

**New York State Higher Education Services Corporation (HESC)**

**Request for Proposals**

**for**

**NYGEAR UP Year 7: College Success Western NY**

Proposal Due Date:  
4/8/2020 3PM EST

New York State  
Higher Education Services Corporation  
99 Washington Avenue  
Albany, New York 12255

Contact Information: All inquiries related to this RFP should be addressed, via email to:

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This Request for Proposals (RFP) explains the guidelines, schedule, requirements, and awards process for the New York Gaining Early Awareness and Readiness for Undergraduate Programs (NYGEAR UP) sub-grants awarded through the New York State Higher Education Services Corporation (HESC) for NYGEAR UP Year 7: College Success. Please note the following important dates and information:

**Deadline for submitting inquiries about this RFP:** All inquiries must be submitted by 4:00 p.m. Eastern Standard Time on 3/19/20 to Christopher Forman at HESC, by e-mail only, to the following e-mail address: [Christopher.Forman@hesc.ny.gov](mailto:Christopher.Forman@hesc.ny.gov).

Responses to bidder's questions will be posted at on Grants Gateway.

**Deadline for submitting proposals:** Proposals due by 3PM, Eastern Time on April 8<sup>th</sup>, 2020.

All applications and required components must be submitted via Grants Gateway by that date and time to be considered. Mailed, hand-delivered, faxed or e-mailed submissions will not be accepted. Applications received after the application due date and time will not be accepted. The Grants Gateway can be accessed at <https://grantsgateway.ny.gov>.

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## **1. Introduction**

The New York State Higher Education Services Corporation (HESC) seeks, through this RFP, to procure nonprofit organizations to provide required services to freshman college students through the New York Gaining Early Awareness and Readiness for Undergraduate Program (NYGEAR UP) in relation to its stated goal, objectives and intended outcomes.

In September 2014, New York State was awarded a \$22,420,000, multi-year GEAR UP grant by the U.S. Department of Education to significantly increase the number of low-income New York State secondary school students who are prepared to enter and succeed in postsecondary education or training.

The GEAR UP program was established in Chapter 2 of the 1998 amendments to the Higher Education Act of 1965. With increasing attention on not just college *access*, but also college *success*, the US Department of Education began, in 2011, making 7-year awards to enable entities to “provide services to a student through the student’s first year of attendance at an institution of higher education.”

NYGEAR UP and its site partners worked to increase:

1. The academic performance and preparation for postsecondary education of participating students, with an emphasis on career readiness and college fit;
2. The rate of high school graduation, with an emphasis on college and career readiness;
3. The participation in postsecondary education of participating students with an emphasis on college fit and alignment with high-demand fields and sectors of the economy;
4. The participation in postsecondary education of participating students without need for remedial coursework;
5. The rate of college persistence and completion of participating students; and
6. Student and family knowledge of postsecondary education options, preparation and financing.

### **A. Purpose of this RFP**

Through this RFP, HESC is looking to provide services to assist NYGEAR UP students in their first year in higher education such that they can succeed in school. Services provided by NYGEAR UP through this RFP should not, to the maximum extent possible, duplicate services otherwise offered to these students but supplement and enhance them. It is critical that projects coordinate with campus programs, including academic support services for the best effect.

Under this RFP, NYGEAR UP will work with a cohort of up to 1,600 students enrolled in either a New York State two- year Community College or a four-year college/university in the Rochester/Buffalo Region. Students are expected to be located in the

Buffalo/Rochester area, or enrolled at Erie Community College, Monroe Community College and Finger Lakes Community College. \$320,000 has been allocated for this.

NYGEAR UP Year 7: College Success is designed to:

- Reduce the number of students needing remedial classes.
- Increase the rate of college persistence as measured by completion of year 1 in good academic standing and enrollment in year 2.

HESC will make awards until all students are receiving services.

A base award of \$200 per student has been established. If funding is available within the stated allocation, a per student award may increase up to \$300 depending on the number of students and services to be provided.

## **B. Eligibility**

To be eligible for a NYGEAR UP grant, a bidder must be a non-profit organization or government entity.

## **C. Prequalification**

The State of New York has implemented a new statewide prequalification process (described in <https://grantsmanagement.ny.gov/>) designed to facilitate prompt contracting for not-for-profit vendors. All not-for-profit vendors are required to pre-qualify prior to grant application (Note: Government entities are not required to prequalify in the Grants Gateway, but **must register** in order to submit an application). Proposals received from entities that are not prequalified at the time of the bid opening cannot be considered.

The [Vendor Prequalification Manual](#) on the Grants Management website details the requirements and an online tutorial is available to walk users through the process. Please see Addendum D for further information.

## **D. Project Funding and Timeline**

HESC seeks to award contracts for the provision of required NYGEAR UP services to the highest ranked organizations that submit acceptable proposals based on the best value procurement approach, which includes consideration of not only cost, but quality of service and experience. For the purposes of this application, the budget allocated for the solicitation is up to \$200 in federal funding per student served. Actual funding per student may increase depending on the number of GEAR UP students who attend college. As noted below, proposals must provide a listing of what grantees would do with additional funding per student, should it be available. This amount in federal funding excludes project matching funds. This RFP requests proposals for fifteen months, with services beginning June 25, 2020 and ending September 24, 2021.

### **E. Cost Sharing or Matching**

This project requires a 50% match to participate. Federal funds may not be used to match GEAR UP funds. Matching funds may be in cash, in-kind services or through donation and must directly support the services required by the project. Applicants will be held to the matching commitment proposed in the application for funding.

### **F. Debriefing Request**

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by Higher Education Services Corporation that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in this Solicitation.

### **G. Protest Procedures**

It is HESC policy to provide all Bidders with an opportunity to resolve complaints or inquiries related to the Bid solicitations or pending contract awards administratively. HESC encourages Bidders to seek resolution of complaints concerning the contract award process through consultation with HESC. All such matters will be accorded impartial and timely consideration.

It is the intent of HESC to be receptive to and resolve issues, inquiries, questions, and complaints on an informal basis, whenever possible. Information provided informally by any interested party will be fully reviewed by the Project Procurement Team.

Final HESC decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. A formal protest must be submitted in writing to HESC, by ground mail, to the Chief Financial Officer, Contracts Management Unit, 99 Washington Avenue, Room #1500, Albany, NY 12255. A formal protest must include a statement of all legal and/or factual grounds for disagreement with HESC specification purchasing decisions; a description of all remedies or relief requested; and copies of all applicable supporting documentation.

HESC must receive formal protests concerning errors, omissions or prejudice, including patently obvious errors in the RFP specifications or documents, at least ten (10) calendar days before the Closing Date for Receipt of Bids. HESC must receive formal protests concerning a pending Contract award within seven (7) calendar days after the protesting party knows or should have known of the facts which form the basis of the protest.

A copy of the protest determination, stating the reason(s) upon which it is based shall be sent to the protester within forty-five (45) calendar days of receipt of the protest, except that upon notice to the protestor such period may be extended. The protest determination will be recorded and included in the procurement record.

If the protesting party is still not satisfied with the result of its protest after conclusion of the formal protest and appeal procedure described above, the protesting party may file a written appeal with the OSC within ten business days of the date the protesting party received OCFS's protest determination. An appeal to the OSC's Bureau of Contracts must be in writing and must contain the specific factual and/or legal allegations setting forth the basis upon which the protesting party challenges the contract award by OCFS. Such appeal must be filed with the director of the Bureau of Contracts at the NYS Office of the State Comptroller, 110 State Street, 11th Floor, Albany, NY 12236.

## 2. Schedule

Date	Action
3/12/20	RFP announced by HESC
3/19/20	Due date for written Bidder questions to be e-mailed to <a href="mailto:Christopher.Forman@hesc.ny.gov">Christopher.Forman@hesc.ny.gov</a> only
3/26/20	Due date for HESC's responses to written Bidder questions
4/8/20	Deadline for receipt of proposals
5/15/20	Notification to Bidders of HESC's proposal evaluation results.

Note: The dates in this schedule may be subject to change.

## 3. Project Scope

The overarching goals of NYGEAR UP Year 7: College Success are: (1) increase participation in postsecondary education of participating students without the need for remedial coursework; and (2) to increase the rate of college persistence as measured by completion of year 1 in good academic standing and enrollment in year 2.

The intended outcomes of NYGEAR UP Year 7: College Success are to:

- Reduce the number of students required to take remedial classes in college;
- Increase student connections at their college through a two-way texting platform (provided by HESC), mentoring and counseling;
- Increase opportunities for students to receive academic supports;
- Increase the number of students that successfully complete financial aid documents for their sophomore year; and
- Increase the number of students to be on track for graduating from college by completing their freshman year in good academic standing.



