New York State Department of Environmental Conservation
Division of Materials Management
625 Broadway, 9th Floor
Albany, NY 12233-7253
(518) 402-8706

REQUEST FOR PROPOSALS (RFP)

Name of Project: Technical Assistance to Manage Wasted Food and Food Scraps

Contract Number: C0000051

Release Date: June 1, 2026

Proposal Due Date and Time: June 30, 2026 at 11:00 AM

For additional information please contact:

Kristine Ellsworth
Division of Materials Management
625 Broadway, 9th Floor
Albany, NY 12233-7253
(518) 402-8706
Kristine.Ellsworth@dec.ny.gov

ARTICLE 1: PROPOSER

The term "Proposer" shall be defined as an individual, organization, or company that is external to the State of New York and submits a bid for this procurement opportunity. For the purposes of this solicitation, the following terms may be used interchangeably: Bidder, Consultant, Contractor, Firm, Offeror, Proposer, and Vendor.

ARTICLE 2: PROJECT OVERVIEW

INTRODUCTION

Up to 40% of the food produced in the United States goes uneaten. Meanwhile, an estimated 3 million New Yorkers are food insecure. Simultaneously, excess edible food and food scraps see the end of their life at a landfill, where their decomposition produces methane, a potent greenhouse gas. New York State enacted the Food Donation and Food Scraps Recycling Law, ECL § 27-2201-2219 to make the most of our food by mandating large generators of food scraps to redirect wholesome edible food to those in need and food scraps to organics recycling facilities where they will be recycled into a product beneficial to our environment.

Most recently, an amendment was made to the law expanding the number of generators that will have to comply in 2027 and 2029. This represents a significant increase in the number of generators that will be subject to the law and will include smaller generators that may not have the resources to fully understand and implement the requirements of the law without technical assistance. There will be an increased need for providing assistance to generators of all sizes. In addition, some generators that are not subject to the law will voluntarily seek to increase food donation and food scraps recycling and will be seeking technical assistance. To effectively implement the coming changes in 2027 and 2029, assistance must begin in earnest in 2026.

To assist the New York State Department of Environmental Conservation ("Department" or "DEC") with the implementation of the Food Donation and Food Scraps Recycling Law and to promote food donation, food scraps reduction and recycling for entities not covered by the Law, DEC is requesting proposals for cost-effective direct technical assistance for all involved parties (food scraps generators, transporters, composting facilities, etc.) in accordance with the requirements of this request.

THE REQUEST FOR PROPOSAL (RFP)

The Department seeks Proposals from qualified organizations, to provide direct support services for enhancing wasted food reduction and food scraps recycling in New York State. The selected Contractor will engage and support actions through outreach, planning, education and technical assistance to food scraps generators, organics recycling facilities, and other interested parties.

The Contractor selected through this RFP will provide direct support services. The Contractor will facilitate implementation of the New York State Food Donation and Food Scraps Recycling Law ("the Law"). They will also assist generators and related entities not covered by the Law to reduce wasted food generation and increase food scraps recycling, leading to a reduction in wasted food destined for landfills. These actions will help address climate change by reducing the amount of methane produced by decomposing food in the landfill. The Contractor will assist the organics recycling industry with operations efficiency, facility start up and expansion, and market development.

DEC anticipates awarding one (1) contract. The term of the award will be five (5) years, and budgets should reflect five years of expenses to provide five years of services. DEC reserves the right to award no contracts.

PROGRAM PURPOSE AND GOALS

Purpose: To provide direct technical assistance that results in the reduction of wasted food generated, an increase in the donation of food, and an increase in the recycling of food scraps. Assistance should complement, but not duplicate, current efforts underway by DEC.

Goals: The primary goals of this effort are to expand the adoption of and enhance the effectiveness and impact of the existing wasted food reduction, food donation, and food scraps recycling programs. This includes encouraging generators and recyclers to use methods and techniques to alter their current practices to address the need to reduce the disposal of wasted food and the associated climate impacts, and to improve their environmental and economic sustainability. Specific goals include:

- Increasing the use and implementation of methods to reduce the amount of food that will not be sold or consumed, resulting in a reduction in the amount of wasted food generated.
- Increasing the amount of wholesome food that is donated to food banks and food recovery organizations.
- Providing technical assistance to transporters of food scraps for recycling and organics recycling facilities, that leads to greater efficiency in operations and better education and participation of generators.
- Increasing the available facility capacity and operational viability for organics recycling.
- Increasing the amount of food scraps that are recycled.

ARTICLE 3: SCOPE OF WORK

The Department requires the services of a contractor to provide technical assistance to manage wasted food and food scraps. The detailed Scope of Work is attached hereto as Schedule 1.

ARTICLE 4: PROPOSER QUALIFICATIONS (PASS/FAIL)

Mandatory Qualifications

A Proposer for this RFP must demonstrate that it meets mandatory qualifications by describing how the mandatory qualifications are satisfied, completing and signing the Proposer Attestation of Meeting Mandatory Qualifications form (Attachment 3), and providing supporting documentation. See Article 5: Mandatory Requirements for additional details. Failure to meet all Mandatory Qualifications and/or provide adequate supplemental documentary evidence for mandatory qualifications as requested may result in a non-responsive determination and disqualify the Proposal from further consideration.

Mandatory qualifications include*:*

- The Proposer has a minimum of three (3) years of experience providing technical support services related to wasted food reduction and food scraps recycling at the state level;
- The Proposer has developed and hosted training experiences related to wasted food management and/or food scraps recycling;
- The Proposer has conducted food waste assessments across multiple food retail and/or food service sectors
- The Proposer has performed program management, data collection, evaluation and progress reporting;
- The Proposer is familiar with state and federal grant and funding sources, application procedures, grant-writing techniques and grants management; and
- The Proposer has generated promotional materials for the public using high-quality written content, photo documentation and other digital multimedia content.

ARTICLE 5: MANDATORY REQUIREMENTS (PASS/FAIL)

All Proposals submitted in response to this RFP **must** include the following information. Failure to submit any of the following mandatory requirements may result in the Proposal being considered non-responsive and will result in elimination from further consideration. All submitted documents must be completed and signed in blue or black ink.
The Proposer's Checklist of Mandatory Submittal Items, attached to this RFP as Attachment 1, is provided as a tool to assist Proposers in preparing their proposal package. While it is not mandatory that the checklist be returned, it is recommended that it be completed and sent in with all Proposals to ensure all mandatory items have been submitted. All submitted documents must be completed and signed in blue or black ink.

A. All Proposers must submit a technical proposal outlining how the Scope of Work outlined in Article 3 (Schedule 1) will be completed. The technical proposal must also include a timetable for services, key milestones, and the development of materials needed.

B. All Proposers are required to complete, sign, and submit the Proposal Declaration Form, attached hereto as **Attachment 2**

C. All Proposers must include documentation to demonstrate compliance with the Mandatory Qualifications outlined in Article 4: Proposer Qualifications and a completed and signed **Attachment 3**: Proposer Attestation of Meeting Mandatory Qualifications Form, attesting to meeting all required qualifications as detailed in Article 4: Proposer Qualifications.

D. All Proposers must sign and return, as part of their proposal, a completed Bidder's/Proposer's Certification, attached hereto as **Attachment 4**.

E. All Proposers must sign and return, as part of their proposal, a completed Procurement Lobbying Law Bidder/Proposer Disclosure of Prior Non-Responsibility Determinations, attached hereto as **Attachment 5**.

F. All Proposers must sign and return, as part of their proposal, a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect Form, attached to this RFP as **Attachment 6.**

G. All Proposers must sign and return, as part of their proposal, a completed Sexual Harassment Prevention Certification Form, attached hereto as **Attachment 7**.

H. All Proposers must sign and return, as part of their proposal, a completed Gender-Based Violence and the Workplace Certification Form, attached hereto as **Attachment 8**.

I. All Proposers must sign and return, as part of their proposal, the Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia, attached hereto as **Attachment 9.**

J. All Proposers must provide their Diversity Practices on the form provided in this RFP as **Attachment 10:** Diversity Practices Questionnaire.

K. References: All Proposers must complete and submit the Proposer's Reference Form, attached hereto as **Attachment 11 ,** listing two (2) references, for whom the Proposer delivered similar work as described in Article 3(Schedule 1), Scope of Work, that has been successfully completed. Up to two alternate references may be provided, for a total of four. The information for each reference must include names, titles, emails, addresses, telephone numbers, and a brief statement detailing the work completed for the reference**. In order to avoid any possible conflict of interest and/or appearance issues, actual or apparent, references must not include Department employees or staff.** The contact person for the listed references must be available for interviews by telephone with the Department's Division of Materials Management and must have direct first-hand knowledge of the Proposal work on the listed project.

In the event that the named contact person is unavailable when contacted, the Department will contact the next available reference in order (including any alternates) until one response has been obtained. If one response has not been obtained after attempting to contact all potential references, the Department will allow up to five (5) business days for responses to be provided, during which time responses will be accepted in the order they are received until a total of one response has been obtained. Once one response has been obtained no further responses will be accepted.

References will be verified to determine that the work was of a similar scope and nature. Other criteria such as timeliness, responsiveness, ability to meet contract terms, appropriate skills to conduct tasks, and whether or not the performance was satisfactory will be assessed. Failure to obtain one satisfactory reference may deem the Proposal Proposer non-responsive. A satisfactory reference will be one in which answers to the reference questions produce a score of at least eighty percent (80%).

The remaining item must be submitted with the Proposal, but should be separated from the rest of the Proposal by placing the item into a sealed envelope to keep it separated from the rest of the Proposal during scoring and evaluation.

L. All Proposers must complete and submit, as part of the Proposal, **Attachment 12**: Financial Proposal Budget Form(s)

ARTICLE 6: TECHNICAL PROPOSAL

The Technical Proposal should include a detailed narrative description of how the Proposer plans to accomplish each of the tasks and deliver corresponding services as described in Article 3 (Schedule 1): Scope of Work; showcase sufficient organizational capacity and qualifications as described in Article 4: Proposer Qualifications; and a Business Resume that shows how the Proposer meets required qualifications through former experience and projects completed.

