

**New York State Department of State  
Office for New Americans**

**REQUEST FOR APPLICATIONS  
RFA #12-ONA-08**

**Statewide Legal Technical Assistance Request to Support  
Immigrant Service Providers in New York State**

**Important Dates:**

RFA Release Date: June 22, 2012  
Questions Due: July 6, 2012  
RFA Updates Posted: July 13, 2012  
Application Due Date: Received on August 3, 2012 no later than 4:00 p.m.

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**CONTACT INFORMATION**

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**General Program Information/Inquiry**

Office for New Americans  
New York State Department of State  
One Commerce Plaza  
99 Washington Avenue, Suite 1020  
Albany, NY 12231-0001

E-mail: [dos.sm.DCS@dos.ny.gov](mailto:dos.sm.DCS@dos.ny.gov)

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**Proposal Submission**

LuAnn Hart, Contract Administration Unit  
New York State Department of State  
Bureau of Fiscal Management RFA 12-ONA-08  
One Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231-0001

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## **I. INTRODUCTION**

New Americans in New York State lack options for free or low cost legal services to assist them with immigration law questions. They therefore turn to service providers who may not be expert in immigration law. To address these issues, the Office for New Americans (ONA) will expand the availability of pro bono immigration lawyers while building the capacity of immigrant service providers around the state.

This Request for Applications (RFA) complements a simultaneously released RFA that will support the creation of ONA Neighborhood-Based Opportunity Centers (“ONA Opportunity Centers”) around New York State. Part A of this RFA seeks up to four organizations capable of retaining and supporting an immigration attorney, referred to as the Office for New Americans Legal Counsel (“ONA Legal Counsel”), who will provide legal technical assistance to ONA Opportunity Centers and other immigrant service providers in assigned regions of the State. Two of the four regions will be located downstate, one in the Hudson Valley, and the last region will cover the remainder of upstate New York. We expect the regions to approximate the regions on the attached map (Appendix A). However, the exact boundaries of the regions may be adjusted after ONA Opportunity Centers are selected. We anticipate that each ONA Legal Counsel will have responsibility for serving between four and eight ONA Opportunity Centers.

Using legal technical assistance funding described in Part A of this RFA, up to four successful agencies will employ an ONA Legal Counsel who will be dedicated to performing the required activities described in Part A. Each agency hosting an ONA Legal Counsel will receive a grant of up to a maximum of \$150,000 for the first year, with the possibility of renewal for two additional years. Each applicant for this funding must describe how it will attract and hire an ONA Legal Counsel, how it will support the ONA Legal Counsel, how it will expand the impact of the ONA Legal Counsel’s work through partnerships, and how it will ensure implementation of the required activities described in Part A.

While the ONA Legal Counsels will support the ONA Opportunity Centers and provide legal technical assistance services, Part B of this RFA seeks an organization capable of building the in-house capacity of immigrant service providers. Using the funding described in Part B of this RFA, a successful organization will help immigrant service providers to apply for recognition from the Board of Immigration Appeals (BIA) and provide immigration law training to service provider staff to prepare it to obtain and retain status as BIA accredited representatives.

The organization supported through Part B of this RFA, referred to as the BIA Trainer, will receive a grant of up to a maximum of \$60,000 for the first year, with the possibility of renewal for two additional years. Each applicant for this funding must describe how it will inform community-based organizations that serve new Americans of the benefits of BIA recognition and accreditation, why it is qualified to assist those organizations in preparing BIA recognition and accreditation applications, and how it will develop and deliver at least 160 hours of immigration law training to immigrant service providers each year.

## **II. FUNDING AND PROJECT PERIOD**

The Department of State (DOS) through ONA is making up to \$600,000 available to fund Part A of this RFA, providing up to four awards of up to a maximum of \$150,000 each to organizations that hire and support an ONA Legal Counsel. Each ONA Legal Counsel will be assigned to support ONA Opportunity Centers and other immigrant service providers in a designated region of the state.

Part A grants are limited to \$150,000 per year per region served. If an agency wishes to serve more than one region, the agency must employ the same number of ONA Legal Counsels as regions served, and must clearly describe intentions and capabilities in its application. A separate application must be submitted for each region.

The DOS through ONA is making up to \$60,000 available to fund Part B of this RFA, providing a single award to one organization that will serve as the statewide BIA Trainer. Nothing in this RFA prevents an organization interested in hosting an ONA Legal Counsel from applying to serve as the statewide BIA Trainer so long as the ONA Legal Counsel is dedicated to the responsibilities described in Part A, while other competent staff provide training services. Similarly, nothing in this RFA prevents an organization interested in hosting an ONA Opportunity Center from applying to host an ONA Legal Counsel or applying to serve as the BIA Trainer, so long as competent staff is dedicated to each program. A separate application should be submitted for each program.

All funds for this RFA are State funds from the New York State Aid to Localities budget for State fiscal year 2012-2013. Funds for Part A grants in the initial year will not exceed \$150,000 per award and will have the option of two one-year renewals at the same funding level as year one. Funds for the Part B grant in the initial year will not exceed \$60,000 and will also have the option of two one-year renewals at the same funding level as year one. Funding in subsequent years is contingent upon funds being appropriated in the State budget and the organization's ability to meet the program requirements in year one of the contract as stipulated in this RFA.

The following funding restrictions/guidelines should be noted: (1) Funds awarded under this RFA may not be used to supplant other funds; (2) Ineligible costs are those not adequately justified or that do not directly support the project; and (3) Ineligible costs will be stricken from proposed budgets.

### III. APPLICANT ELIGIBILITY

Not-for-Profit Organizations, Educational Institutions and Legal Service Providers located within New York State are eligible for funding under either or both parts of this RFA.

- (1) *Not-for-Profit Organization* shall mean any not-for-profit corporation exempt from taxation under section 501(c)(3) of the internal revenue code whose stated mission is to provide services to economically or socially disadvantaged persons, including but not limited to immigrants or new Americans.
- (2) *Educational Institution* shall mean an accredited institution of higher education located in New York State.
- (3) *Legal Service Provider* shall include organizations, incorporated and unincorporated, that provide legal services as: (1) legal aid organizations; (2) human and civil rights defense organizations; (3) public interest law firms; and, (4) organizations that attempt to achieve charitable goals through the institution of litigation as a plaintiff.

To be selected as a host for an ONA Legal Counsel, applicants should demonstrate understanding of the needs of immigrants in New York State and knowledge of the services available to those immigrants through community-based organizations, state and local governments, law schools, bar associations, and other service providers. Applicants also should have a history of developing effective collaborative relationships with community-based organizations, pro bono lawyers, law firms, law schools, and legal service providers, as well as the ability to serve the region that they propose to cover with the assistance of a newly hired or repurposed ONA Legal Counsel. Finally, applicants should be able to attract an outstanding immigration lawyer to serve as their ONA Legal Counsel.

To be selected as the BIA Trainer, applicants should demonstrate extensive knowledge of the BIA application and renewal processes, the organizations in New York State that could benefit from BIA recognition and accreditation, extensive knowledge of immigration law and practice, and the ability to develop and deliver immigration law training programs for non-lawyers.

#### **IV. APPLICATION PROCEDURES**

The application package is available online at [www.dos.ny.gov](http://www.dos.ny.gov). Requests for the RFA package may be made by e-mail at: [dos.sm.DCS@dos.ny.gov](mailto:dos.sm.DCS@dos.ny.gov), or by telephone at 518-474-5741.

##### **a. RFA QUESTIONS AND UPDATES**

All questions regarding this competitive grant program must be submitted in writing, and received on or before the *Questions Due* date as stated on the cover of this RFA, and sent via email addressed to [onalegaltechrfa@dos.ny.gov](mailto:onalegaltechrfa@dos.ny.gov). When corresponding by e-mail, clearly indicate the subject as: *ONA Legal Technical Assistance RFA*. No responses will be provided to inquiries made by telephone other than to request an RFA package.

Questions and answers will be posted on the *RFA Updates Posted* date as stated on the cover of this RFA at the following URL address: <http://www.dos.ny.gov/funding>.

##### **b. APPLICATION SUBMISSION**

One signed and complete original application, plus five exact copies of each application must be submitted (for a total of 6). All submissions must contain the complete application, including signature pages.

All applications must be delivered to:

LuAnn Hart, Contract Administration Unit  
New York State Department of State  
Bureau of Fiscal Management RFA# 12-ONA-08  
One Commerce Plaza, 99 Washington Avenue, Suite 1110  
Albany, NY 12231-0001

Electronic or fax copies will not be accepted. All applications must be complete to be considered for review.

Applications must be received by August 3, 2012 at 4:00 p.m. Late applications will not be considered.