By statute, GEAR UP activities for Year 7 may include:

- (a) Orientation services including introduction to on-campus services and resources;
- (b) On-going counseling to students either in person or through electronic or other means of correspondence;
- (c) Assistance with course selection for the second year of postsecondary education;
- (d) Assistance with choosing and declaring an academic major;
- (e) Assistance regarding academic, social, and personal areas of need;
- (f) Referrals to providers of appropriate services;
- (g) Tutoring, mentoring, and supplemental academic support;
- (h) Assistance with financial planning;
- (i) Career counseling and advising services; or
- (j) Advising students about transferring to other schools.

#### **A. Project Requirements**

HESC seeks to partner with non-profit organizations to support activities, initiatives and programs, that serve the cohort of freshmen (NYGEAR UP) students enrolled in four-year colleges/universities and two-year Community Colleges to foster student success and retention.

The NYGEAR UP Year 7: College Success program seeks to support research-based/informed proposals, and recognizes the expertise and experience of each organization as the best source for ideas and crafting of proposals that capitalize on this existing knowledge base.

To increase the number of students' college persistence rates among NYGEAR UP participants, HESC's 7<sup>th</sup> Year will focus on three main transition points for first-time college students, providing services to support NYGEAR UP students after they graduate high school through the start of their sophomore year:

- The Summer Before College: The goal of the summer-bridge program will be customized to the academic needs of the students by providing intensive courses in English and Math to reduce enrollment in remedial classes.

- First Year of College: HESC will procure “College Success” State-wide partner(s) that will provide NYGEAR UP students who attend college within New York State, the successful acclimation and navigation of campus life, including through the establishment of working relationships with academic, career or student support offices at the student’s enrolled college. Re-application for financial aid will be a priority initiative during the second semester of the freshman year.
- Prior to the Second Year of College: HESC’s “College Success” State-wide partner(s) will work NYGEAR UP students and develop a customized plan for year 2 specific to each student’s stated academic and career goals: needs, including but not limited to advisement on coursework needed for completion of year 2.

To meet the needs of our NYGEAR UP students, HESC will support services that provide the following:

- Transition Activities (e.g., summer bridge programs, expanded orientations);
- Navigation (campus acclimation and referral to student support services);
- Academic Support (e.g., tutoring and study groups);
- Integration and Connections (e.g., two-way texting program provided by HESC), mentoring, counseling, NYGEAR UP events and clubs);
- Financial Support (e.g., FAFSA completion initiatives such as Financial Aid Renewal workshops and one-one-one sessions); and
- Academic Advising (e.g., Information on degree progress, sophomore year schedule and pathways to four-year institutions for community college students).

**Texting Requirement:** HESC has identified text message communication with students as a key method to keeping students engaged as they enter college. To achieve that end, HESC will provide the Signal Vine texting platform for 2019-20 and 2020-2021. Texting NYGEAR UP students who opt-in will begin in 2019-2020, with the nine NYGEAR UP sub-grantees responsible for communication. When NYGEAR UP Year 7: College Success begins in 2020, the responsibility for communication and response will switch to the 2020-2021 sub-grantees (made through this RFP). This will be one of the primary responsibilities under this award.

Responsibilities will include, but not be limited to:

- Send individual and group texts to students in their cohort about important events, opportunities and deadlines;

- Respond to student inquiries;
- Work with HESC and other grantees to identify trends and coordinate responses; and
- Submit bi-weekly text message reports for review. (Format to be supplied).

Training on how to use and navigate the system will be provided.

## **B. Data Collection Requirements**

Nonprofit organizations must work in tandem with NYGEAR UP's independent program evaluator, Measurement, Inc., in the collection and reporting of data. This data is mandatory and required to be entered into the existing NYGEAR UP database on an on-going basis and will include but not be limited to the following:

1. Student Academic Information
  - a. Remedial Coursework and results of bridge program
  - b. Semester pass/fail grades
2. Student Participatory Information
  - a. Documentation (student sign-in sheets) for all project activities. Format to be supplied by HESC.
  - b. Student attendance at project activities must be entered into the database.

## **C. Personnel**

Site Coordinator. The nonprofit organization must designate at least one, full-time, site coordinator to administer project services with the specific responsibilities to include:

- Coordinate all NYGEAR UP Year 7: College Success mandatory activities and services;
- Collect required data elements in the format prescribed by NYGEAR UP's independent evaluator; and,
- Complete all required reports.

## **D. Reporting**

In addition to data collection and reporting as outlined in the data collection requirements, each nonprofit organization awarded a grant under this RFP must provide the following reports in formats prescribed by HESC:

Each project funded under this sub-grant is responsible for reporting to HESC. Report formats will be provided by HESC.

- Progress reports: Two Progress Reports, due October 15, 2020 and June 15, 2021, will contain actual expenditures of sub-grantees and matching funds from June 25, 2020 to October 1, 2020 (Progress Report #1) and from February 16,

2021 to June 1, 2021, and a summary of student participation in mandated activities.

- **Mid-Year Expenditure:** The Mid-Year Report, due to HESC by February 24, 2021 will contain actual expenditures of sub-grantees and matching funds for the period from June 24, 2020 to February 15, 2021, and progress against stated project goals and objectives.
- **Final Expenditure:** The Final Expenditure Report, due to HESC by October 24, 2021 will contain actual expenditures of sub-grantees and matching funds for the period from June 25, 2020 – September 24, 2021, and final progress against stated project goals and objectives. will be reported via updated goals and objective forms.

#### **4. Application Requirements**

##### **A. Project Abstract**

In one (1) double spaced page, applicants must state the geographical region, number of students to be served and describe the proposed project activities and intended outcomes.

##### **B. Project Narrative**

All proposals must include a detailed project narrative of no more than twelve (12) double spaced pages. Applicants, should, at a minimum, address the requirements of the RFP. This, along with the services chart below, will serve as the basis for activities during the year. It must include how the bidder will address the tasks required herein and how they will work to achieve NYGEAR UP's overall goals. This includes background on the proven or research based solutions, an implementation strategy, describing how the organization will establish a presence and engage students to ensure project success.

Proposals may also include a detailed explanation of how services would be enhanced or added should additional funding per student be available (as shown in Chart 1). This is limited to two (2) double spaced pages and is in addition to Chart 1.

##### **C. Services Chart**

Applicants should list the activities, with complete, descriptions and provider information, and the number of students anticipated for each activity that will be completed on Chart 1 (attached). The chart should include as much detail as possible. Applicants should be sure to include location information if activities are provided at a specific site. HESC desires activities in each area of service listed.

Please note: this section is not part of the project narrative and does not count against the page limit in that section.

#### **D. Resumes**

Applicants should include the resume(s) of any key personnel to be involved with this project. At a minimum, applicants must include the resume of the site coordinator and a brief organizational structure.

#### **E. Forms A, B**

Applicants must include the completed attached Forms:

Form A – Cover Sheet

Form B – Program Assurance

### **5. Application Format**

Applications must be submitted through the [NYS Grants Gateway](#). Mailed, hand-delivered, faxed or e-mailed submissions will NOT be accepted. Applicants are strongly encouraged to submit their applications well in advance of the application deadline. Late applications will not be accepted. Applicants will be unable to click “submit” or make changes to the application after the deadline has passed. Applicants are encouraged to finish the online application at least one-week prior to the deadline, allowing time to double check that all mandatory requirements have been completed and to correct any technical errors.

**A note on grantee roles:** Only someone in the role of **Grantee Contract Signatory** or **Grantee System Administrator** can electronically submit the application via the Grants Gateway. When the application is ready for submission, click the Status Changes tab, then click the “Apply Status” button under “Application Submitted.”

All applicants must be registered with Grants Gateway to submit an application. In addition to registration, not-for-profits must also be prequalified at the time and date that the application is due. If you are not prequalified at that time and date, your application will not be considered for funding. **For more information about Grants Gateway and prequalification, please visit <https://grantsmanagement.ny.gov/get-prequalified> or contact Grants Gateway help desk at [grantsgateway@its.ny.gov](mailto:grantsgateway@its.ny.gov)**

**Please do not delay in beginning and completing the prequalification process. The state reserves 5 business days to review submitted prequalification applications. Applicants should not assume that their prequalification will be reviewed if they do not adhere to this timeframe.**

## 6. Project Evaluation Criteria

Scoring	Weight
1.0 Initial Screening	Not Scored
2.0 Suitability of the Proposal	10%
3.0 Depth and Breadth of Services	40%
4.0 Experience/Capabilities	30%
5.0 Project Resources, Costs, & Value	20%

### Criterion 1.0 – Initial Screening

HESC, in its sole discretion, will determine whether the nonprofit organization:

- Meets all requirements to do business with New York State; and
- Has submitted all required narratives, forms and addendums, as specified in the RFP.

*Proposals will be disqualified in the event the nonprofit organization fails to meet the Initial Screening criteria.*

### Criterion 2.0 – Suitability of the Proposal

In determining the suitability of the proposal, HESC will consider the following factors:

- The extent to which the proposal demonstrates an understanding of and effectiveness towards the intended outcomes of NYGEAR UP.
- The extent to which the proposal offers proven or research-based solutions, interventions and/or activities.
- The extent to which the proposal addresses the services desired as set forth in the RFP.

