

**New York Department of State, Division of Consumer Protection,
Utility Intervention Unit
REQUEST FOR QUOTATION (RFQ) #19-UIU-15**

Consultant Services: **Investor-owned Regulated Public Utility Customer
Energy Solutions Capital Investments and
Performance-Based Revenues**

Key Dates:

Release Date: **March 8, 2019**
Questions Due: **March 15, 2019**
Questions & Answers Posted: **March 22, 2019**
Bids Due: **March 29, 2019 at 4:00 pm**

The procurement is in a restricted period from the date this RFQ is issued until the contract has been approved. All contacts/inquiries shall be made by email to the designated contact for this procurement at the following address:

Email: Catherine.Traina@dos.ny.gov
(include in subject line: **RFQ# 19-UIU-15** <name of vendor>)

Refer to www.dos.ny.gov/funding to review responses.

Designated Contact:

Catherine Traina
NYS Department of State
1 Commerce Plaza
99 Washington Avenue, Ste. 1110
Albany, NY 12231

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I. GENERAL INFORMATION

The New York Department of State (DOS), Division of Consumer Protection, Utility Intervention Unit (UIU), through this competitive Request for Quotation (RFQ), is seeking a Consultant experienced in investor-owned regulated public utility customer energy solutions capital investments and performance based revenues to assist the UIU in analyzing and testifying on the Consolidated Edison Company of New York, Inc. (Con Edison or the Company) electric and gas rate cases (19-E-0065 and 19-G-0066) filed with the New York Department of Public Service (DPS) on January 31, 2019. In these rate proceedings, the Company continues to support electric and gas Earning Adjustment Mechanism (EAMs) that allow it to retain earnings exceeding the Company's target Return On Equity (ROE) levels up to 100 basis points (electric) and 70 basis points (gas) if it achieves certain goals such as electric and gas energy efficiency, electric and gas peak reduction, Distributed Energy Resources (DER) utilization, electric and gas Greenhouse Gas (GHG) emissions reduction, and Advanced Meter Infrastructure (AMI) customer awareness. In addition, the Company proposes to invest in a myriad of "customer energy solution" (CES) programs that it states will "promote a cleaner, more sustainable energy future, enhance the customer experience, and build the capabilities necessary for integrating DER."¹ The Company's proposed investments related to Customer Energy Solutions include, but are not limited, to (1) increasing the investment in the Company's energy efficiency and demand management initiatives; (2) proposing an Electric Vehicle (EV) make-ready program; and (3) proposing the development of six energy storage facilities on Company locations and one make-ready site for third-party storage developers. The Company states that these proposed CES investments support New York State Public Service Commission (Commission) goals and policy objectives, such as generating 50% of New York's electricity from renewable sources by 2030.²

As for development of EAMs, the Commission developed a regulatory policy framework for its Reforming the Energy Vision (REV) initiative (case 14-M-0101) that focuses on aligning ratemaking practices with an evolving set of regulatory and policy objectives such as making energy more affordable for all New Yorkers and achieving a state target of 50% renewable generation by 2030. On May 19, 2016, the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (REV Track Two Order) changes the current status quo utility business model by adding a combination of market-based platform

¹ See Case 19-E-0065, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Customer Energy Solutions Panel Initial Testimony p. 9 (filed January 31, 2019).

² See *e.g., id.* at 8.

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earnings and outcome-based earnings opportunities to traditional cost of service-based earnings.³ One such new earnings opportunity is EAMs.

The Commission's Order Approving Electric and Gas Rate Plans in cases 16-E-0060 and 16-G-0061 adopted the following EAMs: (1) Program-Achievement Based EAMs (a) Incremental GWh Savings – this EAM incentivizes the Company to achieve certain energy efficiency (EE) savings targets; (b) Incremental System Peak MW Reductions – this EAM incentivizes Con Edison to achieve certain system peak reduction targets; and (2) Outcome-Based EAMs - Residential and Commercial Energy Intensity EAM - to incent Con Edison to help customers reduce energy usage; (3) a DER Utilization EAM to encourage Con Edison to expand the use of DERs in its service territory.⁴ The Joint Proposal in these 2016 cases originally proposed a third outcome based EAM, the Customer Load Factor EAM, to incent Con Edison to improve the load factor for poor load factor customers. However, during the 2016 Outcome based EAM collaborative after the filing of this Joint Proposal, parties of these rate cases determined the Customer Load Factor EAM was not feasible for rate year one. Furthermore, the 2016 Outcome based EAM Collaborative Report established a process by which parties revised and updated metrics, targets, and incentive levels for outcome based EAMs in rate years two and three. On March 31, 2018, Con Edison filed the 2017 (Rate Year 1) EE EAM Achievement report where the Company concluded that some of the outcome-based targets were not met in Rate Year 1 (hence \$0 EAM reward).

