

# STANDARD CLAUSES AND REQUIREMENTS FOR SOLICITATIONS

## EXHIBIT A

NEW YORK STATE HOUSING FINANCE AGENCY  
STATE OF NEW YORK MORTGAGE AGENCY  
NEW YORK STATE AFFORDABLE HOUSING CORPORATION  
STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY  
TOBACCO SETTLEMENT FINANCING CORPORATION  
HOUSING TRUST FUND CORPORATION



**Homes and  
Community Renewal**

[www.nyshcr.org](http://www.nyshcr.org)

## **1. AGENCY AND STATE-MANDATED REQUIREMENTS**

New York State Homes and Community Renewal (“**HCR**”) consists of all the major housing and community renewal agencies of the State of New York (“**State**”), including the New York State Housing Finance Agency, Housing Trust Fund Corporation, New York State Affordable Housing Corporation, State of New York Mortgage Agency, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (singularly and collectively, “**Agency**”). HCR also includes the New York State Division of Housing and Community Renewal (“**DHCR**”), an agency not involved in this solicitation.

## **2. EQUAL EMPLOYMENT OPPORTUNITY**

It is the goal of the Agency to award contracts to contractors and vendors that comply with the laws of the State prohibiting discrimination in employment.

## **3. PARTICIPATION OF STATE BUSINESS ENTERPRISES AND STATE RESIDENTS IN CONTRACTS**

It is the goal of the Agency to promote the participation of State business enterprises and State residents in Agency contracts.

For potential bidders located in foreign countries, the Agency may assign or otherwise transfer offset credits created by Agency contracts, directly or indirectly, to third parties located in the State, in accordance with the written directions of the State Commissioner of Economic Development. The Agency cooperates with the Department of Economic Development in efforts to get foreign countries to recognize offset credits created by Agency contracts and assigned or transferred to third parties located in the State.

## **4. PROCUREMENT LOBBYING LAW**

All Proposers/ Bidders (“**Offerers**”)<sup>1</sup> are required to make a written statement affirming that they understand and will abide by the provisions of the State Finance Law (“**SFL**”) relating to the persons who may be contacted during this solicitation process.

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<sup>1</sup> “Offerer” means any person or entity that responds to an Agency solicitation. It also means, for purposes of applying the Procurement Lobbying Law (SFL Section 139-j), an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts an Agency about an Agency solicitation process during the Restricted Period of such Agency’s solicitation process. The Procurement Lobbying Law applies to solicitations involving estimated annualized expenditures in excess of \$15,000.

Pursuant to SFL §139-j and §139-k<sup>2</sup>, this solicitation imposes certain restrictions on communications between the Agency and an Offerer during the solicitation process. An Offerer is restricted from making contacts that a reasonable person may infer were intended to influence the selection of a firm or company to perform (or provide) the proposed professional services (and/or goods) provided for in the solicitation, from the date of publication of the solicitation until the awarding of a contract(s) by the Agency (the “**Restricted Period**”) with any person other than the Procurement Lobbying Law Contact Officer indicated in the solicitation, unless it is a contact that is included among certain statutory exceptions set forth in SFL §139-j(3)(a). Employees of the Agency, including any employees of DHCR, are required to obtain certain information when contacted during the Restricted Period and make a determination of responsibility of the Offeror under the SFL. Findings of non-responsibility can result in rejection for contract award and in the event of two (2) findings within a four (4) year period, the Offeror will be debarred from obtaining governmental contracts for four (4) years as set forth in SFL Section 139-j(10)(b).

For further information, please refer to the following website:

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/Faq.htm>.

## **5. NON-COLLUSIVE BIDDING CERTIFICATION**

This solicitation requires the Offeror to affirm, under penalty of perjury, that the prices in their proposal or bid were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Offeror or any competitor.

## **6. VENDOR RESPONSIBILITY**

### **6.1 General Responsibility**

The successful Offeror (“Contractor”) will at all times during the proposal evaluation process and during the Contract term remain responsible. The Contractor agrees, if requested by the Agency, to present evidence of its continuing legal authority to do business in the State and evidence relating to its integrity, experience, ability, prior experience, and organizational and financial capacity.

