

# New York State Office for New Americans

## REQUEST FOR APPLICATIONS RFA #20-ONA-26

### Office for New Americans ESOL Opportunity Center

#### Important Dates:

RFA Release Date: **March 8, 2021**  
Questions Due: **March 22, 2021**  
RFA Updates Posted: **April 2, 2021**  
Application Due Date: **April 21, 2021 by 4:00 pm**

---

#### CONTACT INFORMATION

---

##### General Program Information/Inquiry

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

E-mail:  
NewAmericans@dos.ny.gov

##### Proposal Submission

Procurement Unit  
New York State Department of State  
Bureau of Fiscal Management  
One Commerce Plaza  
99 Washington Avenue, Suite 1110  
Albany, NY 12231-0001

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

---

## I. INTRODUCTION

This Request for Applications (RFA) seeks organizations within New York State with significant concentrations of low-income immigrants and refugees to establish a network of neighborhood-based “Opportunity Centers - ESOL” where immigrants will be supported through opportunities to learn English as well as provided information to help navigate their communities. This Request for Applications (RFA) seeks to award funding to approximately 21 partner organizations located throughout New York State to conduct this work.

This programming will use professional staff and in-class technology to provide English-for-Speakers-of-Other Languages (ESOL) training and workforce assistance to low-income new Americans.

## II. FUNDING AND PROJECT PERIOD

The New York State Department of State (DOS), on behalf of the Office for New Americans (ONA), is making approximately \$1,696,800 annually in federal Community Services Block Grant (CSBG) funding available through this RFA to provide approximately 21 awards to partner organizations to serve as Opportunity Centers - ESOL. This RFA is 100% federally funded through CSBG. The federal awarding agency for CSBG is Health and Human Services, Administration for Children and Families, Office of Community Services. The catalogue of federal domestic number is 93.569. The initial contract period is anticipated to be one year with an opportunity for up to two annual renewals. Continued funding is contingent upon funding availability, and the organization’s ability to meet the program requirements of the contract as stipulated in this RFA.

Funds for each award in the initial year is anticipated to be approximately \$80,800 per contract. Matching funds are not required for this grant program and no preference will be given to organizations that provide matching funds under this grant.

**Subcontracting is not allowed under this grant.**

## III. APPLICANT ELIGIBILITY

1. Applicant must be a community-based not-for-profit organization (CBO) with 501(c)(3) IRS status, having a principal place of business within New York State and meeting the definition of “community-based organization” as outlined in NY Executive Law section 159-e (4). All applicants applying as a community-based organization are required to *demonstrate* that their organization currently provides services to low-income persons directly or through contract, and meets the definition of a community-based organization as stated in NY Executive Law section 159-e (4); meaning any organization incorporated for the purpose of providing services or other assistance to economically or socially disadvantaged persons within its designated community. **Such organizations must have a board of directors of which more than half of the members reside in such designated community.**

AND

2. Applicant must have been operating continuously as a CBO for the last three years, and not have been debarred from contracting with the State or federal government in the past three years.

AND

3. Applicant must be pre-qualified in Grants Gateway on or before the application due date.

Current ONA grantees, Community Action Agencies (CAAs), or other ONA or DOS past or current grantees are not precluded from applying for this RFA, if they are otherwise eligible. Eligible organizations applying to host an ONA Opportunity Center - ESOL are also not restricted from applying to host more than one ONA Opportunity Center - ESOL, however, multiple ONA Opportunity Centers - ESOL cannot be in the same zip code. For zip codes within counties where there are multiple applications, the highest ranked applicant will be awarded. The second highest scoring applicant within the same zip code will have 10 days from notification to identify an alternative service delivery location in a different zip code within the county. Further, if an organization wishes to host more than one ONA Opportunity Center - ESOL, the organization must submit all required application documentation separately for each proposed ONA Opportunity Centers - ESOL and these applications cannot reference each other.

Due to the need for a strong performance management culture, fundamental to the CSBG, organizations which have an individual who is a ROMA Professional (either implementer or trainer) certified by The Association for Nationally Certified ROMA Trainers (ANCRT) on staff or contract with an individual or organization for ROMA professional assistance at the time of application submission and who participate in the Organizational Standards for CSBG Eligible Entities as found in CSBG Information Memorandum 138 will receive additional points during evaluation.

#### IV. SCOPE OF SERVICES

1. Overview

This RFA seeks approximately 21 not-for-profit organizations capable of hosting an ONA Opportunity Center - ESOL at a physical location within the service area for which the organization is applying or remotely. Each ONA Opportunity Center - ESOL that provides in person services will have a designated space -which will be designated by branded signage. Each ONA Opportunity Center - ESOL will provide the following services, including:

- a. English Language Training
- b. Workforce Assistance
- c. Referrals to the ONA Hotline

**All services provided under this grant must be offered free of charge to clients. This includes books and other instructional materials.**

The counties in which DOS/ONA proposes to make awards and the number of awards per county is outlined in Appendix A.

2. English Language Training

##### *Overview*

Every new American who wants to learn English should have the opportunity to do so. New Americans contribute greatly to the State's dynamic cultural and economic environment, but their participation in our society may be limited due to limited language proficiency. Today, there are about one million New

Yorkers who have Limited English Proficiency (“LEP”). Providing access to ESOL training throughout the State is vital to facilitate the full participation of new Americans in New York’s civic and economic life.

ESOL training under this grant may only be offered for adult education purposes (18 and older).

### *Instruction and Programing*

Each ONA Opportunity Center – ESOL will run English language classes quarterly, and provide instruction at a variety of levels, with classes scheduled to best accommodate the diverse work schedules of the new American communities by offering day, night, and weekend classes.

Each Center will be required to provide 75 hours of ESOL training to each client per quarter, of which 50 hours at a minimum should be dedicated to teacher-led instruction, either in person or through live in person instruction via an online platform. If instruction is done via an online platform, classes must be synchronous, with opportunities for students to communicate face to face with the instructor in real time. All grantees conducting remote classes must adhere to New York IT policies regarding accessibility of information communication technology.<sup>1</sup>

The remaining hours may be achieved through documented time spent on mobile learning such as Cell-Ed or one-on-one tutoring, in computer labs, and/or conversation hours. Cell-ed is funded through a separate grant with ONA and will be offered at no cost to students or grantees.

ONA Opportunity Centers - ESOL will be required to offer at a minimum, a pre-literate/beginner, intermediate, and advanced level course each quarter however, based on student testing the grantee can apply for a waiver from ONA to readjust classes offered. Each class must provide English language learners with the ability to achieve competence in reading, writing, speaking, and comprehension of the English language. Class topics must incorporate skills to allow participants to participate in the workplace and be fully engaged in the community. Classes that are solely to prepare students for the Citizenship exam are not permitted.

All classes, whether taught in person or via online platform, must be led by a paid qualified instructor. Volunteers may also be used to assist with instruction as needed. The minimum qualifications for both paid and volunteer ESOL instructors under this grant are a certificate in teaching ESOL, such as CELTA, and/or two years of demonstrated ESOL teaching experience. In addition, for ASL instructors teaching both ESOL and ASL students, the instructor must have either Provisional or Qualified and Professional certifications from the American Sign Language Teachers Association (ASLTA) or equivalent certification from an accredited source. If a supplemental instructor is only teaching an ASL class, that individual does not need the CELTA and/or two years of demonstrated ESOL teaching experience. Opportunity Centers may repurpose existing staff members for the ESOL instructor position as long as they meet the minimum qualifications. Grantees must submit documentation supporting the certification/teaching experience of their ESOL instructors at the time of contract negotiation and retain such documentation throughout the duration of the grant.

---

<sup>1</sup> [https://its.ny.gov/sites/default/files/documents/nys-p08-005\\_accessibility\\_of\\_information\\_communication\\_technology\\_1.pdf](https://its.ny.gov/sites/default/files/documents/nys-p08-005_accessibility_of_information_communication_technology_1.pdf)

If offered in person, classes should be offered in locations that are easily accessible to clients by public transportation, and that are located within communities that have a significant population of new Americans (see Appendix A).

### *Registration*

ONA Opportunity Centers - ESOL classes are expected to run on a quarterly basis, enrolling a minimum of 40-60 clients across the different classes. Opportunity Centers - ESOL will be required to register a minimum of 60 clients across the different classes in three out of four quarters each year. In the other quarter, the registration requirement will be a minimum of 40 registered clients across the different classes, for a total of 220 students per year.

For example:

- An Opportunity Center – ESOL may find that a significant number of clients do not attend classes in the winter due to the holiday season and may structure the program as such: in Q1 (October- December) - 60 clients, Q2 (January-March) – 40 clients, Q3 (April-June) – 60 clients, and Q4 (July- September) – 60 clients.
- An Opportunity Center - ESOL may find that a significant number of clients work in the summer and may structure the program as such: in Q1 (October-December) -60 clients, Q2 (January-March) – 60 clients, Q3 (April-June) – 60 clients, and Q4 (July-September) – 40 clients

Registration of clients will be required to have been accomplished by the second week of the quarter. If an organization fails to do so, they may be subject to corrective action. **Clients who receive the 75 hours of ESOL training (as described above) may be counted anew for the following quarter if they want to continue ESOL studies.** For example, a client completing the required classes in Q1, Q2 and Q4 would count as three clients, one per quarter where they have met the target goal.

