

APPENDIX C

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

POLICY STATEMENT

New York State Office of General Services, as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS 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" ("the 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 verses 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.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A 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. 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 this contract; or (ii) employment outside New York State.

Bidder further agrees to submit with the bid a staffing plan (Form EEO 100) identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit to the Authorized User, a workforce utilization report identifying the work force actually utilized on the Contract if known.

Further, pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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.

Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises (MWBE)

In accordance with Article 15-A of the New York State Executive Law and regulations adopted pursuant thereto and consistent with the objectives of Governor Andrew Cuomo's Executive Order No. 8 , an Authorized User that is a State Agency or State Authority (as defined in New York State Executive Law §310 and hereinafter referred to as "State Agency") should establish separate goals for each placement made against this Contract for participation of New York State Certified minority-owned business enterprises and women-owned business enterprises ("MWBEs") at the time of the acquisition, if the acquisition is (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. As a condition of award of the Contract resulting from this RFP, the Contractor agrees to be bound by a State Agency's implementation of the provisions of Article 15-A of the New York State Executive Law, including but not limited to the submission of a utilization plan, in the acquisition. State Agencies and Authorities will seek an overall 20 percent participation rate based on all acquisitions made throughout the term of the contracts awarded hereunder. Joint ventures with MWBEs to meet the goals are encouraged.

A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this contract and Contractor agrees that the Authorized User may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/MWBE.html> For guidance on how Authorized Users will determine a contractor's "good faith efforts," refer to 5 NYCRR §142.8.

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