#### **V. PART A GENERAL PROGRAM SERVICES**

Part A funding will support four host organizations in recruiting, hiring or repurposing, and supporting an immigration lawyer to serve as ONA Legal Counsel. Each ONA Legal Counsel must meet the following minimum qualifications: (1) Be a member in good standing of the bar of the highest court of any State, and (2) have three or more years of experience as an attorney, including at least two years of immigration law experience. ONA Legal Counsels with the ability to communicate in a language other than English are preferred. The funding will support the work of the ONA Legal Counsels, which will be dedicated entirely to the Required Activities defined in Part A of this RFA, and include:

- (1) Ensure that all ONA Opportunity Centers and immigrant service providers in the assigned region know that the ONA Legal Counsel is available to answer questions related to immigration law;
- (2) Timely respond to immigration law questions from ONA Opportunity Centers and other immigrant service providers in the assigned region;
- (3) Become familiar with the CitizenshipWorks software program and work with staff from ONA Opportunity Centers and Pro Bono Net to understand the citizenship application process using CitizenshipWorks;
- (4) Attend citizenship drives at ONA Opportunity Centers, where the ONA Legal Counsel will answer legal questions related to naturalization, and either personally review and approve, or coordinate with pro bono attorneys or BIA accredited representatives and attorneys on staff at the ONA Opportunity Center to ensure that an attorney or BIA accredited representative reviews and approves all citizenship applications before submission to the United States Citizenship and Immigration Services (USCIS);
- (5) Either personally review and approve, or coordinate with BIA accredited representatives and attorneys on staff at the ONA Opportunity Centers to ensure that an attorney or BIA accredited representative reviews and approves all citizenship applications completed at ONA Opportunity Centers on a rolling basis before submission to USCIS;
- (6) Provide direct legal representation in selected citizenship cases to immigrants with complex legal needs that require representation by an attorney;
- (7) Meet with and advise new Americans with immigration law questions at ONA Opportunity Centers in assigned region during designated immigration law consultation days;
- (8) Develop relationships with pro bono legal organizations, bar associations, volunteer lawyer associations, independent volunteer lawyers, law firms, law school clinics, law school pro bono programs, and volunteer law students, who can assist in providing the services listed above.
- (9) Work within the New York State Plan for supporting youth eligible for deferred action (to be released) by referring youth interested in deferred action to appropriate resources for direct legal representation and support.
- (10) Provide direct representation to immigrants in selected cases related to halting the deportation of young people eligible for deferred action and work authorization pursuant to the Obama Administration's deferred action process announced on June 15, 2012 and described on the United States Department of Homeland Security website at <http://www.dhs.gov/files/enforcement/deferred-action-process-for-young-people-who-are-low-enforcement-priorities.shtm>.

## **VI. PART A REQUIRED ACTIVITIES**

This section discusses the required activities and contractual documentation requirements for successful applicants under Part A. All services should be provided by the ONA Legal Counsel with the support of the host organization. Each ONA Legal Counsel is expected to dedicate their work exclusively to the Required Activities defined in this part.

<b>REQUIRED ACTIVITIES</b>	<b>SERVICE DESCRIPTION</b>	<b>DOCUMENTATION REQUIREMENTS</b>	<b>EXPECTED QUANTITIES</b>
Recruit and hire or repurpose an immigration lawyer to serve as ONA Legal Counsel	Each host organization must hire or repurpose an ONA Legal Counsel who meets the following minimum qualifications: (1) Be a member in good standing of the bar of the highest court of any State, and (2) have three or more years of experience as an attorney, including at least two years of immigration law experience.	(1) Copy of job posting or other material advertising the ONA Legal Counsel position (2) Resume of the selected ONA Legal Counsel, which must demonstrate compliance with minimum qualifications	Each host organization will recruit and retain or repurpose one ONA Legal Counsel
Ensure that all ONA Opportunity Centers and immigrant service providers in assigned region know that the ONA Legal Counsel is available to answer questions related to immigration law	The ONA Legal Counsel should inform all immigrant service providers in his/her assigned region that the ONA Legal Counsel is available to field questions about immigration law, and provide the ONA Legal Counsel's contact information. The ONA Legal Counsel should also provide a complete description of the legal technical assistance he/she will provide in the region.	(1) Log listing the name and contact information of all organizations provided with this information (2) Copy of the correspondence providing the ONA Legal Counsel's contact information and describing the legal technical assistance he/she will provide in the region	Outreach should be done upon hiring or repurposing of the ONA Legal Counsel.  Quarterly email blasts should remind immigrant service providers of the availability of this service.
Timely respond to immigration law questions from ONA Opportunity Centers and other immigrant service providers in assigned region	When an ONA Opportunity Center or other immigrant service provider from the ONA Legal Counsel's region contacts the ONA Legal Counsel with an immigration law question, the ONA Legal Counsel should respond within three business days (with exceptions during the ONA Legal Counsel's authorized time off).  If an ONA Legal Counsel receives an immigration law question from a service provider outside of their assigned region, he/she should direct the provider to the ONA Legal Counsel assigned to that provider's region.	(1) Log showing the number of immigration law questions received and responded to per week	This service should be provided on an ongoing basis.

<b>REQUIRED ACTIVITIES</b>	<b>SERVICE DESCRIPTION</b>	<b>DOCUMENTATION REQUIREMENTS</b>	<b>EXPECTED QUANTITIES</b>
<p>Attend citizenship drives at ONA Opportunity Centers, where the ONA Legal Counsel will answer legal questions related to naturalization, and review and approve and/or coordinate review and approval of all citizenship applications before submission to USCIS. The ONA Legal Counsel should also familiarize him/herself with the Citizenship Works software program.</p>	<p>Each ONA Opportunity Center will hold at least four (4) citizenship drives per year. Many of these drives will be held on weekends. The ONA Legal Counsel should attend substantially all of the drives hosted by the ONA Opportunity Centers in his/her assigned region. At each citizenship drive, the ONA Legal Counsel should answer questions from ONA Opportunity Center staff and volunteers related to immigration law generally and naturalization specifically. During and after each drive, the ONA Legal Counsel should conduct or coordinate the legal review of each citizenship application completed at the drive by an attorney or BIA accredited representation. The ONA Legal Counsel and other legal reviewers should follow-up with clients as needed. After ensuring appropriate legal review, the ONA Legal Counsel should submit citizenship applications to USCIS.</p> <p>When reviewing citizenship applications, the ONA Legal Counsel should pay particular attention to any issues flagged through the Citizenship Works software program.</p>	<p>(1) List of times, dates, and locations of citizenship drives attended by the ONA Legal Counsel</p> <p>(2) Log showing the number of citizenship applications reviewed by the ONA Legal Counsel at/after each citizenship drive</p> <p>(3) Log showing the number of citizenship applications submitted to USCIS at/after each citizenship drive</p>	<p>Each ONA Legal Counsel will be expected to attend substantially all citizenship drives at ONA Opportunity Centers in their assigned region, which is likely to be between 16 and 32 citizenship drives per year.</p> <p>The number of participants in each citizenship drive will depend on the ONA Opportunity Center.</p>
<p>Review and approve and/or coordinate legal review and approval of all citizenship applications completed at ONA Opportunity Centers on a rolling basis before submission to USCIS</p>	<p>The ONA Legal Counsel should either review each citizenship application for legal issues or coordinate with BIA accredited representatives or attorneys on staff at ONA Opportunity centers to review citizenship applications for legal issues. The ONA Legal Counsel and other legal reviewers should follow-up with clients as needed. After ensuring appropriate legal review, the ONA Legal Counsel should submit citizenship applications to USCIS.</p>	<p>(1) Log showing the number of citizenship applications reviewed by the ONA Legal Counsel that were completed on a rolling basis</p> <p>(2) Log showing the number of citizenship applications submitted by the ONA Legal Counsel to USCIS that were completed on a rolling basis</p>	<p>The number of applications will depend on the ONA Opportunity Center.</p>

<b>REQUIRED ACTIVITIES</b>	<b>SERVICE DESCRIPTION</b>	<b>DOCUMENTATION REQUIREMENTS</b>	<b>EXPECTED QUANTITIES</b>
<p>Provide immigration law consultations to new Americans with immigration law questions at ONA Opportunity Centers in assigned region</p> <p>Document the immigration law questions asked during immigration law consultations</p>	<p>The ONA Legal Counsel will provide advice to scheduled and walk-in clients with immigration law questions on a consultation basis.</p> <p>The ONA Legal Counsel should work with each ONA Opportunity Center in their region to schedule a mutually convenient legal consultation day each month, and the ONA Opportunity Center staff will schedule legal consultation appointments for the ONA Legal Counsel throughout the day. During each legal consultation day, ONA Opportunity Centers will schedule multiple appointments and ONA Legal Counsels will meet with multiple individuals with immigration law questions.</p> <p>Before providing legal advice during a legal consultation day, the ONA Legal Counsel will ensure that each client understands and signs a form indicating that he/she is not retaining the ONA Legal Counsel, and understands the nature of the consultation service provided.</p> <p>The ONA legal Counsel will comply with all ethical and confidentiality rules. The ONA Legal Counsel will complete a form after meeting with each client during an immigration law consultation describing the type of question asked.</p>	<p>(1) List of times, dates, and locations of each immigration law consultation day provided by the ONA Legal Counsel</p> <p>(2) Copies of the signed, dated forms completed by each client that consulted the ONA Legal Counsel</p> <p>(3) Copies of the forms completed after each consultation appointment by the ONA Legal Counsel</p>	<p>We expect the ONA Legal Counsel to hold immigration law consultation days 10 to 12 times per year at each ONA site in their assigned region. That means each ONA Legal Counsel will provide between 40 and 96 legal consultation days per year; and three to eight legal consultation days per month.</p> <p>Forms and records should be compiled and submitted to DOS/ONA on a quarterly basis.</p>