### Criterion 3.0 – Depth and Breadth of Service

In determining the depth and breadth of service, HESC will consider the following factors:

- The extent to which the nonprofit organization can establish a physical presence or select a qualified liaison on campuses in the geographical region served with 10+ NYGEAR UP freshman.
- The adequacy of the implementation strategy to achieve the NYGEAR UP Year 7: College Success objectives on time and on budget over the fifteen-month period, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks.

- The extent to which the nonprofit organization can provide services delineated in the workplan and Services Chart (All proposals must complete the chart with activities that will be offered).
- The extent to which the nonprofit organization demonstrates that it has effective methods for the delivery of services and/or materials.

#### **Criterion 4.0 – Experience/Capabilities**

In determining the nonprofit organization's experience and/or capabilities, HESC will consider the following factors:

- The extent to which the nonprofit organization have successfully offered similar services or demonstrate that it has the capability to provide services in an effective manner.
- The extent to which the nonprofit organization have appropriate and experienced staff to develop and/or render services to accomplish the project goals.
- The extent to which the nonprofit organization and its project staff have prior working relationships with the target population.
- The extent to which the time commitment of key project personnel is appropriate to meet the objectives of the proposed project.
- The extent to which the nonprofit organization can document all student services and meet all reporting requirements.

#### **Criterion 5.0 – Project Resources, Costs, and Value**

- The extent to which the identified resources and materials, including facilities, equipment, or supplies, are necessary and effective to implementing the project.
- The extent to which the interventions are cost effective and maximize the number of participating students to be served or benefit from the services.
- The extent to which the price is commensurate with the value offered by the services to be rendered and the anticipated results and benefits.

### **7. Evaluation Methodology**

Proposals will be evaluated by a panel of reviewers determined by HESC.

No proposal will be evaluated until the nonprofit organization completes and submits all required documents and information.

#### **A. Evaluation Approach**

HESC will perform an Initial Screening of proposals received to determine whether or not proposals meet the Pass/Fail requirement. Proposals that receive a failing evaluation on the Initial Screening will not be evaluated further.

The evaluation of all other criteria will be scored on a scale of zero (0) through and including five (5) by each evaluator, with five being exceptional and zero being poor. A This score (0 through 5) is a Raw Score. Each evaluator's Raw Score will be added to all other evaluators' Raw Scores. The sum of evaluators' Raw Scores will be divided by the number of evaluators, resulting in an Average Raw Score. The Average Raw Score will be multiplied by the corresponding Weight for each Criterion as set by HESC. This will result in a Weighted Score for each criterion. Weighted Scores for each criterion will be added together and will result in a Total Weighted Score for each proposal.

## **B. Selection of Winning Nonprofit organizations**

HESC will make awards to the highest ranked nonprofit organizations based on the nonprofit organizations' Total Weighted Scores. In the event of a tie, the award will be made first to the nonprofit organization that has the highest score for Criterion 4 (Experience/Capabilities). In the event multiple tied nonprofit organizations have received the same score for Criterion 4, the award will be made to the tied nonprofit organization who received the highest score for Criterion 3 (Depth and Breadth of Service).

## **8. Budgetary Guidelines and Requirements**

Each nonprofit organization must complete the Project Budget Summary for the entire project period included in this RFP.

### **A. Allowable Expenses**

Nonprofit organizations should refer to OMB Circular A-21 Cost Principles for Educational Institutions or OMB Circular A-122 Cost Principles for Non-Profit Organizations, as applicable, for guidance on what expenses are allowable. Federal OMB Circulars can be found at: [http://www.whitehouse.gov/omb/circulars\\_index-education/](http://www.whitehouse.gov/omb/circulars_index-education/). No reimbursement will be made for costs not allowed pursuant to the OMB Circular.

The following items may be charged to the budget of a project funded by a sub-grant awarded under this RFP.

- Instructional and other academic support services for students and parents/guardians.
- Activities that encourage and support active parental involvement in the educational process.
- Academic year, summer and weekend activities for students and parents/guardians of students.
- Program administration, planning and evaluation.



- Receipted travel expenditures for students and program staff.

All expenses must supplement and not supplant other programs and funding sources in effect during the project timeline.

## **B. Personal Services and Indirect Costs**

### Personnel

The successful nonprofit organization will appoint a project director to manage the funded project. The project director must have NYGEAR UP as his/her primary responsibility, which means more than 50 percent of his/her duties if he/she is a full-time employee or all of his/her duties if he/she is a half-time employee.

### Holiday and Vacation Leave

Project staff whose salaries are paid in whole or in part by this sub-grant may receive holiday benefits and vacation leave not to exceed that given to staff of equal rank in the organization. The scheduling of holidays and vacations must ensure continuity of project activities.

### Fringe Benefits

The rate for fringe benefits charged under this sub-grant may not exceed the actual rate paid by the organization.

### Indirect Costs

The indirect cost rate is limited to a maximum of 8 percent of the modified total direct costs or the actual indirect cost rate used by the organization, whichever is less.

## **9. Payment**

Nonprofit organizations should refer to Addendum B for the payment schedule.

### New York State Vendor Requirements

Entities doing business with the State of New York must have a Vendor Identification Number in order to receive payment for goods and/or services. For more information on the vendor registration process please visit:  
[http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

## **10. Additional Requirements**

## **A. NYS 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 NYS workers' compensation and NYS 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 of the Successful Bidder to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

### **1. 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:

- a) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- b) Obtain such coverage from an insurance carrier; or
- c) 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 HESC within the designated time frame:

- a) 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 at <http://www.wcb.ny.gov/>
- b) Certificate of Workers' Compensation Insurance:
  - 1) Form C-105.2 (9/17) if coverage is provided by the contractor's insurance carrier, contractor must submit this form to HESC; or
  - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must submit this form to HESC.

- c) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- d) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

## **2. 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:

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

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to HESC within the designated time frame:

- a) 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 <http://www.wcb.ny.gov/>;
- b) Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must submit this form to HESC; or
- c) Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

### **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155**

**MUST NAME:** Higher Education Services Corporation, 99 Washington Ave, Albany NY 12255 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

## **B. NYS Standard Vendor Responsibility Questionnaire:**

The successful Bidder agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as Appendix D (hereinafter the "Questionnaire") and submit it to HESC within the specific time frame stated in this RFP. The Bidder acknowledges that the HESC's execution of the Contract will be contingent upon the HESC's determination that the Bidder is responsible, and that HESC will be relying upon the Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if it is found by the HESC that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, HESC may terminate the Contract by providing ten (10) days written notification to the Contractor. In no case shall such termination of the Contract by the HESC be deemed a breach thereof, nor shall the HESC be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

Please see Appendix D for information regarding the Questionnaire. The Successful Bidder will be required to submit the Questionnaire to HESC within the designated time frame.

Note: There are two (2) versions of the Questionnaire, FOR PROFIT and NOT FOR PROFIT; Please ensure to use the correct Questionnaire.

### **C. Nondiscrimination in Employment in Northern Ireland:**

(Bidder must complete the MacBride Fair Employment Principals document in **Appendix E** and submit with bid)

Non-discrimination in employment in Northern Ireland.

a. For the purposes of this section "MacBride Fair Employment Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which would require employers doing business in Northern Ireland to:

- i. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- ii. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- iii. ban provocative religious or political emblems from the workplace;
- iv. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

- v. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- vi. abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
- vii. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- viii. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- ix. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

b.

- i. With respect to contracts described in subparagraphs (ii) and (iii) of this paragraph, and in accordance with such subparagraphs, state agencies as defined in this article shall not contract for the supply of commodities, services or construction with any contractor who does not agree to stipulate to the following, if there is another contractor who will contract to supply commodities, services or construction of comparable quality at a comparable price or cost: the contractor and any individual or legal entity in which the contractor holds ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (A) have no business operations in Northern Ireland, or (B) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with MacBride Fair Employment Principles, and shall permit independent monitoring of their compliance with such principles.
- ii. In the case of contracts let by a competitive process, whenever the responsive and responsible offerer having the lowest price or best value offer has not agreed to stipulate to the conditions set forth in this subdivision and another responsive and responsible offerer who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest price or best value offer for a contract to supply commodities, services or construction of comparable quality, the contracting entity shall refer such offers to the commissioner of general services, who may determine, in accordance with applicable law and rules, that it is in the best interest of the state that the contract be awarded to other than the lowest price or best value offer.

