management Unit, 3<sup>rd</sup> Fl.  
44 Holland Avenue  
Albany, New York 12229  
(518) 474-0677  
Email Address: [amanda.s.mitchell@opwdd.ny.gov](mailto:amanda.s.mitchell@opwdd.ny.gov)

### Ethics Requirements

All Bidders and their employees must be aware of and comply with the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations doing business with the OPWDD, and for applicable Federal laws and regulations of similar intent. In signing the Bid, each Bidder guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc. involving the OPWDD and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as may be required or permitted by law.

### Procurement Timetable

<b>Activity</b>	<b>Date/Time</b>
Release IFB	Monday, June 8, 2015
Written Questions Due from Vendors	Friday, June 19, 2015
OPWDD Responses to Written Questions	Wednesday, June 24, 2015
<b>Bid Due Date</b>	<b>Thursday, July 2, 2015, 3:00 P.M.</b>
<b>Bid Opening</b>	<b>Friday, July 3, 2015, 9:00 A.M.</b>
<b>Anticipated Notification of Award **</b>	<b>Friday, July 17, 2015</b>
Estimated Control Agency Approvals **	Thursday, October 1, 2015
Contract Start Date **	Thursday, October 1, 2015

\*\* **NOTE:** These dates are target dates and are subject to change at OPWDD's sole discretion.

## Questions Regarding this IFB

To be given consideration by the OPWDD, all questions related to this procurement must be submitted via e-mail to the Designated Contact. Each question must, to the degree possible, cite the specific IFB Section to which it refers.

All questions must be received by the Date/Time for Written Questions Due from Prospective Bidders as noted in the Procurement Timetable (above). Any questions received after this date and time will not be answered unless the OPWDD determines otherwise. The OPWDD encourages Vendors to suggest cost saving alternatives at this time, as the OPWDD may not be able to consider them after the due date for questions.

The OPWDD will post official answers to the questions of all Vendors on the OPWDD's website: [http://www.opwdd.ny.gov/opwdd\\_resources/procurement\\_opportunities](http://www.opwdd.ny.gov/opwdd_resources/procurement_opportunities) by the Date/Time noted for OPWDD Responses to Written Questions in the Procurement Timetable. Bidders must consider the OPWDD Responses to Written Questions, along with the information contained in this IFB when calculating the rates for **Exhibit A - Bid Form**. Only answers provided in writing by the OPWDD will be considered official. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum which will become part of the ensuing Contract.

## II. Minimum Qualifications

### References

Each Bidder must be able to prove to the OPWDD that it has and does successfully and satisfactorily provide services comparable to the requirements set forth within this IFB. Completion of the reference form included with this IFB, as **Exhibit B – References**, shall serve as initial proof of this experience. Each Bidder must provide a minimum of three (3) positive references in the space provided in this form. References must be from corporations, institutions and/or government agencies, for which the Bidder provided similar services, and with contracts that met similar terms and conditions. References shall demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the outlined Bid. References should support satisfactory evidence that the Bidder has had previous experience, adequate financial resources, and organization to perform the type, magnitude, and quality of work specified in this IFB. The OPWDD reserves the right to contact references to obtain additional information.

Bidders who have previously held a comparable contract with the DDSOO within the past three (3) years do not need to submit other references. Such Bidders will be evaluated on the basis of the services provided to the DDSOO, although the DDSOO reserves the right to request other references and additional information.

### Financial Stability

The Bidder shall provide evidence that it has maintained an organization capable of performing the work hereinafter described, in continuous operation for at least the past five (5) years. If requested, Bidder must document its ability to service a Contract with a similar scope to the scope of this Bid. The Bidder must be financially stable and able to substantiate the financial condition of its company. The State reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent sources. The State reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this Bid.

### Contractor Insurances

The Contractor shall possess at no cost to the OPWDD the necessary qualifications, permits and licenses required to perform the services specified in Section III, Statement of Work, in compliance with all State, Federal, and local laws and regulations.

**Proof of Insurances**

A Bidder must commit to obtaining all necessary proof of insurance with its Bid. Upon tentative award, Bidder shall be required to procure all required insurance. If awarded a Contract, the Contractor must provide proof of current insurance throughout the contract term if requested by the OPWDD. The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth.

The Contractor shall deliver to OPWDD evidence of such policies in a form acceptable to OPWDD. Except as may be otherwise specifically provided herein or agreed to in writing by OPWDD, policies must be written on an occurrence basis.

Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OPWDD, before commencing any work under this Contract. Certificates of Insurance shall:

- Be in the form approved by OPWDD;
- Specify the Additional Insured and Named Insured as required herein;
- Refer to the Contract by number and any other attachments on the face of the certificate;
- When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit; and
- Be signed by an authorized representative of the insurance carrier or producer.

All forms, except CE-200 and SI-12, must name as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder):

New York State Office for People With Developmental Disabilities  
44 Holland Avenue  
Albany, New York 12229

Only original documents (Certificates of Insurance and other attachments) will be accepted.

**Insurance Requirements**

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence.

Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per job basis.

- b. Workers Compensation, Employers Liability, and Disability Benefits as required by New York State.

If employees will be working on, near or over navigable waters, the US Longshore and Harbor Workers Compensation Act endorsement must be included. The Alternate Employer Endorsement WC 00 03 01A must be included on the policy naming The People of the State of New York as the alternate employer for this contract.

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- c. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident.

Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

- d. If providing professional occupation job titles, the Contractor shall maintain errors and omissions liability insurance with a limit of not less than \$2,000,000 per loss.

Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.

If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OPWDD prior to the policy's expiration or cancellation.

### **Policy Renewal/Expiration**

At least two weeks prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to OPWDD than the expiring policies shall be delivered to OPWDD in the manner required for service of notice. If, at any time during the term of this contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the contract or proof thereof is not provided to OPWDD, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OPWDD. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OPWDD, shall not give rise to a delay claim or any other claim against OPWDD. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OPWDD may withhold further contract payments, and treat such failure as a breach or default of the contract.

### **Waiver of Subrogation**

Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against OPWDD, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OPWDD or (ii) any other form of permission for the release of OPWDD.

### **Workers' Compensation Insurance and Disability Benefits Requirements**

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your Bid or renewal.

### **Proof of Compliance with Workers' Compensation Coverage Requirements**

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- Obtain such coverage from an insurance carrier; or
- Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the OPWDD prior to Anticipated Notification of Award as noted within the Procurement Timetable:

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

### **Proof of Compliance with Disability Benefits Coverage Requirements**

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- Be legally exempt from obtaining disability benefits coverage; or
- Obtain such coverage from an insurance carrier; or
- Be a Board-approved self-insured employer.

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

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

### **Prevailing Wages**

According to the New York State Department of Labor, Article 8, § 220, and Article 9 § 237 of the Labor Law require that certain conditions be met for any "Public Work." Generally, projects and contracts for construction, reconstruction or maintenance, and building service done on behalf of a public agency (entity) are public work. Any of the work involving the employment of laborers, workers or mechanics is subject to Article 8 or Article 9.

Since OPWDD is a public agency, these requirements must be complied with. The Prevailing Wage schedules applicable to this public works project PRC# 2015004670 may be found on the Department of Labor Website at: [www.labor.state.ny.us](http://www.labor.state.ny.us). Prevailing Wages questions should be directed to the Department of Labor Bureau of Public Work at (518) 457-2744.

The Contractor agrees to comply with all State and Federal laws and regulations relating to payment of prevailing wage rates in accordance with the Prevailing Wage Schedule to be issued by the Department of Labor. Within 30 days following the annual publication of the DOL Prevailing Wage, the contractor may request, in writing, the contract to be amended to reflect the change in the new Prevailing Wage.

### **Procedures**

Any contractor/sub-contractor performing work for a public agency must pay prevailing wages regardless of the dollar amount of the project/contract. The only exception to this requirement is when the work is performed exclusively by either the owner of the company or equal partners. It is expected that Contractor will pay prevailing wages for any tradesmen employed on the work in this contract covered by the Prevailing Wage Rate Schedule. In addition, contractor will be requested to submit a certified payroll to the Capital District Facility's Business Office with Contractor's invoice(s).

Any contractors/sub-contractors performing work of this nature must submit a "certified payroll" to the contracting agency as proof that prevailing wages were paid. A "certification" must be attached to the Contractor's payroll. Certified payrolls will be retained by the Capital District DDSOO Business Office.

Bidder is required to consider prevailing wages within the Bid price.

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

New York State Executive Law § 310–318, (Article 15-A: Participation By Minority Group Members and Women With Respect To State Contracts -- hereinafter "the Statute"), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. The New York State Office for People with Developmental Disabilities (OPWDD) fully supports the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons, and to promote equality of economic opportunity for minority group members and women who own business enterprises.

OPWDD has developed compliance requirements to ensure that (i) all contractors as defined under § 310 (3) (to include those who submit Bids/proposals in an effort to be selected for contract award as well as those successful Bidders/proposers with whom OPWDD enters into State Contracts, as defined in § 310 (13) [hereinafter "Contractors"], as well as proposed or actual "Subcontractors", as defined in § 310 (14) shall comply with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, and, (ii) there are meaningful participation opportunities for certified minority or women-owned business enterprises (M/WBEs) in the OPWDD procurement process. Contractors participating in and/or selected for procurement opportunities with OPWDD shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144). Please refer to the Appendix A Supplement, attached and incorporated by reference herein, for the specific EEO/M/WBE requirements.

Vendors must submit hardcopy M/WBE forms to the designated OPWDD Program Manager. These forms are to be submitted without change to goals specified in the IFB or contract, unless otherwise authorized by OPWDD.

As stated in Subcontracting within this Minimum Qualifications section of the IFB, subcontracting is prohibited unless approved by OPWDD. Using NYS Certified M/WBEs (link to Directory of NYS Certified M/WBEs, <http://www.esd.ny.gov/MWBE.html>) as providers of these second tier services can be counted in satisfaction of the goals. The following are examples of indirect services that you may want to consider for compliance with M/WBE subcontracting participation requirements: Accounting Services, Advertising, Building Maintenance, Car Rental, Cleaning Supplies, Copying, Electrical Services, Furniture, Heating and Cooling, Janitorial Services, Office Supplies, Pest Control, Materials, Supplies and Equipment, Publishing, Rubbish Removal, Security, Shredding Services, Tax Preparation, Technical Writing, Training, Travel Services.

