

**Request for Proposals**

**BUFFALO WATERFRONT – CENTRAL WHARF TO MAIN ST**

**Buffalo, New York**

**CENTRAL WHARF EXTENSION**

**ARCHITECTURAL & ENGINEERING SERVICES**

Solicitation Issue Date: August 22, 2011

Proposal Due Date: September 12, 2011, 2:00pm EST

Issued by:

**Erie Canal Harbor Development Corporation**

A subsidiary of New York State Urban Development Corporation d/b/a

Empire State Development Corporation

95 Perry Street – Suite 500

Buffalo, NY 14203-3030

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## **I. INVITATION TO SUBMIT PROPOSALS**

The Erie Canal Harbor Development Corporation (ECHDC), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation (ESDC), is seeking to retain a professional Architectural Engineering firms and/or teams with specific experience in architecture and engineering, to provide services related to Buffalo's Inner Harbor, a proposed mixed-use waterfront project located in Downtown Buffalo. The consultant will work closely with the ECHDC for the Project to complete and implement the design of the Central Wharf: Boardwalk Extension along with other site amenities such as permanent restrooms with shower facilities, extension of docks, playgrounds, etc. The A/E team will provide services beginning with the Schematic Design Phase, continuing through completion of construction. The project shall include Architectural and Engineering Services (Mechanical, Electrical, Plumbing, Structural, Marine and Civil); Lighting; Landscaping; Sustainability; Cost Estimating; ADA Compliance; and Construction Administration.

## **II. PROJECT BACKGROUND**

### **Erie Canal Harbor Master Plan (ECHMP)**

In October 2000, then Governor George Pataki announced that the State of New York would provide additional funds to the Erie Canal Harbor Project to address reconfiguration of the Hamburg Drain and to allow for a re-watering of the Commercial Slip along its historic right-of-way. Following discussions through June 2002, Empire State Development Corporation (ESDC), the City of Buffalo, Erie County, and the Buffalo Sewer Authority entered into a Memorandum of Understanding ("MOU") that allowed a portion of the project to continue, (i.e., known as "Phase I"; limited to the new Naval Basin and other park improvements) while planning for modifications was undertaken.

To facilitate the agreements in the MOU, ESDC undertook a subsequent public planning process and new federal/state SEIS with agencies and local stakeholders. This led to the development of the 2004 Erie Canal Harbor Master Plan ("ECHMP"), from which the proposed action for a new Supplemental Environmental Impact Statement (SEIS) was an outgrowth. The document included goals and objectives were outlined one of which was to construct and establish continuous esplanade in order to enhance maritime access to the land and to enhance visual access to the water. In the 2004 Master plan in which the extension of the lower dock access was illustrated as the Preferred Master Plan (See exhibit A).

This again was reaffirmed in Re-Evaluation Report for Project Refinements for the Erie Canal Harbor Project dated December 2006 (see exhibit B). This report eliminated the southern portion of the Project including the South Basin. This Project is intended to enhance and facilitate public transit access to the waters edge, and to encourage intermodal opportunities between water bourne, transit, pedestrian, vehicular and bicycle route systems. It will also reconfigure the public plaza along the water's edge to better interpret the former location of Buffalo's Central Wharf. In 2009 the Erie Canal Harbor

Development Corporation again addressed this in their General Project Plan and FGEIS which was adopted in 2009 for Canal Side.

- **Central Wharf: Boardwalk**

As shown in the 2004 ECHMP a continuous esplanade would be constructed to facilitate pedestrian travel along the Buffalo River. As described in the ECHMP “A new wooden boardwalk will recall the historic character and location of the wood wharf... an objective at this location is to provide low-level access for pedestrians and shore access for recreational boat users.” This was also re-affirmed in the 2006 Re-Evaluation for the Erie Canal Harbor Project. In 2011 Erie Canal Harbor constructed a temporary boardwalk extension to the main Boardwalk included in the 2004 Masterplan. The purpose of this project is to reconstruct the Temporary Boardwalk and install the permanent extension along with necessary handrails, lighting, wooded docks along the existing bulkhead and optional amenities such as permanent restrooms and showers.

### **III. SCOPE OF SERVICES**

#### **A. Meeting and Review Procedures**

- a. It is anticipated that the Design Team project managers shall meet with ECHDC at the beginning of the task in order to incorporate all the amenities into the design necessary to complete this project. Participate in weekly progress review thereafter in accordance with the approved design schedule. In addition to these regular meetings, the Design Team should anticipate that their attendance will be required at occasional interagency meetings and at monthly meetings with ECHDC Board Committees and/or the full ECHDC Board.

In addition, the Design Team shall include in the Basic Service fee proposal participation in up to two (2) “Public Review Meeting”.

#### **Task 1 – Conceptual Design**

- A. Flynn Battaglia Architects, P.C. has developed a Conceptual Master Design dated (November, 2004), along with the 2006 Re-Evaluation Report review this conceptual design and confirm the information given in order to be used in the Schematic Phase of this Project. Review is to include but not limited to evaluation of information and confirm assumptions made and constructability. Review for grades, locations, historical evaluation, utility conflicts, etc. Document any item which is not consistent with findings.

#### **Task 2 – Schematic Design Phase Services**

The Consultant shall maintain the ECHMP’s design intend of the Central Wharf’s boardwalk, as best as possible. The design shall include, the installation of recreational docks along the existing bulkhead,

additional esplanade lighting along the boardwalk's waterfront, and the continuation of the wood esplanade. The design will require some demolition and removal of an existing asphalt walkway that was installed for temporary use by ECHDC in 2011. The Consultant shall integrate social and cultural elements into the design of the esplanade to maintain the original feeling described by the 2004 ECHMP.

- A. The Consultant shall review the program and other information furnished by the owner, and shall review laws, codes, and regulations applicable to the Consultant's services.
- B. The Consultant shall prepare a preliminary evaluation of the Owner's Program, Schedule, Budget and/or Cost of Work, Project Site, and the proposed procurement or delivery method and other initial information, each in terms of the other, to ascertain the requirements of the Project. The Consultant shall notify the owner of (1) any inconsistencies discovered in the information, and (2) other information of consulting services that may be reasonably needed for the Project.
- C. The Consultant shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to the design and construction of the Project, including feasibility of incorporating environmentally responsible design approaches which do not conflict with the Architect's Conceptual Design. The Consultant shall reach an understanding with the Owner regarding the requirements of the Project.
- D. Based on the Project's requirements agreed upon with the Owner, the Consultant shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project's components.
- E. The Consultant shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan complete with sections and elevations. Preliminary construction materials shall be noted on the drawings and described in writing.
- F. The Consultant shall consider the value of alternative materials (as long as they meet the design guidelines as indicated in the DGEIS), with considerations based on aesthetics in developing a design for the Project that is consistent with the Owner's Conceptual Design, Program, Schedule, and Budget for the Cost of Work.
- G. The Consultant shall submit to the Owner an estimate of the Cost of Work.
- H. The Consultant shall submit the Schematic Design Documents to the Owner, and if necessary make presentation to Owner's Historic District Committee and/or the full ECHDC Board of Directors.