- iii. In the case of contracts let by other than a competitive process for goods or services involving an expenditure of an amount greater than the discretionary, buying threshold as specified in section one hundred sixty-three of this article, or for construction involving an amount greater than fifteen thousand dollars, the contracting entity shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in this subdivision unless the entity seeking to use the commodities, services or construction determines that the commodities, services or construction are necessary for the entity to perform its functions and there is no other responsible contractor who will supply commodities, services or construction of comparable quality at a comparable price. Such determination shall be made in writing and shall be public documents.
- c. Upon receiving information that a contractor who has made the stipulation required by this subdivision is in violation thereof, the contracting entity shall review such information and offer the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, it 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.
- d. As used in this subdivision, the term "contract" shall not include contracts with governmental and non-profit organizations, contracts awarded pursuant to emergency procurement procedures or contracts, resolutions, indentures, declarations of trust or other instruments authorizing or relating to the authorization, issuance, award, sale or purchase of bonds, certificates of indebtedness, notes or other fiscal obligations, provided that the policies of this subdivision shall be considered when selecting a contractor to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.
- e. The provisions of this subdivision shall not apply to contracts for which the state or other contracting entity receives funds administered by the United States department of transportation, except to the extent Congress has directed that the department of transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Fair Employment Principles, or to the extent that such funds are not otherwise withheld by the department of transportation.

**D. Non-Collusive Bidding Certification:**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition. In the event that the bidder is unable to certify as stated above, the bidder shall provide a signed statement which sets forth in detail the reasons why the bidder is unable to furnish the certificate as required in accordance with State Finance Law Section 139-d(1)(b).

#### **E. Executive Order 177 Certification**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor

organizations and apprenticeship training programs in all instances of discrimination or harassment;

- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Please see Appendix F

#### **F. State Finance Law 139-I Certification**

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassmentworkplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the



signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, HESC may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

Please see Appendix G.

### **G. Minority and Women-Owned Business Enterprises**

Pursuant to Article 15-A of the New York State Executive Law, HESC must ensure that certified Minority/Women-Owned Business Enterprises (M/WBE's) are provided the opportunity for meaningful participation in the performance of contracts awarded by HESC. While personal services, rent and utilities are exempt from M/WBE goals, all other expenses (including non-personal services) in excess of \$25,000 are subject to M/WBE goals.

HESC has established a goal of thirty percent (30%) for business participation by certified Minority-Owned Business Enterprises and/or Women-Owned Business Enterprises on this particular contract with specific goals of fifteen percent (15%) for participation by certified Minority-owned business enterprises and fifteen percent (15%) for certified Women-owned business enterprises. The selected bidder must agree, as a condition of the State contract, to be bound by the provisions of Section 316 of Articles 15-A of the Executive Law. Additional information and resources can be found at the following link: <http://esd.ny.gov/MWBE.html>. A listing of certified minority and/or women owned business enterprises is available through the NYS M/WBE Directory at: <https://ny.newnycontracts.com/?>

Please see Appendix B for additional information.

### **H. Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses**

Article 17-B of the New York 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 New York State's economy. HESC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of HESC contracts.

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

For purposes of this procurement, HESC conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

#### **I. Iran Divestment Act:**

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor is advised that once the list is posted on the OGS website, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should New York State Higher Education Services Corporation receive information that a person is in violation of the above-referenced

certification, New York State Higher Education Services Corporation will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Higher Education Services Corporation shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

New York State Higher Education Services Corporation reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibit entities list after contract award.

## **J. Charities Registration**

Not-for-profit vendors must be registered with the New York State Office of the Attorney General as a charitable organization, and the registration must be up to date at the time of contracting. Vendors must be sure all their documents are up-to-date and comply with the vendor responsibility requirements as outlined below. To determine the status of your charities registration information, contact:

[https://www.charitiesnys.com/RegistrySearch/search\\_charities.jsp](https://www.charitiesnys.com/RegistrySearch/search_charities.jsp)

## **11. State Reserved Rights**

The State of New York reserves the right to:

- Reject any or all proposals received in response to the RFP.
- Withdraw the RFP at any time, at the agency's sole discretion.
- Make an award under the RFP in whole or in part.
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
- 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 RFP.
- Prior to the bid opening, amend the RFP 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 RFP 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 RFP 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 60 days from the bid opening.
- 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.

## **12. HESC's Reserved Rights and Prerogatives**

The following HESC requirements, prerogatives and limitations (in addition to such others that may otherwise be set forth in this RFP) apply to the proposals and/or the contract to be entered into with the successful bidder, as applicable.

- HESC is not obligated for any costs incurred by the bidder in preparing or evaluating its proposal or in the negotiation of a contract.
- The hourly rates and prices quoted by a bidder shall be the same as or lower than those quoted to other corporations, institutions, or governmental agencies for the provision of similar goods and/or services supplied in like quality.
- Any bidder submitting a proposal in response to this request for proposal shall accept the following contract conditions, that relate to consideration of the proposal:
  - o HESC reserves the sole rights of judgment and acceptance of a bidder's written proposal;
  - o The bidder's proposal shall remain in effect for 180 days from the final due date for submission of a proposal. However, a non-successful bidder may withdraw his/her proposal upon notice any time after the selection of the successful bidder, upon written notice to HESC. Bidders whose proposals have been rejected by HESC will be notified of such rejection; and
  - o Payments will be based on invoices containing an itemization of charges. Payments by the State of New York must be made to the prime contractor, in accordance with the prompt-payment legislation of the State of New York.
- All proposals and accompanying documentation become the property of HESC and will not be returned.

- A contract will be negotiated. Such contract will not be effective unless and until it is approved by the NYS Attorney General's Office and the Office of the State Comptroller.
- So far as concerns the obligations of HESC, the award and the contract entered into shall be deemed executable only to the extent of monies available to HESC, and no liability shall be incurred by HESC or the State of New York beyond the monies available for the purposes of the contract.
- If a bidder's proposal includes another provider's product(s) and/or services, the bidder shall be required to assume responsibility for those products and/or services as the prime contractor to HESC.
- The successful bidder shall not assign, transfer, or convey the award, nor shall it assign, transfer, or convey the agreement entered into, any part thereof, or any interest therein without the prior written consent of HESC.
- Any subcontracting shall require the prior express written approval of HESC.
- Purchases made by HESC are not subject to state or local sales taxes, federal excise taxes, or transportation taxes. To satisfy the requirements of the New York sales tax, either the purchase order issued by an agency or institution of New York State for goods and/or services, or the voucher forwarded to authorize payment for such goods and/or services, will be sufficient evidence that the sale by a contractor or vendor was made to HESC, an exempt organization under Section 1116 (a) (1) of the Tax Law. New York State's Federal Excise Tax Exemption Certificate Number is 14740026K.

## **Addendum A**

### **Policy Statement for NYGEAR UP Sub-Grant Funded Projects**

#### **DOCUMENTS WHICH FUNDED PROJECTS ARE REQUIRED TO KEEP ON FILE**

Each component of the project must maintain data and records that are specific to its needs and operations; for example, the counseling component must maintain student files which contain records of each contact, session, recommendation, referral, and follow-up. The tutoring component must maintain student files which contain relevant information about the student's needs, tutoring schedule, plans and activities, and progress reports. The site director must monitor these files on a regular basis to ensure compliance with the NYGEAR UP guidelines. The site director must maintain the following information:

1. Project Administration Records

Project proposal, renewal applications, award notifications, Memoranda of Agreement, approved modifications of the project format, reports, and evaluations.

2. Project Finance Records

Approved and amended budgets, expenditure reports, contracts, vouchers, receipts, travel records, time sheets, and payroll records.

3. Personnel Records (for all paid and volunteer staff and faculty)

Staff rosters, resumes, job descriptions, search procedures and announcements, recommendations, performance evaluation plans, staff schedules, and correspondence regarding all personnel actions.

4. Program Operations Records

- a. Academic year and summer program calendars for each year of operation;
- b. Schedule and location of all project activities;
- c. Attendance records for students, parents/guardians, and staff for all project-sponsored activities;
- d. Cumulative records of tutoring, counseling and any other services provided by the project including, but not limited to, brief descriptions of each service, number of hours for each type of service provided, number of students, and parents/guardians who received each type of service;

- e. Minutes from staff and advisory board meetings; and
- f. Records of all staff development activities.

5. Individual Student Files:

- a. Academic Information – Needs assessment, academic transcripts, and attendance records, report cards and interim progress reports, class schedules, evaluations from teachers, results and interpretations of performance on standardized diagnostic and prescriptive tests, State-mandated tests, Regents examinations; and
- b. Services and Activities – Student contract (if required), signed parental permission slips for field trips, student schedule (including date, time, location, and provider of assigned project activities and services), record of student attendance and participation, record of referrals, and student progress reports that document any changes in academic performance, attendance or other factors that place the student at risk.

The project has the responsibility to ensure that student applications for admissions to the NYGEAR UP grant project and all other data and documents required by HESC are readily available for review. Projects must be able to provide information to HESC about student participation in specific programs and services. Projects must also provide evidence that the services provided have improved or are improving students' potential to complete high school, gain entry into and successfully complete post-secondary education.

## **GRANT SUSPENSION**

Sub-grants may be suspended because of the failure of an institution to carry out the project as approved. In the event the institution does not comply with all requirements of the grant, monies already awarded will be recovered by HESC.