Failure to meet any of the above qualifications in whole or in part of the above statements may result in a rejection of the Bid of that Bidder. An incomplete Bid will result in a non-responsive Bid determination and rejection.

### **Contract Period and Renewals**

The intention of the OPWDD is to enter into one contract for a term of (5) five years. All or any part of this Agreement may be terminated if the OPWDD deems that termination would be in the best interest of the OPWDD provided that the OPWDD shall give written notice to the Contractor not less than 30 calendar days prior to the date upon which termination shall become effective, and such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of Contractor's receipt for notice in the case of hand delivery. In the case of termination under this section, the OPWDD agrees to pay the Contractor for contract work performed and reasonable and appropriate expenses incurred in good faith for 30 days of closeout activities. OPWDD will not be obligated to pay the Contractor for lost and/or anticipated profits. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.

### **Subcontracting**

Full responsibility for the delivery of services specified in this IFB must be provided by the Contractor under Contract. No subcontracting for the provision of services required under this IFB shall be permitted without prior written consent from OPWDD.

### **Performance Monitoring**

The quality of service shall be subject to inspection by the OPWDD at any time. Should it be found that quality of the service is not satisfactory and that the requirements of the specifications within this IFB are not being met, the OPWDD will notify the Contractor of these deficiencies in writing, and it shall be the Contractor's responsibility to make the necessary corrections within thirty (30) days after receipt of such notice. In the event that the deficiencies have not been corrected within thirty (30) days, the DDSOO may terminate the contract and employ a Contractor to make corrections at the original Bidder's expense.

Contractor shall at all times during the contract term remain responsible and responsive. A Bidder must be prepared, if requested by the OPWDD, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the product offered/bid. If the OPWDD determines that the conditions and terms of the bid documents or contract are not complied with, or that items or product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the OPWDD may reject such Bid or terminate the Contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the OPWDD to make an investigation either before or after award of a Contract, but should such investigation be made, it in no way relieves the Bidder from fulfilling all requirements and conditions of the Contract.

The OPWDD reserves the right to investigate qualifications of all Bidders and their workmen on other work projects, in order to assess their ability to perform the work required and to evaluate the Contractor(s) personnel and methods of operation to ascertain that it can effectively perform the duties required.

The OPWDD reserves the right to request the dismissal of any contractual employee who violates the safety and security rules and regulations of the OPWDD or who in any way may be considered a hindrance to quality care of the individuals OPWDD serves.

### III. Statement of Work

The Capital District Developmental Disabilities State Operations Office (DDSOO) requires Plumbing Repair Services at various community locations in Albany, Rensselaer, Saratoga, Schenectady, Warren and Washington counties. Refer to **Exhibit C– Service Locations** for a listing of the current community locations that may need plumbing services under this IFB.

Basic plumbing services will include, but not be limited to, repairs, replacements, and maintaining all plumbing components compliant to industry and manufacturer standards. Calls for service are to be authorized by the Work Control Center Supervisor or the On Call Maintenance Supervisor as indicated below.

Primary and secondary awards will be made for each county. The lowest qualified bidder will be awarded primary status; the second lowest qualified bidder will be awarded secondary status. Bidders may provide a Bid for multiple counties.

#### Site Visits

Each Bidder must inform herself/himself by personal examination of the specifications, locations, and extent of the proposed service and, by additional other means as he/she may select, of the character, nature, quality and extent of work to be performed and the condition under which the Contract is to be executed. The OPWDD will make no allowance or concession to a Bidder for any alleged misunderstanding or discrepancy because of quantity, character, location, or other conditions.

#### Detailed Specifications

1. Plumbing Repair, Replacement and Maintenance (includes, but may not be limited to):

- Hot water heaters (Gas, Oil, Electric)
- All Plumbing Fixtures
- Mixing Valves
- Hot Water Fail Safe Systems
- Hot Water Temperature Adjustment and Maintenance
- Drain Auguring by Convention and Pressurized Techniques
- Drain Camera Service

2. Repair Services

- a) Repairs require approval by the Work Control Center Supervisor. During normal business hours, 7:30 am – 4:00 pm, please call (518) 388-0344. After normal business hours authorization will be provided by the On Call Supervisor who can be reached through the Power Plant at (518) 370-7312.
- b) After the assessment is made, further authorization from the Work Control Supervisor is required when:
  - i. Any modifications (including replacements or removal) of existing piping are necessary.

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ii. Repair costs are estimated to be over \$500.

### 3. Working Hours

- a) Normal working hours are defined as Monday through Friday, 7:30 am – 4:00 pm, excluding Holidays provided by the New York State Department of Labor under the Prevailing Wage Schedule. These defined holidays will be paid at the “Off Hours” rate. The 2015 Prevailing Wage Schedule identifies the following six (6) Holidays:
- Memorial Day
  - July 4<sup>th</sup>
  - Labor Day
  - New Year’s Day
  - Thanksgiving Day
  - Christmas Day
- b) Vendor must have the ability to respond to emergency calls 24 hours a day. Vendors shall provide emergency service within two (2) hours of receipt of a request for such service by telephone or otherwise from the DDSOO.
- c) Vendor will provide hourly service rates for Business Hours and Off Hours, Trip Charge (if applicable – if you do not charge a “Trip Charge” please enter \$0 in this field), and the Parts Markup Percentage.

### 4. Call Back Service

The Contractor shall provide call back service within four (4) hours after receipt of a request for such service by telephone or otherwise from the DDSOO. Call back services shall be performed as part of this Contract without additional charge.

### 5. Reports

- a) A Repair Service Report must be generated when repair or service has been completed.
- b) A copy of this report must be left at the residence and a copy provided to the Work Control Center within forty-eight (48) hours to the following address or fax:

Capital District DDSOO  
500 Balltown Road  
Schenectady, NY 12304  
Attn: John Kohler, Maintenance Supervisor  
(518) 388-0341 (Office)  
(518) 370-7478 (Fax)

### **Price**

This is a full service contract. Unless otherwise specified, for the purpose of this contract, full service shall mean that the Bidder’s price includes, but is not necessarily limited to: all labor, material and supplies; all emergency work and special requests; all administrative, reporting or other requirements; and all overhead costs and profit. It shall also include all travel costs, parking fees, and any other ancillary fees and costs, including permits, licenses, insurance, etc. Details of service not explicitly stated in these specifications, but necessarily attendant, are deemed to be understood by the Bidder and herein. The prices submitted by the Bidder on **Exhibit A - Bid Form**, must include the Bidder’s complete costs.

The prices submitted by Bidders on **Exhibit A - Bid Form**, once approved by the OPWDD and the Office of the State Comptroller, are fixed for the entire term of the Contract and are not subject to change other than as permitted in Section VIII, Contract Terms, of this IFB.

When calculating Bids, Bidders must consider the requirements as set forth in this IFB along with the OPWDD Response to Written Questions to be provided as noted within the Procurement Timetable of this IFB.

**Contract Award**

Primary and secondary awards will be made for each county. The lowest qualified bidder will be awarded primary status; the second lowest qualified bidder will be awarded secondary status. Bids may be provided for multiple counties.

**Work Site Modifications**

Upon written notification to the Contractor, OPWDD has the option to delete service locations included in **Exhibit C – Service Locations** of this IFB. The Contract amount will be adjusted accordingly.

**IV. Instructions for Bid Submission**

Bids must conform to the following Bid Submission requirements of this IFB. A Bid that fails to conform may be considered non-responsive and may be rejected.

**Bid Documentation**

Each Bid submitted must be comprised of the following two (2) completed documents, all of which are provided to Bidders in an incomplete format within this IFB:

- **Exhibit A – Bid Form**
- **Exhibit B – References**

Portions of successful Bidders' proposals and of this IFB shall be incorporated into a final Contract, executed by OPWDD and the Contractor. Therefore, the Bid must be signed by a partner, corporate officer, or other person authorized to commit its firm to all the provisions of this IFB and its Bid as submitted.

**Bid Format and Packaging**

Facsimile and E-mail Bid Submissions are not acceptable and will not be considered. All Bids mailed to OPWDD must be packaged, sealed and submitted with a label on the outside of the package or shipping container outlining the following information:

Bidder's name and address  
"BID ENCLOSED"  
Name of IFB: "Capital District DDSOO Plumbing Repair Services – Community IFB"  
Bid Due Date: "07/02/15, 3:00 PM"

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the OPWDD reserves the right to open the shipping package or envelope to determine the proper Name of IFB, and the Bid Due Date. The Bidder shall have no claim against the OPWDD arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Notwithstanding the OPWDD's right to open a Bid to ascertain the information above, the Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with such requirements.

**Bid Delivery**

The Bid package must be hand-delivered or sent by certified mail to the IFB Designated Contact:

Capital District DDSOO Plumbing Repair Services – Community

NYS Office for People With Developmental Disabilities  
Attn: Amanda Mitchell  
Contract Management Unit, 3<sup>rd</sup> Fl.  
44 Holland Avenue  
Albany, New York 12229

The Bid must be received by the OPWDD on or before the Bid Due Date and time as noted in the Procurement Timetable of this IFB. Any Bidder's proposal made in response to this IFB not received by the Bid Due Date and time may not be considered responsive and will not be accepted, unless the OPWDD, in its sole discretion, determines that no material prejudice will occur if such Bid is accepted. Upon receipt of the Bids, a date and time stamped receipt will be issued by the OPWDD.

All Bids received on or before the closing date for receipt of Bids shall become the property of the OPWDD and will not be returned to the Bidder.

Bidders mailing their Bids must allow sufficient mail delivery time to ensure receipt of their Bid by the date and time specified in the Procurement Timetable of this IFB.