<b>REQUIRED ACTIVITIES</b>	<b>SERVICE DESCRIPTION</b>	<b>DOCUMENTATION REQUIREMENTS</b>	<b>EXPECTED QUANTITIES</b>
Develop relationships with pro bono legal organizations, volunteer lawyer associations, bar associations, independent volunteer lawyers, law firms, law school clinics, law school pro bono programs, and volunteer law students, who can assist in providing legal services to new Americans in assigned region	<p>Each ONA Legal Counsel should reach out to law school and legal services organizations in assigned region to develop relationships that will expand access to quality immigration law advice for clients in their region.</p> <p>The ONA Legal Counsels should work together and with ONA to develop relationships with national and statewide organizations that could expand access to quality immigration law advice for clients statewide.</p>	<p>(1) Copy of MOU's executed with partner organizations</p> <p>(2) Log showing names and affiliations of volunteer attorneys and volunteer law students that assisted at each citizenship drive</p> <p>(3) Log showing names and affiliations of volunteer attorneys and volunteer law students that assisted at each immigration law consultation day</p>	<p>We expect each ONA Legal Counsel to develop a productive relationship with at least one organization in his/her region.</p> <p>We expect the ONA Legal Counsels to collaboratively develop at least one relationship with a national or statewide organization.</p>
Provide direct representation to immigrants in selected cases related to citizenship and naturalization and cases related to halting the deportation of young people eligible for deferral of deportation and work authorization pursuant to the Obama Administration's deferral of action process announced on June 15, 2012.	<p>Certain new Americans interested in applying for citizenship at ONA Opportunity Centers may have complex legal needs that require representation by an attorney. The ONA Legal Counsel may provide direct representation to these new Americans in selected citizenship cases.</p> <p>On June 15, 2012 the Obama administration announced a policy that will allow the deferral of deportation for eligible individuals who were brought to this country as children. The ONA Legal Counsel may provide direct representation to eligible youth as they apply for a deferral of deportation under this new policy in selected cases.</p>	<p>(1) Copies of the retainer agreements signed by the new American and the ONA Legal Counsel in each case in which the ONA Legal Counsel selects to provide direct representation</p>	<p>The ONA Legal Counsel is not required to provide direct legal representation in any case, but may do so to the extent he/she has the time and expertise to provide such representation in citizenship cases and youth deferral of deportation cases.</p> <p>The ONA Legal Counsel should submit copies of retainer agreements to DOS/ONA on a quarterly basis.</p>

<b>REQUIRED ACTIVITIES</b>	<b>SERVICE DESCRIPTION</b>	<b>DOCUMENTATION REQUIREMENTS</b>	<b>EXPECTED QUANTITIES</b>
Work within the New York State Plan for supporting youth eligible for deferred action (to be released) by referring youth interested in deferred action to appropriate resources for direct legal representation and support.	<p>New York State is currently developing a plan to assist youth eligible for deferral of deportation under the new federal policy announced on June 15, 2012. We expect this plan to include an expansion of access to legal assistance for eligible youth.</p> <p>ONA Legal Counsels should work within the New York State Plan, once announced, by referring youth interested in deferred action to appropriate resources for legal representation</p>	(1) Log showing number of referrals made	ONA Legal Counsels should submit the log of referrals on a quarterly basis.

## VII. PART B GENERAL PROGRAM SERVICES

Many immigrant service providers in our state lack the resources to have an immigration law attorney on staff. These organizations are nevertheless frequently confronted with immigration law questions and desirous of assisting new Americans in immigration law proceedings. To do this, organizations need immigration law training and recognition from the BIA. BIA recognized organizations provide services to new Americans through a staff person or volunteer who serves as the organization's BIA accredited representative. In order to receive and maintain BIA accreditation immigrant service providers must pursue immigration law training. This training is essential to ensuring that BIA representatives provide quality immigration services, stay abreast of developments in immigration law and policy, and avoid the unauthorized practice of law.

Part B of this RFA seeks one BIA Trainer capable of assisting ONA Opportunity Centers and other immigrant service providers in obtaining BIA recognition and training the staff at those organizations to receive and maintain BIA accreditation. The BIA Trainer will provide immigrant service providers across New York State with information about the recognition process, and assist providers in applying for recognition and staff accreditation. In addition, the BIA Trainer will provide immigration law trainings in order to (1) help organizations achieve BIA recognition, and (2) help staff and volunteers at those organizations achieve (a) full recognition as BIA accredited representatives authorized to represent immigrants before the Department of Homeland Security (DHS), Immigration Courts, and the BIA; (b) partial recognition as BIA accredited representatives authorized to represent immigrants before DHS; and/or (c) renewal of BIA accreditation.

The services provided by the BIA Trainer will include:

- (1) Conduct outreach to ONA Opportunity Centers and other immigrant service providers statewide that are not yet BIA recognized to inform them of the benefits and responsibilities associated with BIA recognition and accreditation, including but not limited to group training sessions explaining the BIA recognition and accreditation process;
- (2) Provide consultation services and technical assistance to ONA Opportunity Centers and other immigrant service providers in New York State interested in applying for BIA recognition;

- (3) Provide at least two, week-long 40-hour training courses that will fulfill the continuing education requirements for BIA accredited representatives and provide immigration law training to prospective BIA representatives; and
- (4) Provide at least 80 hours of additional immigration law training sessions to assist prospective BIA representatives in developing their immigration law expertise and help existing BIA accredited representatives maintain immigration law knowledge and stay up-to-date on new developments in immigration law and policy.

### VIII. PART B REQUIRED ACTIVITIES

This section discusses the required activities and contractual documentation requirements for successful applicants under Part B.

REQUIRED ACTIVITIES	SERVICE DESCRIPTION	DOCUMENTATION REQUIREMENTS	EXPECTED QUANTITIES
Conduct outreach to ONA Opportunity Centers and other immigrant service providers statewide that are not yet BIA recognized to inform them of the benefits and responsibilities associated with BIA recognition and accreditation	Develop a list of contacts at organizations that serve new Americans in our state and use email, telephone, in-person, and virtual communications to inform them of the benefits and responsibilities associated with BIA recognition and accreditation. Provide group training sessions describing those benefits and responsibilities at convenient ONA Opportunity Centers.	<ol style="list-style-type: none"> <li>(1) List of contacts at organizations that serve new Americans in our state</li> <li>(2) List of group training sessions, locations, and attendee names and affiliations</li> </ol>	The BIA Trainer should identify all providers that could benefit from BIA recognition, send an email blast to those providers bi-annually, and hold at least two group training sessions per year. The list of contacts should be submitted to DOS/ONA bi-annually
Provide consultation services and technical assistance to ONA Opportunity Centers and other immigrant service providers in New York State interested in completing applications for BIA recognition	Provide in-person, telephonic, and virtual assistance to immigrant service providers interested in applying for BIA recognition. This should include advice on the amount and type of training prospective representatives should undertake, as well as advice reflecting doctrine and practice that gives shape to the requirements described in the application materials.	<ol style="list-style-type: none"> <li>(1) Log showing organizations receiving technical assistance, organizations that completed applications for BIA recognition, and organizations that received BIA recognition</li> </ol>	The BIA Trainer should work with enough providers to ensure that at least 10 providers in New York State receive new BIA recognition per year. The log should be submitted to DOS/ONA bi-annually

<b>REQUIRED ACTIVITIES</b>	<b>SERVICE DESCRIPTION</b>	<b>DOCUMENTATION REQUIREMENTS</b>	<b>EXPECTED QUANTITIES</b>
Provide at least two, week-long 40-hour training courses that will fulfill the continuing education requirements for BIA accredited representatives and provide immigration law training to prospective BIA representatives	The BIA Trainer will develop an up to date immigration law curriculum for a 40-hour course for non-lawyers, taking into consideration the industry standards for training for BIA representatives. The BIA Trainer will also develop and distribute written training materials to trainees. We expect the BIA Trainer to conduct one 40-hour training at an ONA Opportunity Center upstate, and one at an ONA Opportunity Center downstate each year. The BIA Trainer should work with the ONA Opportunity Centers to schedule a mutually convenient week. The ONA Opportunity Centers will provide space and administrative support.	<ol style="list-style-type: none"> <li>(1) One copy of the written training materials distributed to participants in the 40 hour training courses</li> <li>(2) Log showing the name and affiliation of participants on each of the 5 days of both 40 hour training sessions</li> </ol>	The BIA Trainer will conduct at least two, week-long 40-hour training courses per year (one upstate and one downstate). Written materials and log should be submitted to DOS/ONA after each 40-hour training session.
Provide at least 80 hours of additional immigration law training sessions to assist prospective BIA representatives in developing their immigration law expertise and help existing BIA accredited representatives maintain immigration law knowledge and stay up-to-date on new developments in immigration law and policy	The BIA Trainer should develop immigration law curricula appropriate to prepare non-lawyers to become BIA accredited representatives and/or renew that accreditation. The BIA Trainer will also develop and distribute written training materials to trainees. The BIA Trainer should coordinate with ONA Opportunity Centers, who will provide space and administrative support for the 80 hours of additional training sessions. These 80 hours may be provided in two, week-long sessions of 40 hours each or through shorter sessions as the BIA Trainer finds most appropriate to meet immigrant service provider needs. The BIA Trainer should conduct at least 40 of the 80 hours of additional training sessions at ONA Opportunity Centers outside of New York City.	<ol style="list-style-type: none"> <li>(1) One copy of the written training materials distributed to participants in each training session</li> <li>(2) Log showing date, time, location and duration of additional immigration law training sessions</li> <li>(3) Log showing attendee names and organizational affiliations for each training session</li> </ol>	The BIA Trainer should provide at least 80 hours of additional immigration law training at various ONA Opportunity Centers around the state, with appropriate consideration for the topical and geographic needs of immigrant service providers. Documentation should be submitted to DOS/ONA on a quarterly basis.

## **IX. COMPLETING THE APPLICATION**

Applicants should respond to this RFA by compiling the narratives and forms described below. The narrative portions of the application should be typed in Microsoft Word, double-spaced, using Times New Roman font size 12, and margins no narrower than .75/right-left, and .5/top-bottom.

The following criteria must be met to qualify applications for consideration. Failure to meet the following criteria will result in disqualification of the application:

1. One signed and complete original application and 5 exact copies must be submitted to ONA and received by the due date and time;
2. The funding requested for Part A cannot exceed \$150,000 for the October 1, 2012 – September 30, 2013 year;
3. The funding requested for Part B cannot exceed \$60,000 for the October 1, 2012 – September 30, 2013 year; and
4. The applicant must be an eligible entity as defined in this RFA.