### **6.2 Suspension (for Non-Responsibility)**

The Agency reserves the right to suspend any or all activities under an awarded Contract, at any time, when the Agency discovers information that calls into question the responsibility of the

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<sup>2</sup> Please click on the following link to view the statutes  
<http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html> .

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 Agency issues a written notice authorizing a resumption of performance under the Contract.

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

Upon written notice and a reasonable opportunity to be heard is given to the Contractor, the Contract may be terminated by the Agency, at the Contractor's expense where the Contractor is determined by the Agency to be non-responsible. In such event, the Agency may complete the contractual requirements in any manner the Agency deems advisable and pursue available legal or equitable remedies for breach of contract.

## **7. FREEDOM OF INFORMATION LAW**

All information and materials provided in response to this solicitation is subject to disclosure pursuant to the Freedom of Information Law.

## **8. AFFORDABLE CARE ACT**

It is the sole responsibility of the Contractor to provide and maintain all Affordable Care Act ("ACA") requirements/benefits. The ACA mandates employers with 50 or more full-time equivalents to offer coverage to full-time employees and their dependents or pay taxes if an employee obtains Exchange coverage and a premium tax credit<sup>3</sup>. Employees of the Contractor providing goods and/or services to the Agency are employees of the Contractor and are not employed by the Agency nor the State.

## **9. LICENSES, CERTIFICATIONS, AND OTHER CREDENTIALS**

This solicitation requires the Offeror to affirm that it, and its subcontractors (if any), will have, prior to commencement of work under an awarded Contract, all necessary licenses, certifications, approvals, and other needed credentials to perform the Scope of Work described in the solicitation.

## **10. INTERNET SERVICE PROVIDER**

If this procurement is for internet service(s), in accordance with the requirements of Executive Order No. 175, the successful Proposer/Bidder agrees to certify that it will adhere to net neutrality principles in the provision of internet services, regardless of delivery method, to all end users in

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<sup>3</sup> . Exchange coverage allows a firm to use the State's insurance exchange marketplace to obtain coverage from competing private health care providers.

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New York State, unless the President/CEO of the Agency, or their designee, determines that adherence to net neutrality principles for a particular purpose is not in the best interests of the State. Nothing in this provision supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so. As used herein, "net neutrality" means that the successful Proposer/Bidder will not block, throttle, or prioritize internet content or applications or require that end users pay different or higher rates to access specific types of content or application.

## **11. SOLICITATION REQUIREMENTS**

An Offeror may withdraw a proposal/bid any time prior to the final due date and time by written notification, signed by an authorized agent, to the contact person identified in the solicitation. The proposal/bid may thereafter be resubmitted, but not after the final due date and time.

By responding to this solicitation, the Offeror indicates its acceptance of the provisions and conditions enumerated in this solicitation. The Offeror warrants and affirms that the terms of this solicitation, and any resulting agreement(s), do not violate any contracts or agreements to which it is a party, and that its other contractual obligations will not adversely influence its capabilities to perform under a contract resulting from this procurement process.

By submitting a proposal/bid, the Offeror covenants that it will not make any claims or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of lack of information.

The Agency shall not be obligated for any cost incurred by the Offeror in proposal/bid preparation or in activities related to the review of proposals/bids or any interview costs.

## **12 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR STATE CERTIFIED MINORITY - AND WOMEN -OWNED BUSINESS ENTERPRISES**

### **12.1 State Law**

Pursuant to State Executive Law Article 15-A and 5 NYCRR 140-145, the Agency recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises ("MWBEs") and the employment of minority group members and women in the performance of Agency contracts.

In 2006, the State commissioned a disparity study to evaluate whether MWBEs 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 MWBEs in State procurement contracting versus the number of MWBEs 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 State-wide certified MWBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of State Executive Law Article 15-A, which requires, among other things, that the Agency establish goals for maximum feasible participation of State certified MWBEs and the employment of minority groups members and women in the performance of State contracts.