Grantees must ensure that a minimum of 70 percent of the registered cohort in a quarter complete a minimum of 75 hours of instruction per quarter.

### *ESOL Participant Assessment*

Initial client assessment should take place at the time of registration to determine the competency level in English or American Sign Language (ASL). Additionally, all clients will be tested at the end of each quarter.

Client assessments and post-testing should be accomplished with the standard assessment instruments approved by ONA. Some instruments may include but are not limited to the Test of Adult Basic Education (“TABE”); the BEST Plus (computer or print-based); and/or the BEST Literacy.

### *Volunteers*

Opportunity Centers - ESOL are strongly encouraged to recruit, train and incorporate community volunteers to support ESOL programming. Applicants proposing to use volunteers will receive additional points in the evaluation. These community volunteers may assist paid instructors with English classroom instruction, assist with supplemental activities including one-on-one tutoring, conversation groups, assist

with workforce workshops, provide administrative support, assist with client registration, and provide outreach assistance for the ESOL program. The minimum qualifications for volunteer ESOL instructors under this grant are a certificate in teaching ESOL, such as CELTA, and/or two years of demonstrated ESOL teaching experience. In addition, for ASL instructors teaching both ESOL and ASL students, the instructor must have either Provisional or Qualified and Professional certifications from the American Sign Language Teachers Association (ASLTA) or equivalent certification from an accredited source. If a supplemental instructor is only teaching an ASL class, that individual does not need the CELTA and/or two years of demonstrated ESOL teaching experience.

Training of volunteers will be required to be documented and such documentation should be made available at ONA's request. Volunteers are required to maintain client confidentiality at all times. Opportunity Centers - ESOL must track volunteer hours, services provided, and report said hours and services to ONA.

### 3. Workforce Assistance

#### *Overview*

The Workforce Assistance provided by the Opportunity Center- ESOL will help New York's low-income immigrant population fully utilize their potential. This program will allow ESOL students the opportunity to gain skills and knowledge that will prepare them to successfully participate in the workforce. This program will ultimately help grow the state's economy, thus building upon Governor Cuomo's ongoing commitment to immigrant empowerment and workforce development.

#### *Programming*

Individual guidance on resume building, interview techniques and employment opportunities must be offered to all clients who demonstrate a need or interest who attend ESOL programs funded under this grant. Such support can be provided with ONA assistance through collaborations with available state/local employment service providers and/or available Cell-Ed resources including its WorkReady Suite of programs which offers remote training in essential work skills, career coaching, and job placement. Cell-ed is funded through a separate grant with ONA and will be offered at no cost to students or grantees.

Additionally, ONA Opportunity Centers - ESOL are required to hold a minimum of 10 workshops a year on workforce topics. Topics may include, but are not limited to, resume writing, interviewing, and sector specific job trainings. Workshops can either be offered in person or through an online platform. All workshops must be approved by ONA prior to being held.

### 4. ONA Hotline

Each ONA Opportunity Center - ESOL will refer clients to the Office for New Americans' multi-lingual, toll-free immigration assistance hotline, which responds to general questions about immigration and naturalization benefits, requirements and procedures.

ONA Opportunity Centers - ESOL are required to share contact information and class schedules with the ONA hotline.

## V. FUNDING

### *Eligible Expenses*

1. The use of funds must conform to the authorized purposes of the Community Services Block Grant Act, 42 USC § 9901 et seq..
2. The use of funds must comply with the Terms and Conditions of the Community Services Block Grant award.
3. The use of funds must comply with all applicable federal uniform administrative requirements, cost principles, and audit requirements, 45 C.F.R. 75.
4. Grant funds may only be used to support activities delineated in the program scope of this RFA.
5. The federal poverty line must be used as a criterion of eligibility for program participants. 125% of the Federal Poverty Guidelines must be used to determine eligibility after September 30, 2021. The applicable poverty line to be used will be set forth in DOS's CSBG State Plan or program memoranda which will be provided to grantees.
6. All ESOL classes must be taught by a paid instructor. Organizations may hire a per-diem instructor to teach either ESOL or ASL classes.
- 6-7. Costs to develop materials to serve individuals with disabilities.
- 7-8. Personal protective equipment (PPE) for students and staff necessary for safety of in person classes.
- 8-9. Organizations can apply a federally approved indirect cost rate or a 10% de minimis rate towards this grant. If any organization elects not to use either of these rates, the organization may use a direct allocation to document administrative costs. Organizations using the direction allocation method must submit a detailed cost allocation plan documenting the methodologies to be used to allocate costs to this grant with their application. Administrative Expenses are those expenses authorized and allowable pursuant to applicable agency regulations, contracts or other rules that govern reimbursement with Federal funds or State-authorized payments that are incurred in connection with the covered provider's overall management and necessary overhead that cannot be attributed directly to the provision of program services. Please note that the grantee must retain backup documentation detailing how administrative funds were spent. This back up must be made available for review by DOS personnel upon request.

### *Ineligible Expenses*

Ineligible costs will be removed from proposed budgets. Ineligible costs are those not adequately justified, unallowed, not properly allocated, unreasonable, or that do not directly support the project and include, but are not limited to:

1. Funds used to supplant other grant award funds, including any other ONA funding;
2. Funds paid for subcontractors;
3. Funds used for voter registration, lobbying, or political activity, including activity covered by the Hatch Act;
4. Funds used for attendance at conference and professional development trainings including registration fees, membership fees, lodging, and travel to attend such events;

5. Funds used for activities not approved under the resulting contract;
6. Food and entertainment costs; and
7. Costs for travel outside of New York State.

## VI. RFA QUESTIONS AND UPDATES

All questions regarding this competitive grant program must be submitted in writing and received on or before the Questions Due date as stated on the cover of this RFA. Questions must be submitted via email to [newamericans@dos.ny.gov](mailto:newamericans@dos.ny.gov). All e-mails should clearly indicate in the subject line: ONA Opportunity Centers - ESOL Application, General Question. Where applicable, please refer to the RFA page number and section.

No responses will be provided to inquiries made by telephone or social media. Questions and answers will be posted at [www.dos.ny.gov/funding](http://www.dos.ny.gov/funding) on the date stated on the cover of this RFA.

## VII. APPLICATION SUBMISSION

The application guidance and forms are available online at [www.dos.ny.gov/funding](http://www.dos.ny.gov/funding).

Application forms should be signed and submitted in one pdf document to [dos.sm.procurement@dos.ny.gov](mailto:dos.sm.procurement@dos.ny.gov).

Applications must be received in the Procurement mailbox by the Application Due date and time listed on the front page of this RFA. All applications must be complete to be considered for review. DOS strongly recommends submitting applications no later than 2 days before the due date in case there are technical difficulties with the submittal. Late applications will not be reviewed. DOS is not responsible for applications that are not received due to technical issues. DOS will confirm receipt of applications, but Applicant is responsible for ensuring that their application was received.

Applicant offices do not need to be physically located in the geographic service delivery area in which they are applying, provided they meet the criteria outlined in Section III of this RFA. Applicants may apply to more than one service area.

Applicants should respond to this RFA by compiling the narratives and forms described below:

### Application Format

#### 1. Regional Identification and Contact Information

- a. All applicants must submit the contact sheet found in Appendix B indicating a contact person to whom correspondence regarding this application can be directed. This should be submitted with the application as **Attachment 1: Contact Sheet**.
- b. All applicants must submit the regional identification sheet found in Appendix C indicating the service region for which they are applying. This should be submitted with the application as **Attachment 2: Regional Identification**. Separate applications must be submitted by applicants applying for more than one service area.

- c. Applicants must submit the MWBE Compliance Form found in Appendix D with the application. The form should be submitted as **Attachment 3: MWBE Compliance Form.**

## 2. **Proof of Minimum Qualifying Criteria**

- a. Applicant must submit articles of incorporation showing that the applicant organization is incorporated for the purpose of providing services or other assistance to economically or socially disadvantaged persons within its designated community. Such organizations must have a board of directors of which more than half of the members reside in such designated community (provide a complete list of current board members with full addresses, which demonstrates that more than half of the members reside in the area in which the organization is incorporated). This should be submitted with the application as **Attachment 4: Articles of Incorporation and Board List.**
- b. Applicants must submit proof of 501(c)(3) IRS status showing that the applicant has been operating continuously for the last three years. This should be submitted with the application as **Attachment 5: 501(c)(3) IRS status.**
- c. Applicants must be prequalified in Grants Gateway on or before the application due date.