The following components must be included in the Part A Application in order for the submission to be complete:

1. Project Summary (less than one page):
  - a. Description of services and activities
  - b. Description of region applicant proposes to serve
  - c. Expected results and outcomes
  - d. Estimate of the overall budget for the first year of the program (up to a maximum of \$150,000)
2. Program Proposal (less than 26 pages):
  - a. Organizational experience / capacity to host ONA Legal Counsel (approx. four pages)
    - i. Applicant should describe the organization and demonstrate its ability to recruit and support an outstanding ONA Legal Counsel capable of fulfilling the required activities
    - ii. Applicant should demonstrate its understanding of the needs of immigrants in New York State and knowledge of the services available to those immigrants through community based organizations, state and local governments, and other service providers
    - iii. Applicant should demonstrate ability to serve the region that it proposes to cover with the assistance of a newly hired or repurposed ONA Legal Counsel
    - iv. Applicant should demonstrate the capacity to work with non-English speaking clients, including experience using interpreters and professional translation services
  - b. Plan for recruiting or repurposing immigration law attorney to serve as ONA Legal Counsel (approx. three pages)
    - i. Applicant should describe its unique organizational ability to recruit and hire a high-quality ONA Legal Counsel
    - ii. Applicant that anticipates employing a new immigration law attorney as ONA Legal Counsel should describe how it plans to recruit that attorney
    - iii. Applicant that anticipates repurposing an immigration law attorney already employed at the organization should demonstrate that that attorney meets the basic requirements of an ONA Legal Counsel, describe that attorney's additional qualifications, and include that attorney's resume

- c. Implementation and integration plan (approx. five pages)
    - i. Applicant should describe its strategy for performing the Required Activities described in Part A of this RFA
    - ii. Applicant should describe how the ONA Legal Counsel will gain the confidence of the ONA Opportunity Centers and work effectively in partnership with them
    - iii. Applicant should describe its plan for integrating the ONA Legal Counsel's activities into the organization's other activities
  - d. Partnerships and resources that will fortify implementation of the Required Activities described in Part A of this RFA (approx. five pages)
    - i. Applicant should describe pre-existing organizational relationships with pro bono law organizations, volunteer lawyer associations, bar associations, independent volunteer lawyers, law firms, law school clinics, law school pro bono programs, and volunteer law students, who can assist in providing immigration law services to new Americans in the region that it proposes to cover through its ONA Legal Counsel
    - ii. Applicant should describe other funding sources currently supporting the provision of immigration legal services by the organization and the specific projects or activities funded thereby
    - iii. Applicant should describe other funding sources that it will use to support the required activities described in Part A of this RFA
  - e. Strategy for measuring success (approx. four pages)
    - i. Applicant should describe the outcomes it intends to achieve by engaging in the Required Activities described in Part A of this RFA
    - ii. Applicant should describe the indicators that it will use to measure its success in performing the Required Activities described in Part A of this RFA
    - iii. Applicant should describe its evaluation plan and methodology
3. Regional Identification Sheet (Appendix B)
  4. Budget Summary (approx. four page narrative + complete Appendix C)
    - a. Applicant should provide a detailed and realistic budget for the 2012-2013 year containing allowable, reasonable, and necessary costs
    - b. Given the timeline between award announcement and program commencement, the budget should show whether and how expenses will be ramped up over the grant period
    - c. All budget items should be clearly justified and directly related to the Required Activities described in Part A of this RFA
    - d. None of the Required Activities described in Part A of this RFA may be subcontracted out to any individual or organization

The following components must be included in the Part B Application in order for the submission to be complete:

1. Project Summary (less than one page):
  - a. Description of services and activities
  - b. Expected results and outcomes
  - c. Estimate of the overall budget for the first year of the program (up to a maximum of \$60,000)

2. Program Proposal (less than 24 pages):

- a. Organizational experience and capacity (approx. six pages)
  - i. Applicant should demonstrate its knowledge of the organizations in New York State that serve new Americans and identify groups or types of organizations that are not currently recognized by the BIA but which would benefit from such recognition
  - ii. Applicant should demonstrate expertise in the process and requirements for obtaining BIA recognition and accreditation
  - iii. Applicant should describe experience it has had in assisting immigrant service providers in preparing applications for BIA recognition
  - iv. Applicant should describe experience it has had in assisting individuals in preparing applications for full, partial, or renewal BIA accreditation
  - v. Applicant should name individual staff members who will be charged with providing consulting services and technical assistance to organizations and individuals interested in BIA recognition/accreditation, describe their experience and expertise, and attach their resumes
  - vi. Applicant should demonstrate familiarity with the industry standards for training of prospective BIA representatives and continuing education for existing BIA accredited representatives
  - vii. Applicant should demonstrate the capacity to develop immigration law curricula for non-lawyers consistent with those industry standards
  - viii. Applicant should describe any experience it has had in providing immigration law training to non-lawyers
  - ix. Applicant should name individual staff members who will be charged with designing and leading training sessions, describe their experience and expertise, and attach their resumes
- b. Plan for two, week-long 40-hour training courses (approx. four pages)
  - i. Applicant should provide examples of topics to be covered during the 40-hour training courses, leaving flexibility to update curriculum to reflect changes in immigration law or policy
  - ii. Applicant should describe topical areas for which it expects to subcontract with another individual or organization that can provide additional expertise necessary to develop or present a comprehensive training program, if any
  - iii. Applicant should describe the upstate and the downstate areas in which it intends to conduct the two 40-hour training sessions and explain why those locations are most appropriate
- c. Plan for at least 80 hours of additional training sessions (approx. four pages)
  - i. Applicant should provide examples of topics to be covered during the 80 hours of additional training sessions, leaving flexibility to update curriculum to reflect changes in immigration law or policy
  - ii. Applicant should describe topical areas for which it expects to subcontract with another individual or organization that can provide additional expertise necessary to develop or present a comprehensive training program, if any
  - iii. Applicant should describe how it intends to spread the 80 hours of additional training sessions temporally over the course of the year and geographically across the state and explain why that allocation will best serve the needs of immigrant service providers in New York State

- d. Partnerships and resources that will fortify implementation of the Part B Required Activities (approx. three pages)
    - i. Applicant should describe pre-existing organizational relationships with immigration law practitioners, experts, professors, pro bono organizations, and law schools who may assist in developing or presenting immigration law curriculum to non-lawyers under the terms of this contract
    - ii. Applicant should describe other funding sources currently supporting the applicant's provision of immigration law training services to non-lawyers and the specific projects or activities funded thereby
    - iii. Applicant should describe other funding sources, if any, that it will use to support the Required Activities described in Part B of this RFA
  - e. Strategy for measuring success (approx. three pages)
    - i. Applicant should describe the outcomes it intends to achieve by engaging in the Required Activities described in Part B of this RFA, including but not limited to the recognition of at least 10 immigrant service providers in New York State by BIA who previously had not been recognized
    - ii. Applicant should describe the indicators that it will use to measure its success in performing the Required Activities described in Part B this RFA
    - iii. Applicant should describe it's evaluation plan and methodology
3. Budget Summary (approx. four pages) (Appendix C)
- a. Applicant should provide a detailed and realistic budget for the 2012-2013 year containing allowable, reasonable, and necessary costs
  - b. Applicant should describe any intention to subcontract with another service provider in order to complete the Required Activities described in Part B of this RFA
  - c. All budget items should be clearly justified and directly related to the Required Activities described in Part B of this RFA

Only complete applications will be reviewed and evaluated.

## X. REVIEW AND SELECTION PROCESS

**Initial DOS/ONA Screening:** Each application will be screened by a DOS/ONA staff team to acknowledge its receipt by the closing date and time, whether the amount requested exceeds the stated ceiling, and to determine its completeness. Incomplete applications or those exceeding the funding limit will be disqualified; applicants will be notified of such disqualification.

**First level review:** Applications that pass the initial screening will be evaluated individually by a DOS/ONA Review Team. Reviewers will use the evaluation criteria listed below to review and score applications. Each reviewer will assign a score up to a maximum of 100 points to each application; individual scores will be averaged to determine the applicant's score. A complete listing of applicants, along with their applications, will be provided to the Secretary of State (or his designee) for second level review.

**Second level review:** The Secretary of State (or his designee) will review each application and award up to 10 additional points per application, for a total maximum score of 115 points.

**Awards:** Under Part A of this RFA approximately four grants of up to a maximum of \$150,000 per award per year will be made based on rank order of final scores, until allocated funds are fully distributed. Under Part B of this RFA one grant of up to a maximum of \$60,000 per year will be made based on rank order of final scores. ONA reserves the right to offer partial or no funding to any applicant if

its application cannot be fully funded within the funds remaining. In the event that any awardee fails to satisfactorily negotiate a proper contract, funding will be awarded to the next highest-scoring applicant.

## **XI. EVALUATING THE APPLICATION**

The evaluation criteria are designed to assess the quality of the proposed project and to determine likelihood of success. The evaluation criteria are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which respond to the evaluation criteria within the context of this program announcement. The contract awards will be made to the applicants whose proposals are determined to best meet the criteria for proposal evaluation and selection set forth in this RFA.