## **12.2 Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the Agency hereby establishes an overall goal of 30% for MWBE participation, 15% for State certified minority owned business enterprise ("**MBE**") participation and 15% for State certified women owned business enterprise ("**WBE**") participation (*based on the current availability of qualified MBEs and WBEs*). The Contractor must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors, partners or suppliers in the performance of the awarded Contract and the Contractor agrees that the Agency may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=3972> . For guidance on how the Agency will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 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 awarded Contract, such finding constitutes a breach of contract and the Agency may withhold payment of a portion of the compensation under the awarded Contract 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 awarded Contract.

By submitting a proposal/bid, the Offeror agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the State Contract

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System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com/frontend/diversityusers.asp> , provided, however, that an Offeror may arrange to provide such evidence via a non-electronic method by contacting Ms. Lisa G. Pagnozzi at [Lisa.Pagnozzi@nyshcr.org](mailto:Lisa.Pagnozzi@nyshcr.org) . Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Offeror’s MWBE requirements, please click on the following hyperlinked MWBE guidance, “[Your MWBE Utilization and Reporting Responsibilities Under Article 15-A](#)”.

Additionally, an Offeror will be required to submit a MWBE [Utilization Plan](#), hyperlinked herein, with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Agency.

The Agency will review the submitted MWBE Utilization Plan and advise the Offeror of the Agency’s acceptance or issue a notice of deficiency within thirty (30) calendar days of receipt. If a notice of deficiency is issued, the Offeror will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Agency at 641 Lexington Avenue, 4th Floor, New York, NY 10022, Fax number 917-274-0364, a written remedy in response to the notice of deficiency. If the written remedy is not timely or is found by the Agency to be inadequate, the Agency shall notify the Offeror and direct the Offeror to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

The Agency may disqualify an Offeror as being non-responsive under the following circumstances:

- i. If an Offeror fails to submit a MWBE Utilization Plan;
- ii. If an Offeror fails to submit a written remedy to a notice of deficiency;
- iii. If an Offeror fails to submit a [Request for Waiver](#), hyperlinked herein; or
- iv. If the Agency determines that the Offeror has failed to document good faith efforts.

The Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the awarded 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 awarded Contract to the Agency, but must be made no later than prior to the submission of a request for final payment on the awarded Contract.

The Contractor will be required to submit a [Cumulative Payment Statement](#), hyperlinked herein, to the Agency, by the tenth (10<sup>th</sup>) business day following each end of quarter over the term of the awarded Contract documenting the progress made toward achievement of the MWBE goals.

### **13. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

By submission of a bid or proposal in response to this solicitation, the Offeror agrees with all of the terms and conditions of [Appendix I – Standard Clauses for All New York State Contracts including Clause 7 - Equal Employment Opportunities for Minorities and Women](#), hyperlinked herein.

The Offeror will be required to submit a [Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, PROC-4 Form](#), hyperlinked herein, to the Agency with their bid or proposal.

To ensure compliance with this Section, the Offeror will be required to submit with the bid or proposal an [Equal Employment Opportunity Staffing Plan PROC-1 Form](#), hyperlinked herein, identifying the anticipated work force to be utilized. If awarded a Contract, the Offeror will submit an [EEO Workforce Utilization Report](#), hyperlinked herein, and will require each of its subcontractors to submit a [EEO Workforce Utilization Report](#), on a quarterly basis, during the term of the awarded Contract, identifying the workforce actually utilized.

Pursuant to Executive Order #162, Contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees during the term of the awarded Contract utilizing the EEO Workforce Utilization Report, on a quarterly basis.