The UIU's foremost objective in these proceedings is balancing the interests of all consumers while focusing on the protections of New York residential and small commercial consumers. The Consultant should have experience testifying in public utility matters with a specific knowledge base associated with utility capital structures and incentives. The primary purpose of this contract is to assess whether the Company's and other parties' claims associated with the Company's proposed (1) customer energy solution capital investments (e.g., Energy Efficiency and Demand Management, Electric Vehicles, Energy Storage, Demonstration Projects, etc.) to advance policy objectives or provide customers benefits and (2) EAMs and associated metrics, targets and costs are in the best interest of consumers. The Work Plan and Proposal Package further explain the expectations of the Contract.

Submissions responsive to this RFQ must include a completed Proposal Package including Part I – Technical Proposal and Part II- Administrative/Cost Proposal. Part I - Technical Proposal must include (1) Consultant Background; (2) Proposed Work Plan; (3) References; (4) Conflict of Interest and Positions in Past Testimony; and (5) MWBE/SVOB

³ See *id.*, [Order Adopting a Ratemaking and Utility Revenue Model Policy Framework \(May 19, 2016\)](#).

⁴ See *Cases 16-E-0060 et al.*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service and Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

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Certification or Teaming. Part II – Administrative/Cost Proposal must include (1) Procurement Lobbying Forms (see attachment 1 and 2); (2) Quotation Sheet (see attachment 3); and (3) Attestation Form (see attachment 4). The content required for each document is described below. The failure of the Consultant to provide any of the required documents may result in rejection of the Consultant’s submission from consideration for this RFQ.

II. PROJECT PERIOD

Unless modified as provided herein, this Contract shall begin March 25, 2019 and conclude January 31, 2020. The contract shall be effective upon approval by DOS. The contract may be amended or extended upon mutual written consent of both parties, subject to the availability of funds.

III. SCOPE OF WORK

The Consultant will agree to review a select number of the Company’s electric and gas panels, witness testimony, and/or exhibits and will submit to the UIU its own independent analysis and review of the appropriateness of the Company’s claims. For the purposes of this RFQ, the panels and witnesses of interest to the UIU must include: (1) Direct Testimony and Exhibits of Customer Energy Solutions Panel (found in both electric and gas filings); (2) Direct Testimony and Exhibits of Electric Forecasting Panel (electric filing); and (3) Direct Testimony and Exhibits of Gas Volume and Forecasting Panel (gas filing).⁵ In addition, the Consultant will agree to review customer energy solution capital investment and/or EAM related material distributed or presented by the Company or other parties in these cases and other related information such as collaborative reports, interim reports/updates from New York Utilities, and/or Commission rulings pertaining to customer energy solution capital investments and/or EAMs for New York utilities (e.g., REV Track Two Order), as deemed necessary by the UIU. The Consultant will submit to the UIU its own initial high level independent analysis (with the primary focus on the Company’s proposed customer energy solution capital investments and EAMs) and review of the appropriateness of the Company’s and other parties’ claims pertaining to customer energy solution capital investments and EAMs (e.g., earning target structures, financial basis point assignments for achieving targets, data analysis to determine baseline, timing of utility earnings, benefit-cost analysis (BCA), and

⁵ See links to Con Edison’s testimony in cases 19-E-0065 and 19-G-0066:
<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-e-0065&submit=Search>

And
<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-g-0066&submit=Search>

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associated earning adjustment methodologies) and recommend a strategy for initial/reply testimony that will likely be due towards the end of May and mid-June, respectively. Based on this analysis, the Consultant will, as necessary, prepare written initial and rebuttal testimony and exhibits. At the UIU's discretion, the Consultant will review customer energy solution capital investment and EAM related documents, studies, workpapers, and other related materials in more depth. The Consultant is expected to focus on customer energy solution capital investments and EAMs that carry the highest potential benefits and costs to all consumers. Furthermore, the Consultant is expected to balance the interests of all consumers and ensure adequate consumer protections associated with customer energy solution capital investments and EAMs in these cases.

The Consultant will be expected to monitor the Company's rate case activities and the submissions of other parties in these proceedings by subscribing to the party list in these specific proceedings (19-E-0065 and 19-G-0066) on the New York State Public Service Document and Matter Management system website⁶ and opting to receive all filings associated with these proceedings. The Consultant is expected to prepare written information requests to the Company, New York Department of Public Service (DPS) Staff, and other parties during the course of these cases, as well as answer relevant information requests directed to the UIU. The Consultant will also be expected to consider other parties' positions and develop responsive strategies to counter those that are inconsistent with the public interest. The Consultant should be prepared to devote sufficient resources to meet all procedural schedules, timelines, or deadlines directed by the UIU Director, Department of Public Service Administrative Law Judges, or the Commission.