**TASK 2 Deliverables**

- Preliminary Design
- Schematic Design Documents
- Estimated Cost of Work

### **Task 3 – Design Development Phase Services**

- A. Based on the Owner’s approval of the Schematic Design Documents, the Owner’s authorization of any adjustments in the Project requirements, and the budget for the Cost of Work. The Consultant shall prepare Design Development Documents for the Owner’s approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of utilities that describe the size and character of the Project as to architectural, site, civil, structure, mechanical, and electrical systems and any other elements as may be appropriate. The Design Development Documents shall also outline specifications that identify major materials and systems and establish in general their quality levels.
- B. The preliminary design submittal shall include, but not necessarily limited to the following:
  - A. Architectural Plans
  - B. Site plan showing coordination and relationships with overall site development
  - C. Construction Phasing Plan
  - D. Removal Plan
  - E. Civil Design
  - F. Plumbing Design
  - G. Electrical Design
  - H. Storm Drainage Plans and Details
  - I. Landscaping and Hard-scaping Plan
  - J. Utility Plan
  - K. Site Area Lighting Plan
  - L. Sustainability Plan
  - M. Outline Specifications for each Discipline of Work
  - N. Update Project Cost Estimate and Schedule
  - O. All appropriate code coordination and review with applicable local, state, and federal agencies.
  - P. Coordinate with all Utility companies for newly proposed utility services.
- C. The Consultant shall submit a detailed cost estimate to ECHDC for review, with revisions/resubmissions as required, for written approval before proceeding with the Construction document phase of the design. Cost estimates shall be prepared on a unit cost basis. Should the estimate come in over the Project Budget, the Consultant shall redesign and perform value engineering (VE) to reduce the estimate to meet the budget at no additional cost to ECHDC. The Consultant shall cooperate with the ECHDC in any VE efforts that ECHDC may choose to undertake. The Consultant shall incorporate VE suggestions into the design as directed by the ECHDC.
- D. The Consultant shall provide preliminary schedule and phasing plans for the construction of the Project. The Consultant shall revise the design schedule, as necessary, and approval by the ECHDC.

- E. The Consultant shall be available to meet with the ECHDC Board, Local Community Boards, Local Elected Officials, and others associated with the public review and approvals process, at the direction of the ECHDC. The Consultant Team shall prepare graphic presentations for these meetings.

**Task 3 Deliverables**

- Preliminary Architectural Plans
- Preliminary Site Plan
- Preliminary Construction Phasing Plans
- Preliminary Removal Plan
- Preliminary Utility Plan
- Preliminary Landscape and Hard-scape Plan
- Preliminary Site Area Lighting Plan
- Preliminary Sustainability Plan
- Preliminary Construction Cost Estimate
- Preliminary Construction Schedule
- Associated Reports and Analysis Work
- Outline of Specifications

**Task 4 – Construction Document (75%)**

Based on Owner’s approval of the Design Development Documents and the Owner’s authorization of any adjustments in the Project’s requirements and the budget for the Cost of Work, the Consultant shall prepare Construction Documents for the Owner’s approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications set forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Consultant acknowledge that in order to construct the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples, and other similar submittals which the Consultant will review for conformance of the Project plans and specifications.

- A. Preparation of Contract Documents in sufficient detail to provide the information necessary for competitive contract bidding for the Project.
- B. Permits and Approvals:
- a. Perform all applicable code coordination and review with all applicable local, state, and federal agencies.
  - b. Consultant shall complete applications, including necessary documentation, to obtain all permits and approvals for the Project other than those that are required to be obtained by the Contractor(s). The applications shall be submitted to the Owner for review and approved prior to filing with appropriate agencies.
  - c. Permits/Approvals for this Project include, include but not limited to, the following:
    - i. City of Buffalo Planning Board
    - ii. City of Buffalo Department of Public Works, Streets and Parks
    - iii. Erie County Department of Planning and Environment

- iv. Buffalo Sewer Authority
  - v. New York State Department of Transportation
  - vi. U.S. Army Corp of Engineering
  - vii. New York State Coastal Review
  - viii. New York State Department of Conservation
- d. Changes in the Contract Documents, including any changes required by change in rules, regulations, or laws required to obtain final approval from said agencies, shall be made by the Consultant.
- C. The Consultant shall provide a review of the cost estimate at 75% & 100% of the Construction Document Phase to ascertain whether the Project is within the approved budgets. Estimates shall be prepared on a unit price basis. Should the estimate come in over the Project Budget, the Consultant shall redesign and perform VE to reduce the estimate to meet the budget, at no additional cost to the ECHDC. The Consultant shall cooperate with ECHDC in any VE effort that ECHDC may choose to undertake. The Consultant shall incorporate VE suggestions into the design as directed by ECHDC.

#### **Task 4 Deliverables**

A 75% version of the following, grouped by contract set, shall be provided to the ECHDC at the end of this design phase:

- Architectural Plans
- Site Plans
- Removal Plans
- Civil Plans
- Sustainability Plans
- Preliminary Electrical/Plumbing Plans
- Utility Composite Plan
- Landscape/Hard-scape Plan
- Site Area Lighting Plan
- Updated Construction Cost Estimates
- Updated Construction Schedule and Phasing Plan
- Associated Reports and Analysis Work
- Calculations
- Specifications

#### **Task 5 – Construction Document (100%)**

The Consultant Team shall prepare working drawings, specifications and bid documents that establish in detail the requirements for and quality level of materials and systems required for the Project.

Construction Document drawings should be at  $\frac{1}{4}'' = 1'$ ,  $\frac{1}{16}'' = 1'$ ,  $1'' = 20'$  scale, with details at a larger scale as may be appropriate. The drawings shall show all essential information which shall include, but not limited to such information as: layout, grading plans, existing elevations, proposed elevations, sections, and details and any other documentation necessary to define the intended design. The Consultant Team shall confer with all necessary regulatory agencies and incorporate their comments

into the Construction Documents. The Consultant shall be responsible for securing all construction permits for the Project.

- A. Upon issuance of written Notice to Proceed (NTP) from the Owner, or written provisional Notice to Proceed with individual elements. Consultant shall prepare the Final Design submittal and respond to and incorporate all comments received from the Owner and/or City of Buffalo Building Department.
- B. Contract Documents shall be stamped and signed by an Architect or Engineer appropriately licensed in the State of New York.
- C. Submit to the Owner all construction quantities as well as structural, electrical, and any other calculations used in the design of the Project.
- D. Submit a detailed estimate of the cost based on the Bid items and provide a Class "A" estimate.
- E. Submit a proposed construction schedule in sufficient detail for use by the Owner in evaluating the adequacy of the Contractor's scheduling submittal.
- F. The Consultant shall be available to meet with the ECHDC Board, the Local Community Boards, Local Elected Officials, and any other associated with the public review and approvals process, at the direction of the ECHDC. The Consultant Team shall prepare graphic materials and presentations for these meetings.

#### **Task 5 Deliverables**

- Architectural Plans
- Site Plans
- Removal Plans
- Civil Plans
- Sustainability Plans
- Electrical/Plumbing Plans
- Utility Composite Plan
- Landscape/Hard-scape Plan
- Site Area Lighting Plan
- Updated Construction Cost Estimates
- Updated Construction Schedule and Phasing Plan
- Associated Reports and Analysis Work
- Calculations
- Specifications

#### ***Task 6 Signature Submittal***

- A. Following review and incorporation of comments from the Owner and original Contract Documents. The drawings shall be stamped and signed by an Architect or Engineer appropriately licensed to practice in the State of New York, the Consultant then shall submit to the Owner for signature approval.
  - a. The original drawings and two (2) hardcopy drawings, the drawing's electronic CAD files, one (1) original unbound specifications, two (2) copies of the final specifications, cost estimate, and schedule shall be submitted to the Owner.

- B. Submit to the Owner all final construction quantities as well as structural, civil, electrical, and any other calculations used in the design of the Project.

**Task 6 Deliverables**

- Original Drawings
- Original Unbound Specifications
- Final Project Specifications
- Final Cost Estimate
- Final Schedule
- Final Quantities and Calculations

**Task 7 Bidding Phase**

The Consultant shall provide assistance to the Owner during the contract(s) advertising and award process to include the following:

- Assistance in pre-qualifying potential bidders
- Attendance at pre-bid meetings
- Reviewing and providing responses to bidder's inquiries
- Preparing and issuing Addendum(s) as needed
- Assistance in reviewing bids
- Responding to Requests for Information (RFI) submitted by potential bidders

**Task 8 Design Service during Construction**

The Consultant Team shall provide construction contract administration services in conformance with ECHDC's construction schedule. The Consultant Team shall be a representative of and shall advise and consult with the ECHDC during the provision of these services:

- Office Engineering
  - a. Check detailed construction drawings, shop and erection drawings, and substitutions submitted by the Project's Contractor for compliance with permits and contract documents.
  - b. Review specific non-routing laboratory, shop, and mill test reports of materials and equipment as directed by the Owner.
  - c. The Consultant Team shall review and address Requests for Information (RFIs) from the Project's Contractor(s), Construction Manager, and the City or State Building and Safety Inspectors.
  - d. Prepare record drawings (As-Builts) on original contract documents as per the data supplied by the Project's Contractor via the Owner's Construction Manager (CM).
  - e. The Consultant Team shall prepare preliminary and final punchlists for substantially completed construction work.
- Field Engineering
  - a. Make periodic visits to the site to observe the work in progress and provide appropriate reports, including attendance at weekly progress meetings. Provide written reports from site visits.