The Technical Proposal should include a distinct and clearly labeled section called "a. Tasks and Services" describing how the Proposer plans to accomplish each of the tasks and deliver corresponding services as described in Article 3: Scope of Work.

The Technical Proposal should include a distinct and clearly labeled section called "b. Organizational Capacity and Qualifications" describing organizational qualifications corresponding to Article 4: Proposer Qualifications, and should be consistent with the Business Resume. The organizational capacity and qualifications section should demonstrate how the Proposer meets the required qualifications and preferred qualifications only for those items in the Business Resume that may be unclear or need more details. The organizational capacity and

qualifications section should also include, where appropriate, references from prior experiences that demonstrate experience, competence, expertise and/or insights in providing or delivering services, products or activities of similar size, scope and complexity to those in the RFP. The Proposer should provide a description and references to documentation (web links) where appropriate regarding its organizational ability to complete the tasks described in Article 3: Scope of Work. Documentation may include, but is not limited to, a list of organizational staff and their qualifications, reports and plans from previous experience.

ARTICLE 7: METHOD/RESPONSE TO RFP INQUIRIES

All requests for information pertinent to the preparation and submission of the proposal and the procurement process are to be made by Close of Business (COB) on ***June 15, 2026*** in writing to:

Kristine Ellsworth
Division of Materials Management
625 Broadway, 9th Floor
Albany, NY 12233-7253
Kristine.Ellsworth@dec.ny.gov

No other Department employee is to be contacted regarding the procurement process. Written responses are estimated to be provided by e-mail by COB ***June 19, 2026*** to all potential Proposers.

The Department is responsible for providing addenda or responding to questions only from those persons or firms having obtained the RFP documents directly from the Department. Persons or firms obtaining the RFP documents from sources other than the Department bear the sole responsibility for obtaining any addenda issued, or responses to questions about the procurement. If it is necessary to revise this RFP before the due date for Proposals, revisions will be provided only to firms who have requested the Proposal documents from the Department.

ARTICLE 8: PROCUREMENT LOBBYING LAW

Pursuant to State Finance Law §§139-j and 139-k, this procurement includes and imposes certain restrictions on communications between a Government Entity and an Offeror during the procurement process. An Offeror is restricted from making contacts from the earliest posting, on the Department's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement, or solicitation of a request for proposal, invitation for Proposals, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerors intending to result in a Procurement Contract with the Department through final award and approval of the Procurement Contract by the Department and, if applicable, Office of the State Comptroller ("Restricted Period") to other than Designated Contacts unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). The Designated Contact(s) for this Government Procurement, as of the date hereof, is identified below. Department employees are also required to obtain certain information when Contacted during the Restricted Period and make a determination of the responsibility of the Offeror 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 Offeror is debarred from obtaining governmental Procurement Contracts.

Further information about these requirements, including a copy of the lobbying law, can be found at: https://ogs.ny.gov/acpl/

For information concerning the Department's guidelines, see Appendix D: New York State Department of Environmental Conservation Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence.

Designated Department Staff:

Kristine Ellsworth, Professional Engineer I
New York State Department of Environmental Conservation
Division of Materials Management
625 Broadway, 9th Floor
Albany, NY 12233-7253
(518) 402-8706
Kristine.Ellsworth@dec.ny.gov

ARTICLE 9: PROPOSAL SUBMISSION

Proposals are due to be submitted to the Department in Albany, New York. Proposals must be clearly labeled with the name of the Proposer. Proposals must include one (1) hard copy and an electronic copy submitted by external flash drive (thumb drive). Mailed or otherwise delivered Proposals must be clearly labeled on the outside of the envelope or package with the following statement:

Project Name: Technical Assistance to Manage Wasted Food and Food Scraps
Contract No.: C0000051
Proposal Open Date and Time: **June 30 at 11:00 AM**
PROPOSAL - DO NOT OPEN

One (1) original Proposal must be delivered no later than **11:00 AM** local prevailing time, on **June 30** to the following:

Attention: Justin Lennox
Bureau of Expenditure Accounting
NYS Department of Environmental Conservation
625 Broadway, 10th Floor
Albany, New York 12233-5025

Please note that the above deadline is for receipt of the proposal at the Department's Bureau of Expenditure Accounting in Albany, New York, not for mailing or entrusting to a delivery service. The Department is not responsible for lost or late mailings. Late proposals will be returned unopened.

No electronic submissions will be accepted. Proposers electing to hand deliver their proposal are strongly encouraged to do so at least one-half hour prior to the submittal deadline to ensure timely delivery to the appropriate Department personnel. The official proposal opening shall commence shortly thereafter the aforementioned deadline of receipt.

Attachment *12*: Financial Proposal Budget Form(s) shall be separated from the rest of the Proposal by placing it into a separate sealed envelope to keep it separated from the rest of the Proposal during scoring and evaluation. This separate envelope should have the following information clearly written on the outside of the sealed envelope:

Project Name: Technical Assistance to Manage Wasted Food and Food Scraps
Contract No.: C0000051
FINANCIAL PROPOSAL - DO NOT OPEN

Proposers **must** also submit an electronic copy including an exact scanned image of the complete, signed hard copy of the Proposal, including all attachments, in the form of two PDF files on an external flash drive (thumb drive). The external flash drive (thumb drive) should be included in the same envelope with the hard copy of the Proposal. The main PDF file should be titled *[Proposer Name: Technical Assistance Wasted Food and Food Scraps_C0000051.pdf]* should include all items in the Proposal EXCEPT **Attachment *12***: Financial Proposal Budget Form(s). The Second PDF file should include ONLY **Attachment *12***: Financial Proposal Budget Form(s), and should be titled *[Proposer Name: Technical Assistance Wasted Food and Food Scraps FINANCIAL Proposal_C0000051.pdf]*

Proposal submissions must include (a checklist has been provided – Attachment 1 – Checklist for Mandatory Submittals):

1. Completed Proposal Declaration Form (Attachment 2);
2. Completed Proposer's Attestation of Meeting Mandatory Qualifications Form (Attachment 3);
3. Completed Proposer's Certification (Attachment 4);
4. Completed Procurement Lobbying Law Bidder/Proposer Disclosure of Prior Non-Responsibility Determinations Form, (Attachment 5);
5. Completed Vendor Assurance of No Conflict of Interest or Detrimental Effect Form (Attachment 6);
6. Completed Sexual Harassment Prevention Certification Form (Attachment 7);
7. Completed Gender-Based Violence and the Workplace Certification Form (Attachment 8);
8. Completed Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia (Attachment 9);
9. Completed Diversity Practices Questionnaire (Attachment 10);
10. Completed Bidder's Reference Form, (Attachment 11);

11. Technical Proposal (for additional details, see Article 6: Technical Proposal); and

IN A SEPARATE SEALED ENVELOPE:

12. Completed Financial Proposal Budget Form, (Attachment 12);

ARTICLE 10: PROPOSAL EVALUATION AND SCORING

The Department will evaluate Proposals for this RFP in a fair, objective, and comprehensive manner, subject to the provisions listed below. The evaluation process will be a multi-stage process consisting of both Pass/Fail determinations and the awarding of points. If a Proposer fails to meet the minimum requirements for any Pass/Fail category, they may be considered non-responsive and be eliminated from further evaluation. Each proposal that passes the Proposer Required Qualifications and Mandatory Requirements as outlined in Articles 4 and 5, respectively, will then be assessed for their overall proposal.

EVALUATION CRITERIA (100 POINTS)

The Proposal will be evaluated for a maximum of 100 points. Point breakdowns are provided in the table below.

Proposal Evaluation Criteria	Max 100 Points
a. **Task and Services:** The Proposal identifies a feasible and potentially effective strategy to meet the stated goals and addresses the tasks as described in *Article 3: Scope of Work*, and demonstrates an overall understanding of the purpose and intent of the Program as described in *Article 2: Project Overview* of the Request for Proposal (RFP).	**40**
b. **Organizational Capacity and Qualifications:** The Proposal effectively describes sufficient organizational qualifications or experience, expertise, capacity and resources as described in *Article 4: Proposer Qualifications* to enable the Proposer to fulfill the goals and complete the tasks as described in *Article 3: Scope of Work* of this RFP; and provides adequate documentation evidence to verify qualifications.	**15**
c. Business Resume: The Proposal includes a Business Resume, describing how it meets required qualifications and preferred qualifications, especially through former experience and projects completed, and also briefly outlines and summarizes the Proposer's organizational qualifications, experience and expertise.	**20**
d. **Diversity Practices:** Proposers will be scored based on their responses to Attachment 10: Diversity Practices Questionnaire. Points will not be awarded based on a company's status as a certified MWBE firm.	**5**
e. **Financial Proposal:** The proposal with the lowest total costs will receive the full amount of points, then, points will be awarded proportionally to the next lowest Proposers using the following formula: $\frac{Lowest\ Proposed\ Total\ Costs}{Proposer's\ Total\ Costs}\ X\ Points\ Allocated$	**20**
Total Points	**100**

ARTICLE 11: METHOD OF AWARD

Department will select the Proposal that receives the highest total numeric score. In the event that two or more Proposals have an identical total numeric score, the Proposal with the higher scoring Financial Proposal will be selected. In the event that two or more Proposals have identical numeric scores and cost scores, the Proposal with the lower indirect cost percentage will be selected. The basis for determining the award shall be documented in the Procurement Record. The response to this RFP shall be firm and not revocable for a period of sixty (60) days.