In evaluating each application for support under Part A of this RFA, DOS/ONA will consider the following criteria, which will be weighted in accordance with the point scale described below, for a total possible score of 115 points:

a. PROJECT SUMMARY	Not Scored
b. ORGANIZATIONAL EXPERIENCE AND CAPACITY	20 points maximum
c. RECRUITMENT/REPURPOSING PLAN	10 points maximum
d. IMPLEMENTATION AND INTEGRATION PLAN	25 points maximum
e. PARTNERSHIPS AND RESOURCES	15 points maximum
f. STRATEGY FOR MEASURING SUCCESS	10 points maximum
g. BUDGET	20 points maximum
h. SECRETARY OF STATE DISCRETIONARY POINTS	15 points maximum

In evaluating each application for support under Part B of this RFA, DOS/ONA will consider the following criteria, which will be weighted in accordance with the point scale described below, for a total possible score of 115 points:

a. PROJECT SUMMARY	Not Scored
b. ORGANIZATIONAL EXPERIENCE AND CAPACITY	20 points maximum
c. PLAN FOR 40-HOUR TRAINING COURSES	15 points maximum
d. PLAN FOR ADDITIONAL 80 TRAINING HOURS	15 points maximum
e. PARTNERSHIPS AND RESOURCES	15 points maximum
f. STRATEGY FOR MEASURING SUCCESS	15 points maximum
g. BUDGET	20 points maximum
h. SECRETARY OF STATE DISCRETIONARY POINTS	15 points maximum

## XII. CONTRACTING REQUIREMENTS

**Standard Contract:** Successful applicants must enter into a standard contract with the Department of State (DOS) which includes an approved budget and work plan, any attachments or exhibits, and standard clauses required by the NYS Attorney General for all state contracts, along with Article 15-A of the New York Executive Law. The contract includes financial reporting requirements, including procurement procedures. The contract may be subject to approval by the Attorney General and State Comptroller, require submission of final products in both hard copy and electronic form, and be subject to payment only upon proper documentation and compliance with payment procedures and all other contractual requirements. A copy of a sample standard contract is attached as Appendix D. Sample contracts should not be submitted with this proposal; successful applicants will receive a contract package to complete.

**Project Period:** The project period under both parts of this RFA is anticipated to be October 1, 2012 through September 30, 2013, with the option of two one-year renewals. Failure to incur all expenses or complete all identified outcomes in the stated period may result in loss or recapture of funds.

**Vendor Responsibility Questionnaire:** DOS strongly recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at [cio-helpdesk@osc.state.ny.us](mailto:cio-helpdesk@osc.state.ny.us). Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact DOS or the Office of the State Comptroller's Help Desk for a copy of the paper form.

## XIII. CONTRACT DEVELOPMENT PROCESS

It is anticipated that applications will be reviewed and that successful applicants will be notified of funding decisions on or about August 31, 2012. Successful applicants will be notified of funding decisions through issuance of a Notice of Award document that sets forth the amount of funds granted, and the terms and conditions of the grant award, which are subject to approval by the Office of the State Comptroller. Grant awards will have a start date of approximately October 1, 2012.

DOS/ONA will begin the contract development process with the successful applicants when the award is announced. Successful applicants may be asked to provide updated work plans and payment schedules that specify the services to be delivered, project goals, claiming process, and other information. The contract will include, but not be limited to, standard terms and conditions such as confidentiality of records, publications, and contract termination. The proposal of the successful applicant will serve as the basis for additional contract terms, which will be modified within the context of this RFA. The contract will constitute a legal agreement between the selected applicant and DOS/ONA and will be in force for the full period of the contract.

The contract will have a 12-month payment schedule and it is required for each of the contracts' specified budget periods. The contract will have the option for two one-year renewals. All plans and working documents prepared by the applicant(s) under the contract to be awarded will become the property of the State of New York.

Unsuccessful applicants may request the opportunity to be debriefed. Requests must be made in writing by October 1, 2012 to the same address to which applications are submitted.

#### **XIV. PAYMENT**

The contractor will receive 25% of the total first year's award as a budget advance on or about October 1, 2012. Thereafter, each grantee will be reimbursed for expenses incurred pursuant to grant related activities including salary, benefits, travel, and related expenses. No payments will be made until the contract is fully executed and signed by the State Comptroller and the State Attorney General. Contractors will work at their own risk if they conduct program activities before the contract is executed.

#### **XV. PROGRAM ASSESSMENT AND MONITORING**

##### **a. RECORD KEEPING**

The contractor must maintain current and accurate fiscal and accounting controls to support its claims for payment. Records must adequately identify revenue sources and expense items for all contracted activities. Accounting records must be supported by clear documentation for all funds received and disbursed. Records must be retained and be accessible for a period of six years from the end of the contract or last payment or last contract transaction.

If any claim, audit, litigation, or State/Federal investigation is commenced before the expiration of the aforementioned record retention period, the records must be retained by the contractor until all claims or findings regarding the records are finally resolved. DOS/ONA or its designee shall have access to any records relevant to the project (including books, documents, photographs, correspondence, and records), for audits, examinations, transcripts, and excerpts. If DOS/ONA determines that such records possess long-term or historic value, they must be transferred, upon request, to DOS/ONA.

*Failure to provide requested documents could result in immediate termination of the contract.*

##### **b. REPORTING AND VOUCHERING REQUIREMENTS**

Awardees must submit copies of the Required Documentation listed in the applicable part of this RFA on a quarterly basis during the contract term, unless otherwise specified. Payments will be based on the Required Documentation and other documents that support reimbursement in accordance with the Payment Schedule. Dates of Service in Required Documents should be consistent with the actual service dates. Additional reporting, as may be determined by DOS/ONA, may also be required.

Final reports and vouchers, known as "close-out" vouchers, are due within 60 days after the completion of, or termination of, the contract.

##### **c. MONITORING**

DOS/ONA will monitor projects on a regular basis throughout the life of the contract. Monitoring may include, but not be limited to, site visits, regular telephone contact and/or discussions of progress reports. The goals of project monitoring are to ensure that the terms of the contract are being met and to provide technical assistance, where necessary, to help the contractor meet the terms of this RFA.

#### **XVI. AMENDMENTS TO THE CONTRACT**

Amendments and modifications to executed contracts are sometimes necessary to accommodate the needs of both the contractor and DOS/ONA. These changes, which must be by mutual written agreement, may include modification to reimbursement schedules, time and money amendments, or no-cost extensions as necessary. Contract modifications, including amendments and no-cost time extensions, will be made at the discretion of DOS/ONA with the approval of the Office of the State Comptroller.

#### **XVII. GENERAL TERMS AND CONDITIONS**

This RFA and any contract resulting from this RFA is subject to all applicable laws, rules and regulations promulgated by any Federal and State authority having jurisdiction over the subject matter thereof. Any contract awarded pursuant to this RFA will be subject to DOS' processing procedures for

contracts of this type, including approval as to form by the State Attorney General, and as to award by the NYS Division of Budget and NYS Office of the State Comptroller.

DOS/ONA reserves the right to terminate or modify the contract due to the unavailability of funds, unsatisfactory performance, or the best interests of the state.

Pursuant to the New York State Procurement Guidelines, ONA also reserves the right to:

1. Reject any or all applications received in response to the RFA;
2. Withdraw the RFA at any time, at the Department's sole discretion;
3. Make an award under the RFA in whole or in part;
4. Disqualify any applicant whose conduct and/or application fail to conform to the requirements of this RFA;
5. Seek clarifications and revisions of applications;
6. Use application information obtained through site visits, management interviews and the state's investigation of an applicant's qualifications, experience, ability or financial standing, and any material or other information submitted by the applicant in response to the Department's request for additional information in the course of evaluation and/or selection under the RFA;
7. Prior to the application due date, amend the RFA specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the application due date, direct applicants to submit application modifications addressing subsequent RFA amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with successful applicants within the scope of the RFA in the best interests of the state;
13. Conduct contract negotiations with the next responsible applicant, should DOS be unsuccessful in negotiating with a selected applicant;
14. Use any and all ideas submitted in the applications received;
15. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an application and/or to determine an applicant's compliance with the requirements of the RFA;
16. Make additional awards if funding becomes available; and,
17. Not to make any awards pursuant to this RFA.

This RFA does not commit DOS/ONA to award any contracts, to pay the costs incurred in the preparation of a response to this RFA, or to procure or contract for services.

#### **XVIII. REQUIREMENTS RELATED TO MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES**

Pursuant to New York State Executive Law Article 15-A, DOS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises (MWBES) and the employment of minority group members and women in the performance of DOS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether MWBES had a full and fair opportunity to participate in state contracting. The findings of the study were published on

April 29, 2010, under the title “The State of Minority and Women-Owned Business Enterprises: Evidence from New York” (“Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of MWBEs in state procurement contracting versus the number of MWBEs that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified MWBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that DOS establishes goals for maximum feasible participation of New York State Certified MWBE and the employment of minority groups members and women in the performance of New York State contracts.

a. Business Participation Opportunities for MWBEs

The nature of the services provided through the ONA Legal Counsels described in Part A of this RFA are exempt from the provisions of Article 15-A of the Executive Law that require the setting of participation goals. Therefore, although applicants under Part A are encouraged to promote and assist the participation of certified MWBEs as subcontractors and suppliers on this project for the provision of the services and materials needed in the performance of the Contract, DOS hereby establishes an overall goal of 0% for MWBE participation 0% for Minority-Owned Business Enterprises (MBE) participation and 0% for Women-Owned Business Enterprises (WBE”) participation (based on the current availability of qualified MBEs and WBEs).

For purposes of the solicitation in Part B of this RFA, DOS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises participation and 10% for Women-Owned Business Enterprises participation (based on the current availability of qualified MBEs and WBEs). A contractor on the subject contract must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that DOS may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

While applicants under Part B RFA are encouraged to promote and assist the participation of certified MWBEs as subcontractors and suppliers on this project for the provision of the services and materials needed in the performance of the contract, the nature of some services and materials being provided may be exempt from the 20% goal established hereunder and therefore the provisions of Article 15-A of the Executive Law that require the setting of participation goals would not apply under those circumstances.