- b. Observe and report to the Owner on any performance test required by contract documents.
- c. Attend final inspections of Project's completed construction contracts.
- d. Assist the Owner in commissioning of all the installed systems.
- e. Assist the Owner in all requirements necessary for filing with respect to certification for sustainability requirements.
- f. The Consultant shall be available to meet with the ECHDC Board, the Local Community Boards, Local Elected Officials, and any other associated with the public review and approvals process, at the direction of ECHDC. The Consultant Team shall prepare graphic materials and presentations for these meetings.

**Task 8 Deliverables**

- Responses to Request for Information (RFIs)
- Field Reports and "Punch Lists"
- Reviewed Shop Drawings and Submittals
- Reports from Periodic Site Visits.

## **IV. SELECTION PROCESS & REQUIREMENTS**

### **A. Skills Required**

The selected firm and/or teams should be proficient and have demonstrated project experience in:

- Architectural and Engineering Services
- Involvement with public projects and stakeholder interaction
- Document control and QA/QC protocols
- Pertinent rules/regulations of Local and State agencies, including the City of Buffalo Site Plan Approval process.

### **B. Selection Process**

A maximum of three (3) applicants will be selected, or 'short-listed' for interviews. Selection for interviews will be based on an independent evaluation of the submitted proposals using the following factors:

- Demonstrate experience in completing projects of a similar nature
- Ability to successfully complete projects of this type on schedule and within budget
- Cost of Consultant services by task
- References

Final selection of the chosen applicants will be based on the above factors as well as the interview performance. ECHDC may elect to award all or some (any combination thereof) of the tasks outlined under the Scope of Services section (1-8).

## V. Submission Requirements

### 1. COST PROPOSAL

Proposals must include, at a minimum, the following items:

- A. Schedule: Provide a schedule showing that all documents, bid process, and approvals must be completed by. Outline key milestones necessary to meet ECHDC's schedule.
- B. Provide itemized list of services offered.
  1. Fee Proposal for each Task listed in the Scope of Services Section (1-8)
  2. Hourly Billing Rates (provide the hourly billable rates for all positions, including, but not limited to, the following: Principal-in-Charge, Project Manager, Project Engineer, Project Designer, Contract Administrator – submit in a tabular format for consultants and all sub-consultants.)
  3. A fully loaded resource schedule broken down by task and classification – submit rates in a tabular format.
  4. Typical Cost/Persons – hours per task

### 2. Other Certifications & Requirements

#### 1. Non-Discrimination Policy.

It is the policy of the State of New York, ESDC, and ECHDC to comply with all federal, State and local laws, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that New York State Business Enterprises, Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ECHDC's participation in projects or initiatives, and/or the use of ESDC and ECHDC's funds. ECHDC's non-discrimination and affirmative action goals will apply to this initiative. The selected design-build team shall be required to use its best efforts to achieve M/WBE participation of not less than 25% (20%-MBE, 5%-WBE) of the total dollar value of the contract. **A copy of each respondent's Equal Employment Opportunity Policy Statement, anticipated Staffing Plan (Schedule A-1) and Schedule of Minority and Women Business Participation (Schedule A-2) shall be included as part of the response to this RFQ.** The latter two forms can be found on the Required Forms for Vendors link at the ESDC website under "RFPs/RFQs".

(<http://www.empire.state.ny.us/CorporateInformation/RFPS.html>) Only the prime consultant completes the forms. In the forms, the firm is required to denote all the sub-consultants it proposes to use in achieving M/WBE participation. The ESDC Affirmative Action Unit ("AAU") is available to assist you in identifying New York State certified M/WBEs that can provide goods and services in connection with the contract. If you require M/WBE listings, please call the AAU at (212) 803-3224.

#### 2. State Tax Law Section 5-a.

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESDC from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all respondents to this solicitation**

**must include in their responses a properly completed Form ST-220-CA, a copy of which is accessible at the Required Forms for Vendors link at the ESDC web site.**

(<http://www.empire.state.ny.us/CorporateInformation/RFPs.html> )\_Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

### **3. State Finance Law Sections 139-j and 139-k**

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFQ. These Procurement Requirements (1) govern permissible communications between potential respondents and ESDC or other involved governmental entities with respect to this RFQ; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFQ. Compliance with the Procurement Requirements requires that (x) all communications regarding this RFQ, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed below; (y) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under “RFPs/RFQs”); and (z) periodic updating of such forms during the term of any contract resulting from this RFQ. **Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law as part of their submittal.**

The Procurement Requirements also require ESDC staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

**For the purpose of compliance with State Finance Law Sections 139-j, contact with Mark Smith, ECHDC Director of Construction is considered permissible. Contact information for Mr. Smith is provided in Section VII.**

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

<http://www.empire.state.ny.us/CorporateInformation/RFPs.html>  
(under “ESDC Policy Regarding Permissible Contacts under SFL 139”)

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and the sub-consultants complete the forms required above

## **VI. TIME AND PLACE OF SUBMISSION**

Respondents will not receive compensation or reimbursement of any expenses associated with preparing and/or submitting the proposal.

Respondents are required to submit one (1) original, five (5) copies, and one electronic copy on a CD of their submittal prior to **2:00 PM EST on September 12, 2011**. Responses shall be firmly sealed in an envelope or box, and contain the Respondent's name and return address.

Please be advised that under no circumstances will ECHDC obligate itself to consider a response which is received after the deadline or does not include the basic items described above in the previous sections.

Responses shall be delivered to:

**Thomas P. Dee, President  
Erie Canal Harbor Development Corporation  
95 Perry Street, Suite 500  
Buffalo, New York 14203-3030**

The ECHDC reserves the right to reject a submittal if any documents or items listed in this RFP are incomplete, improperly executed, indefinite, ambiguous, and/or missing. Additionally, factors such as, but not limited to the following may also disqualify a Respondent without further consideration:

- Evidence of collusion among Respondents
- Any attempt to improperly influence any member of the evaluation panel
- Discovery that a Respondent purposely misled or knowingly provided false or inaccurate information in the submittal
- A Respondent's default under any type of agreement, which resulted in the termination of that agreement
- Existence of any unresolved litigation or legal dispute between the Respondents and the City of Buffalo, ECHDC, ESDC, or the State of New York

The ECHDC reserves the right to reject any and all submittals and to waive any informalities or irregularities in the procedure.

## **IV. ADDITIONAL INFORMATION**

Any and all questions or requests for additional information or documents will be accepted no later than **close of business on August 31, 2011**, and to be directed to:

**Mark Smith, Director of Construction**

**Erie Canal Harbor Development Corporation**  
**msmith@empire.state.ny.us**

Except as otherwise noted in this RFP, all questions shall be **submitted in written form** and answers will be sent via e-mail and facsimile on **August 31, 2011**. Additional information may become available and, along with the responses to all requests for deadline extensions, substantive questions and documents requests may be made available at any point during this process.

The anticipated completion date for the interview selection is **September 15, 2011**.

## **V. GENERAL TERMS AND CONDITIONS**

In addition to the terms and conditions stated elsewhere in this RFP, it is subject to the terms and conditions set forth in **Exhibit A** hereto.