## 3. **Application Narrative:**

### I. **Experience**

- a. Describe the organization's experience working with low-income new American populations. Include number of years providing services to low-income new Americans within the region being proposed.
- b. Describe the organization's experience in providing ESOL classes to low-income new American populations. Describe the curriculum utilized by the organization, and the levels of courses offered. Describe how the curriculum utilized by the organization led to English language proficiency increases. Demonstrate that the organization's ESOL classes served at least 220 individuals a year.
- c. Describe the organization's experience in conducting workforce development programming for low-income new American populations. Describe experience providing guidance on resume building, interview techniques and employment opportunities. Describe the types of seminars the applicant organization has offered in the past, the seminar's applicability to the low income new American population, and the average number of attendees per seminar.

### II. **Capacity**

- a. Demonstrate the organization's capacity to integrate the proposed program into its overall operations. Describe how the proposed program and program staff will relate to the overall organization. Please include an organizational chart showing the applicant's organization and the proposed program with the submitted application. Include at least one paid teacher under

this grant on this chart. Submit the organizational chart as **Attachment 6: “Organizational Chart.”**

- b. Prepare a timeline to delineate when crucial stages of preparation for the provision of the requested services will begin (e.g., hiring of staff, acquisition of necessary technology, outreach to low-income new American communities, official start of ESOL classes, official start date of workforce development seminars and individual assistance, etc.). The timeline should indicate the start date for ESOL services including client registration and the date classes and seminars will begin. Applicant must show ability to start immediately following award.
- c. For applicants that anticipate employing a new ESOL instructor and/or a new ASL instructor, describe plans to recruit an instructor that meets the basic requirements of an ESOL instructor (CELTRA and/or two years of demonstrated ESOL experience) and/or an ASL instructor (Provisional or Qualified and Professional certifications from the American Sign Language Teachers Association (ASLTA) or equivalent certification from an accredited source.) including a sample of the job description, or for applicants that anticipate repurposing an ESOL or ASL instructor already employed at the organization, demonstrate that this instructor meets the basic requirements of (i) an ESOL instructor including CELTRA, and/or two years of demonstrated ESOL experience and/or (ii) an ASL instructor (Provisional or Qualified and Professional certifications from the American Sign Language Teachers Association (ASLTA) or equivalent certification from an accredited source.). This should be submitted with the application as **Attachment 7: ONA ESOL Instructor Qualifications.**
- d. Describe the agency’s outreach capacity within the low income new American community, describing events regularly attended, dedicated outreach staff, and methods through which the agency regularly promotes programming. The plan should be attainable and sustainable for the duration of the grant contract. The plan should demonstrate that the applicant will be able to register 60 students in three quarters, and 40 students in the fourth, for a total of 220 students annually. Organizations are required to indicate in which quarter they will register the smaller cohort (40).
- e. Describe the proposed location(s) in which classes and workshops will be held. Describe how the location will adequately and appropriately accommodate the program activities. If classes and workshops will be held in person, describe health precautions taken to keep teachers and students safe. For in person classes and workshops, include information regarding the accessibility of the facilities for low income new American populations, including proximity to public transportation. If classes and workshops will be held remotely via an online platform, describe platform used, security measures to keep classes and workshops secure, and user accessibility consistent with New York State IT policies regarding accessibility of information communication technology.
- f. Describe if volunteers will be used under this grant. Describe the volunteer training plan, including how volunteers will become familiar with the organization, with ONA, their jobs and responsibilities, and demonstrated safeguards in place to ensure volunteers will maintain client confidentiality.

- g. Describe organization's use, if any, of results-oriented management and accountability (ROMA). Include in the description the number of staff members who are either ROMA implementers or trainers certified by the Association for Nationally Certified ROMA Trainers and/or describe any contracts held for ROMA professional services. Attach documentation of proof of staff ROMA certification or contract for ROMA professional services as **Attachment 8: ROMA Certification**. Additionally, describe if your organization has, at the time of application submission, participated in the Organizational Standards which reflect the requirements of the CSBG Act, good management practices, and the values of Community Action described in CSBG Informational Memorandum 138.

#### 4. Program Description

##### a. ESOL

- i. Describe how the proposed ONA Opportunity Center – ESOL will provide English language classes to best accommodate the varying working schedules of low income new American communities in the applicant's geographic area.
- ii. Describe the proposed curriculum including classroom driven instruction and supplemental ESOL offerings. Describe how the agency will provide seventy-five (75) hours of ESOL instruction per quarter, of which fifty (50) are teacher led. Provide extensive detail on how workplace English will be incorporated into the curriculum.
- iii. Describe the number and types of classes offered (beginning, intermediate, ~~and~~ advanced, and any ASL classes). Describe proposed class schedule each quarter, including times held, and describe how this schedule will meet the needs of new Americans in the region proposed.
- iv. Describe the pre-test and post-test that will be administered. Describe how these tests will be used to place students into class levels and how they will be used to effectively measure proficiency.
- v. Describe the applicant's proposed retention plan to encourage the maximum number of clients to complete the required ESOL hours per quarter. Include opportunities offered by the Center for clients to make up any missed instruction. The plan should demonstrate that the agency will be able to have a minimum of 70% of the registered cohort complete a minimum of 75 hours of instruction per quarter.

##### b. Workforce Assistance

- i. Describe the proposed topics for workforce development seminars to be offered by the applicant organization.
- ii. Describe the process for determining topics that meet the needs of the low income new American population and employers in the proposed service region.

- iii. Describe how individual guidance on resume building, interview techniques and employment opportunities will be offered to all interested clients that attend ESOL programs funded under this grant.

**c. Hotline Outreach**

- i. Describe the proposed plan whereby the ONA Opportunity Center - ESOL will provide information and referral of clients to the Office for New Americans' multi-lingual, toll-free immigration assistance hotline in their community.

**5. Budget**

- i. Provide a detailed budget for the first year containing allowable, allocable, reasonable, and necessary costs as found in Appendix D. Submit this attachment as **Attachment 9: Budget Summary**. If the applicant plans to apply an indirect cost rate using a pre-existing federal negotiated rate, they must also attach a federally approved indirect cost rate letter. If the applicant plans to apply the 10% de minimis rate, they must clearly state it on the budget summary page and detail the Modified Total Direct Costs to which the de minimis rate is applied. If the applicant plans to use a direct allocation methodology, they must submit a detailed cost allocation plan documenting the methodologies to be used to allocate costs to this grant. If applicable, administrative rate supporting documentation must be included as part of Attachment 9.
- ii. Include a narrative description within Attachment 9 clearly linking costs to specific proposed services and activities, including at least one paid ESOL instructor. The narrative is required to clearly justify all costs proposed in the budget as they directly relate to project costs outlined in the RFA and cannot include any ineligible costs as described in Section V.

**VIII. REVIEW AND SELECTION PROCESS**

**Initial ONA Screening:** Each application will be screened by a DOS staff team to determine if the application meets the eligibility requirements, whether the amount requested exceeds the stated ceiling, and whether the application is complete. Incomplete applications, applications that do not meet the eligibility requirements, or those exceeding the funding limit **may be disqualified**; applicants will be notified of such disqualification.

**Review & Scoring:** Applications that pass the initial screening will be evaluated individually by a DOS Review Team. Reviewers will use the evaluation criteria listed below to review and score applications. Each reviewer will assign a score up to a maximum of 100 points to each application; individual scores will be averaged to determine the applicant's final score.

**Awards:** Under this RFA approximately 21 grants of up to \$80,800 each for year one of the resulting contract will be made based on rank order of final scores in each region, until allocated funds are fully distributed. Awardees should be prepared to negotiate and execute subject contracts quickly. Work related expenses incurred prior to contract execution are not authorized and may not be reimbursed if the awardee fails to negotiate a contract in good faith.

**In order to be awarded a contract, the applicant must have an average score of 60 or higher.**

## **IX. EVALUATION SECTION**

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

**Pass/Fail:** The following criteria must be met to qualify applications for review. Failure to meet the following criteria may result in disqualification of the application:

1. Submit the application by the due date and time listed on the RFA cover sheet.
2. The applicant must be prequalified in Grants Gateway on or before the application due date.
3. Applicant must be a not-for-profit organization with a 501(c)(3) IRS status operating continuously for the last three years and must not have been debarred from contracting with the State or federal government in the past three years.
4. Applicant must meet the criteria of a CBO as outlined in Section III of this RFA.

Once an application is determined to pass the basic criteria noted above it will be reviewed for content. In evaluating each application for this RFA, ONA will consider the following criteria, which will be weighted in accordance with the point scale described below, for a total possible score of 100 points:

### **a. Experience – 10 points**

- i. The applicant fully demonstrated that their organization has experience working with low-income new American populations within the region being proposed.
- ii. The applicant fully demonstrated that their organization has experience in providing ESOL classes to low-income new American populations. The applicant demonstrated that the curriculum utilized by the organization will lead to English language proficiency increases. The applicant demonstrated that they have experience providing instruction at different levels. The applicant demonstrated that their ESOL classes served at least 220 individuals a year.
- iii. The applicant fully demonstrated that their organization has experience in conducting workforce development programming for low-income new American populations. The applicant fully demonstrated that they have had experience providing guidance on resume building, interview techniques and employment opportunities. The applicant described seminars the applicant organization has offered in the past, and fully demonstrated that the

seminars are applicable to the low-income new American population. The applicant described average number of attendees per seminar.