For guidance on how DOS will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

b. MWBE Utilization

By submitting a bid or proposal, an applicant under Part B of this RFA (“Bidder”) agrees to submit the following documents and information as evidence of compliance with 5 NYCRR §142.8:

1. Bidders are required to submit a MWBE Utilization Plan on Form A with their bid or proposal. (Appendix E). Any modifications or changes to the MWBE

- Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DOS. DOS will review the submitted MWBE Utilization Plan and advise the Bidder of DOS acceptance or issue a notice of deficiency within 30 days of receipt.
2. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the DOS: Office of Affirmative Action Programs, 99 Washington Avenue, Albany, New York 12231; Phone: (518) 473-2507; Fax (518) 473-9211. If the written remedy that is submitted is not timely or is found by DOS to be inadequate, DOS shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver (Appendix E) form B of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
  3. DOS may disqualify a Bidder as being non-responsive under the following circumstances:
    1. If a Bidder fails to submit a MWBE Utilization Plan;
    2. If a Bidder fails to submit a written remedy to a notice of deficiency;
    3. If a Bidder fails to submit a request for waiver; or
    4. If DOS determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DOS, but must be made no later than prior to the submission of a request for final payment on the Contract.

c. Non-Compliance

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

In addition, failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

d. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this RFA, the Bidder/Contractor agrees with all of the terms and conditions of Standard Clauses for New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to undertake or

continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan Form C (Appendix E) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the DOS, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

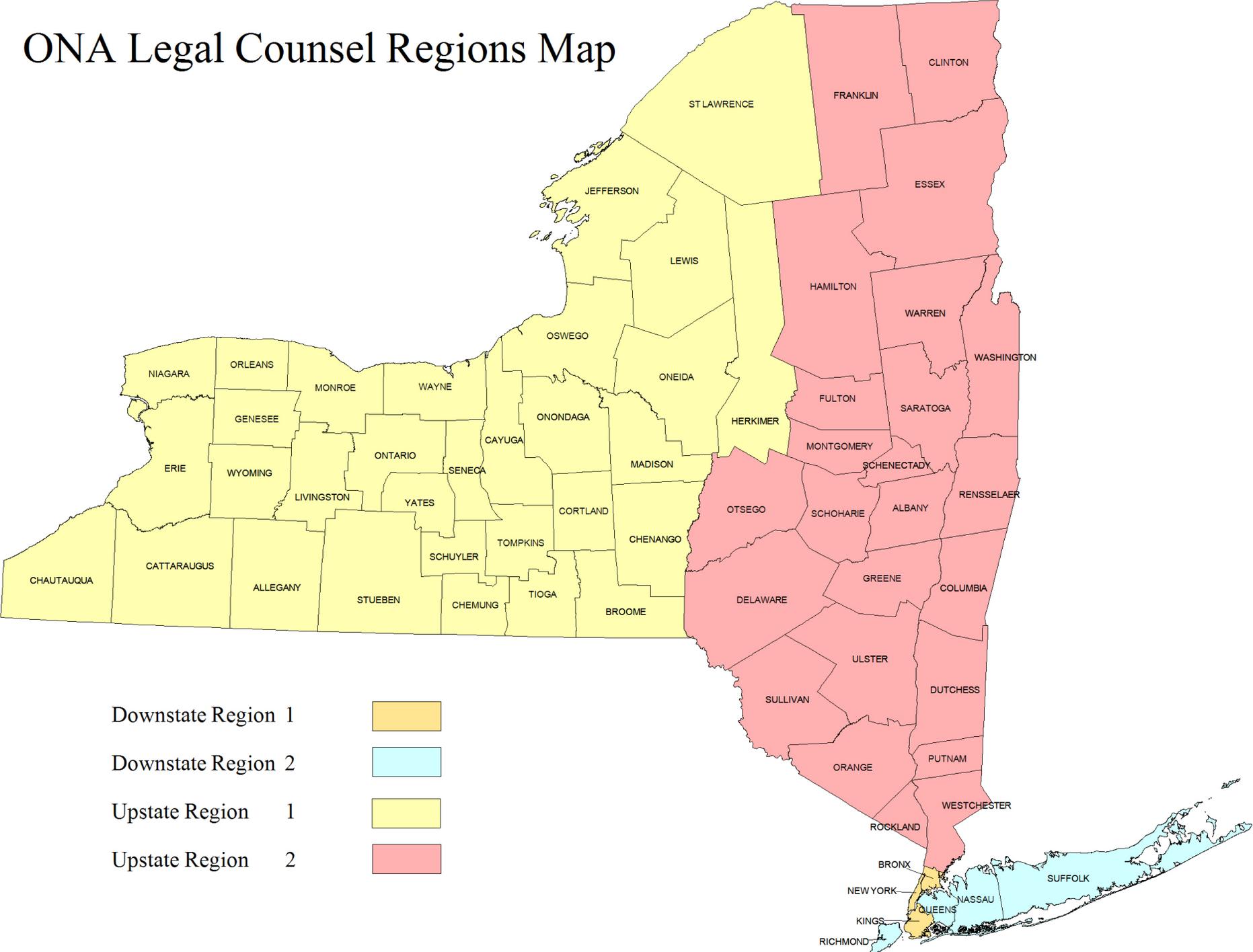
Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

## **XIX. APPENDICES**

- a. APPENDIX A: Map of anticipated regions to be covered by the ONA Legal Counsels (subject to change)
- b. APPENDIX B: Regional Identification Sheet
- c. APPENDIX C: Budget Summary
- d. APPENDIX D: Sample DOS Standard Contract
- e. APPENDIX E: MWBE Utilization Plan Forms

## **APPENDIX A: MAP OF ONA LEGAL COUNSEL REGIONS**

# ONA Legal Counsel Regions Map



Downstate Region 1



Downstate Region 2



Upstate Region 1



Upstate Region 2



## **APPENDIX B: REGIONAL IDENTIFICATION SHEET**

### **Regional Identification Sheet**

Through the award available under Part A of the ONA Legal Technical Assistance RFA #12-ONA-08, Applicant \_\_\_\_\_ proposes to host and support an ONA Legal Counsel capable of providing legal technical assistance services to ONA Opportunity Centers and other immigrant service providers in the following region (check one):

- Downstate Region 1
- Downstate Region 2
- Upstate Region 1
- Upstate Region 2

**APPENDIX C: BUDGET SUMMARY  
(APPLICATION FORM)**

# Appendix C. Budget Summary

NEW YORK STATE DEPARTMENT OF STATE  
Office for New Americans  
**Budget Summary – RFA 12-ONA-08**

Applicant \_\_\_\_\_

FY **2012-2013**

Budget Period **10/1/12** To **9/30/13**

Cost Categories		Total Project Cost by Category
1.	Service Delivery	
2.	Personal Services	
3.	Contractual Services	
4.	Equipment	
5.	Non-Personal Service	
6.	Other Costs	
<b>TOTAL PROJECT COST</b>		

Service Delivery	
Proposed Service	Total Cost

<b>Total</b>	

<b>Personal Services</b>				
<b>Title</b>	<b>Annual Salary</b>	<b>Annual Fringe</b>	<b>Effort Charged to Grant</b>	<b>Total</b>
<b>Total</b>				
<p>Justification: Completely justify all positions. Describe duties and contributions to the project.</p>				

<b>Contractual Services (Part B Only) (Note MWBE Requirements)</b>
<p>Justification: Completely justify all proposed contractual services. Describe each contractor in detail, including cost per contract. Justify the need for the contractual service and how it will benefit the project.</p>

<b>Total</b>

<b>Equipment (Note MWBE Requirements)</b>
Justification: Completely justify all proposed equipment purchases. Provide detailed costs and justify the need for the equipment and how it will benefit the project.
<b>Total</b>

<b>Non-Personal Services</b>
Justification: Completely justify all proposed non-personal service budget items. Justify in detail the need for each expense category and it will benefit the project.
Travel:
Supplies:
Other:
<b>Total</b>

## **APPENDIX D: SAMPLE DOS STANDARD CONTRACT**

## GRANT CONTRACT

<b>ORIGINATING AGENCY CODE: 19000/DOS01</b>	<b>NYS CONTRACT NO.:</b>	
<b>STATE AGENCY</b> New York State Department of State Office for New Americans One Commerce Plaza, 99 Washington Avenue Albany, New York 12231	<b>CONTRACT AMOUNT: \$</b>	
	<b>TOTAL PROJECT COST</b>	
	State Funding: \$	Local Share: \$ 0
<b>CONTRACTOR (Name and Business Address)</b>	<b>PROGRAM</b>	
	State: 100 %	
	Federal: 0 %	
	<b>FEDERAL FUNDS CFDA NO.:</b>	
<b>FEDERAL TAX ID NO.:</b>	<b>INITIAL CONTRACT PERIOD</b>	
<b>NYS VENDOR ID NO.:</b>	From: 10/1/12	To: 9/30/13
<b>MUNICIPAL CODE:</b>	<b>MULTI-YEAR TERM</b>	
	From: 10/1/12	To: 9/30/15
	<b>STATUS</b>	
	Securian entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Not-for-Profit Organization?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Charities Registration:** Number  
 Exemption (E-2)  
 Estate, Power and Trusts Laws Reporting Exemption (E-3)

If the organization did not claim an exemption as noted above, please check the applicable response to the following:  
 Contractor  has /  has not timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.