## **VI. ATTACHMENTS**

Attachment A – Erie Canal Harbor Master Plan, Flynn Battaglia Architects, P.C. (November 2004)

Attachment B – Re-Evaluation Report Erie Canal Harbor Project (December 2006)

Attachment C – Temporary Boardwalk Drawings, C&S Engineering, Inc. (March 2011)

Exhibit A – General Terms and Conditions

**Attachment A – Erie Canal Harbor Master Plan by Flynn Battaglia Architects, P.C.  
(November 2004)**

**\*due to the file size, Attachment A is available on disk upon request**

**Attachment B – Re-Evaluation Report Erie Canal Harbor Project  
(December 2006)**

**Attachment C – Temporary Boardwalk Drawings, C&S Engineering, Inc.  
(March 2011)**

**\*due to the file size, Attachment B is available on disk upon request**

## **Exhibit A – General Terms and Conditions**

**SCHEDULE A**

**CONDITIONS APPLICABLE TO THE CORPORATION'S<sup>(1)</sup> AGREEMENTS  
FOR MATERIALS/SERVICES**

**ARTICLE 1**  
**RELATION OF CONTRACTOR TO THE CORPORATION**

**1.1 SUPERVISION BY THE CORPORATION.** The services to be performed by Contractor under this Agreement shall be subject to the general supervision and direction of the Corporation provided that neither the Corporation's exercise nor failure to exercise such supervision and direction shall relieve the Contractor of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

**1.2 CONTRACTOR'S PERSONNEL.** The Contractor shall designate in writing to the Corporation one individual, satisfactory to the Corporation, who shall be responsible for coordinating all of the services to be rendered by the Contractor and who shall be the Corporation's normal point of contact with the Contractor on matters relating to such services. Such individual shall be replaced upon the Corporation's written request.

**1.3 APPROVAL OF SUBCONTRACTORS.** The Contractor shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subcontractor") in connection with the performance of its obligations under this Agreement without the prior written consent of the Corporation. The Contractor shall inform the Corporation in writing of the name, proposed service to be rendered, and compensation of the Subcontractor, and of any interest the Contractor may have in the proposed Subcontractor.

**1.4 CONTRACTOR AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this Agreement, the Contractor's status (and that of any Subcontractor) shall be that of independent contractor and not that of an agent or employee of the Corporation. Accordingly, neither the Contractor nor any Subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Corporation.

**1.5 THE CORPORATION'S REPRESENTATIVE.** The Corporation will designate in writing to the Contractor an individual who will serve as the Corporation's Representative and normal point of contact for the Contractor in regard to this Agreement and the Contractor's services and obligations hereunder. The Corporation may from time to time change this designation by written notification to the Contractor.

**1.6 APPROVALS OR ACCEPTANCE BY THE CORPORATION.** Whenever action is to be taken, or approval or acceptance given, by the Corporation, such action, approval or acceptance shall be deemed to have been taken or given only if so taken or given by the Corporation's Representative, by the official of the Corporation who signed this Agreement on behalf of the Corporation, or by another officer or employee of the Corporation duly designated by such signing officer to represent the Corporation in connection therewith. The Corporation shall notify the Contractor in writing of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Corporation's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by the Contractor hereunder shall in no way relieve the Contractor of responsibility for such materials.

1 As used in this Schedule A, the "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") unless the Contract for Materials/Services of which this Schedule A forms a part has been entered into by a subsidiary corporation of ESDC, in which case the "Corporation" shall mean such subsidiary corporation.

**17**            **CONFLICT-OF-INTEREST.** The Contractor represents and warrants that:

(a)        The Contractor has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Contractor's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder any person or entity having any such interest during the term of this Agreement.

(b)        No officer, employee, agent or director of the Corporation, or any of its subsidiaries shall be permitted by the Contractor to share in any benefit to arise from the Contractor's work.

(c)        The Contractor shall not permit any officer, employee, agent or director of the Corporation, or any of its subsidiaries to participate in any decision relating to this Agreement which affects the personal interest of the aforementioned individuals, or the interests of any corporation, partnership, or association in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of the Corporation, or any of its subsidiaries be permitted by the Contractor to have any interest, direct or indirect, in this Agreement or the proceedings thereof.

(d)        The Contractor shall cause, for the benefit of the Corporation, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), (c) of this Section 1.7. The Contractor will take such action in enforcing such provisions as the Corporation may direct, or, at its option, assign such rights as it may have to the Corporation for enforcement by the Corporation.

**18**            **NO BROKER.** The Contractor represents that it has not employed any person, corporation or partnership, to solicit or procure this Agreement, and has not made, and will not make, any payment or agreement for the payment of any commission, percentage, brokerage or contingent fee, or other compensation in connection with the procurement of this Agreement.

**19**            **NOTICE OF OVERRUNS AND DELAYS.** The Contractor shall promptly give written notice to the Corporation's Representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, which may result in an increase in (a) the compensation due Contractor; (b) reimbursable expenses and/or (c) the number of hours necessary to perform the work.

The Contractor shall promptly give written notice to the the Corporation's Representative of the occurrence of an event or action, or the discovery of a condition, or the failure of an event or action to occur or a condition to exist as anticipated, which may delay completion of the work (or extend the Completion Date).

**ARTICLE 2**  
**DOCUMENTS AND RECORDS**

**21**            **OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Contractor under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Corporation, and the Corporation shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specifications and other documents without payment of any additional royalty, charge or other compensation to Contractor. Upon request of the Corporation during any stage of the work, Contractor shall deliver all such materials to the Corporation.

The Contractor agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of the Corporation, except that Contractor may retain copies of such reports and other documents for general reference use.

**22 MAINTENANCE OF RECORDS.** The Contractor shall and shall require any and all subcontractors to, until three years after completion of services hereunder or termination of this Agreement by the Corporation, maintain (a) the original books, documents, materials and other records created or collected in the course of Contractor's (and Subcontractors') performance of its (their) obligations under this Agreement (and any subconsulting agreement), and indexes of the same; (b) unless waived or modified in writing by the Corporation, complete and correct records of time spent by Contractor (and Subcontractor) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Contractor is being reimbursed for out-of-pocket expenses, complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement (and any subcontract), including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Contractor (and Subcontractors) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Contractor (and Subcontractor) in performing its obligations hereunder (or under any subcontract). Contractor (and Subcontractor) shall make such books, records and indexes available to the Corporation, the State of New York, any other governmental entity having an interest in the performance of services under this Agreement (or any subconsulting agreement) and any of their authorized representatives for review and audit at all such reasonable times as the Corporation or any such other entity may from time to time request. Contractor shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Contractor invoices in accordance with this Agreement.

This Article shall survive the expiration or earlier termination of this Agreement.

### **ARTICLE 3** **TERMINATION**

**31 DEFAULT BY CONTRACTOR.** If any material representation made by the Contractor in this Agreement shall prove to be false or misleading in any material respect, or if the Contractor shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of ten (10) days after written notice from the Corporation specifying the occurrence, omission or failure giving rise to such default, or if, in the opinion of the Corporation, by reason of the nature of such default, such default cannot be cured within such ten (10) day period, then if the Contractor shall not within such period commence with due diligence the curing of such default and thereafter prosecute and complete the curing of such default as promptly as possible, except that the Corporation shall not be required to give Contractor such written notice and Contractor shall not have such right to cure for Contractor's failure to comply with Section 1.9 hereof, the Corporation, in addition to any other remedies or claims it may have with respect to such representation or such default may terminate this Agreement immediately upon verbal or written notice to the Contractor. In the event of such termination, the Corporation, without waiving any such remedy or claims, (including consequential damages) shall not be required to pay the Contractor any portion of the fee specified in this Agreement remaining to be paid for which valid vouchers have not been submitted pursuant to this Agreement on or before the date of the Corporation's notice of termination.

**32 OPTIONAL TERMINATION BY THE CORPORATION.** The Corporation at any time, in its sole discretion, may terminate this Agreement or postpone or delay all or any part of the Agreement upon written notice to the Contractor. In the event of such termination, postponement or delay, the Corporation shall pay the Contractor for professional time and out-of-pocket expenses incurred by Contractor to the date notice of such action is received by Contractor. The Contractor agrees to cause any agreement or contract entered into by Contractor with any Subcontractor to provide for an optional termination by Contractor similar to the provisions of this Section 3.2.

### **ARTICLE 4** **REQUIRED PROVISIONS**

**41 CONTRACTOR TO COMPLY WITH LEGAL REQUIREMENTS.** The Contractor in performing its obligations and in preparing all documents required under this Agreement shall comply with all applicable laws and regulations. All provisions required by such laws and regulations to be included in this

Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

**4.2 CONTRACTOR TO OBTAIN PERMITS, ETC.** Except as otherwise instructed in writing by the Corporation, the Contractor shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Corporation or the Contractor in connection with this Agreement.