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 subcontractor(s) 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.**

#### **14. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

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

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

##### **14.1 Contract Goals**

- a) The Agency hereby establishes a goal of 6% for SDVOB participation on the Contract resulting from this solicitation process, based on the current availability of qualified SDVOB(s). For purposes of providing meaningful participation by SDVOBs, the Offeror/Contractor should reference the directory of State Certified SDVOBs found at: <https://ogs.ny.gov/Core/SDVOBA.asp>. Questions regarding compliance with SDVOB participation goals should be directed to Ms. Lisa G. Pagnozzi at [Lisa.Pagnozzi@nyshcr.org](mailto:Lisa.Pagnozzi@nyshcr.org). Additionally, following Contract execution, the Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs.
- b) The Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see subsection 13.4 below).

## 14.2 SDVOB Utilization Plan

- a) In accordance with 9 NYCRR § 252.2(i), Offerors are required to submit a completed SDVOB [Utilization Plan](#), hyperlinked herein, with their proposal or bid.
- b) The Utilization Plan shall list the SDVOB(s) that the Offeror intends to use, a description of the work that the Offeror intends the SDVOB(s) to perform to meet the goals on the awarded Contract, the estimated dollar amounts to be paid to the SDVOB(s), or, if not known, an estimate of the percentage of Contract work the SDVOB(s) will perform. By signing the Utilization Plan, the Offeror acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future proposals/bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOB(s) after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Agency.
- c) The Agency will review the submitted SDVOB Utilization Plan and advise the Offeror of the Agency's acceptance or issue a notice of deficiency within twenty (20) business days of receipt.
- d) If a notice of deficiency is issued, the Offeror agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to the Agency a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Agency to be inadequate, the Agency shall notify the Offeror and direct the Offeror to submit, within five (5) business days of notification by the Agency, a request for a partial or total waiver of SDVOB participation goals. Failure to file the waiver in a timely manner may be grounds for disqualification of the bid or proposal.
- e) The Agency may disqualify an Offeror's bid or proposal as being non-responsive under the following circumstances:
  - i. If an Offeror fails to submit an SDVOB Utilization Plan;
  - ii. If an Offeror fails to submit a written remedy to a notice of deficiency;
  - iii. If an Offeror fails to submit a request for waiver; or
  - iv. If the Agency determines that the Offeror has failed to document good faith efforts.

- f) If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOB(s) on the Contract pursuant to the prescribed SDVOB contract goal set forth above.
- g) The Offeror further agrees that a failure to use SDVOB(s) as agreed in the Utilization Plan shall constitute a material breach of the terms of the awarded Contract. Upon the occurrence of such a material breach, the Agency shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **14.3 Request for Waiver**

**Prior to submission of a request for a partial or total waiver, Offeror/Contractor shall speak to the Designated Contact(s) at the Agency for guidance.**

- a) In accordance with 9 NYCRR § 252.2(m), an Offeror/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in subsection 13.4 below, may submit a request for a partial or total waiver, accompanied by supporting documentation. An Offeror may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Agency at that time, the provisions of subsection 13.2 (c), (d) and (e) will apply. If the documentation included with the Offeror's/Contractor's waiver request is complete, the Agency shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- b) The Contractor shall attempt to utilize, in good faith, the SDVOB(s) identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the awarded Contract to the Agency, but must be made no later than prior to the submission of a request for final payment.
- c) If the Agency, upon review of the SDVOB Utilization Plan and Quarterly SDVOB [Cumulative Payment Statement](#) report, hyperlinked herein, determines that the Contractor is failing or refusing to comply with the goals and no waiver has been issued in regards to such non-compliance, the Agency 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 SDVOB contract goals.

Waiver requests should be sent to the Agency at 641 Lexington Avenue, 4th Floor, New York, NY 10022, Fax number 917-274-0364.

#### **14.4 Required Good Faith Efforts**

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

- a) Copies of solicitations to SDVOBs and any responses thereto;
- b) Explanation of the specific reasons each SDVOB that responded to Contractor's solicitation was not selected;
- c) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Agency with SDVOB(s) that the Agency determined were capable of fulfilling the SDVOB goal set in the awarded Contract;
- d) Information describing the specific steps undertaken to reasonably structure the scope of work for the purpose of subcontracting with, or obtaining supplies from SDVOB(s); and
- e) Other information deemed relevant to the waiver request.