**Hand Deliveries**

A Bidder who elects to hand deliver its proposal is encouraged to contact the Designated Contact of this IFB at least 24 hours prior to the Bid Due Date.

Bidders must allow extra time to comply with the security procedures in effect at 44 Holland Avenue, Albany, when hand delivering Bids or using deliveries by independent courier services. To access the OPWDD building at 44 Holland Avenue, all visitors must check in with the security guard stationed in the front lobby, and provide the security guard the name and phone number of the Designated Contact to coordinate in-person receipt of the Bid by the Designated Contact or their designee.

**Period of Validity**

The Bidder's proposal will remain valid for a minimum of 180 calendar days from the Bid Due Date.

**Withdrawal of Bid**

A bid may be withdrawn at any time prior to the time specified for receipt of bid. Not more than five (5) calendar days after the bid opening, a low bidder may request the withdrawal of its bid based on an error with such Bid. The request must be submitted via certified or registered mail to the address noted in the Bid Delivery section of this IFB. The OPWDD may conduct or have conducted on its behalf a fact-finding proceeding to develop information concerning the request for withdrawal.

A request for withdrawal of a Bid shall be allowed if, before any detrimental change of position by the State occurred, the Bidder establishes by clear and convincing evidence all of the following:

1. An error, verifiable by written evidence, occurred in the computation of the Bid;
2. Absent the error, the Bid would have been at least 10 percent (10%) higher;
3. The Bidder would suffer at least a 10 percent (10%) loss on the Contract if required to proceed with the Contract at the price set forth in the Bid; and
4. The absence of negligence in the preparation of the Bid. For the purposes of this subparagraph, the inaccurate preparation of an estimate for Bidder's performance of activities described in the Statement of Work in this IFB may constitute negligence in the preparation of the Bid. Such inaccuracies include but are not limited to the following:
  - a. The omission of quantities for labor or materials.

- b. The use of erroneous quotations from subcontractors or suppliers.

If the Bidder fails to meet its burden of evidence, the request to withdraw shall be denied. The Bidder will also be held responsible for the additional cost of doing the work. The decision of the OPWDD shall be final and conclusive.

During the pending decision period on a request to withdraw, the OPWDD shall continue with the contract award process as if the Bid which is the subject of the request had been withdrawn.

No Bidder who has made request to withdraw, whether or not granted, shall be permitted to be considered for award of the Contract which was the subject to the request or on a re-bid subsequent to action on the request.

### **Public Information Requirements**

All Bids upon submission will become the property of the OPWDD, except late Bids, which may be returned. During the evaluation process, the content of each Bid/proposal will be held in confidence and details of any Bid/proposal will not be revealed (except as may be required under the New York State Freedom of Information Law: NYS Public Officers Law, Article 6). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Information relating to Bidder price submissions, including commercial, book or list pricing, applicable discounts or final Bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to Bidder after contract final approval.

Should a Bidder feel the firm's Bid/proposal contains any such trade secrets or other confidential or proprietary information, Bidders must specifically identify those parts of the Bid/proposal that are claimed as a trade secret or other confidential or proprietary information, and must submit a request to exempt such information from disclosure. Such request must be in writing, must state the reasons why the information should be exempt from disclosure, and must be provided at the time of submission to the subject information.

Non-responsive requests for exemption from public access will not be considered by the OPWDD in the event a Freedom of Information request for Bid information is received.

## **V. Method of Award, Debriefings and Protest/Appeal Procedures**

Overview - All Bids received shall be subject to an evaluation by the OPWDD, assisted by such other personnel as deemed appropriate, for the purpose of selecting Bidder(s) with whom an agreement will be negotiated. Only Bids judged to be responsive to the submission requirements set forth in this IFB will be evaluated. The OPWDD will award contracts on the basis of lowest price among responsible and responsive Bidders, meeting all the Bid Submission requirements described in Section IV.

### **Evaluation Policy**

The OPWDD is committed to a fair and impartial evaluation process characterized by:

- Requirements based upon the OPWDD's substantiated needs;
- Equal opportunity for incumbent and non-incumbent Bidders; and
- Evaluation by a structured impartial process.

### **Evaluation Process**

Contract(s) shall be awarded to responsive and responsible Bidder(s) submitting the lowest price(s) on **Exhibit A - Bid Form**.

Awards will be based on a three-part evaluation process that consists of the following:

- Pass/Fail Screening
- Bid Submission Ranking
- Responsiveness and Responsibility Determination

### **Pass/Fail Screening**

Bids submitted in response to this IFB shall first undergo a completeness review. This review shall determine minimal compliance with the IFB. If a Bid fails to comply with all requirements listed in Sections II, Minimum Qualifications, or IV, Instructions for Bid Submission, it shall be deemed non-responsive and removed from consideration. (Note: OPWDD reserves the right to eliminate any mandatory requirement that cannot be met by all Bidders).

Bidders may be given an opportunity to correct errors of a procedural or non-substantive nature that do not give them a competitive advantage.

Bids that pass the Pass/Fail Screening will be considered for the Bid Submission ranking (following).

### **Bid Submission Ranking**

Bids that have passed the Pass/Fail Screening will be ranked according to the price submitted. The OPWDD will award contract(s) on the basis of lowest price to responsive and responsible Bidders for the provision of the items specified in Section III, Statement of Work, of this IFB.

All pricing offered as hourly rates and material mark-ups by Bidders on **Exhibit A - Bid Form** should be the lowest pricing offered based on the scope of services described in Section III, Statement of Work, of this IFB.

In the event of tie Bids, the decision must be made in accordance with the State Finance Law § 163(10)(a).

The apparent lowest Bids will be reviewed further to ensure only responsive and responsible Bidders are considered for contract award in accordance with §163 of the New York State Finance Law.

### **Responsive and Responsible Determination**

Section 163 of the State Finance Law (SFL) requires that contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible Bidder." Section 163 (9) f of the SFL requires that prior to making an award of a contract each contracting entity shall make a determination of responsibility of the proposed contractor. The lowest Bids will be further evaluated to determine responsiveness and responsibility of the Bidder. Details on Vendor Responsibility procedures and requirements are outlined in Section VIII, Contract Terms, of this IFB.

**Responsive Determination:** The OPWDD must verify that the apparent lowest Bidder is responsive by ensuring the Bidder complies with the requirements in Section IV, Instructions for Bid Submission of this IFB.

**Responsible Determination:** The OPWDD must verify that the apparent lowest Bid is responsible in accordance with § 163(9) of the SFL. Responsibility determinations involve a review of the following four major categories:

- Does the business entity possess the integrity to perform the contract? Factors to be considered include criminal indictments, criminal convictions, civil fines and injunctions imposed by government entities, anti-trust investigations, ethical violations, tax

delinquencies, debarment or suspension by a government entity, prior determinations of integrity-related non-responsibility, etc.

- Has the business entity performed at acceptable levels on other government contracts? Factors to be considered include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.
- Is the business entity legally capable of performing the contract? Factors to be considered include authority to do business in New York State, licensing (e.g. with the Education Department or Department of State), debarment by the State Labor Department due to a prevailing wage violation, etc.
- Is the business entity financially and organizationally capable of performing the contract? Factors to be considered include assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, existence of appropriate accounting and auditing procedures for control of property and funds, etc.

If the lowest Bid submitted is by a Bidder who is found to be non-responsive or non-responsible, the Bid will be rejected and the next lowest Bid must be reviewed. In addition, prior to finding a prospective contractor non-responsible, the OPWDD will provide the Bidder written notice with an opportunity to rebut the concerns over the vendor's responsibility in writing or at a meeting with the prospective contracting entity.

#### **Notification of Award**

Subsequent to the evaluation of all Bids received pursuant to this IFB, OPWDD will notify successful Bidders of the tentative (pending regulatory approval) selection of their Bid on or about the time noted in the Procurement Timetable Anticipated Notification of Award of this IFB. News releases or any other disclosure relating to tentative contract award(s) shall not be made by any Bidder or its agent without the explicit approval of the OPWDD.

The OPWDD will notify all unsuccessful Bidders, at or about the time of tentative Bid award(s), of the fact that their Bids were not selected. Each unsuccessful Bidder may at that time request a debriefing by the OPWDD as to why its Bid was not selected. The scope of such debriefings will ordinarily be limited to the strengths and weaknesses of the individual Bidder's Bid.

#### **Incurred Costs**

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

#### **Debriefings to Unsuccessful Bidders**

A debriefing to an unsuccessful Bidder in an OPWDD solicitation will be made available to individual Bidders on a case-by-case basis. The debriefing process offered to unsuccessful Bidders regarding the procurement serves to illuminate the given Bidder's shortcomings with respect to their submitted Bid in an effort to educate them to be successful in future Bid submissions to the OPWDD/New York State. Please note that all debriefings must be limited exclusively to the individual Bidder's proposal. The OPWDD may not discuss a Bidder's proposal in comparison to another Bidder's proposal. This limitation in discussion of the Bidder's proposal is mandated by State Finance Law 163 (9)(e), which prohibits the disclosure of the content of competing offers. To make an appointment for a debriefing, please contact the Designated Contact of this IFB.

## **Procedure for Handling of Protests/Appeals of Bid Specifications and Proposed Awards**

### **Formal Written Protests**

Final contracting agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any Bidder or prospective Bidder who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of a Bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to the OPWDD and request administrative relief concerning such action ("formal protest").

A formal protest must be submitted in writing to the OPWDD, by ground mail, except where alternate arrangements have been made, and to the Director of Fiscal and Contract Management:

Lisa F. Davis  
NYS Office for People With Developmental Disabilities  
Contract Management Unit, 3<sup>rd</sup> Fl.  
44 Holland Avenue  
Albany, New York 12229  
(518) 474-5513  
Email Address: [lisa.f.davis@opwdd.ny.gov](mailto:lisa.f.davis@opwdd.ny.gov)

A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OPWDD specification or purchasing decision; a description of all remedies or relief requested; and copies of all applicable supporting documentation.

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

OPWDD must receive formal protests concerning errors, omissions or prejudice including obvious errors in the Bid specifications or documents at least ten (10) calendar days before the Bid Due Date within the Procurement Timetable.