**4.3 WORKERS' COMPENSATION INSURANCE.** The Contractor agrees that:

(a) It will secure Workers' compensation and disability insurance and keep insured during the life of this Agreement such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Worker's Compensation Law; and

(b) This Agreement shall be voidable at the election of the Corporation and of no effect unless the Contractor complies with this provision.

**4.4 NO ASSIGNMENT WITHOUT CONSENT.** The Contractor agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of the Corporation;

(b) If the prohibition of Section 4.4(a) be violated, the Corporation may revoke and annul this Agreement and the Corporation shall be relieved from any and all liability and obligations thereunder to the Contractor and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Contractor and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

**4.5 NON-DISCRIMINATION & AFFIRMATIVE ACTION**

The Contractor shall comply and cause each of its subcontractors to comply with the provisions of Attachment 4.5 attached to and made a part of this Agreement, relating to non-discrimination and affirmative action.

**4.6 TAX LAW SECTION 5-a COMPLIANCE**

(a) During the term of this Agreement, the Contractor shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law. A copy of the Contractor's initial Form ST-220-CA is attached hereto as Attachment 4.6. Immediately upon delivery, such updated form shall form a part of this Agreement.

(b) The Contractor's updated certification shall be made if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

(c) If the Contractor is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Contractor is exempt), the Contractor shall so certify to the Corporation, including in such certification the reason(s) for exemption, in a notarized statement submitted in lieu of Form ST-220-CA.

**4.7 STATE FINANCE LAW SECTION 139-J AND 139-K COMPLIANCE**

The Contractor hereby certifies that all information provided to the Corporation with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's

Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j, attached to this Agreement as Attachment 4.7 – (1), and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment 4.7 – (2), is complete, true and accurate. The Contractor acknowledges that the preceding sentence is a material representation upon which the Corporation is relying in entering into this Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement shall be subject to termination pursuant to Section 3.1 hereof.

## **ARTICLE 5** **OTHER STANDARD PROVISIONS**

**51**           **NO WAIVER.** No failure by the Corporation to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by Contractor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Corporation. No waiver of any breach shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**5.2**           **INDEMNIFICATION.** Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all injuries to persons, including death, and all damage sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Contractor pursuant to this Agreement. Contractor agrees to defend, indemnify and hold the Corporation, the State of New York and, if the Corporation is an ESDC subsidiary, ESDC and each of their respective officers, directors, commissioners, employees and representatives (collectively, the "Indemnitees") harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the Indemnitees by reason of claims against Contractor or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnitees for reasonable attorneys' fees incurred in connection with the above. Contractor shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Contractor or its Subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Contractor, its Subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

This Article shall survive the expiration or earlier termination of this Agreement.

**53**           **ASSIGNMENT BY THE CORPORATION.** The Corporation may transfer and assign any and all of its rights and obligations under this Agreement, including transferring and assigning its rights to the Contractor's performance of any portion of the services provided for herein, together with the Corporation's obligations and rights pertaining to such portion of services, to any partnership, firm, corporation, governmental agency or department or other entity which the Corporation determines has undertaken or will undertake any part of the Agreement. The Corporation shall give the Contractor written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Corporation of any further liability or obligation hereunder.

**54**           **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

**5.5**           **ENTIRE AGREEMENT/AMENDMENT.** This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or

representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

**5.6**            **CONFIDENTIALITY.** Contractor hereby agrees that all data, recommendations, reports and other materials developed in the course of performance under this Agreement are strictly confidential between Contractor and the Corporation and Contractor may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from the Corporation. Notwithstanding the preceding sentence, Contractor shall cooperate fully with such third parties as the Corporation may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Contractor in connection with performance under this Agreement.

**5.7**            **RELEASE AND DISCHARGE.** Simultaneously with request for final payment hereunder, Contractor shall execute and deliver to the Corporation an instrument releasing the Corporation from any and all claims, demands and liabilities whatsoever of every kind of nature both at law and in equity arising from, growing out of, or in any way connected with this Agreement. A copy of such release is annexed hereto as Attachment 5.7 and made a part hereof.

**5.8**            **NOTICES.** All notices permitted or required hereunder shall be in writing and shall be transmitted either:

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

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

**State of New York [Agency Name]**

**Name:**

**Title:**

**Address:**

**Telephone Number:**

**Facsimile Number:**

**E-Mail Address:**

**[Contractor Name]**

**Name:**

**Title:**

**Address:**

**Telephone Number:**

**Facsimile Number:**

**E-Mail Address:**

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

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

**59**            **MISCELLANEOUS.** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any other part of this Agreement.

**ARTICLE 6**  
**BILLING POLICY**

*(ONLY APPLICABLE WHERE REIMBURSEMENT IS PART OF THE AGREEMENT)*

**61**            The Contractor is required to submit detailed documentation in support of Contractor's request for reimbursement. All invoices and their accompanying documentation must be forwarded along with a completed copy of the sample INVOICE SUMMARY attached hereto as Attachment 6.1 and a letter of transmittal to:

Accounts Payable Department  
New York State Urban Development Corporation  
633 Third Avenue  
New York, New York 10017-6754

Invoices should be submitted monthly and include the Corporation's contract and project numbers, if any. Contractor should also include federal identification number with the first invoice.

**62**            Out-of-pocket expenses should be delineated on any invoices by general category. The Contractor must submit supporting documentation for each individual expense category in excess of \$250.

**63**            **MEALS.** Business meals will be reimbursed in accordance with the Corporation's Schedule of Reimbursable Allowances, a copy of which is attached as Attachment 6.3, provided that the names of all attendees shall be included in the request for reimbursement.

**6.4**            **PRINTING.**

(a)            Internal print or xeroxing is not reimbursable. It is part of the Contractor's overhead cost, unless ordered by or for specific use of the Corporation,

(b)            Outside printing will be reimbursed only to the extent of prints requested by the Corporation, and at cost evidenced by a receipt.

(c)            No postage will be reimbursed for printing requested by the Corporation.

**6.5**            **TELEPHONE.**

(a)            Only calls to the Corporation and calls relating to telephone surveys are chargeable. All other calls are part of Contractor's overhead costs.

(b)            Calls between the Contractor's office and its employees are not reimbursable.

**6.6**            **TRANSPORTATION.** Reimbursed in accordance with the the Corporation's Schedule of Reimbursable Allowances (see Attachment 6.3).

**6.7** **LODGING.** Reimbursed in accordance with the Corporation's Schedule of Reimbursable Allowances (see Attachment 6.3).

**6.8** **NON-REIMBURSABLES.**

- (a) Flight insurance
- (b) Valet Services (except five or more consecutive days of travel)
- (c) Personal expenses of any type
- (d) Expenses paid for the Corporation's employees.
- (e) Travel to any office of the Corporation to "deliver vouchers or pick up check".

**6.9** **EQUIPMENT AND SUPPLIES.** Where the Agreement allows reimbursement for equipment and supplies, insurance or similar items, the Contractor must supply the following detailed documentation:

(a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, insurance or other reimbursable items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).

(b) Title to all equipment purchased pursuant to this Agreement is vested in the Corporation. The Corporation has the option of claiming any or all of such equipment.

**6.10** **GENERAL.**

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible original receipts should be presented for reimbursement.

(c) At any time or times until three years after completion of Contractor's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Corporation on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

**ARTICLE 7**  
**INSURANCE**

**7.1** The Contractor shall carry, and shall require each of its Subcontractors to carry, insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required depending on the nature of the services to be performed under this Agreement or a subconsulting agreement. Any such additional types or amounts of coverage shall be specified on Attachment 7.1 attached hereto.

**7.2** Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars (\$2,000,000) aggregate and One Million Dollars (\$1,000,000) per occurrence. Such insurance is to be written on an occurrence basis. The Corporation and, if different, the New York State Urban Development Corporation d/b/a Empire State Development Corporation and each of their directors, officers, employees, agents and representatives shall be named as an additional insureds (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85). Other additional insured as the Corporation may specify in writing on Attachment 7.2 attached hereto.