**b. Capacity -30 points**

- i. The applicant fully demonstrated the organization has the capacity to successfully integrate the proposed program into its overall operations. The applicant fully described how the proposed program and program staff will relate to the overall organization. The applicant included an organizational chart showing the applicant’s organization and the proposed program with the submitted application. The chart included at least one paid teacher under this grant. The applicant submitted the organizational chart as **Attachment 6: “Organizational Chart.”**
  
- ii. The applicant submitted a timeline to delineate when crucial stages of preparation for the provision of the requested services will begin (e.g., hiring of staff, acquisition of necessary technology, outreach to low-income new American communities, official start of ESOL classes, official start date of workforce development seminars and individual assistance, etc.). The timeline indicated the start date for ESOL services including client registration and the date classes and seminars will begin. Applicant timeline shows the ability to start services immediately upon award.
  
- iii. Applicant proposed employing an ESOL instructor and/or an ASL instructor and fully described plans to recruit this instructor, including a sample of the job description which successfully demonstrated that these instructors meet the basic requirements of (i) an ESOL instructor, including CELTRA, and/or two years of demonstrated ESOL experience, and/or (ii) an ASL instructor (Provisional or Qualified and Professional certifications from the American Sign Language Teachers Association (ASLTA) or equivalent certification from an accredited source.). This was submitted with the application as **Attachment 7: ONA ESOL Instructor Qualifications.**

or

Applicant proposed repurposing an ONA ESOL instructor and/or and ASL instructor already employed at the organization and fully demonstrated that this instructor meets the basic requirements of (i) an ESOL instructor, including CELTRA, and/or two years of demonstrated ESOL experience, and/or (ii) an ASL instructor (Provisional or Qualified and Professional certifications from the American Sign Language Teachers Association (ASLTA) or equivalent certification from an accredited source.). This was submitted with the application as **Attachment 7: ONA ESOL Instructor Qualifications.**

- iv. The applicant fully described the agency’s outreach capacity within the low-income new American community. The description included events regularly attended and demonstrated dedicated outreach staff and described methods through which the agency regularly promotes programming. The applicant demonstrated that the plan is attainable and sustainable for the duration of the grant. The outreach plan demonstrated that the application will be able to register 60 students in three quarters and 40 students in the fourth, for a total of 220 students annually. The applicant indicated in which quarter they will register the smaller cohort.

- v. The applicant fully described the proposed location(s) in which classes and workshops will be held. The applicant fully described how the location will adequately and appropriately accommodate the program activities. If classes and workshops are held in person, the applicant described health precautions taken to keep teachers and students safe. For in person classes, the plan demonstrated accessibility of the facilities for new American populations, including proximity to public transportation. If classes and workshops are held remotely via an online platform, the applicant described the platform used, the security measures to keep classes and workshops secure, and user accessibility consistent with New York State IT policies regarding accessibility of information communication technology.
- vi. The applicant demonstrated if volunteers will be used under the grant. The applicant described their volunteer training plan, including how volunteers will become familiar with the organization, with ONA, with their jobs and responsibilities, and with demonstrated safeguards in place to ensure volunteers will maintain client confidentiality.
- vii. Applicant demonstrated use of results-oriented management and accountability (ROMA). Applicant described the number of staff members who are either ROMA implementers or trainers certified by the Association for Nationally Certified ROMA Trainers and/or described any contracts held for ROMA professional services. The applicant attached documentation of proof of staff ROMA certification or contract for ROMA professional services. Applicant demonstrated, at the time of application submission, participation in the Organizational Standards which reflect the requirements of the CSBG Act, good management practices, and the values of Community Action described in CSBG Informational Memorandum 138. described in CSBG Informational Memorandum 138. The applicant submitted this attachment as **Attachment 8: “ROMA Certification.”**

**c. Program Description – 40 points**

*i. ESOL*

- a) The applicant demonstrated that the proposed ONA Opportunity Center – ESOL will provide English language classes to best accommodate the varying working schedules of low income new American communities in the applicant’s geographic area.
- b) The applicant described the proposed curriculum including classroom driven instruction and supplemental ESOL offerings. The applicant’s plan demonstrates that the agency will provide seventy-five (75) hours of ESOL training to each client per quarter, of which 50 hours at a minimum should be dedicated to teacher-led classroom instruction. The applicant demonstrated that workplace English will be incorporated into the curriculum.
- c) The applicant fully demonstrated that beginning, intermediate, ~~and~~ advanced, and any ASL classes will be offered. The applicant demonstrated that the proposed schedule of classes each quarter, including times held, will meet the needs of the new Americans in the region proposed.

- d) The applicant fully described the pre-test and post-test that will be administered. The applicant fully demonstrated that these tests will be used to appropriately place students into class levels and will be effective in measuring proficiency.
- e) The applicant demonstrated the ability to encourage the maximum number of clients to complete the required ESOL hours per quarter. The applicant described opportunities offered by the Center for clients to make up any missed instruction. The plan demonstrated that the agency will be able to have a minimum of 70% of the registered cohort complete a minimum of 75 hours of instruction per quarter.

ii. *Workforce Assistance*

- a) The applicant described the proposed topics for workforce development seminars to be offered by the applicant organization.
- b) The applicant demonstrated the process for determining topics which will meet the needs of the low income new American population and employers in the proposed service region.
- c) The applicant described how individual guidance on resume building, interview techniques and employment opportunities will be offered to all clients that attend ESOL programs funded under this grant.

iii. *Hotline Outreach*

- a) The applicant fully demonstrated that the proposed ONA Opportunity Center - ESOL will advise clients of and refer clients to the Office for New Americans' multi-lingual, toll-free immigration assistance hotline in their community.

d. **Budget – 20 points**

- i. Applicant provided a detailed budget for the first year containing allowable, allocable, reasonable, and necessary costs as found in Appendix D. Applicant submitted the budget as **Attachment 9: Budget Summary**. If the applicant plans to apply an indirect cost rate using a pre-existing federal negotiated rate, they attached a federally approved indirect cost rate letter. If the applicant plans to apply the 10% de minimis rate, they clearly stated it on the budget summary page and submitted a detailed explanation of the Modified Total Direct Costs to which the de minimis rate is applied. If the applicant plans to use the direct allocation methodology, they submitted a detailed cost allocation plan documenting the methodologies to be used to allocate costs to this grant. Applicant provided all applicable supporting administrative rate documentation as part of Attachment 9.
- ii. Applicant included a narrative description within Attachment 9 clearly linking costs to specific proposed services and activities, including at least one paid ESOL instructor. The narrative clearly justifies all costs proposed in the budget as they directly relate to projects costs outlined in the RFA and does not include any ineligible costs as described in Section V.

## X. CONTRACTING REQUIREMENTS

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

**Project Period:** The initial contract period under all parts of this RFA is anticipated to be one year with the option of two annual renewals. Failure to incur all expenses or complete all identified outcomes in the stated period may result in loss or recapture of funds. Annual renewals are anticipated based on funding availability and performance.

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

## XI. CONTRACT DEVELOPMENT PROCESS

It is anticipated that applications will be reviewed and that successful applicants will be notified of funding decisions through issuance of a Notice of Award document that sets forth the amount of funds granted, and the terms and conditions of the grant award, which are subject to approval by the Office of the State Comptroller.

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

The initial term will be for one year. The contract will have the option for two one-year renewals. All plans and working documents prepared by the applicant(s) under the contract to be awarded will become the property of the State of New York.

Unsuccessful applicants may request the opportunity to be debriefed. Requests must be made in writing within 15 business days of receipt of the Notice of Non-award to the same address to which applications are submitted. In the event unsuccessful bidders wish to protest the award resulting from this RFA, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO), available on-line at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

## **XII. PAYMENT**

The contractor may receive a 25% advance of the initial contract amount upon request. Thereafter, each grantee will be reimbursed for expenses incurred pursuant to grant related activities including salary, benefits, travel, and related expenses. No payments will be made until the contract is fully executed and signed by the State Comptroller and the State Attorney General, if applicable. Contractors will work at their own risk if they conduct program activities before the contract is executed.