### APPENDICES ATTACHED TO AND PART OF THIS AGREEMENT

- APPENDIX A      Standard Clauses for New York State Contracts
- APPENDIX A1     Agency-Specific Clauses
- APPENDIX A2     Program-Specific Clauses
- APPENDIX B      Budget
- APPENDIX C      Payment and Reporting Schedule
- APPENDIX D      Program Workplan
- APPENDIX E      Notices
- APPENDIX X      Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
  
- Other (Identify)
- Other (Identify)

# SIGNATURE PAGE

**Contract #:**

IN WITNESS THEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

**CONTRACTOR SIGNATURE**

**STATE AGENCY SIGNATURE**

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

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

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print name)

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

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

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

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

State Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

STATE OF NEW YORK     )  
COUNTY OF \_\_\_\_\_) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known and known to me to be the person who is the \_\_\_\_\_ of \_\_\_\_\_, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

\_\_\_\_\_  
NOTARY PUBLIC

**ATTORNEY GENERAL'S SIGNATURE**

**STATE COMPTROLLER'S SIGNATURE**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

# STATE OF NEW YORK

## AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW, THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

### I. Conditions of Agreement

- A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.
- B. Funding for the first PERIOD shall not exceed the funding amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.
- C. This AGREEMENT incorporates the face page attached and all of the marked appendices identified on the face page hereof.
- D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.
- F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.
- G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

## II. Payment and Reporting

- A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.
- B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.
- C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

## III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.
- C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.
- D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

- E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

#### IV. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

#### V. Property

- A. Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

#### VI. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
- B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the Contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.
- D. CONTRACTOR shall comply with provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR's negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR's agents, officers, employees or subcontractors.

**APPENDIX A**  
**STANDARD CLAUSES FOR NYS CONTRACTS**  
**December 2011**

**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are

required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from

public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing

project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State

Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or

political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.**

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

# APPENDIX A1

## Agency-Specific Clauses

### I. General

- A. For the purposes of this Agreement, the terms "State" and "Department" are inter-changeable, unless the context requires otherwise.
- B. The Contract Period as set forth on the Face Page is the inclusive period within which the provisions of this Agreement shall be performed. Costs incurred for project activities conducted prior to or after the Contract Period will not be reimbursed under this Agreement.
- C. The Department shall not be liable for expenses of any kind incurred in excess of the Funding Amount, and shall not be responsible for seeking additional appropriations or other sources of funds for the Project.
- D. The Contractor shall perform all services to the satisfaction of the Department. The Contractor shall provide all services and meet the program objectives set forth in Appendix D in accordance with: provisions of this Agreement; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.
- E. Pursuant to the provisions set forth in Section V., page 4 of this Agreement, the ownership of all property described therein shall reside with the Contractor unless otherwise specified in writing by the Department at anytime during the term of this Agreement and up to thirty (30) days following the issuance of the final payment.

### II. Funding

- A. Notwithstanding the Contract Period set forth on the Face Page, absent reappropriation in the subsequent State budget, funds for this project will cease to be available for payments on September 15 following the current end date of the contract. In that event, to afford reasonable assurance that payment can be made by the Department, final payment requests must be received by the Department's payment office by not later than August 15.

### II. Terminations

- A. In addition to any other actions authorized by this Agreement, the Department may terminate the Agreement in the best interests of the State of New York by providing written notice to the Contractor as provided in this Agreement.
- B. The Contractor shall complete the project as set forth in this Agreement, and failure to render satisfactory progress or to complete the project to the satisfaction of the State may be deemed an abandonment of the project and may cause the suspension or termination of any obligation of the State. In the event the Contractor should be deemed to have abandoned the project for any reason or cause other than a national emergency or an Act of God, all monies paid to the Contractor by the State and not expended in accordance with this Agreement shall be repaid to the State upon demand. If such monies are not repaid within one year after such demand, the State Comptroller of the State of New York may cause to be withheld from any State assistance to which the Contractor would otherwise be entitled an amount equal to the monies demanded.

- C. In the event that the Department has provided written notice to the Contractor directing that the Contractor correct any failure to comply with this Agreement, the Department reserves the right to direct that the Contractor suspend all work during a period of time to be determined by the Department. If the Contractor does not correct such failures during the period provided for in the notice, this Agreement shall be deemed to be terminated after expiration of such time period. During any such suspension, the Contractor agrees not to incur any new obligations after receipt of the notice without approval by the Department.

### III. Vendor (Contractor) Responsibility

- A. The Department is required to conduct a review of a prospective contractor to provide reasonable assurance that the contractor is responsible. To be considered responsible a contractor should have appropriate legal authority to do business in New York State, a satisfactory record of integrity, appropriate financial, organizational and operational capacity and controls and acceptable performance on previous governmental contracts, if any. The State and any of its agencies may use information gathered from whatever resources it deems appropriate to assist in making a responsibility determination.
- B. If the prospective contractor is a non-governmental entity, a Vendor Responsibility Questionnaire is included with the contract package. This Questionnaire is designed to provide information to assist the contracting agency in assessing a contractor's responsibility prior to entering into a contract and must be completed and returned with the contract.
- C. Contractor hereby acknowledges that, where required, the Vendor Responsibility Questionnaire is made a part of this contract by reference hereto and that any misrepresentation of fact in the Questionnaire and attachments, or in any contractor responsibility information that may be requested by the Department, may result in termination of this contract. During the term of this Contract, any changes in the information provided in the Questionnaire shall be disclosed to the Department, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract.
- D. Should it be determined at any time that a contractor is not responsible, the Department will notify the contractor in writing setting forth the basis for the determination and affording the contractor reasonable time in which to refute the determination, justify why the basis for the determination is not relevant to this contract or to take corrective action to eliminate the responsibility impediment. If the responsibility condition cannot be reconciled to the satisfaction of the Department and the State, the contract, or contract offer will be terminated by written notification.

### IV. Fully-Executed Agreement or Amendment Thereto

- A. If this Agreement, or amendments thereto, allocates funds totaling \$50,000 or less, it shall be deemed to be fully executed when approved and signed by the Contractor and the Department.
- B. If this Agreement, or amendments thereto, allocates funds totaling more than \$50,000, it shall be deemed to be fully executed when approved by the Office of the State Comptroller.

**Attachment 1 to Appendix A1**  
**Article 15-A of the New York State Executive Law**

The Department of State administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A of the New York State Executive Law. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises. Under this law, all state agencies must, subject to certain exceptions, establish goals for minority and women-owned business participation in certain state contracts and grants. Where MWBE goals are required, even in circumstances where this goal is zero, a Quarterly Contractor Report is required to be submitted to the Minority and Women-owned Business Program of the Department on forms provided by the Department.

Article 15-A requires that rules and regulations be established for contracts entered into by the Department. In accordance with Article 15-A, goals must be set for contracts entered into by the Department in excess of \$25,000 for labor, services, supplies, equipment, and materials, or any combination of the foregoing, and for contracts entered into by the Department in excess of \$100,000 for acquisition, construction, demolition, replacement, major repair, renovation or improvement of real property. In applying these rules and regulations, the Department must consider the availability of certified minority and women-owned businesses in the region in which the state contract will be performed, the total dollar value of the contract, the scope of work to be performed, and the project size and term.

The contractor will, when required as a part of the bid or proposal, submit a Staffing Plan on the form provided by the Department. This Plan will detail the work force anticipated in the performance of the state contract, reported by ethnic background, gender, and Federal Occupational Categories.

After a bid opening and prior to the award of a state contract, the contractor will submit an Equal Employment Opportunity (EEO) Policy Statement to the Department within the time frame established by the Department. The law requires that, as a precondition to entering into a valid and binding state contract, the contractor will agree to the following stipulations and will include them in the EEO Policy Statement:

- The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status.
- The contractor will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, affirmative action applies in areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- The contractor will make active and conscientious efforts to employ and to utilize minority group members and women at all levels and in all segments of its work force on state contracts, and the contractor will document these efforts.
- The contractor will state in all solicitations and advertisements for employees that, in the performance of the state contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

- The contractor will, at the request of the Department, 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 because of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- The contractor will include the provisions regarding the EEO Policy Statement and the Staffing Plan enumerated above in each and every subcontract of a state contract in such a manner that the subcontractor is bound by these requirements.
- Failure to provide an EEO Policy Statement and a Staffing Plan without reasonable written justification or commitment to provide these requirements by a specified date will result in rejection of the contractor's bid or proposal.
- After the award of a state contract, the contractor will submit to the Department a Workforce Employment Utilization Report, on the form supplied by the Department, detailing the work force actually utilized on the state contract, by ethnic background, gender and Federal Occupational Categories, as specified on the form. This Report will be submitted to the Department on a quarterly basis throughout the life of the contract.
- The contractor, and any of its subcontractors, may be required to submit compliance reports relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the state contract is executed.

Questions regarding this program should be directed to the Department's Minority and Women-owned Business Program by calling (518) 474-5741. Potential contractors can access the NYS Directory of Certified Minority and Women-owned Business Enterprises on-line through the Empire State Development website at: <http://www.empire.state.ny.us>. The Department makes no representation with respects to the availability or capability of any business listed in the Directory.

Appendix B – Budget

**Sample Only**

Applicant \_\_\_\_\_  
 Contract #: \_\_\_\_\_  
 C1XXXXXX  
 Budget Period                    **10/1/12**                    To                    **9/30/13**

Cost Categories			Total Project Cost by Category	
1.	Personnel Services		\$	0
2.	Fringe (Rate:    %)		\$	0
3.	Contractual Services		\$	0
4.	Equipment		\$	0
5.	Non-Personal Service:		\$	0
6.	Indirect Cost (Approved Rate)		\$	0
<b>TOTAL</b>			\$	<b>0</b>

**APPENDIX C**  
**Payment and Reporting Schedule**

This contract is a true cost reimbursement AGREEMENT. The Contractor may claim and be reimbursed for eligible project costs incurred and paid for by the Contractor. Eligible project costs must be incurred and goods and services must be received and accepted by the Contractor within the contract period. The total of such reimbursement shall not exceed the funding amount for this AGREEMENT as outlined in the most recently approved Appendix B and shall be claimed by the Contractor in accordance with the approved contract.