**7.3** Automobile Liability and Property Damage Insurance in an amount not less than \$1,000,000 combined single limit for both Bodily Injury and Property Damage.

**7.4** Professional Liability Insurance if and as may be specified on Attachment 7.1.

**75** Workers' Compensation: Employers liability and disability benefits as required by New York State. Proof of compliance shall be in the form specified on Attachment 7.5.

**7.6** Excess Liability Insurance if and as may be specified on Attachment 7.1

**7.7** Certificates of Insurance for all of the aforementioned coverages shall be of form and substance acceptable to the Corporation and shall be provided to the Corporation prior to the commencement of work under this Agreement.

**7.8** Other requirements.

(a) Acceptance and/or approval by the Corporation of any insurance does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities.

(b) All required insurance shall be obtained at the Contractor's sole cost and expense; shall be primary and non-contributing to any insurance or self-insurance maintained by the Corporation; shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail.

(c) All required insurance shall be maintained with insurance carriers licensed to do business in New York State, acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

(d) Contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Corporation.

(e) Contractor shall require that any of its subcontractors hired in connection with the services to be performed under this Agreement carry insurance of the same types and with the same limits and provisions provided herein.

(f) The Contractor shall cause all insurance to be in full force and effect as of the commencement of this Agreement and to remain in full force and effect throughout its term until conclusion of the services to be performed hereunder or earlier termination of this Agreement. Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

(g) Not less than thirty (30) days prior to the expiration or renewal date, the Contractor shall supply the Corporation with updated replacement Certificates of Insurance, and amendatory endorsements.

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

SCHEDULE B  
SCOPE OF WORK

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1. Project Area and Purpose

2. Scope of Project

(Indicate technical scope and identify specific work tasks and product deliverables for each phase of the work aggregating the total fee.)

3. Project Schedule

Dated: \_\_\_\_\_

**Non-Discrimination and Affirmative Action Provisions**

At all times during the term of this Agreement, Contracting Party shall comply with the Corporation's Non-Discrimination, Affirmative Action and Minority and Women Participation policies, plans and programs as hereinafter set forth:

**I Definitions**

Defined terms used in this Schedule C and not defined below, shall have the meanings set forth in the Agreement. For the purposes of this Agreement, the following terms shall have the meanings set forth below:

**"Affirmative Action Officer" (AAO)**

Shall mean the Vice President for Affirmative Action or other person designated by the Corporation.

**"Contracting Party"**

Shall mean any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services to the Corporation or any of its subsidiaries pursuant to a contract or purchase order in excess of \$1,500.

**"Minority Business Enterprise" (MBE)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: at least fifty-one percent (51%) owned by one or more Minority Group Members; an enterprise in which such minority ownership is real, substantial and continuing; an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; an enterprise authorized to do business in the State of New York and is independently owned and operated; and an enterprise certified by New York State as a minority business.

**"Minority Group Member"**

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

**"Corporation Contract"**

Shall mean a written agreement or purchase order instrument, or amendment thereto, providing for a total expenditure in excess of \$5,000, whereby the Corporation or any of its subsidiaries 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 Corporation.

**"Corporation Subcontract"**

Shall mean an agreement providing for a total expenditure in excess of \$1,500, between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor's obligation under a Corporation Contract is undertaken or assumed.

**"Women-owned Business Enterprise" (WBE)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; an enterprise in which the ownership interest of such women is real, substantial and continuing; an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; an enterprise authorized to do business in the State of New York and is independently owned and operated; and an enterprise certified by New York State as woman-owned.

## I Policy

It is the policy of the State of New York, the Urban Development Corporation and all of its subsidiaries, to take affirmative action to ensure that minority/women businesses and minority/female workforce participate in the economic benefits generated by the Corporation's participation in projects, and/or the use of State funds. The Contracting Party's EEO Policy Statement shall contain, but not necessarily be limited to, and the Contracting Party, as a precondition to entering into a valid and binding Corporation Contract, shall, during the performance of the Corporation Contract, agree to the following:

- (a) Contracting Party shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, shall undertake or continue existing programs of affirmative action to insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on Corporation Contracts. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) Any Contracting Party performing work in connection with a Corporation Contract must comply with all State, Federal and local laws, orders, rules and regulations which prohibit discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and all such parties shall affirmatively cooperate in the implementation of Contracting Party's obligations hereunder.
- (c) The Contracting Party shall state in all solicitations or advertisements for employment that, in the performance of the Corporation Contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.
- (d) At the request of the AAO, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.
- (e) After an award of a Corporation Contract, the Contracting Party shall submit to the AAO a workforce utilization report, satisfactory to the AAO in form and substance with respect to the workforce actually utilized on the Corporation Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO.
- (f) The Contracting Party shall comply with the provisions of Sections 291-299 of the Executive Law and with the applicable provisions of the Civil Rights Law of the State of New York and (i) shall furnish all information and reports deemed necessary by the AAO under this Agreement and (ii) shall furnish all information and reports required by such sections of the Executive Law and the Civil Rights Law.
- (g) Contracting Party will permit access to its books, records and accounts, with respect to the Corporation Contract, by the AAO for purposes of investigation to ascertain compliance with the provisions herein.
- (h) The Contracting Party shall remit payment in a timely fashion, pursuant to the State and Corporation's Prompt Payment Policy, for work performed by M/WBE firms in connection with the Project.
- (i) The Contracting Party will include, or cause to be included, the provisions of clauses (a) through (h) in every purchase order or contract that it enters into in order to fulfill its obligations under the Corporation Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Corporation Contract or Subcontract.

### **III. Goals for Minority and Women-Owned Business Enterprise Participation**

- (a) The Contracting Party is required to use its best efforts to achieve an overall M/WBE participation goal of % of the total dollar value of the Corporation Contract.
- (b) The goal for M/WBE participation in the conduct of the work is expressed as a percentage equal to the Contract price.
- (c) The total dollar value of the work performed by M/WBEs will be determined as:
  - (i) the dollar value of the work subcontracted to M/WBEs; or
  - (ii) where the Contracting Party is a joint venture including one or more M/WBEs as joint ventures -- the contract price multiplied by the percentage of the joint venture's profits/losses which are to accrue to the M/WBE joint venture(s) under the joint venture agreement; or
  - (iii) where the M/WBE is the Contracting Party -- the contract price.
- (d) Contracting Party will include, or cause to be included, paragraphs (a) through (c) in every subcontract or purchase order unless exempt by the Affirmative Action Officer, so that such provisions will be binding upon each Contracting Party.

### **M. Best Efforts**

For the purposes of this Agreement, it is understood that (i) best efforts are not limited to the efforts specified herein, and (ii) the role of M/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women's trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with M/WBE participation on the Corporation Contract;
- (e) Utilizing the resources of the New York State Urban Development Corporation Affirmative Action Department to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts; and
- (f) Encouraging the formation of joint ventures, partnerships, or other similar arrangements, where appropriate, to ensure that the Contracting Party will meet its obligations hereunder.

### **V. Reporting Requirements**

Upon request, the Contracting Party shall periodically file, or cause to be filed, reports with the AAO detailing compliance with the provisions of this Agreement. Compliance reports, substantially in the format attached hereto as Exhibit 1, shall be filed at such times, shall contain such information and shall be in such form as the AAO may require.

### **VI. Non-Compliance and Sanctions**

In the event that any Contracting Party violates any of the provisions of this Agreement, the Corporation may require that the following sanctions and remedies for non-compliance be imposed:

- (a) Summon the Contracting Party for a hearing with the Affirmative Action Officer.
- (b) After any such hearing, and a determination by the Affirmative Action Officer that the Contracting Party has failed to comply with any of these provisions, and the passage of time in which to remedy such failure has transpired, this Agreement may be cancelled, terminated or suspended, in whole or in part. Alternatively, the Affirmative Action Officer, in his/her sole discretion, may assess liquidated damages against the Contracting Party for failure to demonstrate its best efforts in complying with the Affirmative Action Program. Liquidated damages may be assessed in an amount equal to the dollar value of contracts that would have been realized by MWBE's if the goals had been achieved.
- (c) If such an award is assessed against any Contracting Party, (i) the amount of such assessment may be withheld from any monies due to the Contracting Party by the Corporation or; (ii) may be paid to the Corporation by the Contracting Party that has been found to fail to comply with the Affirmative Action Program. Any liquidated damages collected hereunder shall be paid into one or more MWBE technical assistance funds administered by the Corporation.
- (d) Such sanctions that may be imposed and remedies invoked hereunder, shall be considered independent of, or in addition to, sanctions and remedies otherwise provided by law.