ARTICLE 12: SUBSEQUENT SUBMITTALS

Upon notice of potential award, the responsive Proposer may be required to submit any or all of the following items within ten (10) business days:

1. Executed Agreement, including Appendices, Schedules and Exhibits (with original signature and original, completed, Acknowledgment).
2. An authorizing resolution or documentation stating the person signing the awarded Contract has the legal authority to bind the Proposer.
3. Certificates of Insurance with endorsements as detailed in Article 16 of the RFP.
4. Vendor Responsibility Questionnaire; vendors are encouraged to complete an on-line Questionnaire, as detailed in Article 16.C.
5. Executive Order No. 177 Certification as detailed in Article 22 of the RFP.
6. New York State Tax Law § 5-a Contractor Certification to Covered Agency Form (ST-220-CA).
7. New York State Tax Law § 5-a Contractor Certification Form (ST-220-TD).
8. Consultant Disclosure Form A, if applicable as detailed in Article 29.
9. Consultant Disclosure Form B, if applicable as detailed in Article 29.
10. DEC Equal Employment Opportunity Policy Statement as detailed in Appendix B Article XIX.
11. EEO Staffing Plan as detailed in Appendix B Article XIX.
12. Minority and Women Owned Business Enterprises (MWBE) Utilization Plan.
13. SDVOB Utilization Plan, see Appendix E.

If requested, items **1, 2, 3, 5, 6, 8, 10, and/or 11** are to be returned, with original signatures, to the individual listed in Article 7: Method/Response to RFP Inquiries, at the address provided. If requested, item **4** is to be returned, in hardcopy, with original signature, to the individual listed in Article 7: Method/Response to RFP Inquires, at the address provided, or may be completed online on the New York State Office of the State Comptroller's website (this is the recommended method of item **4** submittal, see Article 16.C, for additional information). If requested, item **7** is to be returned, with original signature, to the New York State Department of Taxation and Finance to the address provided on the form. If requested, item **9** should be submitted annually to the Department, Office of the State Comptroller and Department of Civil Service. If requested, item **12** must be submitted via the New York State Contract System at https://ny.newnycontracts.com. If requested, item **13** can be accessed at https://ogs.ny.gov/veterans Compliance and Reporting > Contractor Reporting Forms > "SDVOB 100 – Utilization Plan" or by contacting the SDVOB Compliance Unit at 518-402-9240 or sdvob@dec.ny.gov.

ARTICLE 13: TERM

A. The term of this Contract shall be for a 5 year period from the effective date. The Contract shall be effective upon approval by the Office of the State Comptroller.

B. The Department shall have the right to terminate this Contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience. The Department may only invoke its right to terminate for convenience 1 year from the

effective date and on each subsequent anniversary date of the Contract (except for the Contract expiration date), provided that the Department has given written notice to the Contractor no later than 30 days prior to the date of termination, except with respect to contracts that give the Department a general right to terminate at any time.

C. The Contract may be amended upon mutual written consent of both parties, subject to the availability of funds, and upon approval of the Office of the State Comptroller.

ARTICLE 14: PROPOSAL CONDITIONS

Responsive: Proposers are advised that failure to use the attached forms and to adhere to the Proposal requirements, instructions, conditions and timetable may result in a Proposal being judged non-responsive.

Offer firm for 60 days: The offer is firm and not revocable for a period of sixty (60) days from the Proposal opening date. Subsequent to the expiration of the sixtieth day, the offer may be withdrawn in writing.

Affirmative Action Requirements: The successful Proposal must make good faith efforts to subcontract up to **30%** of the contract amount to Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs), registered and listed at https://ny.newnycontracts.com/FontEnd/searchcertifieddirectory.asp. In addition, a contractor and/or subcontractor(s) must comply with the Equal Employment Opportunity (EEO) provisions and agree to not discriminate against any minority group member and women and to make an active effort to afford employment opportunities regardless of race, creed, color, national origin, sex, age, disability, or marital status. Appendix B further defines the M/WBE and EEO provisions required by Executive Law, Article 15A.

Service-Disabled Veteran-Owned Business Participation Requirements: The contractor must make good faith efforts to subcontract a goal of **6**% of the contract amount to New York State Certified Service-Disabled Veteran-Owned Businesses (SDVOBs), registered and listed at https://sdves.ogs.ny.gov/business-search for purposes of providing meaningful participation by SDVOBs. Appendix E further defines the SDVOB provisions required by New York State Veterans' Services Law Article 3.

Non-committal Clause: This Invitation for Proposal does not commit the Department to award a contract, pay any costs incurred in the preparation of a Proposal in response to this Invitation for Proposal, or to procure or contract for services or supplies. The Department reserves the right to accept or reject any or all Proposals received as a result of this Invitation for Proposal, to negotiate with all qualified sources, or to cancel, in part, or in its entirety, this Invitation for Proposal if it is in the best interest of the Department to do so.

Standard Contract Clauses: The successful Proposal will be required to comply with all of the mandatory New York State and Department contracting provisions contained in the following three attached documents:

Appendix A - Standard Clauses for All New York State Contracts;
Appendix B - Standard Clauses for All NYSDEC Contracts; and
Appendix C - Standard Clauses for Ethics in all NYSDEC Contracts.

Bidder's / Proposer's Certification: All offerors are required to complete the combined Non-Collusion/Nondiscrimination in Employment in Northern Ireland: MacBride Fair Employment Principles/State Ethics Law Provision/Procurement Lobbying Law Affirmation form and to submit it as part of their Proposal.

Diversity Practices Questionnaire: Proposers must provide their Diversity Practices on the form provided in

this RFP as Attachment 10: Diversity Practices Questionnaire. Additional sheets should be attached, as necessary, to fully describe your company's Diversity Practices.

Pursuant to §310(22) of Article 15A of New York State Executive Law, "Diversity Practices" shall mean the Contractor's practices and policies with respect to:

1. Utilizing certified Minority and Women-Owned Business Enterprises (MWBE) in contracts awarded by a state agency or other public corporation, as subcontractors and suppliers; and

2. Entering into partnerships, joint ventures or other similar arrangements with certified minority and women-owned business enterprises as defined in this article or other applicable statute or regulation governing an entity's utilization of minority and women-owned business enterprises.

ARTICLE 15: STATE'S RESERVED RIGHTS

To enable the State to acquire commodities, technology and services at the lowest price or best value from responsible and responsive offers, the State reserves rights to:

1. Define requirements to meet agency needs and to modify, correct and clarify requirements at any time during the process provided the changes are justified and maintain fairness in contracting with the business community;

2. Accept and/or reject any or all Proposals, and waive technicalities or portions of the Proposal submittals in the best interest of the State;

3. Establish terms and conditions which must be met by all offerors and/or, where permitted by the solicitation, eliminate mandatory requirements that are not met by any offeror;

4. Establish, where permitted by the solicitation, conditions under which the scope of the contract can be expanded and criteria for price increases or decreases during the contract period;

5. Disqualify any Proposal whose conduct and/or Proposal fails to conform to the requirements of the RFP;

6. Prior to the Proposal opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;

7. Change any of the scheduled dates;

8. Negotiate with the successful Proposer within the scope of the RFP in the best interests of the State;

9. Conduct contract negotiations with the next responsible Proposer, should the agency be unsuccessful in negotiating with the selected Proposer;

10. Award contracts for any or all parts of the RFP in accordance with the Method of Award;

11. Consider every offer as firm and not revocable for a period of up to sixty (60) days from the Proposal opening or such other period of time specified in the solicitation. Subsequent to such sixty (60) day or other specified period, an offer may be withdrawn in writing; and

12. Have the option to require a bond or other guarantee of performance, and to approve the amount, form and sufficiency thereof.

13. Elect not to fund projects that are determined to be inconsistent with the Climate Leadership and Community Protection Act or its implementing regulations.

ARTICLE 16: INSURANCE REQUIREMENTS

The Contractor shall procure, at its sole cost and expense, all insurance required herein. During the term of the contract and any renewal or extensions thereof, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required herein. All insurance required herein shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements herein should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. The Department may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documentation are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

The Contractor shall furnish to the Department a certificate or certificates showing that it has complied with the Worker's Compensation and Disability Benefits requirements of this Article detailed below.

The Contractor shall maintain as part of its records a certificate or certificates and appropriate endorsements showing that it has complied with the liability insurance requirements of this Article detailed below. The Department reserves the right to request and/or examine the liability insurance certificate or certificates and all applicable endorsements, in accordance with the details outlined in paragraph 10 (Records) of Appendix A to this Contract. Failure of the Contractor to produce the required insurance coverage, endorsements and supporting documentation may be grounds for termination of this Contract. The certificate or certificates shall provide that:

- Liability and protective liability insurance policies shall provide primary and non-contributory coverage to the NYS Department of Environmental Conservation for any claims arising from the Contractor's Work under this contract, or as a result of the Contractor's activities, and the required coverage shall be primary and non-contributory to other insurance available to the Department and their officers, agents, and employees, and shall not contribute with the Consultant's or subcontractor's insurance.

- The People of The State of New York, NYS Department of Environmental Conservation, their officers, agents and employees, (625 Broadway, 9th Floor Albany, NY 12233-7253), shall be listed as Certificate Holder on all liability insurance certificate(s), as additional insureds on endorsement(s) and on additional supporting documentation.

- All applicable insurance policies pertaining to this article shall include a waiver of subrogation in favor of The People of The State of New York, the Department of Environmental Conservation, their officers, agents, and employees as additional insureds.

- Said additional insured and waiver of subrogation coverage shall be in the form of an endorsement or specified by the policy as blanket coverage as per written contract.

- Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department; as evidenced by an endorsement or declarations page.

- Insurance documentation shall disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.

- Endorsements in writing must be added to and made part of the insurance contract for the purpose of changing the original terms to reflect the revisions and additions as described. A copy of these endorsements must be provided to the Department.

- Applicable insurance policy number(s) referenced on the ACORD form must be referenced in the supporting documentation requested by the Department and supplied by the insurance company (e.g. endorsement page, declarations page, etc.).

- Worker's Compensation and Disability Benefits certificates shall name the New York State Department of Environmental Conservation, (625 Broadway, 9th Floor Albany, NY 12233-7253), as entity requesting proof of coverage.

- This Contract shall be void and of no effect unless the Contractor procures the required insurance policies and maintains them until acceptance or completion of the work, whichever event is later. If at any time during the term of this contract the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the Department, the Contractor shall immediately cease Work on the Project. The Contractor shall not resume Work on the Project until authorized to do so by the Department. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to the Department, shall not give rise to a delay claim or any other claim against the Department. Should the Contractor fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to the Department, the Department may withhold further contract payments, treat such failure as a breach or default of this contract, and/or, after providing written notice to the Contractor, require the Surety "if any" to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.

- Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the subcontractor, as applicable. The Contractor shall determine the required insurance types and limits, commensurate with the work of the subcontractor and maintain the certificate or certificates and endorsements for all subcontractors hired as part of the Contractor's records.

The following types and amounts of insurance are required for this Contract:

1. <u>Workers' Compensation:</u>

For work to be performed in New York State, the Contractor shall provide and maintain full New York State coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

If the agreement involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Act policy as applicable must be provided. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
C-105.2	Certificate of Workers' Compensation Insurance (September 2007, or most current version)
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

Please note that ACORD forms are <u>NOT</u> acceptable proof of New York State Workers' Compensation Insurance coverage.

Additional information can be obtained at the Workers' Compensation website:
http:/www.wcb.ny.gov/content/main/Employers/Employers.jsp

2. <u>Disability Benefits:</u>

For work to be performed in New York State, 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 New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
DB-120.1	Certificate of Insurance Coverage under the New York State Disability Benefits Law
DB-155	Certificate of Disability Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

Please note that ACORD forms are <u>NOT</u> acceptable proof of New York State Disability Benefits Insurance coverage.

Additional information can be obtained at the Workers' Compensation website:
http:/www.wcb.ny.gov/content/main/Employers/Employers.jsp

3. Commercial General Liability Insurance:

Contractor shall maintain Commercial General Liability Insurance (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit – $2,000,000
- General Aggregate – $5,000,000
- Products/Completed Operations – $5,000,000
- Personal & Advertising Injury - $1,000,000
- Damage to Rented Premises - $50,000
- Medical Expense - $5,000

Coverage shall include, but not be limited to, the following:

- Premises liability
- Independent contractors
- Blanket contractual liability, including tort liability of another assumed in a contract
- Defense and/or indemnification obligations, including obligations assumed under this contract
- Cross liability for additional insureds
- Products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract

The following ISO forms must be endorsed to the policy:

a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

4. Business Automobile Liability:

Contractor shall maintain Business Automobile Liability insurance covering liability arising out of the use of any registered motor vehicle in connection with the contract, including owned, leased, hired and non-owned vehicles. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least $1,000,000.

If the Contractor does not own, lease or hire any registered motor vehicles or will not be using any vehicles in performance of the contract services, proof of Business Automobile Liability Insurance shall not be required for this Contract. However, Contractor is required to execute Business Automobile Liability Insurance Attestation.

The Contractor shall assume full responsibility and liability that owners and operators of any registered motor vehicles to conduct work under this contract carry the same Business Automobile Liability Insurance of the kinds and amounts listed above. NYS Department of Environmental Conservation reserves the right to request proof of the same.

5. Umbrella and Excess Liability:

When the limits of the herein above required Liability insurance policies procured are insufficient to meet the limits specified, the Contractor shall procure and maintain Commercial Umbrella and/or Excess Liability policies with limits in excess of the primary; provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary and the required coverage shall be primary and non-contributory to other insurance available to the Department and their officers, agents, and employees, and shall not contribute with the Consultant's or subcontractor's insurance.

ARTICLE 17: CONTRACT TERMS

The successful Proposer will be expected to enter into a contract with the Department, and this contract will contain clauses similar to the following:

A. Subcontracting:

The Contractor shall not enter into any subcontract under this Contract without the advance written approval of the Department.

B. Tax Law 5-a:

Tax Law § 5-a, is effective with all solicitations to purchase issued by covered agencies on or after January 1, 2005. It applies to contracts where (1) the total amount of such persons sales delivered into New York State are in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates, subcontractors, or affiliates of subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and (2) the contracts or agreements with state agencies or public authorities for the sale of commodities or services have a value in excess of $100,000. This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, its subcontractors and affiliates of the subcontractors are required to register to collect state sales and compensating use tax. Where required to register, the contractor must also certify that it is, in fact, registered with the New York State Department of Taxation and Finance (DTF). The law prohibits the Comptroller, or other approving agency, from approving a contract awarded to a Contractor meeting the registration requirements but who is not so registered in accordance with the law.

Upon notice of potential award, the responsive Proposer may be required to submit, within ten (10) business days of receipt of the notice, the New York State Tax Law § 5-a Contractor Certification Forms (ST-220-CA and ST-220-TD). Failure to respond may render a Proposal non-responsive and/or non-responsible. Proposers shall take the necessary steps to provide properly certified forms to ensure compliance with the law.

Contractors may call the DTF at 1-800- 972-1233 for any and all questions relating to Tax Law § 5-a and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF website: http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf.

C. Provision for Termination for Default:

1. The Department shall have the right to postpone, suspend, abandon, or terminate this Contract at any time, and such actions shall in no event be deemed a breach of Contract. In any of these events, the Department

shall make settlement with the Contractor upon an equitable basis as determined by the Department, which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment, or termination of the Contract.

2. The State shall have the right to terminate this Contract for:

   a) unavailability of funds

   b) cause

      (i) If the Department determines that the Contractor has breached a material term of this Contract, it shall issue a written notice, providing the Contractor with 10 days to correct the defect. If the Contractor fails to correct the defect within this time period, or fails to make a good faith effort to do so as determined by the Department, the Department may terminate this Contract for cause.

      (ii) If the termination is brought about as a result of unsatisfactory performance on the part of the Contractor, the value of the work performed by the Contractor prior to the termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this Contract.

   c) convenience

      (i) If the termination is for the convenience of the Department, and is not brought about as a result of unsatisfactory performance on the part of the Contractor, the Department shall consider the following in determining the value of the work performed:

         1. The ratio of the amount of work performed by the Contractor prior to the termination of the Contract to the total amount of work contemplated by this Contract.

         2. The amount of the expense to which the Contractor was put in performing the work prior to the termination, in proportion to the amount of expense to which the Contractor would have been put had it been allowed to complete the total work contemplated by the Contract.

         3. In determining the value of the work performed by the Contractor prior to the termination, no consideration will be given to profit which the Contractor might have made on the uncompleted portion of the work.

3. Termination for Non-Responsibility: Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

D. <u>Freedom of Information Law Requirements:</u>

The Contractor must provide to the Department all information, records, and other written material it produces, possesses, or relies upon if such material is the subject of a legitimate request to the Department pursuant to the Freedom of Information Law.

E. Ownership of Documents:

Project documents and data shall at all times be the property of the Department. In the event that this Contract is terminated for any reason, the documents and data pertaining to the work on the project shall be delivered to the Department within ten (10) calendar days after the receipt of notice or if such termination by the contractor at such time as is reasonable thereafter.

F. Indemnification Clause:

The Contractor shall be responsible for all damage to life and property due to activities of the Contractor, its subcontractors, agents, or employees, in connection with its services under this Contract. This obligation is in no way limited by the enumeration of insurance coverages hereunder. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Department, its officers, employees, agents, and assigns in accordance with the provisions of Appendix B, Clause II. Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against the Contractor or the State of New York such as may legally exist irrespective of this Article or this Contract.

ARTICLE 18: MEANS OF COMPENSATION

A. Payments will be made in accordance with Article XI-A of the State Finance Law.

B. Payments will be based on the cost listed on the Financial Proposal Form, Attachment 12, as submitted by the Contractor.

C. The Contractor will submit requests for payment no more than *monthly*, together with supporting documentation, to the Office of General Services Business Services Center at AccountsPayable@ogs.ny.gov. Request for payment must be submitted within 45 days of the end of each State fiscal year which is March 31. Failure to comply with this request or notify the Department in writing prior to March 31st regarding billing problems shall operate as a waiver by the Contractor for reimbursement by the Department.

D. Payments for expenditures incurred under this contract will be rendered electronically to the Contractor unless payment by paper check is expressly authorized by the Commissioner of the Department (Commissioner), in the Commissioner'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 Office of the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Comptroller's website at www.osc.state.ny.us/epay/index.htm, or by e-mail at epayments@osc.state.ny.us. The Contractor acknowledges that it will not receive payment under this Contract if it does not comply with the Office of the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

ARTICLE 19: PROPOSER DEBRIEFING

A. A debriefing is available to any entity that submitted a proposal or bid in response to a solicitation ("Proposer"). A Proposer will be accorded fair and equal treatment with respect to its opportunity for debriefing.

B. Debriefing must be requested in writing by any proposer within **fifteen (15)** calendar days of the Department notifying the unsuccessful proposer that another vendor was selected.

C. A proposer's written request for a debriefing must be submitted to the individual listed in Article 7: Method/Response to RFP Inquires.

D. The debriefing will be scheduled within **ten (10)** business days of receipt of written request by the Department or as soon after that time as practicable under the circumstances.

ARTICLE 20: VENDOR RESPONSIBILITY

A. General Responsibility: The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

C. The Department 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/enroll.htm or go directly to the VendRep System online at https://portal.osc.state.ny.us.

D. 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 IT Service Desk at 866-370-4672 or 518-408-4672 or by email at ITServiceDesk@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 or may contact the Department or the Office of the State Comptroller's Help Desk for a copy of the paper form.

E. If at any time during performance under this contract total compensation to a subcontractor exceeds or is expected to exceed $100,000, or as otherwise requested by the Department that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire as described in paragraphs C and D of this Article.

ARTICLE 21: PROTEST PROCEDURE

A. The Department does not have a formal protest procedure, therefore a bidder may file an initial protest with the Office of the State Comptroller's Bureau of Contracts (BOC) after the Department has made a contract award. The protest must be in writing and filed with BOC within ten business days of notice of the contract award or if a debriefing has been requested by the interested party, within five business days of the debriefing (whichever is later). If the interested party is not provided with notice of the contract award, the interested party may file a protest with BOC at any time after the contract award and prior to the Comptroller's final action on the contract.

B. Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party knows or should have known of the facts that constitute the basis of the formal protest.

C. The protest must be filed with:

Bureau Director
at bidprotests@osc.ny.gov or
Bureau of Contracts
New York State Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236.