#### **14.5 Quarterly SDVOB Contractor Cumulative Payment Statement Report**

In accordance with 9 NYCRR § 252.2(q), the Contractor is required to submit a Quarterly SDVOB [Contractor Cumulative Payment Statement](#), hyperlinked herein, to the Agency during the term of the awarded Contract for the preceding quarter's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted using the [Contractor Cumulative Payment Statement](#), hyperlinked herein, and should be completed by the Contractor and submitted to the Agency, for the quarters ending March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>. Quarterly [Contractor Cumulative Payment Statement](#) reports shall be submitted, in PDF format, to [Econ.Opportunity@nyshcr.org](mailto:Econ.Opportunity@nyshcr.org) by the April 10<sup>th</sup>, July 10<sup>th</sup>, October 10<sup>th</sup> and January 10<sup>th</sup>.

#### **14.6 Breach of Contract and Damage**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the awarded Contract, shall be found to have breached the Contract and the Contractor shall pay liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to the SDVOB had the Contractor achieved the contractual SDVOB goal;

and (2) all sums actually paid to SDVOB(s) for work performed or materials supplied under the awarded Contract.

## **15. The Use of State Businesses in Contract Performance**

The Agency is committed to awarding a contract to a firm that will provide high-quality services at a reasonable and competitive cost and will substantially perform the scope of work, as described in this solicitation, from an office(s) or location(s) within the State.

State businesses have a substantial presence in State contracts and strongly contribute to the economics of the State and the nation. In recognition of their economic activity and leadership in doing business in the State, Offerors for this solicitation are strongly encouraged and expected to consider State businesses in the fulfillment of the requirements of the awarded Contract. Such partnering may be as subcontractors, suppliers, protégés, providers of office and work space, and/or other supporting roles.

Offerors need to be aware that all authorized users of the awarded Contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsive State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Offerors are reminded that they must continue to utilize small businesses, minority and women-owned businesses, and service-disabled veteran businesses consistent with current State law.

Utilizing State businesses in Agency contracts will help create more private sector jobs, rebuild the State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its State business partners. State businesses will promote the Contractor's optimal performance, thereby benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of State businesses by its contractors. The Agency therefore expects the Offeror to provide maximum assistance to State businesses in its use of the awarded Contract. The potential participation of all kinds of State businesses will deliver great value to the State and its taxpayers.

## **16. RESERVATION OF RIGHTS**

- a. The issuance of this solicitation, the submission of a proposal/bid by any Offeror, and/or the acceptance of such proposal by the Agency, does not obligate the Agency in any manner

whatsoever. Legal obligations will only arise upon execution of a formal contract by the Agency and the Contractor.

- b. The Agency reserves the right to:
- (i) amend, modify, or withdraw this solicitation;
  - (ii) revise any requirements of this solicitation;
  - (iii) require supplemental statements or information from any Offeror;
  - (iv) accept or reject any or all proposals/bids;
  - (v) extend the deadline for submission of proposals/bids;
  - (vi) negotiate or hold discussions with any Offeror and correct deficient proposals/bids that do not completely conform to the instructions contained herein;
  - (vii) cancel or reissue this solicitation, in whole or in part, if the Agency deems it in its best interest to do so;
  - (viii) hold a pre-bid conference with all Offerors, to answer questions and provide applicable information as necessary;
  - (ix) accept a proposal/bid and any subsequent proposal/bid for the contract award from someone other than the lowest cost Offeror consistent with the criteria for the evaluation of proposals/bids;
  - (x) make an award in whole or in part;
  - (xi) disqualify any Offeror whose conduct and/or proposal/bid fails to conform to the requirements of this solicitation;
  - (xii) seek clarification and revisions of proposals/bids;
  - (xiii) change any of the solicitation's scheduled dates;
  - (xiv) utilize any and all ideas submitted in the proposals/bids received;

- (xv) request best and final offers;
- (xvi) require clarification at any time during the procurement process and correction of arithmetic or other apparent errors to assure a full and complete understanding of a proposal/bid or to determine an Offeror's compliance with the requirements of the solicitation;
- (xvii) re-issue this solicitation, or a similar version, annually or as needed to solicit additional proposals/bids;
- (xviii) interview an Offeror prior to selection; and
- (xix) waive any requirements that are not material.