MBE/WBE COMPLIANCE REPORT  
CONTRACTOR

Project Sponsor/Developer:

AA Representative: \_\_\_\_\_

Address:

Project Name:

Telephone:

Project Start Date: Complete Date: \_\_\_\_\_

Contact Person:

*Attach M/WBE contract/subcontract documentation,  
i.e. executed contracts, signed purchase orders or cancelled checks.*

Total # of Subcontractors \_\_\_\_\_

Total \$ Amount of Subcontracts \_\_\_\_\_

Contractor Name, Address, Contact Person & Phone	Type of Contract (Trade/Service)	Contract Amount	M/WBE Subcontract Date	Name, Address, Contact Person & Phone of MBE/WBE Subcontractor	Scope of Services	Amount Contracted to MBE/WBE

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Date

*This report should be completed by an officer of the reporting company, and forwarded to the AA Representative with the appropriate documentation.*

EXHIBT1B

WORK FORCE EMPLOYMENT UTILIZATION REPORT  
SERVICE and/or CONTRACTOR FIRMS

Agency \_\_\_\_\_ / C o d e \_\_\_\_\_ Reporting Period \_\_\_\_\_

Check one:  Quarterly Report  Semi-Annual Report

Contractor Firm Name \_\_\_\_\_ Address \_\_\_\_\_  
City State Zip

Type of Report:  Contract Specific Work Force  Total Work Force Check if NOT-FOR-PROFIT

Federal Id/Payee Id No. _____  Check One: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor  Contract Amount: \$ _____	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Contract No. _____</td> <td style="width: 70%;">Location of Work _____</td> </tr> <tr> <td colspan="2">County _____ Zip _____</td> </tr> <tr> <td colspan="2">Product/Service Provided: _____</td> </tr> <tr> <td colspan="2">Contract Start Date: _____ Percent of Job Completed: _____</td> </tr> </table>	Contract No. _____	Location of Work _____	County _____ Zip _____		Product/Service Provided: _____		Contract Start Date: _____ Percent of Job Completed: _____	
Contract No. _____	Location of Work _____								
County _____ Zip _____									
Product/Service Provided: _____									
Contract Start Date: _____ Percent of Job Completed: _____									

Federal Occupational Category	Number of Employees										Total Percent Minority	Employees		
	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native					
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female			Male	Female
Officials/Admin														
Professionals														
Technicians														
Sales Workers														
Office & Clerical														
Craft Workers														
Operatives														
Labors														
Service Workers														
<b>TOTALS</b>														

Company Official's Name \_\_\_\_\_ Title \_\_\_\_\_  
 Company Official's Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Telephone Number ( ) \_\_\_\_\_

WORK FORCE EMPLOYMENT UTILIZATION REPORT  
SERVICE and/or CONSULTANT FIRMS  
INSTRUCTIONS FOR COMPLETION

**PURPOSE:** The *Work Force Employment Utilization Report for Service and/or Consultant Firms* is prepared by all contractors, and subcontractors if any, providing services (skilled or non-skilled) or professional consulting services to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the *contract specific work force* can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific work force cannot be separated out, the contract's *total work force* is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements

**GENERAL INFORMATION:**

1. **Name of contracting state agency** and state agency code (five digit code).
2. **Reporting period** covered by report (mm/dd/yy to mm/dd/yy); check to indicate Quarterly or Semi-Annual Report.
3. **Contractor firm name** (prime contractor on summary report submitted to agency) and address (including city name, state and zip code); check if contractor is a NOT-FOR-PROFIT.
4. **Type of Report:** check to indicate whether report cover (i) the *Contract Specific Work Force* or (ii) the *Company's Total Work Force* (in the event the contract specific work force cannot be separated out).
5. Contractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); check to indicate prime or subcontractor report.
6. **Contract Amount** is dollar amount based on terms of the contract.
7. **Contract number** is the agency assigned number given to the contract (seven digits).
8. **Location of work** including county and zip code where work is performed.
9. Indicate **Product or Service provided** by contractor (brief description).
10. **Contract start date** is month/day/year work on contract actually began.
11. **Contractor's estimate of the percentage of work completed** at the end of this reporting period.

**FEDERAL OCCUPATIONAL CATEGORIES:** The contractor's work force is broken down and reported by the nine **Federal Occupational Categories (FOC's)** consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Managers, Professionals, Technicians, Sales, Office & Clerical (Administrative Support), Craft Workers, Operatives, Laborers and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

**TOTAL NUMBER OF EMPLOYEES:** Record the total number of all persons employed in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total work force, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) thru (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race;
- **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;
- **Native American or Alaskan Native:** all persons having origins in any of the original peoples of North America.

**TOTAL % MINORITY =** sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

**TOTAL % FEMALE =** total number of female employees in the FOC (column 2) divided by the total number of all employees in the FOC (column 1 + column 2).

**TOTALS:** column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

**SUBMISSION:** The work force utilization report is to be completed by both prime and subcontractors and signed and dated by an *authorized representative* before submission. The Company Official's name, official title and telephone number should be printed or typed where indicated on the bottom of the form.

The **prime contractor** shall complete a report for its own work force, collect reports completed by each subcontractor, and prepare a summary report of the entire combined contract work force. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N* to the *NYCRR* pursuant to *Article 15-A of the Executive Law*.

ATTACHMENT 4.6

**Tax Law Section 5-a**

**Form ST-220-CA**



# Contractor Certification to Covered Agency

# ST-220-CA

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

(6/06)

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

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

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

(name)

(title)

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

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

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

(sign before a notary public)

(title)

## Instructions

### General information

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

If you have questions, please call our information center at 1 800 698-2931.

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

### When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

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

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

Notary Public

Registration No.

Privacy notification

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

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

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

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Internet access: www.nystax.gov (for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

ATTACHMENT 4.7 -(1)  
STATE FINANCE LAW SECTION 139-j

OFFERER'S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

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

**Background:**

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

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

**Instructions:**

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law § 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

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

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

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

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

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

Contractor Address:

\_\_\_\_\_

\_\_\_\_\_

ATTACHMENT 4.7 - (2)

STATE FINANCE LAW SECTION 139-j

OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

## **Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations**

### **Background:**

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

### **Instructions:**

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.



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(Add additional pages as necessary)

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

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

Name:

Title:

ATTACHMENT 5.7

RELEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby acknowledges that pursuant to an agreement dated the day of \_\_\_\_\_, 20 (the "Agreement"), pursuant to which the undersigned agreed to furnish to the Urban Development Corporation d/b/a Empire State Development Corporation or one of its subsidiaries (as the case may be, the "Corporation") all of the work necessary to complete the Agreement, and that the Corporation has paid or will pay the undersigned, or a person, firm or corporation claiming by or through the undersigned, the sum of:

(\$ \_\_\_\_\_) Dollars and up to \_\_\_\_\_

(\$ ) Dollars in reimbursable expenses, in each case subject to the terms, covenants and conditions of the Agreement, said amounts being the full and entire sum due from the Corporation to the undersigned pursuant to the Agreement by reason of work, labor or materials furnished or performed by the undersigned, in connection with the Agreement. In consideration of such payment, the undersigned hereby releases and discharges the Corporation, its officers, agents, and employees, of and from all claims of liability for any payment, fee or expenses payable to the undersigned pursuant to the Agreement.