ARTICLE 22: EXECUTIVE ORDER 177

A. Executive Order No. 177, Prohibiting State Contracts with Entities that Support Discrimination, orders that New York State's government will not do business with entities that promote or tolerate discrimination or infringement on the civil rights and liberties of New Yorkers. New York State is dedicated to ensuring that all individuals are treated equally, regardless of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis. To that end, New York has enacted numerous laws, regulations, and policies, and will continue to aggressively enforce its strong protections against discrimination to the maximum extent allowable by law.

B. In order to comply with this order, the Contractor is required to complete the Executive Order No. 177 Certification which certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

ARTICLE 23: DIESEL EMISSIONS REDUCTION ACT 2006

A. In 2007, New York State passed legislation establishing the Diesel Emissions Reduction Act 2006 (DERA). This Act amended the Environmental Conservation Law (ECL) by adding Section 19-0323 which requires the use of best available retrofit technology (BART) and ultra-low sulfur diesel fuel (ULSD) for heavy duty vehicles owned or operated by, including on behalf of, state agencies and state or regional public authorities. The Department has promulgated regulations (6 NYCRR Part 248) to provide guidance on provisions of the law. The regulations may be found on the Department's website at http://www.dec.ny.gov/regs/2492.html.

B. The contractor must comply with the specifications and provisions of ECL § 19-0323 and 6 NYCRR Part 248, which require the use of BART and ULSD, unless specifically waived by the Department. Qualifications for a waiver under this law are the responsibility of the Contractor.

ARTICLE 24: ENVIRONMENTAL PROTECTION FUND ACKNOWLEDGEMENT

If applicable, in recognition of a portion of the Department funds utilized for any work completed under this Contract, the Contractor agrees to acknowledge in any communication to the public, that such funding was provided from the Environmental Protection Fund as administered by the New York State Department of Environmental Conservation.

ARTICLE 25: SEXUAL HARASSMENT PREVENTION CERTIFICATION

State Finance Law §139-L requires bidders on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training that meets the minimum requirements of NYS Labor Law § 201-G and the Department of Labor's model policy and training standards to all its employees.

Where competitive bidding is required pursuant to statute, rule or regulation, every bid made to the state or any public department or agency of the state must contain the following statement:

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

Bids that do not contain the certification will not be considered for award; provided however, that if the bidder cannot make the certification, the bidder shall provide a signed statement with their bid detailing the reasons why the certification cannot be made. After review and consideration of such statement, the Department may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

Bidders are required to sign and submit the Sexual Harassment Prevention Certification form attached to this procurement. If the bidder cannot make the certification then a signed statement must be submitted with the bid detailing the reasons why the certification cannot be made.

ARTICLE 26: GENDER-BASED VIOLENCE AND THE WORKPLACE CERTIFICATION

State Finance Law §139-m requires bidders on state procurements to certify that they have a written policy addressing gender-based violence and the workplace and have provided such policy to all of its employees, directors and board members. Such policy shall, at a minimum, meet the requirements of subdivision 11 of section five hundred seventy-five of the executive law.

Where competitive bidding is required pursuant to statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, every bid made to the state or any public department or agency of the state must contain the following statement:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing gender-based violence and the workplace and has provided such policy to all of its employees, directors and board members. Such policy shall, at a minimum, meet the requirements of subdivision 11 of section five hundred seventy-five of the executive law."

Bids that do not contain the certification will not be considered for award; provided however, that if the bidder cannot make the certification, the bidder shall provide a signed statement with their bid detailing the reasons why the certification cannot be made. After review and consideration of such statement, the Department may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

Bidders are required to sign and submit the Gender-Based Violence and the Workplace Certification form attached to this procurement. If the bidder cannot make the certification then a signed statement must be submitted with the bid detailing the reasons why the certification cannot be made.

ARTICLE 27: EXECUTIVE ORDER NO. 16

Executive Order No. 16 provides that "all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia." The complete text of Executive Order No. 16 can be found at https://www.governor.ny.gov/executive-order/no-16-prohibiting-state-agencies-and-authorities-contracting-businesses-conducting . The Executive Order remains in effect while sanctions against Russia imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations. As defined in Executive Order No. 16, an "entity conducting business operations in Russia" means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership. Vendors responding to this solicitation are required to complete and submit the form entitled "Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia."

ARTICLE 28: CONSULTANT DISCLOSURE REQUIREMENTS

A. Chapter 10 of the Laws of 2006 amended State Finance Law §§ 8 and 163 by instituting new reporting requirements in contracts for consultant services. As a result of this amendment to the law, State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by these employees. Chapter 10 of the Laws of 2006 expands the definition of contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services.

B. In order to comply with these requirements, the Contractor is required to complete the New York State Consultant Services Contractor's Planned Employment form (Form A). The completed form must include information for all employees providing service under the contract, whether employed by the contractor or a subcontractor.

C. Additionally, the contractor is required to submit annual employment reports to the Department, Office of the State Comptroller, and Department of Civil Service. This reporting will be accomplished through the New York State Consultant Services Contractor's Annual Employment Report (Form B). Form B must be submitted each year the contract is in effect and is intended to capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st - March 31st).

D. Information regarding Consultant Disclosure Legislation can be obtained on the website of the Office of the State Comptroller at:
http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm .

SCHEDULE 1

SCOPE OF WORK

Task 1. Direct Support Through Phone and Email

The NYS Food Donation and Food Scraps Recycling law is expanding to include additional generators in 2027 and 2029. This represents a significant increase in the number of generators that will be subject to the law and will include smaller generators that may not have the resources to fully understand and implement the requirements of the law without technical assistance. There will be an increased need for technical assistance to generators of all sizes.

The Contractor will provide a phone hotline and email response support. The Contractor will staff the phone line and email inbox to answer questions from businesses, institutions, and others, to provide guidance on sustainably managing wasted food and food scraps. Whenever possible, calls should be connected with a staff person, as opposed to an automated voicemail. All calls and emails must be responded to within one business day. At a minimum, the contractor should be prepared to provide information and assistance in the following areas:

- 6 NYCRR Part 350 and Part 361 regulations
- Assistance to generators on how to comply with the Food Donation and Food Scraps Recycling law
- Assistance for generators that are not subject to the Food Donation and Food Scraps Recycling law
- Improving waste reduction for food retail and food service operations
- State grants and assistance available for wasted food reduction and food scraps recycling
- Available markets for compost, digestate, and other organics products
- Requirements for use of food scraps for animal feed
- Upcycling practices to reduce wasted food
- Technical assistance for operational issues at composting and other organics recyclers
- Assistance for transporters and intermediaries
- On-site treatment/recycling options

Task 2. Program Marketing, Development of Web Pages and Resource Documents

The Contractor will:

- Maintain the Rethink Food Waste NY program brand. Maintain a website with ADA compliant content. Content should be available for translation, if requested.
- Maintain a calendar of upcoming events provided by the Rethink Food Waste NY program
- Attend food retail and food service-related industry meetings and conferences to promote the Rethink Food Waste NY program
- Engage with community groups, municipalities, industry associations, business groups and other strategic partners
- Develop a minimum of two outreach materials per contract year that assist entities with sustainably managing excess food and food scraps
- Develop a minimum of two spotlights per contract year acknowledging success stories from the Rethink Food Waste NY program
- Develop social media content for posting on Contractor’s own social media platforms as well as content to be used on DEC social media platforms

Task 3. Direct Assistance to Businesses, Institutions and Other Generators

The Contractor will provide assistance to at least 100 generators each year of the Contract via phone, email, virtual or in-person visits, including, but not limited to:

- Reducing wasted food
- Facilitating partnerships with Feeding NYS, food banks or food recovery organizations
- Starting a food scraps recycling program
- Improving any existing wasted food reduction, food donation or food scraps recycling programs
- Complying with the Food Donation and Food Scraps Recycling law
- Completing the Designated Food Scraps Generator annual report to DEC
- Identifying financial resources (grants, etc.) available for these efforts
- Establishing or modifying waste management contracts to include food scraps collection for recycling
- Providing hands-on, site-specific recommendations to targeted businesses
- Developing cost-effective case studies and guidance that can be adopted by other businesses, institutions, etc.
- Supporting the implementation of new pilot programs that can assess innovative approaches to increasing business waste reduction, donation and organics recycling
- Performing site visits and providing specific recommendations for waste reduction, donation, and food scraps recycling
- Assisting chains or individual generators with setting wasted food reduction targets and measuring wasted food
- Develop an outreach and engagement plan for a specific generator sector, as requested by DEC

Task 4. Assist Organics Recyclers

The NYS Food Donation and Food Scraps Recycling law is expanding to include additional generators in 2027 and 2029. There will be an increased need for additional organics recycling capacity across the state. The Contractor will:

- Support at least 10 recyclers per year with processing source separated organics. This includes, but is not limited to, site development, improving or expanding operations, growing generator relationships and expanding feedstocks. The Contractor will provide assistance based on requests received by the Contractor and the Contractor will reach out to organics recyclers, based on contact information provided by DEC, to inform the facilities that technical assistance is available from the Contractor. Assistance will be provided either verbally, by e-mail, or in-person depending on the level of assistance needed.
- Develop and implement an outreach plan to promote the recycling of source separated organics at yard trimmings composting facilities
- Compost workshops (2-3 per year) – classroom and hands-on instructions covering topics such as operations management, site planning, recipe development, regulations, site development, improving or expanding operations, growing relationships with generators of any size, expanding feedstock sources

Task 5. Expansion of Compost and Digestate Markets

The Contractor will:

- Assist with means to expand markets for compost, digestate, and other related products, using existing research and marketing information
- Assist facilities with identifying options for use of their products, in general, and locally
- Assist product end users with identifying sources of compost, digestate, and other related products.
- Provide recommendations to improve end-products for marketing and distribution
- Facilitate 1 engagement opportunity (e.g. webinar, roundtable) per contract year connecting organic recyclers with end-product users

Task 6. Work with Transporters and Intermediary Facilities (e.g. depackagers and Transfer Facilities)

The Contractor will

- Work with at least three transporters or other intermediary facilities each year of the Contract to improve recycling effectiveness. The Contractor will provide assistance based on requests received by the Contractor and the Contractor will reach out to these entities, based on contact information provided by

DEC, to inform the facilities that technical assistance is available from the Contractor. Assistance will be provided either verbally, by e-mail, or in-person depending on the level of assistance needed.
- Facilitate 1 engagement opportunity per contract year with transporters and/or intermediary facilities to enhance the transport and processing of source separated organics

Task 7. Customer Education and Awareness Campaign

When food is wasted, it's not only the food that goes to waste, but also the resources that went into growing, harvesting, transporting and selling that food. Consumers continue to be one of the leading sectors of wasted food. It's important that the everyday consumer better understand how they can reduce wasted food and, ultimately, save money.

