ATTACHMENT MWBE

DETAILED ADVERTISEMENT / RFQ

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

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, the New York State Department of Transportation (NYSDOT) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MBEs and WBEs") and the employment of minority group members and women in the performance of NYSDOT contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, NYSDOT hereby establishes a target participation of 30 percent for MBE and WBE participation based on the current availability of MBEs and WBEs. A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this Request for Qualifications (RFQ), the respondent agrees that NYSDOT may withhold payment pursuant to any Contract awarded as a result of this RFQ pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: https://ny.newnycontracts.com. For guidance on how NYSDOT will evaluate a Contractor’s "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract]

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

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

By submitting an expression of interest (EOI), bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof with the submission of a completed MBE-WBE-SDVOB Good Faith Effort Log Sheet which is to be submitted with the contractor's EOI (include as an attachment to the CONR 386 submission).

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:
A. An MWBE Utilization Plan with their EOI (include as an attachment to the CONR 386 submission). Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to NYSDOT, Contract Management Bureau, Civil Rights Unit for review and approval. NYSDOT will review the submitted MWBE Utilization Plan and advise the respondent of NYSDOT’s acceptance or issue a notice of deficiency within 30 days of receipt.

B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of within seven (7) business days of receipt by submitting to the NYSDOT, Contract Management Bureau, Civil Rights Unit, 50 Wolf Road 6th Floor F-5, Albany NY 12232, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by NYSDOT to be inadequate, NYSDOT shall notify the respondent and direct the respondent 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.

NYSDOT may disqualify a respondent as being non-responsive under the following circumstances:

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

The successful respondent 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 NYSDOT, Contract Management Bureau, Civil Rights Unit, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent shall comply with the Civil Rights Monitoring and Reporting Article as specified in the Contract resulting from this procurement.

Equal Employment Opportunity Requirements

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

The designated Contractor will be required to submit a MBE and WBE Equal Employment Opportunity Policy Statement, Form #4, to NYSDOT with its executed draft contract signature pages.

For procurements with an anticipated total expenditure in excess of $250,000, the Contractor awarded the contract shall submit an Equal Employment Opportunity (EEO) Staffing Plan, (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. The Contractor shall complete the Staffing Plan form and submit it to NYSDOT with their
Final Cost Proposal information. Separate Staffing Plans shall be submitted for each subcontractor and submitted to NYSDOT by the Prime Contractor with the Final Cost Proposal information.

If awarded a Contract, the Contractor shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by NYSDOT on a QUARTERLY basis during the term of the Contract.

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.

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Documents or forms referenced in the above paragraphs and shown below with colors coordinated with the above text may be found at: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions under the following headings:

**CIVIL RIGHTS**

1. MBE-WBE-SDVOB Good Faith Effort Log Sheet - To be submitted with EOI as part of the CONR 386 submission.
2. MWBE Utilization Plan (Utilization Plan – MBE/WBE/SDVOB Participation Information) – To be submitted with EOI as part of the CONR 386 submission.

**PROPOSAL SUBMISSION SHELLS AND CONTRACT DOCUMENTS**

1. Appendix A, Standard Clauses for NYS Contracts – Not submitted by the Consultant.

**EXECUTIVE ORDER 162, ENSURING PAY EQUITY BY STATE CONTRACTORS, REPORTING REQUIREMENTS**

1. Workforce Utilization Report – Submitted quarterly to the dedicated email box, ConsultEO162@dot.ny.gov.

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