The undersigned further acknowledges that neither the aforesaid payment nor acceptance by the Corporation of the work covered by the Agreement, shall in any way or manner operate as or constitute a release or waiver of the undersigned's obligations, undertakings or liabilities under the Agreement or in any way affect or limit the same.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed and its seal to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
Name of Firm

(Corporate Seal)

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

**ATTACHMENT 6.1**

**INVOICE SUMMARY**  
(Submit with Letter of Transmittal)

Accounts Payable Department  
New York State Urban Development Corporation  
633 Third Avenue, New York, NY 10017-6754

Date: \_\_\_\_\_  
Invoice No: \_\_\_\_\_  
Amount \$ \_\_\_\_\_

Contractor

Address

\_\_\_\_\_

Project

\_\_\_\_\_

Contract No. \_\_\_\_\_ Project No. \_\_\_\_\_

	Original Contract Amount	Amendments Total	Revised Contract Amount	Previously Billed	This Invoice**	Invoiced To Date	Contract Balance
1. Fee							
2. Reimbursables							
3. Extra Services* 4.Total		\$	\$	\$	\$	\$	\$
\$							

Latest Contract Amount \$ \_\_\_\_\_  
Billed to Date \$ \_\_\_\_\_  
Paid to Date \$ \_\_\_\_\_  
Balance Due \$ \_\_\_\_\_

\*Attach letters of Authorization

\*\*Attach back-up

SAMPLE

ATTACHMENT 6.3

**SCHEDULE OF REIMBURSABLE ALLOWANCES**

BREAKFAST		LUNCH	DINNER
	Without Receipt	Without Receipt	Without Receipt
<b>I.</b>			
<b>MEALS ALLOWANCES</b>			
<b>A. OVERTIME</b>			
NORMAL WORKDAY - 8:00 PM (10 or more hours worked)			\$15.00
SAT., SUN & HOLIDAYS			
OVER 4 HOURS		\$10.00	
OVER 10 HOURS			\$15.00
<b>B. BUSINESS GUESTS (PER PERSON)</b>			
METRO N.Y. & OUT OF STATE	\$10.00	\$25.00	\$45.00
UPSTATE N.Y.	\$ 8.00	\$20.00	\$35.00
<b>C. NON-OVERNIGHT TRAVEL DAY TRIPS</b>			
	\$8.00 <sup>(a)</sup>		\$15.00 <sup>(b)</sup>
<b>D. OVERNIGHT</b>			
TRAVEL 1st & last			
Interim full days		\$7-\$9 <sup>(a)</sup>	\$27-\$37 <sup>(b)</sup>

(REIMBURSEMENT RATES ARE BASED ON LOCALITY-See Attached)

**BREAKDOWN OF MEALS BASED ON**

**LOCATION**

**DAILY BREAKFAST DINNER**

\$64	\$13	\$51
\$59	\$12	\$47
\$54	\$11	\$43
\$49	\$10	\$39
\$44	\$9	\$35
\$39	\$8	\$31

**II. LODGING (See attached)**

**III. TRANSPORTATION ALLOWANCES**

A. PERSONAL CAR MILEAGE	44.5 cents per mile.
B. PERSONAL CAR OVERTIME	Actual \$50 limit on overtime
C. CAR RENTAL	Actual Note: Be sure that sales tax is not charged and that collision damage waiver insurance is accepted when renting in NYS.
D. AIRLINE & OTHER PUBLIC TRANSPORTATION	<del>Actual - evidenced by receipt</del> coach rate.
E. TAXI FARES	Actual - evidenced by receipt \$50 limit on overtime

(a) When travel status begins prior to 7:00 AM

(b) When travel status ends after 8:00 PM

<u>City</u>	<u>County</u>	<u>Per Diem Locality</u>	<u>Maximum Lodging Amount</u>	<u>Meal Date</u>	<u>Maximum Per Diem Date</u>
Albany	Albany		94	49	143
Binghamton/Owego	Broome and Tioga		71	39	110
Buffalo (October 1 - November 19)	Erie		70	54	124
Buffalo (November 20 - September 30)	Erie		79	54	133
Floral Park/Garden City/Glen Cove/Great Neck/Roslyn	Nassau		162	64	226
Glens Falls (October 1 - June 30)	Warren		75	49	124
Glens Falls (July 1 - August 31)	Warren		121	49	170
Glens Falls (September 1 - September 30)	Warren		75	49	124
Ithaca/Waterloo/Romulus	Tompkins and Seneca		86	44	130
Kingston	Ulster		83	49	132
Lake Placid (October 1 - November 30)	Essex		95	54	149
Lake Placid (December 1 - February 28)	Essex		114	54	168
Lake Placid (March 1 - June 30)	Essex		83	54	137
Lake Placid (July 1 - August 31)	Essex		142	54	196
Lake Placid (September 1 - September 30)	Essex		95	54	149
Manhattan (includes the boroughs of Manhattan, Brooklyn, Queens, the Bronx and Staten Island) (October 1 - December 31)	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island		226	64	290
Manhattan (includes the boroughs of Manhattan, Brooklyn, Queens, the Bronx and Staten Island) (January 1 - May 31)	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island		201	64	265
Manhattan (includes the boroughs of Manhattan, Brooklyn, Queens, the Bronx and Staten Island)	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island		180	64	244

(June 1 -August31)	Staten Island			
Manhattan (includes the boroughs of Manhattan, Brooklhn, Queens, the Bronx and Staten Island (September 1 - September 30)	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island	226	64	290
Niagara Falls (October 1 - June 30)	Niagara	60	44	104
Niagara Falls (July 1 - August31)	Niagara	83	44	127
Niagara Falls (September 1 - September 30)	Niagara	60	44	104
Nyack/Palisades	Rockland	95	49	144
Poughkeepsie	Dutchess	102	54	156
Riverhead/Ronkonkoma/Melville/Smithtown/Huntingt on Station/Amagansett/East Hampton/Montauk/Southhampton/Islandia/Commack /Medford/Stony Brook/Hauppauge/Centereach	Suffolk	126	64	190
Rochester	Monroe	81	44	125
Saratoga Springs/Schenectady (October 1 - June 30)	Saratoga and Schenectady	93	44	137
Saratoga Springs/Schenectady (July 1 - August31)	Saratoga and Schenectady	147	44	191
Saratoga Springs/Schenectady (September 1 - September 30)	Saratoga and Schenectady	93	44	137
Syracuse	Onondaga	78	44	122
Tarrytown/White Plains/New Rochelle/Yonkers	Westchester	130	59	189
Troy	Rensselaer	80	39	119
West Point	Orange	97	44	141

Attachment 7.1

Additional Insurance

Attachment 7.2

Additional Insureds

**Proof of Workers' Compensation and Disability Benefits Insurance**

To comply, you must submit one of the following proofs:

Private Insurer	-	Form C-1 05.2
State Insurance Fund	-	Form U.26.3
Status as Self-Insured	-	Form SI-12
Status as Member of Group Self Insurance	-	Form GSI-1 05.2

**(Please obtain the above forms from your insurance carrier, licensed insurance agent or self-insurance administrator.)**

Statement that Applicant Is Not Required to Carry New York State Worker's Compensation Insurance	-	Form WC/DB-100 <b>OR</b> Form WC/DB-101
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Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at [www.web.state.ny.us](http://www.web.state.ny.us).

If you have questions regarding workers' compensation insurance coverage requirements, please contact the Bureau of Compliance at: **1-800-298-7830**.

**DISABILITY BENEFITS INSURANCE**

Section 220 of the New York State Workers' Compensation Law requires that before any permit, license or contract is issued by any municipal, county or state government entity, the applicant must submit proof of compliance with NYS disability benefits coverage requirements.

To comply, you must submit one of the following proofs:

All Insurance Carriers	-	Form DB-1 20.1 or DB-820/829
Status as Self-Insured	-	Form DB-155

**(Please obtain the above forms from your insurance carrier or self-insurance administrator.)**

Statement that Applicant Is Not Required to Carry New York State Disability Insurance	-	Form WC/DB-100 <b>OR</b> Form WC/DB-101
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Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at [www.wcb.state.ny.us](http://www.wcb.state.ny.us).

If you have questions regarding disability benefits insurance coverage requirements, please contact the Disability Benefits Office at: **1-800-353-3092**.