The Contractor will

- Develop resources for food retail partners to implement customer education and awareness campaigns to reduce wasted food while shopping and at home (e.g. storage tips, cooking tips, understanding date labels)
- Partner with at least 1 food retailer to implement a customer education and awareness campaign. The Contractor will also submit a report to DEC on implementation of this project.

Task 8. Reporting Requirements

The Contractor will

- Meet with NYSDEC Organics Reduction and Recycling section on a monthly basis to review program updates
- Provide an annual program report. In addition to program metrics, this report will also include any industry insights and recommendations on the development of the organics recycling industry and the implementation and effectiveness of the Food Donation and Food Scraps Recycling law.

ATTACHMENT 1
Proposer's Checklist of Mandatory Submittal Items

Technical Assistance to Management Wasted Food and Food Scraps

Required Document	✓ Included
Proposers Technical Proposal (as Per Article 10 – Proposal Narrative & Scoring)	
Attachment 2: Proposal Declaration Form	
Attachment 3: Proposer Attestation of Meeting Mandatory Qualifications Form	
Attachment 4: Bidder's/Proposer's Certification	
Attachment 5: Procurement Lobbying Law Bidder/Proposer Disclosure of Prior Non-Responsibility Determinations	
Attachment 6: Vendor Assurance of No Conflict of Interest or Detrimental Effect	
Attachment 7: Sexual Harassment Prevention Certification Form, attached hereto.	
Attachment 8: Gender-Based Violence and the Workplace Certification Form	
Attachment 9: Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia	
Attachment 10: Diversity Practices Questionnaire.	
Attachment 11: Proposer's Reference Form.	
Attachment 12: Financial Proposal Budget Form must be submitted in a ***separate sealed envelope***	

ATTACHMENT 2

Proposer Declaration Form

Technical Assistance to Management Wasted Food and Food Scraps

The Proposer hereby declares that either personally or through authorized representative(s), the Proposer has carefully examined all Proposal Documents and understands all terms and conditions of the Proposal Documents. The Proposer further understands that in signing this Proposal, the right to plead any misunderstanding regarding the same is waived.

Pursuant to and in compliance with the Proposal Documents, the Proposer hereby offers to furnish all labor, materials, supplies, and equipment necessary for the completion of this Contract, as required by and in strict compliance with the applicable provisions of all Contract Documents.

The Proposer must complete, sign and return this form to have its Proposal considered. Failure to provide all the requested information or to sign where provided may lead to the rejection of the Proposal. The undersigned shall meet the required submittal time periods listed in **Subsequent Submittals** (Article 12 of this RFP).

The undersigned hereby designates the office listed below as the office to which Notice of Intent to Award and Notice of Award may be mailed, e-mailed or delivered.

By submission of this Proposal, the Proposer stipulates and agrees that he/she has carefully examined the requirements and has met all the requirements contained in this RFP.

Proposer agrees to provide the services detailed in Article 3 (Schedule 1), Scope of Work, of this RFP

In witness whereof the Proposer has executed this Proposal, this _____ day of _____, 2026.

Proposer Sign Here: _____

Name & Title (print):_____

Company Name: _____FEIN:_____

Address: _____

_____

Phone # _____

E-mail:_____

ATTACHMENT 3

Proposer Attestation of Meeting Mandatory Qualifications Form

Technical Assistance to Management Wasted Food and Food Scraps

The Proposer/Bidder below attests that the Proposer/Bidder meets the following mandatory qualifications; that the Proposer/Bidder had included documentation describing how these qualifications are met; and that the following mandatory qualifications can be verified.

Mandatory Qualifications:

- The Proposer has a minimum of three (3) years of experience providing technical support services related to wasted food reduction and food scraps recycling at the state level;
- The Proposer has developed and hosted training experiences related to wasted food management and/or food scraps recycling;
- The Proposer has conducted food waste assessments across multiple food retail and/or food service sectors
- The Proposer has performed program management, data collection, evaluation and progress reporting;
- The Proposer is familiar with state and federal grant and funding sources, application procedures, grant-writing techniques and grants management; and
- The Proposer has generated promotional materials for the public using high-quality written content, photo documentation and other digital multimedia content.

Bidder/Proposer Certification:
The Bidder/Proposer certifies that all information provided to the New York State Department of Environmental Conservation with respect to meeting mandatory qualifications is complete, true, and accurate.

In witness whereof the Proposer has executed this Proposal, this _____ day of _____, 2026.

Proposer Sign Here: _____

Name & Title (print):_____

Company Name: _____FEIN:_____

Address: _____

_____

Phone # _____

E-mail:_____

Attachment 4

Contract No.: C0000051

BIDDER'S/PROPOSER'S CERTIFICATION

NON-COLLUSIVE BIDDING
AND
NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND
MACBRIDE FAIR EMPLOYMENT PRINCIPLES
AND
STATE ETHICS LAW PROVISION
AND
PROCUREMENT LOBBYING LAW

BY SUBMISSION OF THIS BID/PROPOSAL AND BY SIGNING HEREUNDER THE BIDDER/PROPOSER, AND EACH PERSON SIGNING ON BEHALF OF SUCH PARTY CERTIFIES, AND IN THE CASE OF A JOINT BID/PROPOSAL, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

A. NON-COLLUSION State Finance Law §139-d

1. The prices in this bid/proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder/proposer prior to opening, directly or indirectly, to any other bidder/proposer or to any competitor; and

3. No attempt has been made or will be made by the bidder/proposer to induce any other person, partnership or corporation to submit or not to submit a bid/proposal for the purpose of restricting competition.

B. MACBRIDE FAIR EMPLOYMENT PRINCIPLES State Finance Law §165(5)

1. it or any individual or legal entity in which the bidder/proposer holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder/proposer, either: (answer yes or no to one or both of the following, as applicable).

2. has business operations in Northern Ireland;

☐ No ☐ Yes (check answer) **IF YES, COMPLETE #3**

3. shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

☐ No ☐ Yes (check answer)

C. STATE ETHICS LAW PROVISION

By submittal of this bid/proposal, the undersigned hereby certifies, for and on behalf of the bidder/proposer, that he is familiar with the following provisions of the State Ethics Law provisions applicable to post employment restrictions affecting former state employees: POL §73(8)(a)(i) the two year bar, and §73(8)(a)(ii), the life-time bar, and that submittal of this bid/proposal is not in violation of either provision, and that no violation will occur by entering into a contract or in performance of the contractual services, and further that the bidder/proposer recognizes that the Department may rely upon this certification

Except as follows: (attach information if needed)

(Bidder/Proposer is to make full disclosure of any circumstances which could affect its ability to perform in complete compliance with the cited laws. Any questions as to the applicability of these provisions should be addressed to the New York State Joint Commission on Public Ethics, 540 Broadway, Albany, New York 12207. Telephone Number: 518-408-3976.

D. PROCUREMENT LOBBYING AFFIRMATION

The Undersigned affirms that it understands and agrees to comply with the procedures of the New York State Department of Environmental Conservation relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Date: _____ Print Name and Title: _____

Signature: _____

Attachment 5

Procurement Lobbying Law
Bidder/Proposer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract: _____

_____

Address: _____

_____

Name and Title of Person Submitting this Form: _____

_____

Contract Procurement Number: C0000051

Date: _____

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 check the applicable box.):

No ☐ Yes ☐

If yes, please answer the questions 2 - 4, if no, go to question 5:

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

No ☐ Yes ☐

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please check the applicable box.):

No ☐ Yes ☐

4. 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.)*

_____

_____

_____

_____

_____

_____

_____

_____

5. 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 check the applicable box.):

No ☐ Yes ☐

6. 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)*

_____

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Bidder/Proposer Certification:

The Bidder/Proposer certifies that all information provided to the New York State Department of Environmental Conservation with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature: _____

Attachment 6

Contract #: C0000051

Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Entity offering to provide services pursuant to this Procurement/Contract, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this Procurement/Contract does not and will not create a conflict of interest with nor position the Entity to breach any other contract currently in force with the State of New York.

Furthermore, the Entity attests that it will not act in any manner that is detrimental to any State project on which the Entity is rendering services. Specifically, the Entity attests that:

1. The fulfillment of obligations by the Entity, as proposed in the response, does not violate any existing contracts or agreements between the Entity and the State;

2. The fulfillment of obligations by the Entity, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Entity has with regard to any existing contracts or agreements between the Entity and the State;

3. The fulfillment of obligations by the Entity, as proposed in the response, does not and will not compromise the Entity's ability to carry out its obligations under any existing contracts between the Entity and the State;

4. The fulfillment of any other contractual obligations that the Entity has with the State will not affect or influence its ability to perform under any contract with the State resulting from this Procurement;

5. During the negotiation and execution of any contract resulting from this Procurement, the Entity will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

6. In fulfilling obligations under each of its State contracts, including any contract which results from this Procurement, the Entity will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

7. No former officer or employee of the State who is now employed by the Entity, nor any former officer or employee of the Entity who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

8. The Entity has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended

to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Entities responding to this Procurement/Contract should note that the State recognizes that conflicts may occur in the future because a Entity may have existing or new relationships.

The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Signature: _____

Date: _____

Name: _____

Title: _____

This form must be signed by an authorized executive or legal representative and returned with the Bid/Proposal/Contract.

