Attachment 9

Minority and Women-Owned Business Enterprise and Equal Employment Opportunity Participation

A. Minority- and Women-Owned Businesses and Employment

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR 140-145 NYSDOL recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of NYSDOL contracts.

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

For purposes of this solicitation, NYSDOL hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises ("MBE") participation and 15% for New York State certified women-owned business enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that NYSDOL may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: https://ny.newnycontracts.com. For guidance on how NYSDOL will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and NYSDOL may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by

contacting the NYS Department of Labor, Purchase and Contracts, MWBE Administrator, State Campus, Building 12, Room 454, Albany, NY 12240, phone number (518) 474-2678, fax number (518) 457-0620, email labor.sm.MWBEAdmin@labor.ny.gov. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder's MWBE requirements please see the attached MWBE guidance, "Your MWBE Utilization and Reporting Responsibilities Under Article 15-A."

Additionally, a Bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to NYSDOL.

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

If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the the NYS Department of Labor, Purchase and Contracts, MWBE Administrator, State Campus, Building 12, Room 454, Albany, NY 12240, phone number (518) 474-2678, fax number (518) 457-0620, email labor.sm.MWBEAdmin@labor.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by NYSDOL to be inadequate, NYSDOL shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

NYSDOL may disqualify an Applicant as being non-responsive under the following circumstances:

- If an Applicant fails to submit a MWBE Utilization Plan;
- If an Applicatn fails to submit a written remedy to a notice of deficiency;
- If an Applicant fails to submit a request for waiver; or
- If NYSNYSDOL determines that the Applicant has failed to document good faith efforts.

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

If no waiver is approved, the Contractor will be required to submit an MWBE Quarterly Compliance Report to the NYSDOL, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Minority and Women-Owned Business Enterprise and Equal Employment Opportunity Participation

B. Equal Employment Opportunity Requirements

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

The Applicant will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement to NYSDOL with their bid or proposal.

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

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

For more information on the administrative requirements see Attachment 10, New York State Department of Labor's General Terms and Conditions.