## **XIII. PROGRAM ASSESSMENT AND MONITORING**

### **a. RECORD KEEPING**

The contractor must maintain current and accurate fiscal and accounting controls to support its claims for payment. Records must adequately identify revenue sources and expense items for all contracted activities. Accounting records must be supported by clear documentation for all funds received and disbursed. Records must be retained and be accessible for a period of six years from the end of the contract or last payment or last contract transaction. If any claim, audit, litigation, or State/Federal investigation is commenced before the expiration of the records retention period, the records must be retained by the contractor until all claims or findings regarding the records are finally resolved. DOS/ONA or its designee shall have access to any records relevant to the project (including books, documents, photographs, correspondence, and records), for audits, examinations, transcripts, and excerpts. If DOS/ONA determines that such records possess long-term or historic value, they must be transferred, upon request, to DOS/ONA. *Failure to provide requested documents could result in immediate termination of the contract.*

### **b. MONITORING**

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

## **XIV. AMENDMENTS TO THE CONTRACT**

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

## **XV. GENERAL TERMS AND CONDITIONS**

This RFA and any contract resulting from this RFA are subject to all applicable laws, rules and regulations promulgated by any Federal and State authority having jurisdiction over the subject matter thereof. Any contract awarded pursuant to this RFA will be subject to DOS processing procedures for contracts of this type, including approval as to form by the State Attorney General, and as to award by the NYS Division of Budget and NYS Office of the State Comptroller. DOS/ONA reserves the right to terminate or modify the contract due to the unavailability of funds, unsatisfactory performance, or in the best interests of the state. Pursuant to the New York State Procurement Guidelines, DOS reserves the right to:

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

of an application and/or to determine an applicant's compliance with the requirements of the RFA;

16. Waive or modify any irregularities in received applications;
17. Make awards based on geographic distribution;
18. Not fund an application that fails to submit a clear and concise work plan or budget;
19. Adjust or correct cost figures with the consent of the applicant if errors exist and can be documented to the satisfaction of the Department;
20. Offer partial or no funding to any applicant if its application cannot fulfill its proposed program within the funding restrictions herein;
21. Make additional awards if funding becomes available;
22. Require reporting on forms designed for use solely for this procurement; and,
23. Not to make any awards pursuant to this RFA. This RFA does not commit DOS/ONA to award any contracts, to pay the costs incurred in the preparation of a response to this RFA, or to procure or contract for service

## **XVI. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES PARTICIPATION**

### **New York State Law**

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

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

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

NYCRR § 142.8.

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

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

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

Applicants are required to submit the MWBE Compliance Form (Found in Appendix F) with their application.

Additionally, successful applicants will be required to submit an MWBE Utilization Plan (Form D) *or* MWBE Compliance Certification Letter (Form D-1) stating their commitment to show due-diligence to comply with the MWBE goals and requirements within ten (10) business days after the applicant receives notice from Department of State that the grant is being awarded as evidence of compliance with the foregoing. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to Department of State for review and approval.

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

If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department of State, at the address provided below, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by Department of State to be inadequate, Department of State 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 proposal.

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

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

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

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

Successful applicant(s) will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to Department of State (Form F, attached here in Appendix F – MWBE Forms for reference), 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.

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

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

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

If you are unable to comply with the MWBE goals, you must request a waiver of these requirements by submitting to the Department of State the Request for Waiver - Form E (attached here for reference) for processing. Please note that the following information will be required to secure the waiver (all items may not apply to your case, but provide information and documentation for those that apply):

1. A DETAILED statement with the project description (any special characteristics, needs, specifications, etc.), and an explanation setting forth your basis and justification for requesting a partial or total waiver of the MWBE goals.
2. The names of general circulation, trade association, and MWBE-oriented publications in which you solicited certified MWBEs for the purposes of complying with your participation goals related to this Contract.
3. A list identifying the date(s) that all solicitations for certified MWBE participation were published in any of the above publications.

4. A list of all certified MWBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified MWBE participation levels.
5. Documentation of your search in the NYS Directory of Certified Firms (e.g.: Printouts, screenshots).
6. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation, if an identical solicitation was made to all certified MWBEs. Any information and/or documentation to support the efforts to follow up with the MWBEs.
7. Copies of responses to your solicitations received by you from certified MWBEs
8. A description of any contract documents, plans, or specifications made available to certified MWBEs for purposes of soliciting their proposals and the date and manner in which these documents were made available.
9. Documentation of any negotiations between you and the MWBEs undertaken for purposes of complying with the certified MWBE participation goals.
10. Any other information you deem relevant which may help us in evaluating your request for a waiver.
11. The name, title, address, telephone number, and email address of your representative authorized to discuss and negotiate this waiver request.
12. Copy of notice of application receipt issued by Empire State Development (ESD), if subcontractors are not certified MWBE, but an application has been filed with ESD.

## **XVII. EQUAL EMPLOYMENT OPPORTUNITIES**

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

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

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

MWBE Unit  
Email: dos.sm.mwbe@dos.ny.gov  
Phone: 518-474-2754

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

**Please Note: Failure to comply with the requirements detailed in Sections XVI and XVII 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.**

## **XVIII. SERVICE-DISABLED VETERAN-OWNED BUSINESSES PARTICIPATION**

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

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

The Division of Service-Disabled Veterans' Business Development (DSDVBD) is housed within the New York State Office of General Services (OGS) and maintains a directory of the NYS Certified SDVOBs.

For assistance with engaging SDVOB vendors in your contracts, please contact the Division of Service-Disabled Veterans' Business Development at the following email address: [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov), or the DOS Bureau of Fiscal Management – SDVOB Program at [dos.sm.sdvob@dos.ny.gov](mailto:dos.sm.sdvob@dos.ny.gov). The directory of certified SDVOB vendors can be found at: <https://online.ogs.ny.gov/SDVOB/search>

**XIX. APPENDICES**

- **Appendix A: Counties Eligible and the Number of ONA Opportunity Centers – ESOL Proposed for Awards**
- **Appendix B: Contact Information Sheet (Application Form)**
- **Appendix C: Regional Identification Sheet (Application Form)**
- **Appendix D: Budget Summary (Application Form)**
- **Appendix E: Sample Contract**
- **Appendix F: MWBE Utilization Forms**

## APPENDIX A: Counties Eligible and the Number of ONA Opportunity Centers - ESOL Proposed for Awards

Counties	Number of Proposed ONA Opportunity Centers - ESOL (Up to)
Albany	1
Bronx	1
Broome	1
Clinton	1
Dutchess	1
Erie	1
Kings	1
Monroe	1
Nassau	1
New York	1
Oneida	1
Onondaga	1
Orange	1
Queens	2
Richmond	1
Rockland	1
Saratoga	1
Suffolk	1
Westchester -Outside of Yonkers	1
Westchester – Yonkers	1
<b>Total</b>	<b>21</b>

**APPENDIX B: Contact Information Sheet**  
**(APPLICATION FORM)**  
**CONTACT COVER PAGE**

*Submit as Attachment 1: Contact Sheet*

**Region Applying For:**

**Applicant (Organization) Name:**

**Executive Director:**

**Application Point of Contact:**

**Point of Contact Phone:**

**Point of Contact E-mail:**

**Executive Address:**

\_\_\_\_\_  
Signature of Individual Submitting Application

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## APPENDIX C: REGIONAL IDENTIFICATION SHEET (APPLICATION FORM)

### Submit With Application as Attachment 2: Regional Identification

Through the award available under the ONA ESOL Opportunity Center RFA #20-ONA-26, Applicant \_\_\_\_\_ proposes to host and support an ONA Opportunity Center - ESOL and other immigrant service providers in the following region (check **ONLY** one):

Counties	Select One	Zip Code For Proposed ESOL Opportunity Center
Albany		
Bronx		
Broome		
Clinton		
Dutchess		
Erie		
Kings		
Monroe		
Nassau		
New York		
Oneida		
Onondaga		
Orange		
Queens		
Richmond		
Rockland		
Saratoga		
Suffolk		
Westchester -Outside of Yonkers		
Westchester – Yonkers		

**APPENDIX D: Budget Summary (Application Form)**  
**(APPLICATION FORM)**

**Submit with Application as Attachment 9: Budget**

NEW YORK STATE DEPARTMENT OF STATE  
 New York State Office for New Americans  
**Budget Summary – RFA #20-ONA-26**

*Submit as Attachment 9: Budget Summary*

Applicant: \_\_\_\_\_

Budget Period: \_\_\_\_\_ to \_\_\_\_\_

Cost Categories		Total Project Cost by Category (dollar value):
1.	Personnel Services	
2.	Fringe	
3.	Travel	
4.	Advertising & Printing	
5.	Non-Personnel Cost	
6.	Administrative Cost Rate ( ___ %)	
<b>TOTAL PROJECT COST</b>		

<b>Personnel Services</b>			
<b>Title</b>	<b>Annual Salary</b>	<b>(%)</b>	<b>Total</b>
<p>Justification: Completely justify all positions. Describe duties and contributions to the project. Include a brief description of duties/responsibilities for each position</p>			
<b>Personnel Services Total (dollar value):</b>			

<b>Fringe</b>
<p>Describe and justify each fringe cost in detail, including fringe rate, and what is included as part of fringe benefits</p>
<b>Fringe Total (dollar value):</b>

<b>Travel</b>
<p>Describe and justify all travel in detail, including cost per item. Justify the need for travel and how it will benefit the project.</p>
<b>Travel Total (dollar value):</b>

**Advertising & Printing**

Describe and justify all printing and advertising costs in detail, including cost per item. Justify the need for printing and advertising, and how it will benefit the project.