OPWDD must receive formal protests concerning a pending contract award within seven (7) calendar days after the protesting party ("protester") knows or should have known of the facts which form the basis of the protest.

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

Protests will be resolved through written correspondence. However, the protester may request a meeting to discuss a formal protest or the OPWDD may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the protester or the OPWDD may elect to decline such a meeting.

Where further formal resolution is required, the Director of Fiscal and Contract Management may designate an OPWDD employee, ("designee"), to determine and undertake the initial resolution or settlement of any protest.

The designee will conduct a review of the records involved in the protest, and provide a memorandum to the Director summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Director shall: (a) evaluate the procurement team's findings and recommendations, (b) review the materials presented by the protesting party and/or any materials required of or submitted by other Bidders, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the protest.

A copy of the protest decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the Office of the State Comptroller (OSC) shall be sent to the protester or its agent within forty-five (45) calendar days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to OSC upon issue.

### **Appeals**

Upon receipt of OPWDD's determination of a protest, a protester has ten business days to file an appeal of the determination with the OSC Bureau of Contracts. The appeal must be filed at the following address: New York State Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, NY 12236. The protester's appeal must contain an affirmation in writing that a copy of the appeal has been served on OPWDD and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges the OPWDD's determination. The OSC Bureau of Contracts will conduct its determination of the appeal in accordance with its established policy.

### **Reservation of Rights and Responsibilities of the OPWDD**

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

### **Procurement Activity Prior to Final Protest Activity**

Receipt of a formal bid protest shall not stay action on a procurement unless otherwise determined by the OPWDD. If a formal protest or appeal is received by the OPWDD on a recommended award prior to the underlying contract being forwarded to the Office of the State Comptroller (OSC), notice of receipt of the protest and appeal must be included in the procurement record forwarded to the OSC. If a final protest decision or final decision on appeal has been reached prior to transmittal to the OSC, a copy of the final decision must be included in the procurement record and forwarded with the recommendation for award.

If a final protest decision is made after the transmittal of a bid package to the OSC, but prior to the OSC approval under SFL § 112, a copy of the final OPWDD decision shall be forwarded to the OSC when issued, along with a letter either: a) confirming the original OPWDD recommendation for award and supporting the request for final § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final § 112 approval as modified; or c) withdrawing the original award recommendation.

### **Record Retention of Bid Protests**

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

## VI. OPWDD Rights

The OPWDD reserves the right to:

- Reject any or all proposals received in response to the IFB;
- Withdraw the IFB at any time, at the agency's sole discretion;
- Make an award under the IFB in whole or in part;
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening; and,
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

## VII. Price Adjustments

The prices set forth in the Contract resulting from this IFB may be adjusted each year following the first year, and each year thereafter in accordance with the provisions of this clause.

The Contractor may be granted an increase or decrease in prices quoted in **Exhibit A - Bid Form** of this IFB after the first year. Upon written request by the Contractor to the DDSOO Business Office, prices may be adjusted as of October 1, 2016, and on each subsequent anniversary in accordance with the change in the National Consumer Price Index for Wages (CPI-W, unadjusted, US city average, all items index), published by the United States Bureau of Labor Statistics, for the preceding twelve (12) month service period ending one hundred twenty (120) days prior to the anniversary date, or a five (5%) percent maximum escalation rate, whichever is less. CPI-W adjustment may result in an increase or decrease in contract amount. In the event that such index should be discontinued or materially altered in method of compilation, the figure to be used on each renewal anniversary shall be the applicable figure taken from the Index in general use, which is most closely comparable to such Consumer Price Index for Wages. The index is available through the Internet at the Bureau of Labor Statistics website at <http://stats.bls.gov/>.

The OPWDD will notify all interested parties in writing of effected price adjustments by way of an amendment to the contract pricing, which will require the signature of an official authorized to bind the contract. It is the Contractor's responsibility to submit invoices at the OPWDD approved adjusted rate.

## **VIII. Contract Terms**

### **Contact Period**

Unless modified as provided herein, this contract shall begin on October 1, 2015 and end on September 30, 2020, pending approval of the New York State Comptroller's Office (OSC) except that, by mutual agreement, the parties may, retroactively or prospectively as the case may be, delay or advance the starting date by a period of up to 30 calendar days subject to OSC approval and shall continue for the implementation period plus five (5) years, subject to the termination provisions contained in the document titled *Standard Clauses for New York State Contracts* (Appendix A) within the **Attachment** of this IFB and the following Contract Termination section below.

### **Contract Termination**

The OPWDD retains the right to cancel this contract without reason, provided that the Contractor is given at least thirty (30) days notice of its intent to cancel. This provision should not be understood as waiving the OPWDD's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision.

The OPWDD reserves the right to stop the work covered by this proposal and the contract at any time that it is deemed the successful bidder is unable or incapable of performing the work to their satisfaction. In the event of such stopping, the OPWDD shall have the right to arrange for the completion of the work in such a manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any such cost on account thereof. In the event that the OPWDD stops the work as provided thereof, together with the reason thereof, and the Contractor shall have ten (10) working days to respond thereto before any such stop order shall become effective.

### **Contract Amendment Process**

During the term of the Contract, the Contract may be amended as new laws or regulatory mandates are issued affecting the services and provisions under the Contract resulting from this IFB. OPWDD reserves the right to consider amendments which are not specifically covered by the terms of the Contract but are judged to be in the best interest of the OPWDD. Contract amendments are subject to pre-audit by the Office of the State Comptroller and shall take effect upon written notification by OPWDD.

### **Contractor Compensation**

Payment will be made by the OPWDD to the Contractor for full and proper performance of the requirements referred to in this IFB. The contractor shall submit invoices on up to a monthly basis, at the end of each month, for services rendered. The Contract Number is to be referenced on all invoices. Sales tax should not be included on invoices; New York State agencies are tax exempt.

Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, at the Commissioner's sole discretion, due to extenuating circumstances. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Payment shall be based on the prices contained in **Exhibit A - Bid Form**.

### **Procurement Lobbying Act**

Pursuant to State Finance Law §139-j and §139-k, this IFB includes and imposes certain restrictions on communications between an OPWDD employee and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of this IFB through final award and approval of the Contract by the OPWDD and the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a).

Designated staff, as of the date hereof, is identified as Designated Contact in Section I, Overview, of this IFB. OPWDD employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to the two preceding statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at: <http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html>.

Upon tentative Contract award, Contractors will be required to complete the schedules included within the **Attachment**, Procurement Lobbying Act of this IFB, therefore attesting compliance to State Finance Law §139-j and §139-k.

### **Vendor Responsibility**

Section 163 of the State Finance Law (Purchasing services and commodities) requires that contracts for services be awarded on the basis of *best value* (a combination of cost and technical factors), unless it is determined that best value is demonstrated by lowest price alone, to a responsive and responsible vendor. The State and courts have determined that responsibility includes integrity, previous performance, legal authority to do business in New York State, and financial and organizational ability to perform the Contract.

Vendor Responsibility requires that contractors complete and certify specific information on a Vendor Responsibility Questionnaire as unchanged, or in the event of an award or other changes, update information on an on-going basis.

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

Bidders must provide their New York State Vendor Identification Number when enrolling in the VendRep System and to be tentatively awarded a Contract. To request assignment of a New York State Vendor ID Number, Vendors must complete the Substitute Form W-9: Request for Taxpayer Identification Number & Certification, located at [http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf). Bidder’s NYS Vendor Identification Number will be provided via e-mail within 48 business hours, along with further instructions. Bidders who do not already have a New York State Vendor ID number, must submit the completed W-9 prior to tentative contract award. Bidders must e-mail the completed form to the Designated Contact.

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

The Bidder must complete and submit the questionnaire provided Vendor Responsibility Attestation and Questionnaire within the **Attachment** of this IFB, indicating whether the Bidder completed the Vendor Responsibility Questionnaire using the online (preferred) method or the alternative paper format. If the paper questionnaire is completed in lieu of the online questionnaire, the Bidder is required to provide the completed, certified paper questionnaire upon tentative contract award.

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of the OPWDD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

#### **Suspension of Work (for Non-Responsibility)**

The Commissioner of the OPWDD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract resulting from this IFB, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of the OPWDD or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

#### **Termination (for Non-Responsibility)**

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

Subject to this section of this IFB, if the Contractor is determined by the OPWDD to be non-responsible, the OPWDD shall inform the vendor of such ruling. The vendor shall have 30 days to request a meeting with the OPWDD to explain the ruling and to demonstrate the finding to be incorrect or to correct/resolve any issue impacting vendor responsibility. If the OPWDD's finding remains unchanged after meeting with the Contractor, the Contractor shall be removed from consideration for this Contract or the Contract shall be terminated.

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

Pursuant to New York State Executive Law Article 15-A, the New York State Office for People with Developmental Disabilities (OPWDD) recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of OPWDD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation

of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OPWDD establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“M/WBE”) and the employment of minority groups members and women in the performance of New York State contracts.

All work conducted under the contract resulting from this IFB, must be in compliance with the specifications set forth in this IFB and the OPWDD’s policies and procedures set forth in Appendix A, Standard Clauses for NYS Contracts, as may be amended from time to time. By submission of its Bid, the successful Contractor agrees that it will not discriminate against any employee or applicant for employment to the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, and as more fully set forth in paragraph five of Appendix A.

By submission of its Bid, the successful Contractor further agrees that it will comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women’s Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144), and as more fully set forth in paragraph twelve of Appendix A. The successful Contractor further agrees that it will comply with OPWDD’s Appendix A: Supplement, attached and incorporated herein, for the specific EEO/M/WBE requirements and associated forms required for this procurement.

Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority – and Women-owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women:

**Business Participation Opportunities for M/WBEs**

For purposes of this solicitation, OPWDD hereby establishes an overall goal of 30% for M/WBE participation, 17% for Minority-Owned Business Enterprises (“MBE”) participation and 13% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). Subcontracting of the services rendered in accordance with this IFB is prohibited. Therefore, the costs associated with the delivery of those services will not be subject to M/WBE participation goals outlined above. All Bidders are required to identify those costs, as well as second tier costs, where the option for M/WBE participation exists. It is the total amount of these costs to which the M/WBE goals will apply. The Contractor on the subject Contract must document good faith efforts to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that OPWDD may withhold payment pending receipt of the required M/WBE documentation. The directory of New York State Certified M/WBEs can be viewed at: <http://www.esd.ny.gov/m/wbe.html>.

For guidance on how OPWDD will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and OPWDD may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to M/WBEs had the Contractor achieved the contractual M/WBE goals; and (2) all sums actually paid to M/WBEs for work performed or materials supplied under the Contract.

## Capital District DDSOO Plumbing Repair Services – Community

By submitting a Bid, the Bidder on the Contract agrees to submit the following documents and information as evidence of compliance with the foregoing:

- Form 100, Policy Statement, to achieve the overall prescribed M/WBE participation percentage (17% Minority and 13% Woman Owned) goals set forth in the procurement.
- Form 101, Staffing Plan, to communicate the Contractor's workforce utilization for performance of the contract.
- Form 103, M/WBE Utilization Plan. Any modifications or changes to the M/WBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised M/WBE Utilization Plan and submitted to OPWDD.

OPWDD will review the submitted M/WBE Utilization Plan and advise the Bidder of OPWDD's acceptance or issue a notice of deficiency within 30 days of receipt by the OPWDD M/WBE Program Management Unit.

If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting a written remedy in response to the notice of deficiency. Responses to notices of deficiency shall be provided to Wanda Anderson of the NYS Office for People with Developmental Disabilities M/WBE Program Management Unit at 44 Holland Avenue, 3<sup>rd</sup> Fl., Albany, NY 12229. If the written remedy that is submitted is not timely or is found by OPWDD to be inadequate, OPWDD shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of M/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Bid or proposal.

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

- If a Bidder fails to submit a signed Policy Statement;
- If a Bidder fails to submit a M/WBE Utilization Plan;
- If a Bidder fails to submit a written remedy to a notice of deficiency;
- If a Bidder fails to submit a request for waiver; or
- If OPWDD determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its M/WBE 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 OPWDD, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the NYS Office for People with Developmental Disabilities by e-mailing or faxing the OPWDD MWBE Specialist, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the M/WBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

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

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For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the Bid a Staffing Plan on Form 101, identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the OPWDD, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

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

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

### **Tax Law §5-A**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and Contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving Agency, from approving a Contract awarded to a Contractor meeting the registration requirements but who is not so registered in accordance with the law.

Each Bidder is required to file the completed and notarized Form ST-220-CA with the OPWDD certifying that the Bidder filed the ST-220-TD with the NYS Department of Taxation and Finance (DTF). Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. Failure to make either of these filings may render a Bidder non-responsive. Website links to the Contractor certification forms and instructions are provided below.

Note: NYS Department of Taxation and Finance receives the completed Form ST-220-TD, not OPWDD. OPWDD ONLY receives the Form ST-220-CA.

**ST-220-CA-** [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), also provided within the **Attachment** of this IFB.

**ST-220-TD-** [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If

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the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Vendors may call DTF at 518-485-2889 for any and all questions relating to § 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/>.

Upon tentative Contract award, Contractors will be required to complete and submit forms ST-220-CA and ST-220-TD. Copies of ST-220-CA and ST-220-TD are included in the **Attachment** to this IFB.

### **Requirements Related to Contractor Debarments**

NYS contracting entities must ensure that for any public work contract subject to Article 8 of the New York State Labor Law, including amendments or renewals that extend the term of an existing contract, no Bid is accepted from, or contract or subcontract awarded to, a vendor or any substantially owned affiliate of a vendor, that is debarred pursuant to WCL § 141-b. The contracting entity must check the Workers' Compensation Board Debarment List at <http://dbr.labor.state.ny.us/EDList/searchPage.do> to verify that no contractor or subcontractor is debarred pursuant to WCL §141-b.

Contracting entities should include in all public work contracts subject to WCL § 141-b, a provision that provides notice to the contractor that the Contract may be terminated if it is later determined that at the time of either the Bid Submission or Contract award, the Contractor was, in fact, debarred by WCL § 141-b, or was the substantially owned affiliate of a debarred contractor. Additionally, the Contract should include a provision that allows the State to require the Contractor to replace, at no additional charge to the State, any Subcontractor who the State or the Contractor subsequently learns was debarred.

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

### **General**

It is understood and agreed that the Contractor is acting as an independent contractor and not as an agent or employee of the OPWDD in the performance of the agreement. The Contractor hereby agrees to assume all responsibility in the performance of the services covered by the agreement and shall be solely responsible and answerable in damages for any claims resulting therefrom and hereby expressly covenants and agrees to indemnify and hold harmless the OPWDD and the State of New York from any and all claims, suits, actions, damages, and costs of every nature and description arising out of or relating to the performance of its services covered by the Contract. The Contractor shall be liable for any damage to the building or its equipment caused by activities of his employees.

## EXHIBIT A

### BID FORM

Primary and secondary awards will be made for each county. Primary award will be made to the qualified bidder with the lowest total for each county. Secondary award will be made to the qualified bidder with the second lowest total for each county. Bids may be provided for multiple counties.

**Instructions for counties for which a bid is supplied:**

- 1) Enter the hourly rate for "Business Hours" and "Off Hours" in each county's column.
- 2) Enter a percentage for "Parts Mark-Up Over Cost" in the left column.
- 3) Enter the estimated "Parts Mark-Up Over Cost" \* in each county's column.
- 4) Enter the total sum of "Business Hours", "Off Hours" and estimated "Parts Mark-Up Over Cost" rates for each county, on the line titled "TOTAL (each county)".

	Albany	Rensselaer	Saratoga	Schenectady	Warren	Washington
<b>Business Hours **</b>						
Hourly Service Rate						
Trip Charge (if applicable)						
<b>Off Hours ***</b>						
Hourly Service Rate						
Trip Charge (if applicable)						
<b>Parts Mark-Up Over Cost</b> % x \$ 200.00 Est * =						
<b>TOTAL (each county)</b>						

\*Estimations (Est) are for evaluation purposes only. The Contractor will be paid only for repairs and parts actually required, whether more or less.

\*\*Business Hours are defined as 7:30 a.m. through 4:00 p.m. Monday - Friday, excluding holidays defined by New York State Department of Labor for the plumbing trade.

\*\*\*Off Hours are defined as 4:01 p.m. through 7:29 a.m. Monday - Friday, weekends and holidays defined by New York State Department of Labor for the plumbing trade.

**Note:** Pursuant to Article 8 (construction trades) and Article 9 (building maintenance) of New York State Labor Law, employees performing work related to plumbing repairs must be paid at least the prevailing rate for the plumbing trade regardless of title with exception to an apprentice program approved by the New York State Department of Labor. Invoices for work qualified as Article 8 must be accompanied by Certified Payroll Records. Any questions regarding prevailing wages or submission of certified payroll records should be directed to the NYS Department of Labor Bureau of Public Works.

**BID IS HEREBY SUBMITTED BY:**

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

Federal ID#: \_\_\_\_\_

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

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

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

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

**EXHIBIT B**

**REFERENCES**

Each Bidder must provide a minimum of three (3) positive references in the space provided below. References must be from corporations, institutions and/or government agencies, for which the Bidder provided similar services, and with contracts that met similar terms and conditions. References shall demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the outlined Bid. References should support satisfactory evidence that the Bidder has had previous experience, adequate financial resources, and organization to perform the type, magnitude, and quality of work specified in this IFB.

Bidders who have previously held a comparable contract with the DDSOO within the past three (3) years do not need to submit other references. Such Bidders should note the DDSOO within Reference #1 in the space provided below. Bidders with this experience will be evaluated on the basis of the services provided to the DDSOO, although the DDSOO reserves the right to request other references and additional information.

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**Reference #1: Name and address of reference site.**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_   
Contact Name & Phone \_\_\_\_\_

**Reference #2: Name and address of reference site.**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_   
Contact Name & Phone \_\_\_\_\_

**Reference #3: Name and address of reference site.**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_   
Contact Name & Phone \_\_\_\_\_

---

Company Name: \_\_\_\_\_  
Federal ID#: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT C**

**SERVICE LOCATIONS**

The following is a list of locations that may need plumbing repair services. This list may not be all-inclusive.