Attachment 7

Sexual Harassment Prevention Certification Form

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

Company Name:_____

Signature:_____

Print Name and Title:_____

Date:_____

If the above certification cannot be made, the bidder must submit a signed statement below detailing the reasons why the certification cannot be made.

_____
_____
_____
_____
_____

Company Name:_____

Signature:_____

Print Name and Title:_____

Date:_____

NEW YORK STATE | Office for the Prevention of Domestic Violence

Gender-Based Violence and the Workplace Certification

New York State Finance Law §139-M requires bidders on competitive state procurements to certify that they have a written policy addressing gender-based violence and the workplace and that such policy meets the following minimum requirements:

- **Share Information:** Employers must provide information regarding gender-based violence where employees can see and access it, including displaying the NYS Domestic and Sexual Violence Hotline information and a gender-based violence and the workplace poster.
- **Refer Employee-Survivors to Services:** The policy must require that the employer refer employees who disclose current or past victim status to the NYS Domestic and Sexual Violence Hotline and/or a local service provider. For bidders outside of New York State, referrals should be made to a local provider or statewide hotline. While referrals are required to be provided by the employer, it is not required for the employee to access services.
- **Prohibit Retaliation:** The policy must clearly state that discrimination or retaliation against employees who identify as victims or survivors of gender-based violence is prohibited.
- **Comply with Laws:** Ensure your policy follows State law. For employers based in New York State, this means that the policy must follow the SAFE Leave Act, New York State Human Rights Law, and any other relevant laws and regulations.
- **Offer Implementation Support:** OPDV is able to assist employers in developing and implementing this policy. Employers must provide information to supervisors and human resources, where available, about this technical assistance from OPDV. OPDV can be contacted at workplace@opdv.ny.gov.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing gender-based violence and the workplace and has provided such policy to all of its employees, directors and board members. Such policy shall, at a minimum, meet the requirements of subdivision 11 of section five hundred seventy-five of the executive law.

Organization's signature below certifies its compliance with State Finance Law §139-M.

Organization: _____

By (signature): _____

Name (Please Print): _____

Title: _____

Date: _____

This form must be signed by an authorized executive or legal representative.

If the organization cannot make the above certification, they must provide an attached statement with their bid detailing the reasons therefor.

Attachment 9

Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that "all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia." The complete text of Executive Order No. 16 can be found here.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an "entity conducting business operations in Russia" means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

☐ 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.

☐ 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)

☐ 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)

☐ 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor's business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: (legal entity) _____

By: (signature) _____

Name: _____

Title: _____

Date: _____

ATTACHMENT 10
Diversity Practices Questionnaire

I, _____, as _____ (title) of _____firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? **Yes or No (circle one)**

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals. **Please attach your response.**

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-ventures, partners or other similar arrangement for the provision of goods or services to your company's clients or customers? **Please attach your response.**

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?[1] **Please attach your response.**

4. Does your company provide technical training[2] to minority- and women-owned business enterprises? **Yes or No (circle one)**

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs. **Please attach your response.**

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? **Yes or No (circle one)**

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program. **Please attach your response.**

[1] Do not include onsite project overhead.

[2] Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No
If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained. **Please attach your response.**

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? **Yes or No (circle one)**

If Yes, provide documentation of program activities and a copy of policy or program materials. **Please attach your response.**

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? **Yes or No (circle one)**

If Yes, provide a description of your efforts. **Please attach your response.**

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Acknowledgement:

STATE OF _____
COUNTY OF) ss:

On the _____ day of _____, 202_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

_____
Notary Public

Attachment 11

Proposer's Reference Form

Reference Information

Contract #C0000051

This completed form must be submitted along with the Proposal. Two (2) references must be provided. Up to two (2) alternate references may be provided.

These references will be assessed as detailed in Article 5.K of the RFP. Each reference should include a contact name, title, email, telephone number, and a brief statement detailing the work completed for the reference.

REFERENCES

NAME OF ORGANIZATION	ADDRESS	PHONE	CONTACT NAME, TITLE & EMAIL	SCOPE OF WORK*
1.				
2.				
3.				
4.				

* Use additional sheet if needed

ATTACHMENT 12
FINANCIAL PROPOSAL BUDGET FORM(S)
TECHNICAL ASSISTANCE TO MANAGE WASTED FOOD AND FOOD SCRAPS

(Page 1 of 6)

Instructions: Proposers must complete the Financial Proposal Budget Form(s) in its entirety. The figure proposed as "Total Budget for Years 1 – 5" shall constitute the figure in which the Financial Proposal shall be scored, as detailed in Article 10: Proposal Evaluation and Scoring of the RFP. This amount should not exceed $2,500,000 over five years. **The Financial Proposal must be submitted in a sealed and clearly marked envelope, separate from all other Proposal submissions**, as detailed in Article 5: Mandatory Requirements and Article 9: Proposal Submission, of the RFP.

Proposer: _____

Signature:_____ Date: _____

Name and Title:

_____

_____

TECHNICAL ASSISTANCE TO MANAGE WASTED FOOD AND FOOD SCRAPS

Contract Year 1				
Time and Materials Expenses for Year 1				
Personnel Costs	**#/% FTE**	**Rate**	**Cost**	**Total**
Employee Fringe Benefits (Rate = Percentage)				
Personnel Total =				
Non-Personnel Costs			**Cost**	**Total**
Travel				
Contractual Services				
Supplies and Materials				
Equipment				
Other (not included in above – identify)				
Indirect @ ____ %				
Non-Personnel Total =				
Total Budget for Year 1 =				$

TECHNICAL ASSISTANCE TO MANAGE WASTED FOOD AND FOOD SCRAPS

Contract Year 2				
Time and Materials Expenses for Year 2				
Personnel Costs	**#/% FTE**	**Rate**	**Cost**	**Total**
Employee Fringe Benefits (Rate = Percentage)				
		Personnel Total =		
Non-Personnel Costs			**Cost**	**Total**
Travel				
Contractual Services				
Supplies and Materials				
Equipment				
Other (not included in above – identify)				
Indirect @ ____ %				
		Non-Personnel Total =		
		Total Budget for Year 2 =		$

TECHNICAL ASSISTANCE TO MANAGE WASTED FOOD AND FOOD SCRAPS

Contract Year 3				
Time and Materials Expenses for Year 3				
Personnel Costs	**#/% FTE**	**Rate**	**Cost**	**Total**
Employee Fringe Benefits (Rate = Percentage)				
		Personnel Total =		
Non-Personnel Costs			**Cost**	**Total**
Travel				
Contractual Services				
Supplies and Materials				
Equipment				
Other (not included in above – identify)				
Indirect @ ____ %				
		Non-Personnel Total =		
		Total Budget for Year 3 =		$

TECHNICAL ASSISTANCE TO MANAGE WASTED FOOD AND FOOD SCRAPS

Contract Year 4				
Time and Materials Expenses for Year 4				
Personnel Costs	**#/% FTE**	**Rate**	**Cost**	**Total**
Employee Fringe Benefits (Rate = Percentage)				
Personnel Total =				
Non-Personnel Costs			**Cost**	**Total**
Travel				
Contractual Services				
Supplies and Materials				
Equipment				
Other (not included in above – identify)				
Indirect @ ____%				
Non-Personnel Total =				
Total Budget for Year 4 =				$

TECHNICAL ASSISTANCE TO MANAGE WASTED FOOD AND FOOD SCRAPS

Contract Year 5				
Time and Materials Expenses for Year 5				
Personnel Costs	**#/% FTE**	**Rate**	**Cost**	**Total**
Employee Fringe Benefits (Rate = Percentage)				
Personnel Total =				
Non-Personnel Costs			**Cost**	**Total**
Travel				
Contractual Services				
Supplies and Materials				
Equipment				
Other (not included in above – identify)				
Indirect @ ____ %				
Non-Personnel Total =				
Total Budget for Year 5 =				$
Total Budget for Years 1 – 5 (Not to Exceed $2,500,000)				$

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

June 2023

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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, licenser, 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, if this contract exceeds $50,000 (or $75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and $150,000 for State University Health Care Facilities) 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 $25,000, 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed $85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed $125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds $200,000.

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, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 (2 NYCRR § 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 Part 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 clause. 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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: https://ogs.ny.gov/iran-divestment-act-2012

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX B

Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, 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 to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. **Postponement, suspension, abandonment or termination by the Department:**
The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. **Indemnification and Hold harmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

III. **Conflict of Interest**
(a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. **Requests for Payment** All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. **Compliance with Federal requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

VIII. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or
(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or
(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Molly Trembley, P.E., Supervisor - Organics Reduction and Recycling
(Name and Title)

625 Broadway 9th Floor
Albany, NY 12233-7253
(Address)

(518) 402-8706
(Telephone)

The designated appeal individual to review decisions is:

Richard Clarkson, Director - Division of Materials Management
(Name and Title)

625 Broadway 9th Floor
Albany, NY 12233-7253
(Address)

(518) 402-8651
(Telephone)

The Chair of the Contract Review Committee is:
Department of Environmental Conservation

Director, Division of Fiscal Management
Contract Review Committee
625 Broadway, 10th Floor
Albany, NY 12233-5010
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(k) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IX. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

X. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XI. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIII **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XIV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XV. **Patent and Copyright Protection**
If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

(1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and

(2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and

(3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.

(4) The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

(1) procure for the Department the right to continue using the same item or parts thereof;

(2) modify the same so that it becomes non-infringing and of at least the same quality and performance;

(3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;

(4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what

extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVI. **Force Majeure** The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

XVII. **Freedom of Information Requests** The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release and to support its position.

XVIII. **Precedence** In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

XIX. **Article 15-Requirements**

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

(a) General Provisions

(1)The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

(2)The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department", to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

(3)Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

(b) Contract Goals

(1)For purposes of this procurement, the Department hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises ("MWBE") participation, (based on the current availability of qualified MBEs and WBEs).