**Advertising & Printing Total (dollar value):**

**Non-personnel Services**

Describe and justify all non-personnel services in detail, including cost per item. Justify the need for these non-personnel services, and how they will benefit the project.

**Non-personnel Services Total (dollar value):**

**Administrative Cost Rate**

Describe administrative cost rate to be applied to the grant. Specify whether the rate will be federally approved indirect cost rate, 10% de minimis rate, agency determined direct allocation methodology. Include the categories to which the rate will be applied.

**Administrative Cost Rate (dollar value):**

**Appendix E:  
Sample Contract**

## SAMPLE DOS STANDARD CONTRACT

STATE AGENCY (Name & Address):	BUSINESS UNIT/DEPT. ID:  CONTRACT NUMBER:  CONTRACT TYPE: Multi-Year Agreement Simplified Renewal Agreement Fixed Term Agreement
CONTRACTOR SFS PAYEE NAME:	TRANSACTION TYPE: New Renewal Amendment
CONTRACTOR DOS INCORPORATED NAME:	PROJECT NAME:
CONTRACTOR IDENTIFICATION NUMBERS:  NYS Vendor ID Number: Federal Tax ID Number: DUNS Number (if applicable):	AGENCY IDENTIFIER:  CFDA NUMBER (Federally Funded Grants Only):



ATTACHMENTS PART OF THIS AGREEMENT:

Attachment A: A-1 Program Specific Terms and Conditions  
A-2 Federally Funded Grants and Requirements Mandated by Federal Laws

Attachment B: B-1 Expenditure Based Budget                      B-2 Performance Based Budget  
B-3 Capital Budget    B-4 Net Deficit Budget  
B-1(A) Expenditure Based Budget (Amendment)  
B-2(A) Performance Based Budget (Amendment)  
B-3(A) Capital Budget (Amendment)  
B-4(A) Net Deficit Budget (Amendment)

Attachment C: Work Plan

Attachment D: Payment and Reporting Schedule Other:

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

CONTRACTOR:

STATE AGENCY:

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

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

Printed Name

Printed Name

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

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

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

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

STATE OF NEW YORK

County of \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) \_\_\_\_\_

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

\_\_\_\_\_

\_\_\_\_\_

Printed Name

Printed Name

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

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

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

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

**STATE OF NEW YORK  
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

**WITNESSETH:**

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

**STANDARD TERMS AND CONDITIONS**

**I. GENERAL PROVISIONS**

**A. Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

**B. Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

**Budget Changes:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

### **C. Order of Precedence:**

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2<sup>2</sup>, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2<sup>3</sup>, Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

**D. Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**E. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

**F. Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record,

---

<sup>2</sup> To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I (V).

<sup>3</sup> To the extent that the terms of Attachment of A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I (V).

in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

**G. Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**H. Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

**I. Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

**J. Notice:**

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
  - a. by certified or registered United States mail, return receipt requested;
  - b. by facsimile transmission;
  - c. by personal delivery;
  - d. by expedited delivery service; or
  - e. by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal

delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

**K. 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. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

**L. 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 the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master 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 OSC.

**M. Indemnification:** The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

**N. Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master 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 shall be considered to be 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 State Agency and with the concurrence of OSC, where the original contract was subject to OSC'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 the merged 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 the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**O. Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

**P. No Arbitration:** Disputes involving the Master 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.

**Q. Secular Purpose:** Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

**R. Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

**S. Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its 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 it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.<sup>3</sup>

**T. Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

**U. Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

**V. Federally Funded Grants and Requirements Mandated by Federal Laws:** All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent that the Master Contract is funded in whole or part with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with

Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

---

<sup>3</sup>As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia, and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to the provision.

## II. TERM, TERMINATION AND SUSPENSION

**A. Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

### **B. Renewal:**

**1. General Renewal:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

### **2. Renewal Notice to Not-for-Profit Contractors:**

- a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.
- b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

### **C. Termination:**

#### **1. Grounds:**

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written

notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.

- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non- Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

## **2. Notice of Termination:**

- a) Service of notice: Written notice of termination shall be sent by:
  - (i) personal messenger service; or
  - (ii) certified mail, return receipt requested and first class mail.
- b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:
  - (i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual

making such hand delivery attesting to the date of delivery; or

- (ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

**3. *Effect of Notice and Termination on State's Payment Obligations:***

- a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

**4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property:***

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

- a) the repayment to the State of any monies previously paid to the Contractor;  
or
- b) the return of any real property or equipment purchased under the terms of the Master Contract; or
- c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

- D. *Suspension:*** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

**III. PAYMENT AND REPORTING**

**A. Terms and Conditions:**

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, 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.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

**B. Advance Payment and Recoupment:**

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance

payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).

3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

#### **C. Claims for Reimbursement:**

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:
  - a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan). The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.
  - b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and

supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

- c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

- d) Milestone/Performance Reimbursement:<sup>4</sup> Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

- e) Fee for Service Reimbursement:<sup>5</sup> Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.
- f) Rate Based Reimbursement:<sup>6</sup> Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.
- g) Scheduled Reimbursement:<sup>7</sup> The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.
- h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).
- i) Fifth Quarter Payments:<sup>8</sup> Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the

State may pursue all available remedies, including the right of setoff and recoupment.

5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

**D. Identifying Information and Privacy Notification:**

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, 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 Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.
2. 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 principle 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. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This 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.

**E. Refunds:**

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).
2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

**F. Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

**G. Program and Fiscal Reporting Requirements:**

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.
2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:
  - a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
    - (i) *Narrative/Qualitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
    - (ii) *Statistical/Quantitative Report:* The Contractor shall submit, on a quarterly

basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

- (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
  - (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
  - (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).
- b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.
  - (ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.
3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

#### **H. Notification of Significant Occurrences:**

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

#### **IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**

##### **A. Contractor as an Independent Contractor/Employee:**

1. The State and the Contractor agree that the Contractor is an independent contractor and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

## **B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.
2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.
3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.
4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor must submit a Vendor Responsibility Questionnaire (Questionnaire).
5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.
6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

## **C. Use of Material, Equipment, or Personnel:**

1. The Contractor shall not use materials, equipment, or personnel paid for under the

Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

**D. Property:**

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
  - a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
  - b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.
  - c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
  - d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.
  - e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
  - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.
  - g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:
  - a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
  - b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).
4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

**E. Records and Audits:**

**1. General:**

- a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:
  - (i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
  - (ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous

reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

- c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), 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.
- d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law 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 Section 87 of the Public Officers Law, is reasonable.
- e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

**2. Cost Allocation:**

- a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.
- b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

**3. Federal Funds:** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

**F. Confidentiality:** The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their

families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**G. Publicity:**

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.
2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:
  - a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and
  - b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.
3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

**H. Web-Based Applications-Accessibility:** Any web-based intranet and Internet

information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

- I. Non-Discrimination Requirements:** Pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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. 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 the Master Contract shall be performed within the State of New York, the 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 the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the 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 the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.
- J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State 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 State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State 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 Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;
2. The Contractor 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;
3. The Contractor shall 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1–5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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.

**K. 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.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:
  - a) The Contractor has made reasonable efforts to encourage the participation of 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 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 the Master Contract and agrees to cooperate with the State in these efforts.

**L. Workers' Compensation Benefits:**

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

**M. Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

**N. Vendor Responsibility:**

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:
  - a) to require updates or clarifications to the Questionnaire upon written request;
  - b) to inquire about information included in or required information omitted from the Questionnaire;
  - c) to require the Contractor to provide such information to the State within a reasonable timeframe; and

- d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
  - e) to require the Contractor 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. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.
5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall 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 State issues a written notice authorizing a resumption of performance under the Master Contract.
6. The State, in its sole discretion, reserves the right to make a final Determination of Non- Responsibility at any time during the term of the Master Contract based on:
- a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
  - b) the State's discovery of any material information which pertains to the Contractor's responsibility.
7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.
- O. Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.
- P. Consultant Disclosure Law:**<sup>4</sup> 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.

**Q. 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 condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

---

<sup>4</sup>Not applicable for non-profit entities

# **ATTACHMENT A-1**

## **New York State Department of State (4/21/20)**

### **Agency Specific Clauses**

For the purposes of this Agreement, the terms "State" and "Department" are interchangeable, unless the context requires otherwise. In addition, the terms "Agreement" and "Contract" are interchangeable, unless the context requires otherwise.

#### **A. Project Timetable**

The Contractor agrees to proceed expeditiously with the Project and to complete the Project in accordance with any timetable associated therewith as set forth in the Work Plan (Attachment C) as well as with the conditions of any applicable permits, administrative orders, or judicial orders and this Agreement.