## **Addendum B**

### **PAYMENT SCHEDULE**

Payments of grant funds shall be made based on the following schedule:

1. Payment 1: Reimbursement of Costs plus up to 25% of total annual project budget to be paid upon approval of the first progress report, due Oct 15<sup>th</sup>.
2. Payment 2: Reimbursement of Costs plus up to 25% of the total annual project budget following HESC approval of the and Mid-Year Expenditure Report, due February 24<sup>th</sup>..
3. Payment 3: Reimbursement of Costs plus up to 25% of total project budget following HESC's approval of the second progress report due June 15<sup>th</sup>.
4. Final Payment: The remaining balance of the approved project budget based on final, actual expenditures upon HESC's approval of the Final Expenditure Report due October 24<sup>th</sup>.

HESC shall promptly initiate the payment process upon approval of the required Reports, and shall monitor the payment process to ensure payment is received as soon as practicable. Payment may be delayed due to factors beyond HESC's control. HESC shall inform recipients of any delay.



## **Addendum C**

### **CHARITIES REGISTRATION INFORMATION**

Article 7-a of the Executive Law requires, with certain exemptions<sup>1</sup>, that charitable organizations must register with the Office of the Attorney General (OAG). In addition, the Estates, Powers and Trusts Law (EPTL) § 8-1.4(s) requires that a charitable organization "shall not be qualified to make application for funds or grants or to receive such funds from any department or agency of the state without certifying compliance with" all applicable registration and filing requirements.

Accordingly, organizations must provide charities registration information for the applicable charitable organization.

#### **Organizations must submit one of the following:**

1. The organization's charitable registration number and written documentation from OAG that the charitable organization is currently up-to-date with its Charities Registration; or
2. A statement from the charitable organization that the organization is exempt pursuant to one of the categories indicated on OAG's Request for Registration Exemption (Schedule E). The statement must identify the specific category under which the charitable organization is exempt.

To obtain written documentation of your organization's charities registration status, or if you have questions regarding the statutory requirements for registration, contact:

Office of the Attorney General  
Bureau of Charities Registration  
120 Broadway  
New York, NY 10271-0332  
(212) 416-8401

Email: [charities.bureau@ag.ny.gov](mailto:charities.bureau@ag.ny.gov)

Web address: <http://www.charitiesnys.com/home.jsp>

<sup>1</sup>Section 172-a of the Executive Law and Section 8-1.4 of the EPTL enumerate certain entities which are exempt from the registration requirements. These entities are listed on OAG's Request for Registration Exemption (Schedule E).

## **Addendum D**

### **PREQUALIFICATION REQUIREMENT**

New York State has instituted key reform initiatives to the grant contract process which require not-for-profits to register in the Grants Gateway and complete the Vendor Prequalification process in order for applications to be evaluated. Information on these initiatives can be found on the Grants Management Website (<https://grantsmanagement.ny.gov/get-prequalified>).

All applicants must be Prequalified in the Grants Gateway at the time and date that the application is due. Applications received from not-for-profit Applicants that have not registered and are not Prequalified in the Grants Gateway by the application due date and time listed at the beginning of this document cannot be evaluated. If you are not Prequalified at that time and date, your application will not be considered. Such applications will be disqualified from further consideration.

The Grants Management website details the requirements and an online tutorial is available to further explain the process. Follow the instructions under the “Get Started” menu to register your organization and get pre-qualified. **Contact the Grants Management Team for additional assistance by Email:** [GrantsGateway@its.ny.gov](mailto:GrantsGateway@its.ny.gov)

Once you are Prequalified, please check the status of your document vault on a regular basis to ensure that none of your documents expire prior to the application due date. **Expired documents will lead to the loss of Prequalification status.**

**Vendors are strongly encouraged to begin the process as soon as possible in order to participate in this opportunity.**

**CHECKLIST FOR SUB-GRANT APPLICANTS  
NYGEAR UP Year 7**

<b>NYGEAR UP Year 7: College Success</b>
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- ☐ **Project Abstract (no more than 1 page, double-spaced)**
  - State the geographical region and number of students to be served
  - Describe the proposed project activities and intended outcomes
- ☐ **Project Narrative (no more than 12 pages, double-spaced)**
  - Project Description
  - Selection Criteria
- ☐ **Services Chart – Chart 1 (does not figure into the twelve-page limitation)**
- ☐ **Cover Sheet – Form A**
  - Project Lead/Fiscal Agent
- ☐ **Program Assurance – Form B**
- ☐ **Project Budget Summary – on Grants Gateway**
  - Must include a 15 month budget and a budget narrative detailing expenses
- ☐ **Resumes of Key Project Personnel**
- ☐ **NYS Workers' Compensation and Disability Benefits**
- ☐ **Minority and Women Owned Business Enterprise Forms (Appendix B)**
- ☐ **Equal Employment Opportunity Forms (Appendix C)**
- ☐ **Vendor Responsibility Questionnaire (Appendix D)**
- ☐ **MacBride Principles (Appendix E)**
- ☐ **Executive Order 177 Certification (Appendix F)**
- ☐ **State Finance Law 139-I Certification (Appendix G)**
- ☐ **Charities Registration Information**

## CHART 1 – Services Chart

Please use the attached pages to fill out the Services Chart. The first chart below is used for the services to be provided with \$200 in federal funding per student. Each additional chart should be used to demonstrate additional or modified services should additional funding per student be available.

Applicants should clarify if the service is new or an enhancement to a previous service.

Base Services Chart (\$200 per student)

Areas of service	Activities	Description	Provider	#of students
Transition Activities: Community Colleges				
Transition Activities: 4 Year colleges/universities				
Navigation: Community Colleges				
Navigation: 4 Year colleges/universities				
Integrations and Connections: Community Colleges				
Integrations and Connections: 4 Year colleges/universities				
Academic Support: Community Colleges				
Academic Support: 4 Year colleges/ universities				
Financial Support: Community Colleges				
Financial Support: 4 Year colleges/ universities				
Academic Advising: Community Colleges				
Academic Advising: 4 Year colleges/ universities				

Please list additional services for an additional \$20 per student (\$220 overall)

Areas of service	Activities	Description	Provider	#of students
Transition Activities: Community Colleges				
Transition Activities: 4 Year colleges/universities				
Navigation: Community Colleges				
Navigation: 4 Year colleges/universities				
Integrations and Connections: Community Colleges				
Integrations and Connections: 4 Year colleges/universities				
Academic Support: Community Colleges				
Academic Support: 4 Year colleges/ universities				
Financial Support: Community Colleges				
Financial Support: 4 Year colleges/ universities				
Academic Advising: Community Colleges				
Academic Advising: 4 Year colleges/ universities				

Please list additional services for an additional \$20 per student (\$240 overall)

Areas of service	Activities	Description	Provider	#of students
Transition Activities: Community Colleges				
Transition Activities: 4 Year colleges/universities				
Navigation: Community Colleges				
Navigation: 4 Year colleges/universities				
Integrations and Connections: Community Colleges				
Integrations and Connections: 4 Year colleges/universities				
Academic Support: Community Colleges				
Academic Support: 4 Year colleges/ universities				
Financial Support: Community Colleges				
Financial Support: 4 Year colleges/ universities				
Academic Advising: Community Colleges				
Academic Advising: 4 Year colleges/ universities				

Please list additional services for an additional \$20 per student (\$260 overall)

Areas of service	Activities	Description	Provider	#of students
Transition Activities: Community Colleges				
Transition Activities: 4 Year colleges/universities				
Navigation: Community Colleges				
Navigation: 4 Year colleges/universities				
Integrations and Connections: Community Colleges				
Integrations and Connections: 4 Year colleges/universities				
Academic Support: Community Colleges				
Academic Support: 4 Year colleges/ universities				
Financial Support: Community Colleges				
Financial Support: 4 Year colleges/ universities				
Academic Advising: Community Colleges				
Academic Advising: 4 Year colleges/ universities				



Please list additional services for an additional \$20 per student (\$280 overall)

Areas of service	Activities	Description	Provider	#of students
Transition Activities: Community Colleges				
Transition Activities: 4 Year colleges/universities				
Navigation: Community Colleges				
Navigation: 4 Year colleges/universities				
Integrations and Connections: Community Colleges				
Integrations and Connections: 4 Year colleges/universities				
Academic Support: Community Colleges				
Academic Support: 4 Year colleges/ universities				
Financial Support: Community Colleges				
Financial Support: 4 Year colleges/ universities				
Academic Advising: Community Colleges				
Academic Advising: 4 Year colleges/ universities				

Please list additional services for an additional \$20 per student (\$300 overall)

Areas of service	Activities	Description	Provider	#of students
Transition Activities: Community Colleges				
Transition Activities: 4 Year colleges/universities				
Navigation: Community Colleges				
Navigation: 4 Year colleges/universities				
Integrations and Connections: Community Colleges				
Integrations and Connections: 4 Year colleges/universities				
Academic Support: Community Colleges				
Academic Support: 4 Year colleges/ universities				
Financial Support: Community Colleges				
Financial Support: 4 Year colleges/ universities				
Academic Advising: Community Colleges				
Academic Advising: 4 Year colleges/ universities				

## STATE OF NEW YORK MASTER CONTRACT FOR GRANTS

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

### WITNESSETH:

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

## STANDARD TERMS AND CONDITIONS

### I. GENERAL PROVISIONS

**A. Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

**B. Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master 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, and filed with, the AG and OSC.