<b>County</b>	<b>Service Location Name</b>	<b>Street</b>	<b>City and Zip Code</b>	<b>Phone</b>
Albany	Boght Road	206 Boght Road	Watervliet, 12189	273-6926
Albany	Buchanan	57 Buchanan Street	Albany, 12206	482-4411
Albany	Danielwood	21 Danielwood Drive	Colonie, 12211	435-0223
Albany	Delaware	397 Delaware Avenue	Delmar, 12054	439-9960
Albany	Ferua Bush	828 Ferula Bush Road	Delmar, 12054	439-9312
Albany	Hillcrest	4 Hillcrest Drive	Ravena, 12143	756-3807
Albany	Holmesdale Respite	163 Holmes Dale	Albany, 12208	459-8525
Albany	Kenwood	360 Kenwood Avenue	Delmar, 12054	439-9970
Albany	Maple Lane North	6 Maple Lane North	Loudonville, 12211	438-2897
Albany	Marie Avenue	1 Marie Avenue	Guilderland, 12084	456-3855
Rensselaer	24th Street	28 24th Street	Troy, 12180	273-9855
Rensselaer	3rd Avenue	414 3rd Avenue	Troy, 12182	233-8551
Rensselaer	Best Road	1321 Best Road	East Greenbush, 12061	283-7930
Rensselaer	Brookview	1860 Brookview Road	Castleton, 12033	732-7222
Rensselaer	Greenwood	4 Greenwood Drive Ext.	East Greenbush, 12061	479-0605
Rensselaer	McChesney	185 McChesney Avenue	Brunswick, 12180	279-0675
Rensselaer	Phillips	2659 Phillips Road	Castleton, 12033	477-7603
Rensselaer	Tibbits	1674 Tibbits Avenue	Troy, 12180	274-9092
Saratoga	Adirondack Regional Center	200 Smith Drive	Corinth, 12822	654-7680
Saratoga	Alpine Meadows	77 Alpine Meadows	Porter Corners, 12859	893-7633
Saratoga	Ballston Spa	1399 West High Street	Ballston Spa, 12020	885-3413
Saratoga	Benedict	954 Benedict Road	Ballston Lake, 12019	877-6598
Saratoga	Church Ave Respite	55 Church Ave, PO Box 455	Ballston Spa, 12020	884-2880
Saratoga	Corinth	525 Main Street	Corinth, 12822	654-2196
Saratoga	Davidson	20 Davidson Drive	Saratoga Springs, 12866	584-6355
Saratoga	Dunn Avenue	7 Dunn Avenue	Corinth, 12822	654-9423
Saratoga	Farm to Market	377 Farm to Market Road	Clifton Park, 12065	664-3331
Saratoga	Firestone	23 Firestone Lane	Clifton Park, 12065	877-0143
Saratoga	Gansevoort	387 Gansevoort Road	Fort Edward, 12828	798-5014
Saratoga	Grooms	889 Grooms Road	Rexford, 12148	383-5020
Saratoga	Hadley	6305 Route 9N	Hadley, 12835	696-5111
Saratoga	Ingersol	143 Ingersol Road	Saratoga Springs, 12866	581-2981
Saratoga	Jockey	6240 Jockey Street	Middle Grove, 12850	882-9598
Saratoga	Jonesville	902 Main Street	Jonesville, 12065	877-4734
Saratoga	Lapp	258 Lapp Road	Clifton Park, 12065	373-1830
Saratoga	Leland	11 Leland Street	South Glens Falls, 12803	743-9614
Saratoga	Oxford	6 Oxford Street	Clifton Park, 12065	371-0478
Saratoga	Primer Court	10 Primer Court	Clifton Park, 12065	383-3178
Saratoga	Route 50	4759 Route 50	Gansevoort, 12831	587-1016
Saratoga	Schuylerville	21 Spring Street	Schuylerville, 12871	695-3307
Saratoga	Spier Falls	596 Spier Falls Road	Greenfield Center, 12833	893-0934

**EXHIBIT C****SERVICE LOCATIONS**

<b>County</b>	<b>Service Location Name</b>	<b>Street</b>	<b>City and Zip Code</b>	<b>Phone</b>
Saratoga	Stony Creek	669 Stony Creek Road	Hadley, 12835	696-3452
Saratoga	Twilight	8 Twilight Drive	Clifton Park, 12065	383-1741
Saratoga	VanAernum	210 VanAernum Road	Ballston Spa, 12020	885-4661
Saratoga	Western	66 Western Avenue	Amsterdam, 12010	882-5598
Saratoga	Wilton-Greenfield	136 Wilton-Greenfield Road	Greenfield Center, 12833	893-3312
Saratoga	Worth Road	65 Worth Road	Gansevoort, 12831	587-5250
Schenectady	Albany Street	2415 Albany Street	Schenectady, 12304	372-9316
Schenectady	Broadway	2317 Broadway	Schenectady, 12306	393-7316
Schenectady	Karenwald	804 Karenwald Lane	Schenectady, 12309	370-0375
Schenectady	Keyes	1383 Keyes Avenue	Schenectady, 12309	377-7883
Schenectady	Pine Ridge	2303 Pine Ridge Road	Niskayuna, 12309	377-2835
Schenectady	Route 7 Respite	2200 Troy/Schenectady Road	Niskayuna, 12309	344-7506
Schenectady	Union	1212 Union Street	Schenectady, 12308	346-1185
Warren	Arberger	3 Arberger Drive	Queensbury, 12804	743-1754
Warren	Butler	160 Butler Road	Fort Edward, 12828	798-0867
Warren	East Holcomb	33 East Holcomb Street	North Creek, 12853	251-5195
Warren	Fenway	12 Fenway Circle	Lake Luzerne, 12846	696-4692
Warren	Glens Falls	126 Warren Street	Glens Falls, 12801	798-3784
Warren	Hubbell	40 Hubbell Lane	Lake George, 12845	668-9621
Warren	McCormack	25 McCormack Drive	Lake George, 12845	743-9201
Warren	Meadow Lane	40 Meadow Lane	Queensbury, 12804	792-6120
Warren	Old Post	3 Old Post Road	Lake George, 12845	668-5426
Warren	Platt	74 Platt Street	Glens Falls, 12801	743-9550
Warren	Queensbury Day Hab	613 Sherman Avenue	Queensbury, 12804	761-4052
Warren	Stewart Drive	7 Stewart Drive	Lake Luzerne, 12846	696-5780
Warren	Sweet Road	56 Sweet Road	Queensbury, 12804	761-0052
Warren	Webster	24 Webster Avenue	Glens Falls, 12801	743-0945
Washington	Arlington	11 Bowen Hill Road	Cambridge, 12816	677-2175
Washington	Bascom Drive	7 Bascom Drive	Fort Edward, 12828	746-1363
Washington	Blackhouse Road	300 Blackhouse Road	Fort Edward, 12828	747-7411
Washington	Cambridge	24 Mountainview Drive	Cambridge, 12816	677-2697
Washington	Easton	239 General Fellows Road	Greenwich, 12834	695-3439
Washington	Gillis	125 Gillis Road	Greenwich, 12834	692-2319
Washington	Green Barn	53 Green Barn Road	Hudson Falls, 12839	746-1154
Washington	Hampton	2243 Star Route 22A	Hampton, 12837	282-9703
Washington	Perkins	62 Perkins Drive	Hudson Falls, 12839	746-1719
Washington	Perry Hill	117 Perry Hill Road	Shushan, 12873	854-7324
Washington	Salem	4396 Route 22	Salem, 12865	854-3717
Washington	Skellie	269 Skellie Road	Greenwich, 12834	854-3515
Washington	Tripoli	17 Tripoli Road	Hudson Falls, 12839	792-0621

**ATTACHMENT**

**SAMPLE CONTRACT**

**NEW YORK STATE OFFICE FOR PEOPLE WITH  
DEVELOPMENTAL DISABILITIES**

AGREEMENT made by the **New York State Office for People With Developmental Disabilities**, having an office at 44 Holland Avenue, Albany, New York 12229-0001 ("OPWDD") and the **[Contractor Legal Name]**, having an office at [Address] ("CONTRACTOR"),

**WITNESSETH:**

**WHEREAS**, the OPWDD has the authority to provide care, treatment, rehabilitation, education, training and support services to persons with developmental disabilities, and

**WHEREAS**, the OPWDD is empowered to take all actions necessary, desirable and proper to carry out its purposes and objectives within budgetary amounts made available therefore by appropriation, and

**WHEREAS**,..., and

**WHEREAS**,..., and

**WHEREAS**,..., and

**WHEREAS**, CONTRACTOR, has proven and demonstrated experience in this area, and

**WHEREAS**, the OPWDD desires to utilize the CONTRACTOR'S expertise and experience in providing said services and the CONTRACTOR is prepared to render such services, and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

**FIRST:** The CONTRACTOR shall provide the OPWDD the services set forth and defined in Appendix B, Scope of Work, attached hereto and made part of this CONTRACT.

**SECOND:** The OPWDD shall pay the CONTRACTOR in consideration of the services to be provided under this CONTRACT in accordance with the payment provisions in Appendix C, Budget, and

**ATTACHMENT**

Appendix D, Payment Terms, attached hereto, for the periods of time indicated therein. The total payment for services provided under this CONTRACT shall not exceed [\_\_\_\_\_ **thousand** \_\_\_\_\_ **dollars (\$\_\_\_\_,\_\_\_\_.)**]

**THIRD:** This CONTRACT shall **commence on [Month, Day, Year]** and shall **terminate on [Month, Day, Year]**.

**FOURTH:** Payment of any amount due to CONTRACTOR under this CONTRACT shall be contingent on CONTRACTOR submitting invoices with supporting documentation in accordance with Appendix D, Payment Terms, of this CONTRACT.

**FIFTH:** This CONTRACT may be amended upon the mutual agreement of both parties to the CONTRACT.

**SIXTH:** Travel will be undertaken as needed and will be reimbursed consistent with the New York State Travel Guidelines. All travel costs must fall within the dollar value of this contract.

**SEVENTH:** Full responsibility for the delivery of services must be provided by the CONTRACTOR under this CONTRACT. No subcontracting for the provision of services required under this CONTRACT shall be permitted unless approved by OPWDD.

**EIGHTH:** The CONTRACTOR shall treat all information, including but not limited to information relating to the OPWDD service recipients and providers, obtained by it through its performance under CONTRACT as strictly confidential. The CONTRACTOR may not disseminate any information obtained in any manner except as necessary to the proper discharge of its obligations under CONTRACT with the OPWDD.

**NINETH:** The CONTRACTOR may not utilize any information obtained via interaction with the OPWDD in any public medium – print (newspaper, policy paper, journal/periodical, book etc.), media (radio or television), electronic - (internet), or public-speaking engagement without the official prior written approval of the OPWDD Senior Management. Requests for exemption from this policy shall be made in writing, at least 14 days in advance, to the OPWDD Contract Management Unit, 44 Holland Avenue, (3rd Floor), Albany, New York 12229-0001.

**TENTH: Health Information Portability and Accountability Act (HIPAA):** HIPAA Standards for Privacy of Individually Identifiable Health Information (The Privacy Rule) were established by the Federal Department of Health and Human Services (HHS). The Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) provides the first comprehensive federal protection for the privacy of health information. The Privacy Rule is carefully balanced to provide strong privacy protections that do not

## ATTACHMENT

interfere with patient access to, or the quality of, health care delivery. HIPAA has an impact upon how the OPWDD and contractors will deal with protected health information of our consumers. Likewise, State Mental Hygiene Law (Section 33.13) requires disclosure of clinical records to be limited to that information necessary for health care providers to administer treatment.