Depending on the litigated process, the Consultant will likely be required to participate in settlement negotiations (e.g., analyze arguments set forth in the testimony of other parties, develop strategies and suggestions for settlement proposals, attend conference call meetings with other parties, assist in the development of settlement proposals and joint proposal, etc.), and/or assist the UIU with the writing and reviewing statements of support/opposition to the joint proposal.

If evidentiary hearings ensue, a separate contract will be created to handle costs associated with that process (e.g., assist with preparing for the hearing, assist with preparing for cross examination of parties' witnesses, attend hearings, assist with briefs, etc.). As such, costs associated with evidentiary hearings are not included in this RFQ.

⁶See New York Public Service Document and Matter Management System link:
<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/B785AE8643B0B8D9852576A9005E090D?OpenDocument>

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The Consultant must have a system or process for managing cost and budget throughout the entire length of the contract ending January 31, 2020.

In the event the Contractor's Staff assigned to this Contract leaves during the term of the Contract, the individual must be replaced with an individual with equal or greater qualifications as approved by DOS.

IV. APPLICATION PROCEDURES

A. RFQ Questions and Updates

All questions regarding this Request for Quotes must be submitted in writing, received on or before the "Questions Due" date listed on the cover page of this RFQ and sent via email addressed to Catherine.traina@dos.ny.gov. Emails should clearly indicate the subject line as 19-UIU-15 RFQ. No responses will be provided to inquiries made through telephone or social media. Questions and answers will be posted by the "Questions and Answers Posted" date as stated on the cover of this RFQ at the following URL address: <https://www.dos.ny.gov/funding/>.

B. Application Submission

Submissions are due no later than the due date and time listed on the cover page of this RFQ. **Submissions received after this time will not be considered.** Please submit one complete original Proposal Package and all associated required documents plus three exact copies of the original package and all associated required documents and parts (see V. Proposal Package) by the time and date stated above. All submissions must contain the complete Proposal Package, including attachments.

All applications must be delivered to:

RFQ: 19-UIU-15
Catherine Traina
Bureau of Fiscal Management
NYS Department of State
One Commerce Plaza
99 Washington Avenue, Suite 1110
Albany, NY 12231

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V. PROPOSAL PACKAGE

The Proposal Package must be organized in two parts (Part I and Part II):

PART I - Technical Proposal which will include the following sections:

1. Consultant Background;
2. Proposed Work Plan;
3. References;
4. Conflict of Interest and Positions in Past Testimony; and
5. MWBE/SVOB Certification or Teaming.

PART II – Administrative/Cost Proposal which will include:

1. Procurement Lobbying Forms (see attachment 1 and 2);
2. Quotation Sheet (see attachment 3); and
3. Attestation Form (see attachment 4).

Part I and Part II will be evaluated separately, therefore each part must be packaged in separate, sealed envelopes/containers, with all separate sealed parts submitted in a single envelope or shipping carton.

PART I - TECHNICAL PROPOSAL

1. Consultant Background

- a. The Proposal Package must include a list of the relevant experience, specific qualifications, and technical expertise of the Consultant in regulated investor owned public utility customer energy solution capital investments and performance-based revenues (otherwise known as EAMs). A minimum of 10 years testifying in utility rate cases is preferred. The Proposal Package must also include the firm and individuals(s) name(s), position(s), function(s), and role(s) that would be assigned to work on the Company’s 19-E-0065 et al. rate cases.
- b. The Proposal Package must include resumes of each individual provided in section a.
 - a. listing total years of experience with regulated public utility case work along with total years of experience analyzing and testifying during utility rate cases on customer energy solutions capital investments and performance based revenues.
- c. The Proposal Package must include a sample listing of the Consultant’s utility rate case work comparable to the project set forth in this RFQ showing three (3) years

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of experience. The three (3) year sample of the Consultant's utility case work should be within the last five (5) years. In the event the Consultant provides samples older than five (5) years, the Consultant must explain why more recent samples are not available.

This sample listing must include the following information:

- (1) Case number(s);
- (2) Date of contract;
- (3) Date of completion;
- (4) Contracting agency;
- (5) Project objective;
- (6) Project description; and
- (7) Project outcome.

This sample listing must also demonstrate whether and how the Consultant met each client's needs and expectations in each utility proceeding.