**Budget Changes:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

### **C. Order of Precedence:**

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2<sup>1</sup>, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2<sup>2</sup>, Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

**D. Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**E. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

**F. Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the

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<sup>1</sup> To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

<sup>2</sup> To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

**G. Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**H. Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

**I. Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

**J. Notice:**

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
  - a) by 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.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. 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 e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior 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 the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

**K. 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. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

**L. 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 the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master 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 OSC.

**M. Indemnification:** The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

**N. Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master 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 shall be considered to be 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 State Agency and with the concurrence of OSC, where the original contract was subject to OSC'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 the merged 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 the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**O. Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term “litigation” shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term “regulatory action” shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

**P. No Arbitration:** Disputes involving the Master 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.

**Q. Secular Purpose:** Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

**R. Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

**S. Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall 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 it be denied contracts which it would otherwise obtain.<sup>3</sup>

**T. Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

**U. Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor’s behalf.

**V. Federally Funded Grants and Requirements Mandated by Federal Laws:** All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent

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<sup>3</sup>As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

that the Master Contract is funded, in whole or part, with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

## **II. TERM, TERMINATION AND SUSPENSION**

**A. Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

**B. Renewal:**

1. **General Renewal:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a “Simplified Renewal Contract”). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. **Renewal Notice to Not-for-Profit Contractors:**

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State’s intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State (“Unusual Circumstances”), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, “Unusual Circumstances” shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State’s intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.



## **C. Termination:**

### **1. *Grounds:***

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

### **2. *Notice of Termination:***

- a) Service of notice: Written notice of termination shall be sent by:
  - (i) personal messenger service; or

(ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

### ***3. Effect of Notice and Termination on State's Payment Obligations:***

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

### ***4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:***

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

**D. Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time

as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

### **III. PAYMENT AND REPORTING**

#### **A. Terms and Conditions:**

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, 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.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

## **B. Advance Payment and Recoupment:**

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

## **C. Claims for Reimbursement:**

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:
  - a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:<sup>4</sup> Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:<sup>5</sup> Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:<sup>6</sup> Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:<sup>7</sup> The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service

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<sup>4</sup> A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

<sup>5</sup> Fee for Service is a rate established by the Contractor for a service or services rendered.

<sup>6</sup> Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

<sup>7</sup> Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

reports shall be used to determine funding levels appropriate to the next annual contract period.

h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:<sup>8</sup> Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

#### **D. Identifying Information and Privacy Notification:**

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<sup>8</sup> Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, 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 Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. 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 principle 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. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This 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.

#### **E. Refunds:**

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

**F. Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

#### **G. Program and Fiscal Reporting Requirements:**

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.

(ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

(iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

(iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).

(v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:



- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.
- (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

#### **H. Notification of Significant Occurrences:**

- 1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
- 2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

### **IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**

#### **A. Contractor as an Independent Contractor/Employees:**

- 1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor

agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

#### **B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

**C. Use Of Material, Equipment, Or Personnel:**

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

**D. Property:**

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.

c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

- e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
  - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.
  - g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.
2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:
    - a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
    - b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
  3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).
  4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
  5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

## **E. Records and Audits:**

1. **General:**
  - a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
  - b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry

(e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an 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.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law 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 Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

## **2. *Cost Allocation:***

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

- b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.
3. **Federal Funds:** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

**F. Confidentiality:** The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must 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).

**G. Publicity:**

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.
2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:
  - a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and
  - b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.
3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or  
(ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first  
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submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

**H. Web-Based Applications-Accessibility:** Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

**I. Non-Discrimination Requirements:** 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. 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 the Master Contract shall be performed within the State of New York, the 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 the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the 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 the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

**J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State 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 State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State 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 Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women- owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor 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;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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.

**K. 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.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:

- a) The Contractor has made reasonable efforts to encourage the participation of 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;
- c) The Contractor agrees to make reasonable efforts to provide notification to 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 the Master Contract and agrees to cooperate with the State in these efforts.

**L. Workers' Compensation Benefits:**

- 1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

**M. Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

- 1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
- 2. any debts owed for UI contributions, interest, and/or penalties;

3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

#### **N. Vendor Responsibility:**

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:
  - a) to require updates or clarifications to the Questionnaire upon written request;
  - b) to inquire about information included in or required information omitted from the Questionnaire;
  - c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
  - d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
  - e) to require the Contractor 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. By signing the Master Contract, the Contractor agrees

to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall 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 State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

- a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
- b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non- responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

**O. Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

**P. Consultant Disclosure Law:**<sup>9</sup> 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.

**Q. 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

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<sup>9</sup> Not applicable to not-for-profit entities.

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 condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

## **APPENDIX B**

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

#### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145, the Higher Education Services Corporation (HESC) 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 HESC 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 HESC establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

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

For purposes of this solicitation, HESC hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises ("MBE") participation and 15% for New York State certified women-owned business enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that HESC may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how HESC 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 Contract, such finding constitutes a breach of Contract and HESC 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, a bidder on the Contract ("Bidder") agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof to HESC as follows:

Bidders are required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan 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 HESC.

HESC will review the submitted MWBE Utilization Plan and advise the Bidder of HESC's acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to HESC, 99 Washington Ave, Albany, NY 12255, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by HESC to be inadequate, HESC 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. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

HESC 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 HESC determines that the Bidder 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 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 HESC but must be made no later than prior to the submission of a request for final payment on the Contract.

Pursuant to 5 NYCRR 142.5 within ten days of the contract execution, HESC will publish the selected vendor's utilization plan or waiver on the HESC website. Any modifications to the utilization plan or waivers will be posted within 10 days of acceptance of said modifications or waivers.

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report, attached hereto, to HESC by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**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.**

# MWBE UTILIZATION PLAN

☐ Initial Plan    ☐ Revised plan    Contract/Solicitation # \_\_\_\_\_

**INSTRUCTIONS:** This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS Certified Minority and Women-owned Business Enterprises (MWBE) under the contract. By submission of this Plan, the Bidder/Contractor commits to good faith efforts in the utilization of MWBE subcontractors and suppliers as required by the MBE/WBE goals contained in the Solicitation/Contract. Making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION		MWBE Goals In Contract	
Bidder/Contractor Name:	NYS Vendor ID:	MBE	%
Bidder/Contractor Address (Street, City, State and Zip Code):		WBE	%
Bidder/Contractor Telephone Number:		Contract Work Location/Region:	
Contract Description/Title:			

CONTRACTOR INFORMATION			
Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
Email Address:			

## IF UNABLE TO MEET THE MBE AND WBE GOALS SET FORTH IN THE SOLICITATION/CONTRACT BIDDER/CONTRACTOR MUST SUBMIT A REQUEST FOR WAIVER

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE    WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____ %			

MWBE Subcontractor/Supplier Name:	MWBE Certification: <input type="checkbox"/> MBE    WBE (If firm is dual certified please select one only)		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:	
Address:	Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____ %			

## FOR HESC MWBE USE ONLY

HESC MWBE Authorized Signature:		Accepted	Accepted as Noted	Notice of Deficiency
NAME (Please Print):	MBE %/\$ _____	WBE %/\$ _____	e Received:	e Processed:
Comments:				

**NYS CERTIFIED MWBE SUBCONTRACTOR/SUPPLIER INFORMATION:** The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/ VendorSearchPublic.asp?TN=ny&XID=2528>

**Note:** All listed Subcontractors/Suppliers may be contacted and verified by HESC.

# ADDITIONAL SHEET

<b>Bidder/Contractor Name:</b>		<b>Contract/Solicitation #</b> _____
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<b>MWBE Subcontractor/Supplier Name:</b>	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address: _____ Email Address: _____		
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%		

  

<b>MWBE Subcontractor/Supplier Name:</b>	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address: _____ Email Address: _____		
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%		

  

<b>MWBE Subcontractor/Supplier Name:</b>	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address: _____ Email Address: _____		
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%		

  

<b>MWBE Subcontractor/Supplier Name:</b>	MWBE Certification: <input type="checkbox"/> MBE <input type="checkbox"/> WBE (If firm is dual certified please select one only)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address: _____ Email Address: _____		
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): \$ _____ or _____%		



## Instructions for Submitting the MWBE Utilization Plan for Commodities and Services

1. Where required in the Solicitation and/or Contract, submit the completed Plan to the address below:

Higher Education Services Corporation  
ATTN: Finance  
99 Washington Avenue  
15<sup>th</sup> Floor  
Albany, NY 12242  
Phone: 518-473-8824

Failure to submit the Plan or obtain a waiver could result in non-award of the Contract.