**ELEVENTH: Public Officers Law:** All contractors and employees/subcontractors must be aware of and comply with the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the CONTRACT, the CONTRACTOR guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales contracts, services, offers, relationships, etc. involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as required by law.

**TWELTH: Contract Termination Pursuant to the Procurement Lobby Act:** The OPWDD reserves the right to terminate this CONTRACT in the event it is found that the certification filed by the contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the OPWDD may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this CONTRACT.

### **THIRTEENTH: Proof of Coverage**

CONTRACTOR represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the CONTRACT. Prior to the beginning of the term of the CONTRACT and during the CONTRACT term and any renewals thereof, CONTRACTOR must establish to the satisfaction of the OPWDD that it meets or exceeds all requirements of the CONTRACT and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the OPWDD. Failure to do so may constitute grounds for the OPWDD to cancel or suspend this CONTRACT, in whole or in part, or to take any other action deemed necessary by the OPWDD.

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR'S insurance carrier and/or the Workers' Compensation Board, of coverage for Workers' Compensation:

- CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR

## ATTACHMENT

- C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
- SI-12 – Certificate of Workers' Compensation Self-Insurance, OR
- GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

For Disability Benefits coverage:

- CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
- DB-120.1 – Certificate of Disability Benefits Insurance; OR
- DB-155 – Certificate of Disability Benefits Self-Insurance.

**FOURTEENTH: Vendor Responsibility and Termination:** The CONTRACTOR agrees to adhere to all New York State vendor responsibility requirements relative to business integrity, previous CONTRACT performance, legal capacity and regulatory authority to conduct business in New York State and financial and organizational capacity.

(1) General responsibility language: The CONTRACTOR shall at all times during the CONTRACT term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of the Office for People with Developmental Disabilities or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(2) Suspension of work for non-responsibility finding: The Commissioner or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this CONTRACT, at any time, when she or her designee discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. CONTRACT activity may resume at such time as the Commissioner or her designee issues a written notice authorizing a resumption of performance under the CONTRACT.

(3) Termination for non-responsibility: Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate Office for People with Developmental Disabilities officials or staff, the CONTRACT may be terminated by the Commissioner of the Office of People with Developmental Disabilities or her designee at the CONTRACTOR'S expense where the CONTRACTOR is determined by the Commissioner of the Office for People with Developmental Disabilities or her designee to be non-responsible. In such event, the Commissioner of the Office for People with Developmental Disabilities or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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(4) Other Termination: The State and the CONTRACTOR agree and stipulate that OPWDD shall have the sole right, in its discretion, at any time to terminate a resulting CONTRACT by giving written Notice of Termination to the CONTRACTOR, and that such Notice of Termination shall in no event constitute or be deemed a breach of this Agreement and no liability shall be incurred by or arise against the State, its agents and employees there from.

The State shall have the right to terminate the CONTRACT early for:

- A. Unavailability of funds;
- B. Cause; or
- C. Convenience.

The State must give written notice to the CONTRACTOR no later than 30 days or more prior to the date of termination for convenience, except with respect to contracts that give the State a general right to terminate at any time.

**FIFTEENTH:** Appendix A, Standard Clauses for New York State contracts, including the Appendix A: Supplement and [Appendices \_\_\_\_\_, and Attachments \_\_\_\_\_] attached hereto are hereby incorporated into and made part of this CONTRACT. The term "State" in Appendices A and A: Supplement shall be taken to refer to the OPWDD.

**SIXTEENTH: Order of Precedence:** In the event of any inconsistency or conflict in the interpretation of responsibility of either party under the terms and conditions of this CONTRACT, precedence will be resolved in the following manner:

1. Appendix A;
2. Appendix A: Supplement;
3. This CONTRACT including all appendices not noted above; and
4. All attachments.

**SEVENTEENTH:** Certain of these assurances may not be applicable to your project or program. If you have questions, contact the Office for People With Developmental Disabilities (OPWDD).

**ATTACHMENT**

**APPENDIX A**

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

January 2014

**ATTACHMENT**

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### STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

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

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

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an

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office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

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

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discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by

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the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as Bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

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

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

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

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

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(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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

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

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

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

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**APPENDIX A: SUPPLEMENT**

The parties to the attached contract agree to be bound by the following, which are hereby made part of said contract

1. The contractor shall not discriminate against any applicant for services for reasons based upon religion or religious belief. The contractor shall not use any monies received from the State to benefit or inhibit a particular religion or religious belief.
2. The relationship of the contractor to the State is that of an independent contractor and the officers and employees of the contractor shall conduct themselves in a manner consistent with such status, shall neither hold themselves out as nor claim to be officers, employees, or agents of the State by reason thereof, and shall not make any claim, demand or application to or for any right of the State, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.
3. The contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons or property, including death, arising out of or related to the services to be rendered by the contractor. It shall indemnify and hold harmless the State and its officers and employees from any and all claims, suits, actions, damages and costs of every nature and description arising out of or related to the services to be rendered by the contractor or the violation by the contractor, its employees, servants, agents, or contractors, of any law, ordinance, rule or regulation in connection therewith.
4. Neither party shall be liable for losses, defaults, or damages under this contract which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this contract, due to or because of acts of God, the public enemy, earthquake, floods, typhoons, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
5. If any term or provision of the contract shall be found to be illegal or unenforceable, then, notwithstanding, the contract shall remain in full force and effect and such term or provision shall be deemed stricken from the contract.
6. The contractor shall comply with all statutory requirements relating to the confidentiality of information obtained during the performance of the contract.
7. The contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.
8. Upon termination of the contract, there shall be a reconciliation based upon the services provided by the contractor and the payments made by the State. The contractor shall refund to the State any overpayments made by the State pursuant to the contract.
9. Unless otherwise provided, the contract may be amended, modified, renewed, and/or renegotiated by written agreement of the parties which shall become effective upon approval by the Office of the State Comptroller.
10. Unless otherwise provided, the OPWDD may cancel the contract without cause upon serving thirty (30) days' written notice on the contractor. Cancellation by mutual agreement of all parties to the contract will be allowed subject to documentation in writing.
11. No part of the contractor's income or resources shall be used directly or indirectly for the benefit of, or payment to, any State employee for services provided under this contract other than employees whose names are furnished to the OPWDD and no employee so identified shall receive any benefit or payment under this contract without prior written approval by the OPWDD.
12. This contract contains all the terms and conditions agreed upon by the parties and no statement or representation, oral or written, express or implied, shall be deemed to exist or to bind either party or to vary any of the terms and conditions of the contract.
13. Where applicable, the contractor shall maintain eligibility for reimbursement from any program that provides payment for services and shall apply for and obtain all funds available for the program from any public or private source. Upon request, the OPWDD shall assist in establishing the contractor's eligibility for such funds.
14. General conditions relating to Article 15-A of the Executive Law are set forth in the following pages.
15. A determination of vendor non-responsibility may be cause for termination of the contract.

**ATTACHMENT**

16. Contractor must comply with the provisions of Mental Hygiene Law Section 16.33 and Executive Law Section 845-b, the regulations related to criminal history record checks adopted by OPWDD in connection with the fingerprinting of certain individuals and the policies and procedures of OPWDD in connection therewith. In particular, any individual employed by or affiliated as a volunteer with a provider of services as defined in Section 1.03(5) of the Mental Hygiene Law who has regular and substantial unsupervised or unrestricted physical contact with people receiving services (such contact hereinafter referred to as “consumer contact”) and who hereafter submits or who has submitted an application for employment or otherwise becomes or became affiliated with the Contractor on or after April 1, 2005 (such individual hereinafter referred to as “a subject party”) shall be required to consent and submit to a criminal history record check. Upon the completion thereof, the contractor shall deny or hold in abeyance employment or volunteer opportunities involving consumer contact subject party when directed to do so by OPWDD and in those instances the contractor shall notify the subject party that his or her criminal history record information is the basis for such action taken by the contractor.
17. Federal False Claims Act (31 USC Sections 3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, Sections 187-194) – contractor is bound by all of the related laws. The law requires that OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste and abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OPWDD must also provide its contractors with information about OPWDD’s own policies and procedures for detecting and preventing waste, fraud and abuse. You can find detailed descriptions of these laws, their whistleblower protections and OPWDD’s policies on the OPWDD website – ([www.opwdd.ny.gov](http://www.opwdd.ny.gov)). At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at [www.omig.state.ny.us](http://www.omig.state.ny.us) to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud and abuse is available from the OPWDD Contract Management Unit, 3rd floor, 44 Holland Ave., Albany NY 12229-0001. As a contractor of OPWDD, you are required to participate in the reviews and audits described in OPWDD’s policies, and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all your employees and to all of your contractors involved in performing work under your contract with OPWDD.
18. Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If this contract is funded through the New York State Medicaid program, the following applies:  
**For contractors**  
The contractor represents that:
- (1) The United States Secretary of Health and Human Services has not excluded the contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5;
  - (2) The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a);
  - (3) The New York State Medicaid Inspector General has not excluded the contractor from participation in the New York Medicaid program under 18 NYCRR Part 515, and
  - (4) No federal or State agency has otherwise excluded the contractor from participation in the New York Medicaid program or excluded the contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.
- If, during the term of this contract, the contractor is excluded from participation in a federal health care program or the New York Medicaid program, or is excluded from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this contract shall be immediately terminated.
19. On February 12, 2007 the Diesel Emissions Reduction Act took effect as law. Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law (“NYECL”), it is now a requirement that heavy duty diesel

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vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirements of the law apply to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. As a contract vendor, the Law may be applicable to vehicles used by contract vendors “on behalf of” State agencies and State or regional public authorities. Therefore, the bidder/contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder/contractor.

20. Notices:

(1). All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

State of New York, Office for People with Developmental Disabilities (OPWDD)

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

(2). Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(3). The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

21.14 NYCRR Sec. 624.6(t)(2) An agency shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD. This extends to NY State contractors; associated language can be found at [http://www.opwdd.ny.gov/regulations\\_guidance/opwdd\\_regulations/implemenation\\_of\\_the\\_PPSNA\\_and\\_r eforms\\_to\\_incident-management-effective-12-25-13](http://www.opwdd.ny.gov/regulations_guidance/opwdd_regulations/implemenation_of_the_PPSNA_and_r eforms_to_incident-management-effective-12-25-13).