2. Proposed Work Plan

The Consultant will submit a Proposed Work Plan that describes the scope of services to be provided as specified in III. SCOPE OF WORK including the type of analysis and work products to be produced for direct and rebuttal testimony and exhibits, including discovery as necessary; settlement negotiations; and writing and review of documents (e.g., term sheet, joint proposal, etc.). The Proposed Work Plan must describe the roles and organization of the proposed team that demonstrate sufficient resources to meet any procedural schedules, timelines, or deadlines; describe the project management approach to meet project deliverables within the specified timeframe; and describe the working relationship with the UIU.

The Work Plan should demonstrate the Consultant's general understanding of the work completed to date and project objectives moving forward. Previous work the Consultant should review includes the Company's supporting testimonies and exhibits filed in cases 19-E-0065 and 19-G-0066 pertaining to Customer Energy Solution capital investments, to advance policy objectives or provide customer benefits, and EAMs. In addition, this section should demonstrate the Consultant's general understanding of the development of the Company's EAMs in cases 16-E-0060 et al.⁷ which was fundamentally established

⁷ See Case 16-E-0060

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=16-E-0060&submit=Search>

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based on concepts in the REV Track Two Order, issued on May 19, 2016,⁸ and further enhanced during collaborative meetings (including Con Edison and the parties of the 16-E-0060 et al. rate cases) in 2016, 2017, and 2018.

The Proposed Work Plan should provide a description, with a reasonable level of detail, of how the Consultant will evaluate (1) the Company's testimony set forth in 19-E-0065 et al.; (2) delineated assumptions from the Company's EAMs set forth in the cases 16-E-0060 et al. Joint Proposal and subsequent Collaborative in those proceedings; (3) customer energy solution capital investments and/or EAMs established in other New York utility rate cases; (4) Commission goals and/or State policies related to the Company's proposed customer energy solution capital investments; and (5) any other materials, documents, and/or cases it expects to use as relevant to the UIU's scope of work. Additionally, the Proposed Work Plan should identify the proposed panels, expert witness testimony, and/or exhibits deemed necessary to develop its work products.

While the case schedule has not been finalized, the Proposed Work Plan will cover a contract period that will likely conclude by January 31, 2020. The following is an anticipated schedule for the case: direct testimony will likely be due towards the end of May, rebuttal testimony will likely be due mid-June, and settlement will likely begin thereafter. The Consultant will not be required to participate in every meeting pertaining to these rate cases (e.g., settlement meetings, etc.). The UIU Director will notify the Consultant of the relevant meetings to participate in over the course of the rate cases.

3. References

The Consultant must provide the names and phone numbers of three (3) references preferably from the list of past clients provided in V. PROPOSAL PACKAGE PART I – TECHNICAL PROPOSAL Section 1.c. that relate to customer energy solution capital investments, performance-based revenues, and/or utility related rate cases whom the UIU Director may contact for feedback regarding the Consultant's performance and final work products.

4. Conflicts of Interest and Positions in Past Testimony

The Consultant must demonstrate that past testimony does not conflict with UIU's primary objective of balancing interests of all consumers while protecting residential and small commercial consumers and/or UIU's goals. The Consultant must highlight and explain

⁸ See Order: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D6EC8F0B-6141-4A82-A857-B79CF0A71BF0}>

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any instances where the client's needs and/or expectations, and the Consultant's work on the client's behalf, may have been in tension with the UIU's primary objective of balancing the interests of all consumers while protecting residential and small commercial consumers. Include all testimony filed publicly that may be contrary to UIU's primary objective and/or UIU's goals. The Consultant must list current clients who may have a financial interest in the outcome of the contract that will follow this RFQ.

5. MWBE/SDVOB Certification or Teaming

The Consultant must provide Minority or Women-owned Business Enterprises (MWBE) certification or teaming information if applicable. Pursuant to New York State (NYS) Finance Law section 163(1)(j), a quantitative factor for certified MWBEs, as defined in subdivision 1 section 310 of the NYS Executive Law or for certified service-disabled veteran-owned business enterprises (SDVOBs), as defined in subdivision 1 of section 369-h of the NYS Executive Law, will be included in the total evaluation scale. A percentage of the total evaluation scale will be awarded to a responsive Consultant who is listed as an MWBE or SDVOB firm in the appropriate NYS Directory, or who enters into a partnership with a certified MWBE/SDVOB firm found in the appropriate NYS Directory in response to this RFQ. During the evaluation process, a Proposal Package that does not include information pertaining to this section will receive a 0 in the MWBE/SDVOB evaluation criteria.

The directory of certified MWBE vendors can be found at:
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=6158>.