(2)For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address;

https://ny.newnycontracts.com

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

(3)Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

(c) Equal Employment Opportunity (EEO)

(1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

(i)Contractor and Subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(ii)The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii)If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv)The Contractor's EEO policy statement shall include the following language:

a. 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, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.

c. The Contractor shall request each employer Department, 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 employer Department, 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.

d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of **0**% Minority Labor Force Participation**, 0%** Female Labor Force Participation.

(2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(3) Workforce Employment Utilization Report Form ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

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

(d) MWBE Utilization Plan

(1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.

(2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(3)Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

(e) Waivers

(1)For Waiver Requests Contractor should use Waiver Request Form.

(2)If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(4) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

(f) Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

(g) Liquidated Damages - MWBE Participation

(1)Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

(i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

(ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

(h) Forms

The following forms referenced in Article XVIII 3-A-3, 3B, 3C and 5A can be found at http://www.dec.ny.gov/about/48854.html

Appendix C

Standard Clauses for Ethics in all NYSDEC Contracts

The parties to the attached contract, license, lease, grant, 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 “Offeror” herein refers to any party submitting an application, bid, proposal, or other documents in response to this procurement. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Conflict of Interest

A. Procurement Phase:

1. An Offeror will disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated entity, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Offeror or former officers and employees of the Agencies and their Affiliates, in connection with the Offeror rendering services enumerated in this procurement. If a conflict does or might exist, the Offeror will describe how the Offeror would eliminate or prevent it. This description will include, but not be limited to what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

2. The Offeror must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, “Commission”), and if so, a brief description must be included in the Offeror’s response indicating how any matter before the Commission was resolved or whether it remains unresolved.

3. The Offeror/Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the Offeror’s/Contractor’s performance of the services does not and will not create a conflict of interest with, nor position the Offeror/Contractor to breach any other contract currently in force with the State of New York, that the Offeror/Contractor will not act in any manner that is detrimental to any State project on which the Offeror/Contractor is rendering services.

B. Contract Phase:

1. The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this contract. The Contractor shall have a duty to notify the Department immediately of any actual or potential conflicts of interest.

2. In conjunction with any subcontract under this contract, the Contractor shall obtain and deliver to the Department, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Department a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

3. The Department and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing or establish new relationships. The Department will review the nature of any relationships and reserves the right to terminate this contract for any reason, or for cause, if, in the judgment of the Department, a real or potential conflict of interest cannot be cured.

4. In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without prior Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

5. The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid a conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be allowed by law or other applicable provisions of this contract regarding termination.

6. The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package.

7. ***If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.***

   Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

   a. The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to

represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

b. The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

II. PUBLIC OFFICERS LAW

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

III. ETHICS REQUIREMENTS

The Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements").

The Contractor certifies that all of its employees and those of its subcontractors who are former employees of the State and who are assigned to perform services under this contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its subcontractors and who is disqualified from providing services under this contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions.

The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State

shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

IV. SUBCONTRACTING

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the Department. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under this Contract to be subcontracted to qualified, responsible subcontractors, subject to prior approval of the Department. If the Contractor decides to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this contract must be fully explained by the Contractor to the Department. As part of this explanation, the subcontractor must submit to the Department a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Contractor prior to execution of this contract.

The Contractor retains ultimate responsibility for all services performed under the contract.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this contract including, but not limited to, the body of this contract, Appendix A – Standard Clauses for New York State Contracts, Appendix B – Standard Clauses for All New York State Department of Environmental Conservation Contracts, Appendix C - Standard Clauses for Ethics in all New York State Department of Environmental Conservation Contracts, and the Solicitation Document.

Unless waived in writing by the Department, all subcontracts between the Contractor and subcontractors shall expressly name the State, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Department or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the Department.

The Department reserves the right, at any time during the term of the contract, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this contract. The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under the contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the contract.

If at any time during performance under this contract total compensation to a subcontractor exceeds or is expected to exceed $100,000, or as otherwise requested by the Department that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

Appendix D

New York State Department of Environmental Conservation
Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (collectively referred to as the "Lobbying Law"), makes major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j addresses restrictions on "contacts" during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of offerers[1] during the procurement process. The Lobbying Law applies to all procurements initiated on or after January 1, 2006. In this regard, a procurement means a contract or agreement involving an annual expenditure in excess of $15,000 for a commodity, service, technology, public work, or construction; purchase, sale or lease of real property; or revenue contract.

In conformity with the Lobbying Law, during a procurement's restricted period[2] the only New York State Department of Environmental Conservation (Department) officer(s) or employee(s) that the offerer may "contact" is/are the Department designated contact person(s) for that procurement. In this regard, "contact" means any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence a procurement. Exceptions to this rule include:

- submission of a written proposal in response to an RFP, IFB or any other solicitation method;
- submission of written questions as part of an RFP, IFB or other solicitation method where all written questions and written responses will be provided to all offerers;
- participation in a pre-proposal or pre-bid conference scheduled as part of an RFP, IFB or other solicitation process;
- written complaints by an offerer that the Department designated contact for a procurement fails to respond to in a timely manner;
- negotiations with the Department following tentative award;
- contacts between designated Department staff and offerer to request the review of a contract award; and
- communications with the Department regarding an appeal, protest or other review of a procurement, participation in an administrative or judicial proceeding regarding a procurement, and complaints regarding a procurement made to the Attorney General, Inspector General, District Attorney, or State Comptroller.

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[1] Individual or entity, or any employee, agent, consultant or person acting on behalf of such individual or entity, that contacts the Department about a procurement during the restricted period.

[2] The period of time commencing with the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article 4-C of the New York State Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the State Comptroller.

An offerer shall not, under any circumstances, attempt to influence a Department procurement in a way that violates or attempts to violate: Public Officers Law Section 73(5), relating to gifts intended to influence; or Public Officers Law Section 74, relating to the code of ethics for employees of state agencies, public authorities and public benefit corporations, members of the New York State Legislature, and Legislative employees.

An offerer who contacts the Department designated contact person for a procurement during the restricted period must be prepared to provide the following information: name, address, telephone number, place of principal employment and occupation of the person or organization making the contact, and whether the person/organization making the contact is the offerer or is retained, employed or designated by or on behalf of the offerer to appear before or contact the Department about the procurement.

An offerer that submits a proposal, bid or other response to a Department RFP, IFB or other solicitation method must: certify that it understands and agrees to comply with these guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence; and disclose whether any governmental entity has, within the prior four years, found the offerer non-responsible due to a violation of the Lobbying Law or the intentional provision of false or incomplete information. Further, all Department procurement contracts will contain: a certification by the offerer that all information provided to the Department with respect to the Lobbying Law is complete, true and accurate; and a provision authorizing the Department to terminate the contract in the event such information is found to be intentionally false or incomplete.

The Department will investigate all allegations of violations of the Department guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence. A finding that an offerer has knowingly and willfully committed such a violation may result in a determination that the offerer and its subsidiaries are non-responsible and therefore ineligible for award of the procurement contract. A second determination of non-responsibility for such a violation within four (4) years of the first such determination may render the offerer and its subsidiaries ineligible to submit a bid or proposal or be awarded a procurement contract for four (4) years from the date of the second determination. The Department will notify the New York State Office of General Services (OGS) of any determination of non-responsibility or debarments due to violations of the Lobbying Law.

If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at the following address: https://ogs.ny.gov/acpl. A copy of the new Procurement Lobby Law is also available on this website. Frequently Asked Questions (FAQ's) and answers adopted by the council may be found at the following address: https://online.ogs.ny.gov/legal/lobbyinglawfaq/default.aspx

APPENDIX E

Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses (SDVOB)

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

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Appendix E

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 3 of Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. the Department recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Department contracts.

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

The following link includes additional information regarding the responsibilities associates with the Department's SDVOB program: https://www.dec.ny.gov/about/61016.html#SDVOB

I. Contract Goals

A. The Department hereby establishes an overall goal of **6**% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should contact the Department's SDVOB lead with questions regarding compliance with SDVOB participation goals at:

Mark Krisanda
Contract Management Specialist/SDVOB Program Lead
Bureau of Contract and Grant Development
New York State Department of Environmental Conservation
625 Broadway – 10th Floor, Albany, NY 12233-1080
Phone #: (518) 402-9240
sdvob@dec.ny.gov

or reference the directory of New York State Certified SDVOBs found at: https://online.ogs.ny.gov/SDVOB/search Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or https://ogs.ny.gov/veterans to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

II. SDVOB Utilization Plan

A. Pursuant to 9 NYCRR § 252.2(i), Contractors are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 prior to contract execution.

B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use in the performance of the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Department.

C. The Department will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of the Department's acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to the Department, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Department, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

E. The Department may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:

(a) If a Bidder fails to submit an SDVOB Utilization Plan;
(b) If a Bidder fails to submit a written remedy to a notice of deficiency;
(c) If a Bidder fails to submit a request for waiver; or
(d) If the Department determines that the Bidder has failed to document good faith efforts.

F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Department's Designated Contacts for guidance.**

B. Pursuant to 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Department at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

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

D. If the Department, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to:

Mark Krisanda
Contract Management Specialist/SDVOB Program Lead
Bureau of Contract and Grant Development
New York State Department of Environmental Conservation
625 Broadway – 10th Floor, Albany, NY 12233-1080
Phone #: (518) 402-9240
sdvob@dec.ny.gov

IV. Required Good Faith Efforts

Pursuant to 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

(1) Copies of solicitations to SDVOBs and any responses thereto.

(2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

(3) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(4) Other information deemed relevant to the waiver request.

V. Quarterly SDVOB Contractor Compliance Report

Pursuant to 9 NYCRR § 252.2(q), the Contractor is required to report quarterly SDVOB Contractor Compliance to the Department during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 distributed by the Department's SDVOB program and should be completed by the Contractor and submitted to the Department, by the 20th day of October, January, April, and July during the term of the Contract, for that quarter's activity to:

Mark Krisanda
Contract Management Specialist/SDVOB Program Lead
Bureau of Contract and Grant Development
New York State Department of Environmental Conservation
625 Broadway – 10th Floor, Albany, NY 12233-1080
Phone #: (518) 402-9240
sdvob@dec.ny.gov

VI. Breach of Contract and Damages

Pursuant to 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.