**April 2015**

**ATTACHMENT**

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

I. General Provisions

- A. The NYS Office for People with Developmental Disabilities (NYS OPWDD) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) 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 the New York State NYS OPWDD, to fully comply and cooperate with the NYS OPWDD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for 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”) or other applicable federal, state or 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 withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the NYS OPWDD hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 17% for New York State certified minority-owned business enterprises (“MBE”) participation and 13% for New York State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified 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 New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR §142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the NYS OPWDD for liquidated or other appropriate damages, as set forth herein.

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III. Equal Employment Opportunity (EEO)

A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. The Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and subcontractor performing work on the Contract ("Subcontractor") 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 the NYS OPWDD within seventy two (72) hours after the date of the notice by NYS OPWDD to award the Contract to the Contractor.
3. If the Contractor or Subcontractor does not have an existing EEO policy statement, the NYS OPWDD may provide the Contractor or Subcontractor a model statement (see Form 100– Minority and Women-Owned Business Enterprises Equal Employment Opportunity 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.
  - 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 and Paragraph "E" of this Section III, 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.

C. Form \_\_101\_\_ - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan 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 their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form \_102\_\_\_ - Workforce Employment Utilization Report ("Workforce Report")

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1. Once a contract has been awarded and during the term of Contract, the Contractor is responsible for updating and providing notice to the NYS OPWDD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
  2. Separate forms shall be completed by Contractor and any Subcontractor.
  3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and 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 Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof 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 NYS OPWDD, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- 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, NYS OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

### V. Waivers

- A. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to NYS OPWDD.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the NYS OPWDD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the NYS OPWDD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports 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-

## **ATTACHMENT**

compliance, the NYS OPWDD 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 through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the NYS OPWDD by the 10<sup>th</sup> day following each end of quarter over 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 NYS OPWDD determines that the Contractor is not in compliance with the requirements of the Contract 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 the NYS OPWDD 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 the NYS OPWDD, the Contractor shall pay such liquidated damages to the NYS OPWDD within sixty (60) days after they are assessed by the NYS OPWDD unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the NYS OPWDD.

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**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT - Form 100**

**M/WBE AND EEO POLICY STATEMENT**

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

**M/WBE**

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. 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.

**EEO**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and 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.
- (e) This 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 the State contract

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

By \_\_\_\_\_

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

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

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

**M/WBE Contract Goals**

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

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

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

**EEO Contract Goals**

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

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

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

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

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

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**STAFFING PLAN**

**Submit with Bid or Proposal – Instructions below.**

<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>Offeror's Address:</b>		<b>Subcontractor's name</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										
		Total Male (M)	Total Female (F)	White (M) (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)	Disabled (M) (F)	Veteran (M) (F)				
Officials/Administrators														
Professionals														
Technicians														
Sales Workers														
Office/Clerical														
Craft Workers														
Laborers														
Service Workers														
Temporary /Apprentices														
Totals														

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		<b>Submit completed with bid or proposal MWBE 101 (Rev 03/11)</b>

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**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 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 OMWBE 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

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**VENDOR RESPONSIBILITY ATTESTATION AND QUESTIONNAIRE**

Procurement laws and guidelines require the award of New York State contracts to responsible contractors. Vendor responsibility generally means that a contractor has the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract. It is the State's responsibility to evaluate the responsibility of a prospective contractor. A responsibility determination, wherein the State determines that it has reasonable assurances that a contractor is responsible, is an important part of the procurement process, promoting fairness in contracting and protecting a contracting State agency and the State of New York against failed contracts.

The following factors are considered in making a responsibility determination:

- legal authority to do business in New York State
- integrity
- capacity - both organizational and financial
- previous performance

OPWDD is required to conduct a review of a prospective contractor to provide reasonable assurances that the contractor is responsible. The Office of the State Comptroller (OSC) maintains the VendRep system, which allows business entities (vendors) to enter and maintain their Vendor Responsibility Questionnaire (VRQ) information in a secure, centralized database. It is recommended that all potential vendors prepare their VRQ on-line as follows: [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm). For direct VendRep user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672, or by e-mail at: [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

If a Bidder opts to use the paper copy, forms can be downloaded from the website: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

-----  
To comply with the vendor responsibility requirements outlined in Section VIII, Contract Terms, Vendor Responsibility, I hereby certify:

**Choose one:**

- An on-line Vendor Responsibility Questionnaire has been updated or created at NYS OSC's website: <https://portal.osc.state.ny.us> within the last six months.
- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: \_\_\_\_\_

Print/type Name: \_\_\_\_\_

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

Organization: \_\_\_\_\_

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

**ATTACHMENT**

**Procurement Lobbying Act**

**Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**

State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer’s understanding of and agreement to comply with the Governmental Entity’s procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

*Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).*

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

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

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

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

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

**Offerer’s Certification of Compliance with State Finance Law §139-k (5)**

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

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

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

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

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

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

**Contract Termination Provision**

**The Office for People With Developmental Disabilities (OPWDD) reserves the right to terminate this contract in the event it is found that the certification filed by the offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the OPWDD may exercise its termination right by providing written notification to the offerer in accordance with the written notification terms of this contract.**

**ATTACHMENT**

**Offerer Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract: \_\_\_\_\_

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

Name and Title of Person Submitting this Form: \_\_\_\_\_

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

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?  
(Please circle):    No    Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?  
(Please circle):    No    Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?    (Please circle):    No    Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

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

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?  
(Please circle):    No    Yes

6. If yes, please provide details below.

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

Date of Termination or Withholding of Contract: \_\_\_\_\_

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

\_\_\_\_\_

(Add additional pages as necessary)

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

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

Signature

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

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

**ATTACHMENT**

**Offerer’s Compliance with Communications during Restricted Period**

Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between the State agency and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). If State agency employees, other than the designated contacts, are contacted by the Bidder, the State employees are required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.asp>.

Bidder affirms that it understands and agrees to comply with the procedures relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

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

\_\_\_\_\_  
(Officer Signature) (Date)

\_\_\_\_\_  
(Officer Title) (Telephone)

\_\_\_\_\_  
(E-mail Address)

**ATTACHMENT**

**Nondiscrimination in Employment in Northern Ireland**

**MacBride Fair Employment Principles**

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

(1) has business operations in Northern Ireland Yes \_\_\_\_\_ No \_\_\_\_\_

**If Yes,**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT**

**Bidder’s Certification of Compliance with State Iran Divestment Act**

**Background**

By submitting a bid/proposal in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the Entities Determined to be Non-Responsive Bidders/Offerers Pursuant to the New York State Iran Divestment Act of 2012 list (Prohibited Entities List) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the contract is renewed or extended.

During the term of the Contract, should OPWDD receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OPWDD will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then OPWDD shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default. OPWDD 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.

**Bidder Certification:**

The Bidder certifies that it is not listed as a non-responsive bidder/offerer pursuant to the New York State Divestment Act of 2012 nor that it will utilize on this Contract any subcontractor that is identified on the list.

\_\_\_\_\_  
(Officer Signature) (Date)

\_\_\_\_\_  
(Officer Title) (Telephone)

\_\_\_\_\_  
(E-mail Address)

**ATTACHMENT**

**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], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT 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 \_\_\_\_\_, \_\_\_\_\_ as the act and deed of said corporation or partnership.

**ATTACHMENT**

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

**NAMES OF PARTNERS/PRINCIPALS**

**LEGAL RESIDENCE**

_____	_____
_____	_____
_____	_____
_____	_____

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

**NAME**

**LEGAL RESIDENCE**

President: _____	_____
Secretary: _____	_____
Treasurer: _____	_____

**IDENTIFYING DATA**

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

Address \_\_\_\_\_

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

If applicable, Responsible Corporate Officer

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

\_\_\_\_\_  
Signature Date

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

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

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

\_\_\_\_\_  
Title

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

**ATTACHMENT**

**Contractor Disclosure of Contacts Form**

This form shall be completed and submitted with your bid/proposal or offer. You must complete and submit one form for each person or organization whose function is to influence, or who may otherwise attempt to influence, this procurement contract, public works agreement and/or real property transaction. Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid/proposal or offer.

Name of Contractor: \_\_\_\_\_

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

Name and Title of Person Submitting this Form: \_\_\_\_\_

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

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

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

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

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

Place of Principal Employment: \_\_\_\_\_

Occupation: \_\_\_\_\_

Does the above named person or organization have a financial interest in the procurement?

(Please circle)   yes no

**ATTACHMENT**



New York State Department of Taxation and Finance

**Contractor Certification to Covered Agency**

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

**ST-220-CA**

(12/11)

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

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

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

*(name)* *(title)*

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

(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
*(insert contract number or description)* and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

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

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

**Instructions**

**General information**

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

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

**When to complete this form**

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

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

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

ATTACHMENT

Page 2 of 2 ST-220-CA (12/11)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF : }
COUNTY OF : }
SS.:

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

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

- (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): \_he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

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

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

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

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

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

Need help?



Visit our Web site at www.tax.ny.gov

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



Telephone assistance

Sales Tax Information Center: (518) 485-2889

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

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



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

**ATTACHMENT**



Department of Taxation and Finance

**Contractor Certification**

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

**ST-220-TD**

(4/15)

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

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)	City	State	ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )	
Covered agency or state agency	Contract number or description	Covered agency telephone number ( )	
Covered agency address	City	State	ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?			
Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>			

**General information**

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

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

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

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

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS**

**Privacy notification**

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

**Need help?**

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

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

 **Telephone assistance**

**Sales Tax Information Center:** (518) 485-2889  
**To order forms and publications:** (518) 457-5431

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**ATTACHMENT**

Page 2 of 4 ST-220-TD (4/15)

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

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

**Section 1 – Contractor registration status**

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

**Section 2 – Affiliate registration status**

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

**Section 3 – Subcontractor registration status**

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

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

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

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