The directory of certified SDVOB vendors can be found at:
https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf

PART II – ADMINISTRATIVE/COST PROPOSAL

1. Procurement Lobbying Forms

The Consultant will submit the completed Lobbying Form (see Attachment 1) and Procurement Lobbying Termination Form (see Attachment 2).

2. Quotation Sheet

The Consultant will submit a Quotation Sheet (see Attachment 3) that distributes 200 billable hours among staff levels proposed by the Consultant to complete this project. The Consultant will then multiply their total hours per staff level times their billable hourly rate

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per staff level to arrive at a total cost for the work products described in V. PROPOSAL PACKAGE, PART I – TECHNICAL PROPOSAL, 2. Proposed Work Plan. The estimated hours are for bid purposes only and are no guarantee of hours under this contract. The Quotation Sheet must list all individuals assigned to the task and their job titles.

Eligible Costs

Estimated direct costs should be embedded in the billable rates. The need for on-site Consulting Services is not anticipated; therefore, the Consultant must assume there are no travel costs expected to be charged in this task. In the event that travel is required, reimbursement will be made at approved State rates. There will be no reimbursements for any costs other than the billable hours.

Ineligible Costs

The following are considered ineligible costs:

1. Capital expenses, including but not limited to non-personal service expenditures for the purchase, development, installation, and maintenance of real estate or other real property;
2. Taxes, payments in lieu of taxes, or assessments paid to any unit of government;
3. Equipment rental, depreciation and interest expenses, including expenditures for vehicles and fixed, major movable and adaptive equipment and equipment that is expensed (rather than depreciated) in cost reports;
4. Contingency provisions;
5. Fines and penalties;
6. Bad debts;
7. Donations or contributions;
8. Entertainment costs, including but not limited to food and beverages for clients, volunteers, and/or staff;
9. Idle facilities and idle capacity;
10. Interest expenses;
11. Lobbying expenses;
12. Losses on other sponsored agreements or contracts;
13. Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, meetings relating to fundraising, and similar expenses incurred solely to raise capital or obtain contributions;
14. Out of State and Foreign travel; and
15. Pre-award costs.

3. Attestation

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The Consultant will complete the Attestation Form (Attachment 4) confirming the accuracy of the proposal.

VI. EVALUATION OF PROPOSALS

The DOS will assess each applicant’s Technical Proposal and Administrative/Cost Proposal separately and assign a total number of points for each proposal using the scoring model shown in this section. Quotes may be rejected if the applicant fails to provide a complete Technical Proposal and Cost Proposal in the format defined in Section V, PROPOSAL PACKAGE. See below for an overview of the evaluation process.

Rating Criteria (Technical Proposal):

Quotes will be assigned a score for Technical based on the following criteria:

No.	Technical Evaluation Criteria	Technical Score	Max Score
1	Qualifications and Experience of Staff		30
2	Approach of the Work Plan		30
3	References		5
4	Conflict of Interest and Positions in Past Testimony		13
5	MWBE/SDVOB certification or teaming		2
Total:			80

Rating Criteria (Cost Proposal):

Quotes will be assigned a score for Cost based on the following criteria:

The evaluation and scoring of the costs will be determined independently by DOS Bureau of Fiscal Management. The application with the lowest cost will receive the maximum number of points (XX points). The other applicants will receive a proportional score using the formula of $Z = (X/Y) * 20$ where:

- X = lowest total cost
- Y = total cost for the bidder being scored
- Z = normalized cost score for bidder being scored; and
- 20 = total cost points

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Total Evaluation Score:

Each evaluator's individual Technical scores will be averaged to arrive at an overall Technical score. Technical scores will account for 80% and cost will account for 20% of the total score. DOS will make the award based on the highest overall score.

At this time, the UIU anticipates making a final selection of a consultant no later than April 1, 2019. Within five (5) business days of selection, the UIU and the Consultant will execute a contract setting forth each party's responsibilities. This contract will incorporate this RFQ, the Consultant's Proposal, Quotation Sheet (Attachment 3), and all other referenced attachments. The Consultant must be prepared to start work immediately upon contract execution.

VII. STANDARDS OF PERFORMANCE OF CONTRACTED SERVICES

The Consultant will be expected to produce work products that are a direct result of its coordination and collaboration with UIU Staff. As stated under III. SCOPE OF WORK, the Consultant should be prepared to devote resources sufficient to meet any procedural schedules, timelines, or deadlines as established by either the UIU Director, the DPS Administrative Law Judge, DPS Staff, and/or the New York Public Service Commission. The Consultant's work products as specified in the Work Plan are to be completed in a timely manner. The UIU Director will monitor the progress and results of the Consultant's work products through direct communications with the Consultant.

