

ANDREW M. CUOMO  
GOVERNOR

DARRYL C. TOWNS  
COMMISSIONER/CEO

## Exhibit B

### CONTRACTOR SOLICITATION 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**



*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  
641 Lexington Avenue  
New York, NY 10022  
212-688-4000  
[www.nyshcr.org](http://www.nyshcr.org)*

*Housing Trust Fund Corporation  
Hampton Plaza  
38-40 State Street  
Albany, New York 12207  
[www.nyshcr.org](http://www.nyshcr.org)*

*April, 2014*

## **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A (“Article 15-A”), 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 (individually, “Agency” and collectively, the “Agencies”) recognize their obligation under the law to promote opportunities for maximum feasible participation of certified minority- and/or women-owned business enterprises (“MWBE”) and the employment of minority group members and women in the performance of Agency contracts.

In 2006, the State of New York (“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" (the “Disparity Study”). The Disparity Study 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 statewide certified MWBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of Article 15-A, which requires, among other things, that the Agencies establish goals for maximum feasible participation of State certified MWBEs and the employment of minority group members and women in the performance of State contracts.

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

A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of Agency contracts and the Contractor agrees that the Agency(ies) may withhold payment pending receipt of the required MWBE documentation. The directory of State certified MWBEs can be viewed at: <http://www.esd.ny.gov/MWBE.html>.

For guidance on how the Agency(ies) 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 the Contract, such finding constitutes a breach of Contract and the Agency(ies) 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 Contract.

By submitting a bid or proposal, Bidder/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a [MWBE Utilization Plan on Form PROC-2](#) 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(ies).
- B. The Agency(ies) will review the submitted *MWBE Utilization Plan* and advise the Bidder of any Agency's acceptance or issue a notice of deficiency within thirty (30) days of receipt.
- C. 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 to the Office of Fair Housing and Equal Opportunity at [OFHEO1@nyshcr.org](mailto:OFHEO1@nyshcr.org). If the written remedy that is submitted is not timely or is found by the Agency(ies) to be inadequate, the Agency(ies) shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a [partial or total waiver of MWBE participation goals on Form PROC-3](#). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The Agency(ies) may disqualify a Bidder as being non-responsive under the following circumstances:
  - a) If a Bidder fails to submit a *MWBE Utilization Plan*;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If the Agency(ies) determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any minority owned business enterprise ("MBE") or women-owned business enterprise ("WBE") identified within its *MWBE 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 the Agency(ies), 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 Compliance & Payment Report on Form PROC-6](#) via email at [OFHEO1@nyshcr.org](mailto:OFHEO1@nyshcr.org), by the 10<sup>th</sup> day following each end of quarter (i.e., March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>) over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract identified in the Solicitation document and Contract.

## **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 the [Agencies' Standard Clauses for Contracts including Clause 7 - 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, where applicable, to submit with the bid a (i) [company demographic profile \(Form PROC-7\)](#) and (ii) [staffing plan \(Form PROC-1\)](#) identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit a [Contractor's Quarterly Workforce Employment Utilization report on Form PROC-5](#) via email at [OFHEO1@nyshcr.org](mailto:OFHEO1@nyshcr.org), by the 10<sup>th</sup> day following each end of quarter (i.e., March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>) over the term of the Contract, to report the actual work force utilized in the performance of the Contract broken down by the specified categories.

Further, pursuant to Article 15 (the "Human Rights Law") and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors 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.**