The Agency may exercise the foregoing rights at any time without notice and without liability to any Offeror or any other party for expenses incurred in connection with the proposals/bids. All proposals/bids and submissions will be made at the sole cost and expense of the Offeror.

- c. This solicitation and any agreement which may result from it are subject to all applicable laws, rules, and regulations promulgated by any federal, state, or local authority having jurisdiction over the subject matter hereof, as the same may be amended from time to time.
- d. The Agency shall be the sole judge of whether a proposal/bid complies with the requirements of this solicitation and the merits of such proposal/bid. This solicitation does not commit the Agency to select a contract awardee, or to procure or contract for the services or goods described herein.
- e. Nothing stated at any time by any representative of the Agency will effect a change in, or constitute an addition to, this solicitation unless confirmed in writing by the Agency.
- f. Offerors responding hereto must agree to keep confidential their proposals/bids and any information received from the Agency.
- g. The Offeror will be required to execute a contract prescribed by the Agency, and to abide by all relevant laws and policies of the Agency with regard to, among other things, conflicts of interest, ethics, lobbying law directives, minority and/or women owned business enterprise participation requirements, equal employment opportunity programs, service-disabled veteran-owned business enterprises, etc.

- h. The Agency believes the information set forth in this solicitation is accurate. However, the Agency, its directors and/or members, officers, agents and employees assume no responsibility for errors and omissions contained therein.
- i. Under no circumstances (including withdrawal of this solicitation before or after proposals/bids are received) will any Offeror have any recourse against the State or any Agency, their directors, members, officers, agents or employees for any expenses incurred or damages sustained as a result of this solicitation process.
- j. The Agency reserves the right to select qualified proposals/bids for further review and negotiation. Further negotiation may include, but shall not be limited to, bid amounts for contract award on the basis of a formal evaluation of the characteristics, quality and cost of such proposals/bids.
- k. The Agency reserves the right to make one or more awards based on the proposals/bids that the Agency deems best in its sole discretion.
- l. Offerors shall not make public announcements or issue news releases pertaining to selection or contract execution without prior written consent of the Agency.
- m. Any contract subject to approval by an Agency's Board will be awarded only after approval by the Board.

## **17. GROUNDS FOR DISQUALIFICATION**

A proposal/bid may be rejected at any time during the evaluation process and at any point thereafter if there are any adverse findings that would prevent the Agency from selecting the Offeror or any person or entity associated or partnering with the Offeror. Such adverse findings include, but are not limited to:

- a. Negative findings from the State Inspector General, a federal Inspector General, the U.S. Government Accountability Office, or an Inspector General in another state;
- b. Pending or unresolved legal action from the U.S. Attorney General or from an attorney general in New York or another state;
- c. Pending litigation with the State or any other state, or a municipality located in the State or another state;



- d. Arson conviction or pending case;
- e. Harassment conviction or pending case;
- f. Federal, State, local, or private mortgage arrears, default, or foreclosure proceedings;
- g. In rem foreclosure;
- h. Sale of tax lien or substantial tax arrears;
- i. Fair housing violation or current litigation;
- j. Defaults under any Federal, State or locally sponsored program;
- k. A record of substantial building code violations or litigation against properties owned and/or managed by the Offeror or by any entity or individual that comprises the Offeror;
- l. Past or pending voluntary or involuntary bankruptcy proceeding;
- m. Conviction for fraud, bribery, or grand larceny;
- n. Listing on Federal or State excluded parties' lists; or
- o. Allegations or findings of plagiarism in research activity, and/or theft of intellectual property.

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