Performance standards are based on the following criteria:

1. Project management effectiveness, including planning and timeliness of work products.
2. Thoroughness of issue identification, development, and recommendations, including the accuracy of analyses and associated supporting evidence.
3. Thoroughness and persuasiveness of written and oral communications to the UIU Director and Staff.

VIII. PUBLIC DISCLOSURE

The Consultant may not make media releases (written or oral) or other public disclosures related to this RFQ or the work to be performed without receiving prior written consent from the UIU Director.

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IX. TERMINATION

1. Grounds:

a) Mutual Consent: The contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the contract.

c) Non-Responsibility: The State may make a final determination that the Contractor is non-responsible (Determination of Non- Responsibility). In such event, the State may terminate the contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the contract in its sole discretion upon thirty (30) calendar days prior written notice.

e) Lack of Funds: If for any reason the State terminates or reduces its appropriation to the applicable State Agency entering into the contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this contract, the contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f) Force Majeure: The State may terminate or suspend its performance under the contract immediately upon the occurrence of a "force majeure." For purposes of the contract, "force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

X. TYPE OF CONTRACT

Payment to the Consultant under a contract executed as a result of this RFQ will be based upon the hours actually worked by each individual based on authorized itemized expenses. Payments will be made for each individual at the quoted, contracted rate for that individual.

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XI. INCURRING COSTS

Consultant shall bear all costs incurred prior to the receipt of a fully executed contract, including costs associated with preparing the Consultant's response to this RFQ.

XII. REJECTION OR MODIFICATION OF PROPOSALS

The UIU Director may undertake negotiations regarding Total Cost, assigned staff, and/or other matters with any consultants who submit the highest scoring bid. Every Proposal represents a firm offer not revocable for a period of 90 days from the bid opening.

XIII. ISSUING PARTY AND CONTRACT EXECUTION

The DOS (Division of Consumer Protection, UIU) is the issuing party for this RFQ. Upon entering a contract with the DOS, the Consultant will be required to provide a current Workers' Compensation Form and Disability Certification Form, or Exemption from Workers' Compensation and Disability Form. **The New York State Department of State must be listed as the certificate holder in box 2 on the forms.** The only acceptable forms are listed below and are to be obtained by contacting the Consultant's insurance carrier:

- Workers' Compensation Form - C-105.2 or SI-12 or U-26.3
- Disability Form - DB-120.1 or DB-155
- Exemption from Workers' Compensation & Disability - CE-200

Please note that **ACORD** Forms are **NOT** acceptable proof of insurance coverages.

The successful bidder will also be required to complete and submit the Consultant Disclosure form. If awarded a contract, the Consultant will be provided with this form to complete and submit with the contract package.

XIV. RESERVED RIGHTS

In addition to all rights described elsewhere in the RFQ, the DOS reserves, without limitation, the rights to:

1. Reject any or all proposals received in response to the RFQ;
2. Withdraw the RFQ at any time, at the DOS's sole discretion;
3. Make an award under the RFQ in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFQ;

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5. Seek clarifications and revisions of proposals;
6. Use proposal information obtained through site visits; management interviews; the State's investigation of a bidder's qualifications, experience, ability or financial standing; and/or any material or information submitted by the bidder in response to the agency's request(s) for clarifying information; in the course of evaluation and/or selection under the RFQ;
7. Prior to the bid opening, amend the RFQ specifications to correct errors or oversights, or to supply additional information as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFQ 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 the successful bidder within the scope of the RFQ in the best interests of the state;
13. If unsuccessful in negotiating a State contract with the selected applicant within an acceptable time frame, the DOS may begin State contract negotiations with the next ranked qualified applicant(s) in order to serve and realize the best interests of the State;
14. Utilize any and all ideas submitted in the proposals 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 a bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation;
16. Waive or modify minor irregularities (such as typographical errors) in applications received;
17. Not fund an application that fails to submit a clear and concise Work Plan or budget;
18. Adjust or correct cost figures with the concurrence of the applicant if errors exist and can be documented to the satisfaction of the DOS and State Comptroller;
19. Award more than one contract resulting from this RFQ;
20. In its sole discretion, determine the total number of awards to be granted pursuant to this RFQ; and
21. In the event that a Work Plan submitted following an award during contract negotiations is substantially different from the application submitted through the procurement process, DOS reserves the right to require modifications to the Work Plan to bring it into conformance with the application. If no such modifications are made and approved within a reasonable time period, DOS may rescind the award and make funding available to the next highest scoring application.