**I. Payment Terms and Conditions**

A. The State may, at its discretion, make an advance payment to the Contractor, during the initial or any subsequent Period, in an amount to be determined by the State but not to exceed 25 percent of the maximum amount indicated in the budget as set forth in the most recently approved Appendix B. If this payment is to be made, it will be due within thirty calendar days upon submission of a properly executed payment request, excluding legal holidays, after the later of either:

- The first day of the contract term specified in the Initial Contract Period identified on the face page of the AGREEMENT or if renewed, in the Period identified in the Appendix X;
- OR if this contract is wholly or partially supported by federal funds, availability of the federal funds.

Advances will be recouped at a rate of up to 33% on the next three payment requests received in the designated payment office.

If no advance payment is to be made, the initial payment under this AGREEMENT shall be due within thirty calendar days upon submission of a properly executed payment request, excluding legal holidays, after the later of either:

- The end of the first quarterly period of this AGREEMENT;
- OR if this contract is wholly or partially supported by federal funds, availability of the federal funds.

Payments are due only upon receipt of a proper voucher and supporting progress reports, as described in Section II of this Appendix, received in the State's designated payment office.

B. Payment requests must be certified by a duly authorized representative of the Contractor as accurately representing such accomplishments and expenses as recorded in the Contractor accounting records, including where goods or services are provided by third parties not party to this AGREEMENT, a certification that any payment obligations arising from the provision of such goods or services have been paid by the Contractor and do not duplicate reimbursement or costs and services received from other sources.

C. No payment under this AGREEMENT, other than advances as authorized herein, will be made by the State to the Contractor unless proof of performance of required services or accomplishments is provided. If the Contractor fails to perform the services required under this AGREEMENT the State shall, in addition to any remedies available by law or equity, recoup payments made but not earned, by set-off against any other public funds owed to Contractor.

- D. Any optional advance payment(s) shall be applied by the State to future payments due to the Contractor for services provided during initial or subsequent Periods. Should funds for subsequent Periods not be appropriated or budgeted by the State for the purpose herein specified, the State shall, in accordance with Section 41 of the State Finance Law, have no liability under this AGREEMENT to the Contractor, and this AGREEMENT shall be considered terminated and cancelled.
- E. The Contractor will be entitled to receive payments for work, projects, and services rendered as detailed and described in the approved Appendix D. Billing vouchers submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for vouchers submitted by the Contractor shall be rendered electronically unless payment by paper check is expressly authorized by the Secretary of State, in the Secretary's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at (518) 474-6019. The Contractor acknowledges that it will not receive payment on any vouchers submitted under this contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Secretary of State has expressly authorized payment by paper check as set forth above.
- F. The Contractor shall submit to the State quarterly voucher claims and reports of expenditures on such forms and in such detail as the State shall require. The Contractor shall submit complete and accurate vouchers to the State's designated payment office located at the following address:

NYS Department of State  
Contract Administration Unit  
1 Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231

All vouchers submitted by the Contractor pursuant to this AGREEMENT shall be submitted to the State no later than 45 days after the end date of the period for which reimbursement is being claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State to the Contractor shall not exceed the amount of actual expenditures. All contract advances in excess of actual expenditures will be recouped by the State prior to the end of the applicable budget period.

## **II. Reporting Terms and Conditions**

- A. The Contractor will provide the State with the reports of progress or other specific work products pursuant to this AGREEMENT as described in this Appendix below. In addition, a final report must be submitted by the Contractor no later than 45 days after the end of this AGREEMENT. All required reports or other work products developed under this AGREEMENT must be completed as provided by the agreed upon work

schedule in a manner satisfactory and acceptable to the State in order for the Contractor to be eligible for payment.

- B. A narrative progress report describing in detail all significant project accomplishments for which reimbursement is claimed shall be submitted for review and approval and is due 30 calendar days after the end of each quarterly period.
- C. Proof of receipt of goods and services received and paid for under this AGREEMENT must be made available for review upon request.

### **III. Other**

- A. The Department shall have the right to conduct on-site progress assessments and reviews of the project and Contractor's records during the life of the AGREEMENT and for a reasonable time following the issuance of the final payment. The Contractor shall furnish proper facilities, where necessary or useful, for such access and inspection at the Department's convenience.
- B. The Department shall be entitled to disallow any cost or expense, or terminate or suspend this AGREEMENT if found that the Contractor has misrepresented any expenditure(s) or project activities in the AGREEMENT, or in any progress reports(s) or payment requests made pursuant hereto.
- C. The Contractor is required to keep separate books and records for all funds received and activities conducted under the AGREEMENT, and to make such books and records available for inspection and audit for 6 years following termination of the AGREEMENT.

**APPENDIX D**  
**Sample Program Work Plan**

**Contract #:**

Recipient Organization Name:

**NARRATIVE:**

# APPENDIX E

## NOTICES

1. 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 Department of State

Name: Tim Brogan

Title: Program Administrator

Address: One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231-0001

Telephone Number: (518) 473-4301

Facsimile Number: (518) 486-4663

E-Mail Address: Timothy.Brogan@dos.ny.gov

<b>Contractor Name:</b>	
<b>Name of Contact Person:</b>	
<b>Title:</b>	
<b>Address:</b>	
<b>Telephone Number:</b>	
<b>Facsimile Number:</b>	
<b>E-Mail Address:</b>	

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.

# APPENDIX X

Agency Code: **3800000/DOS01**  
Contract Period \_\_\_\_\_

Contract Number \_\_\_\_\_  
Funding for Amendment \$ \_\_\_\_\_

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the New York State Department of State, having its principal office in Albany, New York (hereinafter referred to as the STATE), and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR), for modification of contract number noted above, as amended herein and noted below.

Type of contract modification:

- Renewal
- No Cost Time Extension
- Amendment: \_\_\_\_\_
- Attached Appendices: \_\_\_\_\_

Revised total contract value: \$ \_\_\_\_\_

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE

STATE AGENCY SIGNATURE

By: \_\_\_\_\_  
\_\_\_\_\_  
(print name)

By: \_\_\_\_\_  
\_\_\_\_\_  
(print name)

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

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

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

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

State Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

STATE OF NEW YORK     )  
COUNTY OF \_\_\_\_\_) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known and known to me to be the person who is the \_\_\_\_\_ of \_\_\_\_\_, the organization described in and which executed the above instrument; and that he/she has the authority to sign on behalf of said organization; and that he/she executed the foregoing agreement for and on behalf of said organization.

\_\_\_\_\_  
NOTARY PUBLIC

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

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

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

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

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

## **APPENDIX E: MWBE UTILIZATION FORMS**

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

## **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A, the Department of State (hereinafter "DOS") recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of DOS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that DOS establishes goals for maximum feasible participation of New York State Certified minority-and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

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

For purposes of this solicitation, DOS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that DOS may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how DOS will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

#### **I. MWBE Utilization**

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with 5 NYCRR §142.8:

- A. Bidders are required to submit a MWBE Utilization Plan on Form A with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DOS.
- B. DOS will review the submitted MWBE Utilization Plan and advise the Bidder of DOS acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the DOS:  
Office of Affirmative Action Programs  
99 Washington Avenue, Albany, New York 12231  
Phone: (518) 473-2507; Fax (518) 473-9211  
a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DOS to be inadequate, DOS shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form B. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- D. DOS may disqualify a Bidder as being non-responsive under the following circumstances:
- a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If DOS determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DOS, but must be made no later than prior to the submission of a request for final payment on the Contract.

## II. Non-Compliance

- A. In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and DOS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- B. In addition, failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

## Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form C) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the DOS, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

# FORM A

## M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name:  
 Address:  
 City, State, Zip Code:  
 Telephone No.:  
 Region/Location of Work:

Federal Identification No.:  
 Project/Contract No.:

M/WBE Goals in the Contract: MBE 10% WBE 10%

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM C.**

<p><b>PREPARED BY (Signature):</b>  <b>DATE:</b></p> <p><b>NAME AND TITLE OF PREPARER (Print or Type):</b>                  SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">TELEPHONE NO.:</td> <td style="width: 50%; padding: 2px;">EMAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 2px;"><b>FOR M/WBE USE ONLY</b></td> </tr> <tr> <td style="padding: 2px;">REVIEWED BY:</td> <td style="padding: 2px;">DATE:</td> </tr> </table> <p><b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____  <b>Contract No.:</b> _____ <b>Project No. (if applicable):</b> _____</p> <p><b>Contract Award Date:</b> _____  <b>Estimated Date of Completion:</b> _____  <b>Amount Obligated Under the Contract:</b> _____  <b>Description of Work:</b> _____  <b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____  <b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p>	TELEPHONE NO.:	EMAIL ADDRESS:	<b>FOR M/WBE USE ONLY</b>		REVIEWED BY:	DATE:
TELEPHONE NO.:	EMAIL ADDRESS:						
<b>FOR M/WBE USE ONLY</b>							
REVIEWED BY:	DATE:						



## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note:

**Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by DOS, to determine M/WBE compliance.**

## FORM C STAFFING PLAN

**Submit with Bid or Proposal – Instructions on page 2**

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor <b>Subcontractor's name</b> _____

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification														
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>
	<b>EMAIL ADDRESS:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	<b>Submit completed with bid or proposal</b>

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (FORM B) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the DOS Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** **Male or Female**