- **The Plan must contain a detailed description of the supplies and/or services to be provided by each MWBE subcontractor/supplier.**
- **Complete all items on the form with the exception of the sections marked “For HESC MWBE Use Only.”**
- **List New York State certified MBE/WBE firms only.** Only MBE/WBE firms certified by Empire State Development’s Division of Minority and Women’s Business Development can be used to meet MWBE Goals. Non-certified firms, or firms that are pending certification, cannot be used toward goal attainment until they are NYS certified.
- **All listed subcontractors/suppliers may be contacted and verified by HESC.**  
Bidders/Contractors may attach additional sheets if necessary.

2. To identify New York State certified MWBEs, access Empire State Development’s MWBE directory at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp> For additional information regarding this directory, please call The Empire State Development Corporation at (212) 803-2414 (Downstate) or (518) 292-5250 (Upstate). Additionally, you may contact the HESC MWBE office designated contacts at (518) 486-9284 which will, upon request, provide you with a listing of certified MBE/WBE firms.
3. Pursuant to 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Actions that do not constitute good faith efforts by Contractors to solicit NYS Certified MWBEs to participate in the Contract include, but are not limited to, the following:
  - (1) Self-performance of tasks on a project.
  - (2) Not engaging an MWBE because it did not submit the lowest quote for work or materials.
4. HESC will review the submitted Plan and advise Bidder/Contractor of HESC’s acceptance or deficiency within twenty (20) days of its receipt. Bidder/Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to HESC a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by HESC to be inadequate, HESC shall notify Bidder/Contractor and direct Bidder/Contractor to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on the Request for Waiver of MWBE Participation Goal form. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(must be submitted before requesting final payment on the contract)

Contractor's Name:		Federal Identification Number:	
Street Address:		E-Mail Address:	
City, State, Zip Code:		Telephone: (       )       -	
Contract Number:	MWBE CONTRACT GOALS		
	MBE %		WBE %

MBE Waiver Total <input type="checkbox"/>	Partial	If partial waiver, please enter the revised MBE percentage:	
WBE Waiver <input type="checkbox"/> Total	Partial	If partial waiver, please enter the revised WBE percentage:	

[illegible]

Provide the following documentation as evidence of your good faith efforts to meet the MWBE goals set forth in the contract and in support of your waiver application:

- ☐ **Attachment A.** List of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- ☐ **Attachment B.** List of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- ☐ **Attachment C.** Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- ☐ **Attachment D.** Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract.
- ☐ **Attachment E.** Identify dates of any pre-bid, pre-award or other meetings attended by contractor, if any, scheduled by HESC with certified MWBEs whom HESC determined were capable of fulfilling the MWBE goals set in the contract
- ☐ **Attachment F.** Other information deemed relevant to the request.

<p><b>By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.</b></p>	
<p>Prepared By: (Signature)</p>	<p>Date:</p>
<p>Name and Title of Preparer (Print or Type)</p>	

**For HESC Use Only**

Reviewed By:

Date:

Decision:

Full ☐ MBE waiver granted

Partial ☐ MBE waiver granted; revised MBE goal: \_\_\_\_\_ %

MBE ☐ waiver denied

Full ☐ WBE waiver granted

Partial ☐ WBE waiver granted; revised WBE goal: \_\_\_\_\_ %

WBE waiver denied

Approved By:

Date:

Date Notice of Determination Sent:

Comments

## QUARTERLY MWBE CONTRACTOR COMPLIANCE REPORT

**INSTRUCTIONS:** Beginning THIRTY (30) days after a contract is awarded,

Quarterly MWBE Contractor Compliance Reports are due on Jan. 10, Apr. 10, Jul. 10, and Oct. 10 to report MWBE utilization for the preceding quarter.

**Reporting periods:** (check applicable period)

☐ Jan. 1 - Mar. 31

☐ Jul. 1 – Sept. 30

☐ Apr. 1 - Jan. 30

☐ Oct. 1 – Dec. 31

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

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

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

Federal ID \_\_\_\_\_ No: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Contract #(s): \_\_\_\_\_

AS EVIDENCE OF THE PROGRESS MADE TOWARD ACHIEVEMENT OF THE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) GOAL(S), CONTRACTOR IS REQUIRED TO COMPLETE AND SUBMIT THE FOLLOWING FOR EACH **NYS-CERTIFIED** MWBE (please use additional sheets if necessary):

NAME: _____ FED. ID. No: _____ MBE <input type="checkbox"/> Direct subcontracting <input type="checkbox"/> WBE <input type="checkbox"/> Indirect/Tier 2 Spend <input type="checkbox"/>	Actual value of payments made to the NYS certified MWBE <b><u>during the reporting period:</u></b> \$ _____  Actual <b><u>total</u></b> amount of payments made <b><u>during</u></b> <b><u>the life of the contract:</u></b> \$ _____
NAME: _____ FED. ID. No: _____ MBE <input type="checkbox"/> Direct subcontracting <input type="checkbox"/> WBE <input type="checkbox"/> Indirect/Tier 2 Spend <input type="checkbox"/>	Actual value of payments made to the NYS certified MWBE <b><u>during the reporting period:</u></b> \$ _____  Actual <b><u>total</u></b> amount of payments made <b><u>during</u></b> <b><u>the life of the contract:</u></b> \$ _____
NAME: _____ FED. ID. No: _____ MBE <input type="checkbox"/> Direct subcontracting <input type="checkbox"/> WBE <input type="checkbox"/> Indirect/Tier 2 Spend <input type="checkbox"/>	Actual value of payments made to the NYS certified MWBE <b><u>during the reporting period:</u></b> \$ _____  Actual <b><u>total</u></b> amount of payments made <b><u>during</u></b> <b><u>the life of the contract:</u></b> \$ _____

PREPARED BY (Signature): \_\_\_\_\_ DATE: \_\_\_\_\_

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 142. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NON-COMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

### NAME AND TITLE

OF PREPARER: \_\_\_\_\_

(Print or Type)

TELEPHONE NO.: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

### FOR AUTHORIZED USE ONLY

REVIEWED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

## APPENDIX C

### CONTRACTOR REQUIREMENTS FOR EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

#### 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 – Standard Clauses for All New York State Contracts 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, 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 the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit the Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, contained herein, to the Higher Education Services Corporation (HESC), with their bid or proposal.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal the Equal Employment Opportunity Staffing Plan, contained herein, identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting HESC.

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.**

## EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

Submit with Bid or Proposal (General instructions follow)

<b>Solicitation No.:</b>	<b>Reporting Entity: (check appropriate line)</b> <input type="checkbox"/> <b>Contractor</b> <input type="checkbox"/> <b>Subcontractor</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Contractor's work force to be utilized on this contract  <input type="checkbox"/> Contractor's total work force  <input type="checkbox"/> Subcontractor's work force to be utilized on this contract  <input type="checkbox"/> Subcontractor's total work force
<b>Contractor/Subcontractor's Name:</b>  <b>Contractor/Subcontractor's Address:</b>		
<b>FEIN:</b>		

Enter the total number of employees for each classification:

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)		As (M) ian (F)		Native American (M) (F)		Veteran (M) (F)		Disabled (M) (F)	
Exec/Senior level Officials & Managers																	
First/Mid-level Officials & Managers																	
Professionals																	
Technicians																	
Administrative Support Workers																	
Craft Workers																	
Operatives																	
Laborers and Helpers																	
Service Workers																	
Totals																	

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	
<b>DATE:</b>	

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

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

**M/WBE AND EEO POLICY STATEMENT**

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

**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: \_\_\_\_\_

\_\_\_\_\_ 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

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

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

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

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
NOT-FOR-PROFIT BUSINESS ENTITY**

<b>BUSINESS ENTITY INFORMATION</b>				
Legal Business Name			EIN	
Address of the Principal Place of Business/Executive Office			New York State Vendor Identification Number	
			Telephone ext.	Fax
Email		Website		
Authorized Contact for this Questionnaire				
Name:			Telephone ext.	Fax
Title			Email	
List any other DBA, Trade Name, Other Identity, or EIN used in the last five (5) years, the state or county where filed, and the status (active or inactive): (if applicable)				
Type	Name	EIN	State or County where filed	Status

<b>I. BUSINESS CHARACTERISTICS</b>				
1.0 Business Entity Type – Please check appropriate box and provide additional information:				
a) <input type="checkbox"/> Corporation (including PC)	Date of Incorporation			
b) <input type="checkbox"/> Limited Liability Co. (LLC or PLLC)	Date Organized			
c) <input type="checkbox"/> Limited Liability Partnership	Date of Registration			
d) <input type="checkbox"/> Limited Partnership	Date Established			
e) <input type="checkbox"/> General Partnership	Date Established	County (if formed in NYS)		
f) <input type="checkbox"/> Sole Proprietor	How many years in business?			
g) <input type="checkbox"/> Other	Date Established			
If Other, explain:				
1.1 Was the Business Entity formed in New York State?				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If “No,” indicate jurisdiction where Business Entity was formed:				
United States	State		_____	
Other <input type="checkbox"/>	Country		_____	
1.2 Is the Business Entity currently registered to do business in New York State with the Department of State?				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Note: Select ‘not required’ if the Business Entity is a General Partnership.				Not required
If “No,” explain why the Business Entity is not required to be registered in New York State.				
1.3 Is the Business Entity registered as a Sales Tax vendor with the New York State Department of Tax and Finance?				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Explain and provide detail, such as ‘not required,’ ‘application in process,’ or other reasons for not being registered.				