#### **B. Budget Modifications**

Prior DOS written approval, which requires a detailed breakdown and justification, is required for all requests for budget modifications, regardless of the amount of the modification. Additional approvals will be required when modifications exceed thresholds described below.

Any proposed modification to a contract that will result in a transfer of funds among program activities or budget cost categories, but does not affect the amount, consideration, scope or other terms of such contracts must be submitted to DOS for submission to the Office of State Comptroller for approval when:

1. The amount of the modification is equal to or greater than ten percent of the total value of the contract for contracts of less than five million dollars; or
2. The amount of the modification is equal to or greater than five percent of the total value of the contract for contracts of more than five million dollars.

#### **C. Applicable Terms**

In addition to the criteria set forth in IV(E)(1)(b) of the Standard Terms and Conditions, documentation of personal service expenditures shall:

1. Be based upon actual work performed;
2. Be supported by internal controls that provide a reasonable assurance that the charges are accurate, allowable, and properly allocated; and
3. Comply with the Contractor's established accounting policies.

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.

#### D. License to Use and Reproduce Documents, Intellectual Property and Other Works:

By acceptance of this Agreement, Contractor transfers to the Department a perpetual, transferable nonexclusive license to use, reproduce in any medium, and distribute, for any purpose, any intellectual property or other work purchased, developed or prepared for or in connection with the Project using funding provided pursuant to this Contract, including but not limited to reports, maps, designs, plans, analysis, and documents regardless of the medium in which they are originally produced. Contractor warrants to the Department that it has sufficient title or interest in such works to license pursuant to this Agreement, and further agrees and warrants that it shall not enter into any subcontract or other agreement purporting to limit such title or interest in such works in any manner that may compromise Contractor's ability to provide the aforesaid license to the Department. Such warranties shall survive the termination of this agreement. Contractor agrees to provide the original of each such work, or a copy thereof which is acceptable to the Department, to the Department before payments shall be made under this Agreement.

#### E. Property

The ownership of all property or intellectual property described herein and purchased, developed or prepared under the terms of this Contract shall reside with the Contractor with a reversionary interest in such property or intellectual property held by the Department, unless otherwise authorized or directed in writing by the Department. Except as otherwise provided in Section II.C.4 of the Standard Terms and Conditions, Contractor shall retain ownership of such property or intellectual property after the term of this Contract so long as such property or intellectual property is used for purposes similar to those contemplated by this Contract. Otherwise, the Contractor shall return such property or intellectual property to the Department at the Contractor's cost and expense, and Contractor's ownership interests, rights and title in such property or intellectual property shall revert to the Department. The ownership of all property purchased with federal funds provided pursuant to this Agreement, however, shall be governed by the terms of applicable federal law and OMB Circulars including, but not limited to, 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as amended.

#### F. Termination

The Department may terminate the Agreement in accordance with the terms and conditions set forth in the Master Grant Contract section of this Agreement. In addition to other reserved rights it has to terminate this Agreement, the Department may terminate or suspend the Agreement under the following circumstances:

1. The Contractor shall complete the project as set forth in this Agreement, and failure to render satisfactory progress or to complete the project to the satisfaction of the State may be deemed an abandonment of the project and may cause the suspension or termination of any obligation of the State. In the event the Contractor should be deemed to have abandoned the project for any reason or cause other than a national emergency or an Act of God, all monies paid to the Contractor by the State and not expended in accordance with this Agreement shall be repaid to the State upon demand. If such monies are not repaid within one year after such demand, the State Comptroller of the State of New York may cause to be withheld from the Contractor any State assistance to which the Contractor would otherwise be entitled in an amount equal to the monies demanded.
2. In the event that the Department has provided written notice to the Contractor directing that the Contractor correct any failure to comply with this Agreement, the Department reserves the right to direct that the Contractor suspend all work during a period of time to be determined by the Department. If the Contractor does not correct such failures during the period provided for in the notice, this Agreement shall be deemed to be terminated after expiration of such time period. During any such suspension, the Contractor agrees not to incur any new obligations after receipt of the notice without approval by the Department.
3. If the Department determines the Contractor has breached a term of the Agreement and if the Department determines the defect can be remedied, it may, in its sole discretion, issue a written notice providing the Contractor with a minimum of 30 days to correct the defect and the notice may include a prospective termination date. If the Contractor fails to correct the defect or fails to make a good faith effort to do so as determined by the Department to the Department's satisfaction, the Department may terminate the Agreement for cause.
4. The Department shall also have the right to postpone or suspend the Agreement or deem it abandoned without this action being a breach of the Agreement. The Department shall provide written notice to the Contractor indicating the Agreement has been postponed, suspended or abandoned. During any postponement, suspension or abandonment the Contractor agrees not to do any work under the Agreement without prior written approval of the Department.
5. In the event the Agreement is postponed, suspended, abandoned or terminated, the Department shall make a settlement with the Contractor upon an equitable basis in good faith and under the general compensation principles and rates established in the Agreement by the Department. This settlement shall fix the value of the work which was performed by the Contractor to the Department's satisfaction prior to the postponement, suspension, abandonment or termination of the Agreement.
6. Any funds paid to the Contractor by the Department which are not expended under the terms of the Agreement shall be repaid to the Department.

#### G. Subcontracting Requirements

1. Contractor agrees that it shall not enter into any subcontract for the performance of work in furtherance of this Contract with any subcontractor that at the time of contracting: (1) is listed on the New York State Department of Labor's list of companies with which New York State cannot do business (available at <https://apps.labor.ny.gov/EDList/searchPage.do>); (2) is listed as an entity debarred from federal contracts (available at: <https://www.sam.gov/SAM/>); or (3) fails to possess requisite workers compensation and disability insurance coverage (see <http://www.wcb.ny.gov>). In addition, Contractor agrees that it shall immediately suspend or terminate any subcontract entered into for the performance of work in furtherance of this Contract if at any time during the term of such subcontract the subcontractor: (1) is listed on the New York State Department of Labor's list of companies with which New York State cannot do business (available at <https://dbr.labor.state.ny.us/EDList/searchPage.do>); (2) is listed as an entity debarred from federal contracts (list available at: <https://www.sam.gov/SAM/>); or (3) fails to maintain requisite workers compensation or disability insurance coverage (see <http://www.wcb.ny.gov>). Contractor agrees that any such suspension shall remain in place until the condition giving rise to the suspension is corrected by the subcontractor. The terms of this clause shall be incorporated in any and all subcontracts entered into in furtherance of this Contract.
2. The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the Work in accordance with the Contract. The Contractor shall control and coordinate the Work of its subcontractors.
3. The Contractor shall be responsible for informing its subcontractors of all the terms, conditions and requirements of the Contract Documents including, but not limited to the terms of the Master Grant Contract, any and all Appendices, and any changes made by amendments thereto, and ensuring that any and all subcontracts entered into in furtherance of this Contract conform to and do not conflict with such terms.
4. Contractor shall file each and every subcontract entered into in furtherance of this Contract with the Department of State no later than fifteen (15) calendar days following the signing of the subcontract, unless otherwise authorized or directed by the Department of State.
5. In addition to the requirements of Section IV.B.2 of the Standard Terms and Conditions, the Department reserves the right to require, upon notice to the Contractor, that, commencing from the date of such notice or a date otherwise specified in such notice, Contractor must obtain written approval from the Department prior to entering into any and all subcontracts valued at or below \$100,000 for the performance of any activities covered by this Contract (as provided for in Attachment C). Contractor agrees to require any proposed subcontractors to timely provide to the Department such information as may be requested by the Department as necessary to assess whether the proposed subcontractor is a responsible entity capable of lawfully and satisfactorily performing the work. In the event the Department invokes this right of prior approval and a request

for approval is submitted by Contractor and denied by the Department, Contractor agrees that it shall not enter into the proposed subcontract and that no costs associated with such subcontract shall be allowable under this Contract.

#### H. Compliance with Procurement Requirements

1. All contracts by municipalities for service, labor, and construction involving not more than \$35,000 and purchase contracts involving not more than \$20,000 are subject to the requirements of General Municipal Law §104-b, which requires such contracts to comply with the procurement policies and procedures of the municipality involved. All such contracts shall be awarded after and in accordance with such municipal procedures, subject to the MWBE requirements as set forth in Section M and any additional requirements imposed by the State as set forth in Attachment C hereof.
2. The municipal attorney, chief legal officer or financial administrator of the Contractor shall certify to the Department of State that applicable public bidding procedures of General Municipal Law §103 were followed for all service, labor, and construction contracts involving more than \$35,000 and all purchase contracts involving more than \$20,000. In the case of contracts by municipalities, service, labor, and construction contracts involving not more than \$35,000 and purchase contracts involving not more than \$20,000, the municipal attorney, chief legal officer or financial administrator shall certify that the procedures of the municipality established pursuant to General Municipal Law §104-b were fully complied with, in addition to the MWBE requirements as set forth in Section M of this Agreement and any additional requirements imposed by the State as set forth in Attachment C hereof.
3. For non-municipal entities such as community-based organizations, the chief legal officer or financial administrator of the Contractor shall certify to the State that alternative proposals and quotations for professional services were secured by use of written requests for proposals through a publicly advertised process satisfactory to meet the MWBE requirements set forth in Section M of this Agreement and to ensure the prudent and economical use of public funds for professional services of maximum quality at reasonable cost.