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XV. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN, AND SERVICE-DISABLED VETERAN-OWNED BUSINESSES

1. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations Department of State is required to promote opportunities for the maximum feasible participation of MWBEs and the employment of minority group members and women in the performance of DOS contracts.

Business Participation Opportunities for MWBEs

The Department's New York State-certified MWBEs utilization goal is 30%. For purposes of this solicitation, the specific MWBE goal and the breakdown between the Minority-owned Business Enterprise (MBE) and the Women-owned Business Enterprise (WBE) utilization goals shall be established post award and set forth in the Department of State contract, in the Attachment B "Budget" (based on the current availability of MBEs and WBEs). A contractor (Contractor) on any contract resulting from this procurement (Contract) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFQ, the respondent agrees that Department of State may withhold payment pursuant to any Contract awarded as a result of this RFQ pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com/frontend/vendorsearchpublic.asp>. For guidance on how Department of State will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the broker's contract.

FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by

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the MWBE shall be 60 percent of the total value of the supplier's contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

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

By submitting a proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (NYSCS), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting Department of State. As a contractor of New York State, you have a responsibility to utilize certified minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your solicitation, proposal or contract documents. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

Additionally, successful applicants will be required to submit the following documents and information within ten (10) business days after the applicant receives notice from Department of State that the grant is being awarded as evidence of compliance with the foregoing:

An MWBE Utilization Plan (**Form D**) or a Certification Letter (**Form D-1**) stating their commitment to show due-diligence to comply with the MWBE goals and requirements. Any modifications or changes to an accepted 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 Department of State for review and approval.

The Department of State shall review the submitted MWBE Utilization Plan or Certification Letter and issue a written notice of acceptance or notice of deficiency within 20 days of receipt of utilization plan or certification letter.

If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department of State, at the address provided below, 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 respondent and direct the respondent to submit, within five (5) business days, a

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request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the proposal.

Please see details under **“Additional Notices and Explanations Regarding the MWBE Program and this Request for Applications.”**

Department of State may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan or certification letter;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If Department of State determines that the respondent has failed to document good faith efforts.

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

Successful applicant(s) will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to DOS, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of the New York State Master Grant Contract, Section IV (J) - Equal Employment Opportunities for Minorities and Women. The respondent is required to ensure that it and any subcontractors awarded a subcontract 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 respondent, 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.

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Additionally, successful applicants will be required to submit the following documents and information within ten (10) business days after the applicant receives notice from Department of State that the grant is being awarded as evidence of compliance with the foregoing:

- A. Submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement (*Form A*) to Department of State.
- B. Submit a Workforce Utilization Report (*Form C*) and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by Department of State on a quarterly basis during the term of the Contract, to the Bureau of Fiscal Management at:

Email: dos.sm.mwbe@dos.ny.gov

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 subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Additional Notices and Explanations Regarding the MWBE Program and Successful Applications to this Request for Applications:

If your project is selected for an award, you will be required to show due diligence to comply with all the MWBE contractual requirements, including meeting the goals for certified MWBE firms participation as stated in your Contract and in accordance with NYS Executive Law Article 15-A.

If an applicant chooses to move forward with a project prior to any award announcement, they are responsible for meeting MWBE requirements established by the State of New York. The requested plan, as described herein, is intended to help an applicant think about how to comply with the regulations and provide information showing their due-diligence to comply with the MWBE requirements.

Successful applicants notified by the NYS Contract System (System) that a record for the submission of the utilization plan has been created, must comply with this requirement by entering the Utilization Plan data in the System through the Statewide Utilization Management Plan (SUMP) module.

If you are unable to comply with the MWBE goals, you must request a waiver of these requirements by submitting to the Department of State the REQUEST FOR WAIVER

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FORM E, found on the DOS funding page, for processing. Please note that the following information will be required to secure the waiver (all items may not apply to your case, but provide information and documentation for those that apply):

1. A DETAILED statement with the project description (any special characteristics, needs, specifications, etc.), and an explanation setting forth your basis and justification for requesting a partial or total waiver of the MWBE goals.
2. A copy of the completed MWBE GOALS CALCULATION Template, found on the DOS funding page.
3. The names of general circulation, trade association, and MWBE-oriented publications in which you solicited certified MWBEs for the purposes of complying with your participation goals related to this Contract.
4. A list identifying the date(s) that all solicitations for certified MWBE participation were published in any of the above publications.
5. A list of all certified MWBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified MWBE participation levels.
6. Documentation of your search in the NYS Directory of Certified Firms (e.g.: Printouts, screenshots).
7. 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 MWBEs. Any information and/or documentation to support the efforts to follow up with the MWBEs.
8. Copies of responses to your solicitations received by you from certified MWBEs.
9. A description of any contract documents, plans, or specifications made available to certified MWBEs for purposes of soliciting their proposals and the date and manner in which these documents were made available.
10. Documentation of any negotiations between you and the MWBEs undertaken for purposes of complying with the certified MWBE participation goals.
11. Any other information you deem relevant which may help us in evaluating your request for a waiver.
12. The name, title, address, telephone number, and email address of your representative authorized to discuss and negotiate this waiver request.