**NEW YORK STATE**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**NOT-FOR-PROFIT BUSINESS ENTITY**

**I. BUSINESS CHARACTERISTICS**

1.4 Is the Business Entity a Joint Venture? <i>Note: If the submitting Business Entity is a Joint Venture, also submit a separate questionnaire for the Business Entity comprising the Joint Venture.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
1.5 Does the Business Entity have an active Charities Registration Number?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Enter Number: _____		
If exempt, explain: _____		
If an application is pending, enter date of application: _____ Attach a copy of the application		
1.6 Does the Business Entity have a DUNS Number?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Enter DUNS Number _____		
1.7 Is the Business Entity's principal place of business/Executive Office in New York State?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If "No," does the Business Entity maintain an office in New York State?	Yes	No
Provide the address and telephone number for one New York Office. <div style="border: 1px solid black; height: 30px; margin-top: 5px;"></div>		
1.8 Is the Business Entity's principal place of business/executive office:		
Owned <input checked="" type="checkbox"/>		
Rented <input type="checkbox"/>	Landlord Name (if 'rented') _____	
Other <input type="checkbox"/>	Provide explanation (if 'other') _____	
Is space shared with another Business Entity?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Name of other Business Entity _____		
Address _____		
City _____	State _____	Zip Code _____ Country _____
1.9 Is the Business Entity a Minority Community Based Organization (MCBO)?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
1.10 Identify current Key Employees of the Business Entity. Attach additional pages if necessary.		
Name	Title	
Name	Title	
Name	Title	
Name	Title	
1.11 Identify current Trustees/Board Members of the Business Entity. Attach additional pages if necessary.		
Name	Title	
Name	Title	
Name	Title	
Name	Title	

**II. AFFILIATES AND JOINT VENTURE RELATIONSHIPS**

2.0 Does the Business Entity have any Affiliates? Attach additional pages if necessary (If no, proceed to Section III)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Explain relationship with the Affiliate and indicate percent ownership, if applicable (enter N/A, if not applicable): <div style="border: 1px solid black; height: 30px; margin-top: 5px;"></div>		
Are there any Business Entity Officials or Principal Owners that the Business Entity has in common with this Affiliate?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Individual's Name	Position/Title with Affiliate	

**NEW YORK STATE  
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### III. CONTRACT HISTORY

3.0 Has the Business Entity held any contracts with New York State government entities in the last three (3) years? If "Yes," attach a list including the Contract Number, Agency Name, Contract Amount, Contract Start Date, Contract End Date, and the Contract Description.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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### IV. INTEGRITY – CONTRACT BIDDING

*Within the past five (5) years, has the Business Entity or any Affiliate*

4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract or had a bid rejected based upon a finding of non-responsibility by a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Agreed to a voluntary exclusion from bidding/contracting with a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each "Yes" answer, provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

### V. INTEGRITY – CONTRACT AWARD

*Within the past five (5) years, has the Business Entity or any Affiliate*

5.0 Been suspended, cancelled or terminated for cause on any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each "Yes" answer, provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

### VI. CERTIFICATIONS/LICENSES

6.0 Within the past five (5) years, has the Business Entity or any Affiliate had a revocation, suspension or disbarment of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

### VII. LEGAL PROCEEDINGS

*Within the past five (5) years, has the Business Entity or any Affiliate*

7.0 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of an indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had any New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
NOT-FOR-PROFIT BUSINESS ENTITY**

**VII. LEGAL PROCEEDINGS**

*Within the past five (5) years, has the Business Entity or any Affiliate*

7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws?	Yes	No
7.5 Other than the previously disclosed: (i) Been subject to the imposition of a fine or penalty in excess of \$1,000, imposed by any government entity as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination; or (ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity?	Yes	No

For each "Yes" answer, provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**VIII. LEADERSHIP INTEGRITY**

*Note: If the Business Entity is a Joint Venture, answer 'N/A- Not Applicable' to questions 8.0 through 8.4.*

*Within the past five (5) years, has any individual previously identified, any other Key Employees not previously identified or any individual having the authority to sign execute or approve bids, proposals, contracts or supporting documentation with New York State been subject to*

8.0 A sanction imposed relative to any business or professional permit and/or license?	Yes N/A	No
8.1 An investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct?	Yes N/A	No
8.2 An indictment, grant of immunity, judgment, or conviction of any business related conduct constituting a crime including, but not limited to, fraud, extortion, bribery, racketeering, price fixing, bid collusion or any crime related to truthfulness?	Yes N/A	No
8.3 Misdemeanor or felony charge, indictment or conviction for: (i) any business-related activity including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price fixing or collusive bidding; or (ii) any crime, whether or not business related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny?	Yes N/A	No
8.4 A debarment from any government contracting process?	Yes N/A	No

For each "Yes" answer, provide an explanation of the issue(s), the individual involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**NEW YORK STATE**  
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<b>IX. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>		
<b>9.0</b> Within the past five (5) years, has the Business Entity or any Affiliates received any formal unsatisfactory performance assessment(s) from any government entity on any contract?	Yes	No
If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.		
<b>9.1</b> Within the past five (5) years, has the Business Entity or any Affiliates had any liquidated damages assessed over \$25,000?	Yes	No
If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.		
<b>9.2</b> Within the past five (5) years, has the Business Entity or any Affiliates had any liens, claims or judgments over \$15,000 filed against the Business Entity which remain undischarged or were unsatisfied for more than 120 days?	Yes	No
If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the lien holder or claimant's name(s), the amount of the lien(s), claim(s), or judgments(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.		
<b>9.3</b> Within the last seven (7) years, has the Business Entity or any Affiliate initiated or been the subject of any bankruptcy proceedings, whether or not closed, regardless of the date of filing, or is any bankruptcy proceeding pending?	Yes	No
If "Yes," provide the Business Entity involved, the relationship to the submitting Business Entity, the Bankruptcy Chapter Number, the Court name, the Docket Number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.		
<b>9.4</b> During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any tax returns required by federal, state or local tax laws?	Yes	No
If "Yes," provide the Business Entity involved, the relationship to the submitting Business Entity, the taxing jurisdiction (federal, state or other), the type of tax, the liability year(s), the Tax Liability amount the Business Entity failed to file/pay, and the current status of the Tax Liability. Provide answer below or attach additional sheets with numbered responses.		
<b>9.5</b> During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any New York State unemployment insurance returns?	Yes	No
If "Yes," provide the Business Entity involved, the relationship to the submitting Business Entity, the year(s) the Business Entity failed to file/pay the insurance, explain the situation, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.		
<b>9.6</b> During the past three (3) years, has the Business Entity or any Affiliates had any government audits? If "Yes," did any audit reveal material weaknesses in the Business Entity's system of internal controls If "Yes," did any audit reveal non-compliance with contractual agreements or any material disallowance (if not previously disclosed in 9.6)?	Yes <input type="checkbox"/> Yes Yes	No <input type="checkbox"/> No <input type="checkbox"/> No
For each "Yes" answer, provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.		

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
NOT-FOR-PROFIT BUSINESS ENTITY**

**X. FREEDOM OF INFORMATION LAW (FOIL)**

10.0 Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.

☐ Yes      ☐ No

Indicate the question number(s) and explain the basis for your claim.

**NEW YORK STATE  
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**Certification**

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

- is knowledgeable about the submitting Business Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

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



**MacBride Fair Employment Principles—Mandatory (Must submit  
with bid)**

1: Does your company or any individual or legal entity in which your company holds a 10% or greater ownership interest or any individual or legal entity which holds a 10% or greater ownership interest in your company have business operations in Northern Ireland?

\_\_\_\_\_YES \_\_\_\_\_NO

2: If you answered YES to question 1, will/do you take lawful steps in good faith to conduct any business operations that you have 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 will you permit independent monitoring of their compliance with such Principles?

\_\_\_\_\_YES \_\_\_\_\_NO \_\_\_\_\_N/A

\_\_\_\_\_

\_\_\_\_\_Date:\_\_\_\_\_

(Signature of Authorized Official)

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Title)

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

## **Appendix F**

### ***EO 177 Certification***

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

**By signing, you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Appendix and that all information provided is complete, true and accurate.**

Legal Business Name of Company:	
D/B/A - Doing Business As (if applicable):	
Signature:	Printed or Typed Name:
Title:	Date:

Appendix G

**State Finance Law § 139-I Certification**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

If the bidder cannot make the foregoing certification, such bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the bidder cannot make the certification.

**By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Certification document and that all information provided is complete, true and accurate.**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

D/B/A – Doing Business As (if applicable): \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_