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13. Copy of notice of application receipt issued by Empire State Development (ESD), if subcontractors are not certified MWBE, but an application has been filed with ESD.

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

2. SERVICE-DISABLED VETERAN-OWNED BUSINESSES PARTICIPATION

Article 17-B of the Executive Law, enacted in 2014, authorized the creation of the Division of Service-Disabled Veterans' Business Development to promote participation of Service-Disabled Veteran-Owned Businesses (SDVOBs) in New York State contracting. The Service-Disabled Veteran-Owned Business Act recognizes the veterans' service to and sacrifice for our nation, declares that it is New York State's public policy to promote and encourage the continuing economic development of service-disabled veteran-owned businesses, and allows eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB), in order to increase their participation in New York State's contracting opportunities. To this effect, the Department of State (DOS) has implemented a Veteran-Owned Businesses (SDVOB) Program, as mandated by Article 17-B.

To comply with the SDVOB Program goals of 6%, the Department of State strongly encourages vendors to make every effort, to the maximum extent possible, to engage certified SDVOBs in the purchasing of commodities, services and technology in the performance of their contracts with the Department. If SDVOB utilization is obtained, a quarterly SDVOB utilization report should be submitted to the Department with information of the utilization percentage achieved during that quarter. Contractor Reporting Forms are found at: <https://ogs.ny.gov/Veterans/>.

The Division of Service-Disabled Veterans' Business Development (DSDVBD) is housed within the New York State Office of General Services (OGS), and maintains a directory of the NYS Certified SDVOBs. For assistance with engaging SDVOB vendors in your contracts, please contact the Division of Service-Disabled Veterans' Business Development at the following email address: VeteransDevelopment@ogs.ny.gov, or the DOS Bureau of Fiscal Management – SDVOB Program at dos.sm.sdvob@dos.ny.gov. The directory of certified SDVOB vendors can be found at: https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf

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ATTACHMENT 1

**NEW YORK STATE
DEPARTMENT OF STATE
Lobbying Form**

PROCUREMENT TITLE: _____

RFQ # _____

Offerer/Bidder Name: _____

Offerer/Bidder Address: _____

Offerer/Bidder Vendor ID No: _____

Offerer/Bidder Fed ID No: _____

A. Affirmations & Disclosures related to State Finance Law § 139-j & § 139-k:

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of State relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Pursuant to State Finance Law §§139-j and 139-k, this Invitation for Bid or Request for Proposal includes and imposes certain restrictions on communications between the Department of State (DOS) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the DOS and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this Invitation for Bid, Request for Proposal, or other solicitation document. DOS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

No Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

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2. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

B. Offerer/Bidder certifies that all information provided to the Department of State with respect to State Finance Law §139-k is complete, true and accurate.

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(Email Address)

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ATTACHMENT 2

PROCUREMENT LOBBYING TERMINATION

DOS reserves the right to terminate this Agreement in the event it is determined by DOS, in its sole discretion that the certification filed by the Vendor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, DOS may, at its sole option, exercise its termination right by providing ten (10) days written notification to the Vendor or providing notice in accordance with other written notification terms in the Contract.

By: _____ Date: _____
Signature

Name: _____

Title: _____

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**ATTACHMENT 3
QUOTATION SHEET⁹**

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<u>Staff Title</u>	<u>Total Hours¹⁰</u>	<u>Hourly Rate</u> <u>(\$)</u>	<u>Total Cost =</u> <u>Hours x Rate</u> <u>(\$)</u>
Total	200		

⁹ The need for on-site Consulting Services is not anticipated. The Consultant must assume there are no travel costs expected to be charged in this task.

¹⁰ The estimated hours are for bid purposes only and are no guarantee of hours under this contract.

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ATTACHMENT 4
ATTESTATION FORM

Consultant Information

Name: _____

Title: _____

Company: _____

Address: _____

Phone Number: _____

Email Address: _____

NYS Vendor ID# _____

FEIN # _____

By signing this form, I attest to the accuracy of this submission. Additionally, I certify that I am authorized to submit the attached proposal on behalf of the organization listed above.

Certification/Signature _____ *Date* _____

NYS MWBE Certified

NYS SDVOB