## I. Vendor Responsibility Determinations

1. A Vendor Responsibility Questionnaire and Certification is required for certain contracts. This Questionnaire is designed to provide information to assist the contracting agency in assessing a CONTRACTOR's responsibility, prior to entering into a contract, and must be completed and submitted electronically or returned with the contract. Contractor is invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://osc.state.ny.us/vendrep/index.htm> or go directly to the VendRep System online at <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of State or the Office of the State Comptroller's Help Desk for a copy of the paper form.
2. Contractor hereby acknowledges that the Vendor Responsibility Questionnaire (VRQ), as described in Section IV (N) of the Master Grant Contract, as well as any updated or amended version of the VRQ submitted during the term of this contract, or any contractor responsibility information that may be requested by the Department and submitted during the term of this contract, is made a part of this contract by reference hereto and that any misrepresentation of fact in the information submitted, may result in termination of this contract. During the term of this Contract, any changes in the information provided in the questionnaire shall be disclosed to the Department, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract.

## J. State Attorney General Charities Registration

In accordance with the Estates, Powers and Trust Law § 8-1.4 (s), the recipient certifies that it is in compliance with the requirements of Estate, Powers and Trusts Law sections 8-1.4 (d), (f), and (g), regarding organizations which administer property for charitable purposes registering and filing periodic reports (together with the appropriate filing fees) with the New York State Attorney General's Charities Bureau. This certification is a material representation of fact upon which reliance was placed by the Department of State in entering into this Agreement with the Contractor.

The Contractor agrees that it will provide immediate written notice to the Department of State if at any time it learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

## K. Records Access

The Contractor shall make such records available for review by the Department upon request at any time. The Department shall have the right to conduct progress assessments and review books and

records as necessary. The Department shall have the right to conduct an on-site review of the Project and/or books and records of the Contractor prior to, and for reasonable time following, issuance of the final payment. The Department shall be entitled to disallow any cost or expense, and/or terminate or suspend this Agreement, if the Contractor has misrepresented any expenditures or Project activities in its application to the Department, or in this Agreement, or in any progress reports or payment requests made pursuant hereto. The Contractor shall maintain such books and records in a manner so that reports can be produced therefrom in accordance with generally accepted accounting principles. The Contractor shall maintain separate financial books and records for all funds received through the Department pursuant to this Agreement.

L. Notices

Pursuant to Section J of the Master Grant Contract, notice hereunder shall be addressed as follows:

1. Notice to the State

Name, Title	
Agency/Division	NYS Department of State
Address	
Phone/ Fax/Email	(P): (F): (E):

2. Notice to the Contractor

Name, Title	
Address	
Phone/ Fax/Email	(P): (F): (E):

M. Limits on Administrative Expenses and Executive Compensation (19 NYCRR Part 144, incorporated herein by reference):

1. If Contractor is a “covered provider” within the meaning of 19 NYCRR § 144.3(d) at any time during the life of this Agreement, then during the period when Contractor is such a “covered provider”:
  - a. Contractor shall comply with the requirements set forth in 19 NYCRR Part 144, as amended; and
  - b. Contractor’s failure to comply with any applicable requirement of 19 NYCRR Part 144, as amended, including but not limited to the restrictions on allowable administrative expenses, the limits on executive compensation, and the reporting requirements, may be deemed a material breach of this Agreement and constitute a sufficient basis for, in the discretion of the Department, termination for cause, suspension for cause, or the reduction of funding provided pursuant to this Agreement.
2. Contractor shall include the following provision in any agreement with a subcontractor or agent receiving State funds or State-authorized payments from the Contractor to provide program or administrative services under this Agreement:

[Name of subcontractor/agent] acknowledges that, pursuant to this Agreement, it is receiving “State funds” or “State-authorized payments” originating with, passed through, or approved by the New York State Department of State in order to provide program or administrative services on behalf of [Name of CONTRACTOR]. If at any time during the life of this Agreement [Name of subcontractor/agency] is a “covered provider” within the meaning of Section 144.3(d) of DOS regulations, [Name of subcontractor/agent] shall comply with the terms of 19 NYCRR Part 144, as amended. A failure to comply with 19 NYCRR Part 144, where applicable, may be deemed a material breach of this Agreement constituting a sufficient basis for suspension or termination for cause. The terms of 19 NYCRR Part 144, as amended, are incorporated herein by reference.

N. Minority and Women Owned Business Participation

Article 15-A of the New York State Executive Law, as amended, authorized the creation of a Division of Minority and Women's Business Development to promote employment and business opportunities on state contracts for minorities and women. This law supersedes any other provision in state law authorizing or requiring an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises. Under this statute, State agencies are charged with establishing business participation goals for minorities and women. The Department of State administers a Minority and Women-owned Business Enterprises (MWBE) Program as mandated by Article 15-A.

1. General Provisions

- a. The Department of State is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) 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.
- b. 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 of State (the “Agency”), to fully comply and cooperate with the Agency in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The 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”) and other applicable federal, state, and local laws. Contractor agrees that the terms “MWBE,” “MBE” and “WBE” as used herein, shall mean those MBE or WBE firms certified as such by the State pursuant to NY Executive Law Article 15-A and listed in the directory of New York State Certified MWBEs found at the following internet address:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.
- c. 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 assessment of liquidated damages pursuant to Section M(7) of this Attachment and such other remedies as are available to the Agency pursuant to the Contract and applicable law.

## 2. Contract Goals

- a. The Department’s New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) utilization goal is 30%. For purposes of this Contract, the specific overall MWBE goal and the breakdown between the Minority-owned Business Enterprise (“MBE”) and the Women-owned Business Enterprise (“WBE”) utilization goals, are set forth in the Attachment B “Budget”, based on the current availability of MBEs and WBEs.
- b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section 2(a) hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

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

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

- d. The Contractor must document "good faith efforts," pursuant to 5 NYCRR §142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
  - (1) Evidence of outreach to MWBEs;
  - (2) Any responses by MWBEs to the Contractor's outreach;
  - (3) Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Agency with MWBEs; and,
  - (5) Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

3. Equal Employment Opportunity ("EEO")

- a. The provisions of Article 15-A §312 of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- b. In performing the Contract, the Contractor shall:
  - (1) Ensure that each contractor and subcontractor performing work on the Contract 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.

- (2) The Contractor shall submit an EEO policy statement to the Agency within seventy two (72) hours after the date of the notice by Agency to award the Contract to the Contractor.
- (3) If the Contractor, or any of the subcontractors does not have an existing EEO policy statement, the Agency may require the Contractor or subcontractor to adopt a model statement (see Form A - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
- (4) 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 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.
  - (d) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "e" of this section 3, 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.

c. Form B - Staffing Plan

If the total expenditure of this contract is in excess of \$250,000, the following provision shall apply:

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. The Contractor shall complete the Staffing plan form and submit it as part of their proposal or within a reasonable time, as directed by the Department of State.

d. Form C - Workforce Utilization Report

- (1) The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Agency on a monthly basis for construction contracts, and on a quarterly basis for all other contracts, during the term of the Contract.
  - (2) Separate forms shall be completed by the Contractor and any subcontractors performing work on the Contract.
- e. The Contractor shall comply with the provisions of the Human Rights Law, as well as all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its 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.

4. MWBE Utilization Plan

- a. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan or shall submit an MWBE Utilization Plan at such time as shall be required by the Department of State through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Department of State, either prior to, or at the time of, the execution of the contract.
- b. The Contractor agrees to adhere to such MWBE Utilization Plan for the performance of the Contract.
- c. The Contractor further agrees that a failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Agency shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

5. Waivers

- a. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Agency (use Form E - Waiver Request). Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver

request is complete, the Agency shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

- b. If the Agency, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section 6, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Agency 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.

#### 6. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form F) to the Agency by the 10<sup>th</sup> 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.

The Agency may require the Contractor to use the NYSCS to submit utilization plans, record payments to subcontractors and otherwise report compliance with the provisions of Article 15-A of the Executive Law and regulations. Technical assistance can be obtained through the NYSCS website at <https://ny.newnycontracts.com> by clicking on the “Contact Us & Support” link.

Questions regarding this program should be directed to the Department's Minority and Women-owned Business Program by calling (518) 473-3401. Potential contractors can access the NYS Directory of Certified Minority and Women-owned Business Enterprises on-line through the Empire State Development website at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>. The Department makes no representation with respect to the availability or capability of any business listed in the Directory.

#### 7. Liquidated Damages - MWBE Participation

- a. Where the Agency determines that the Contractor is not in compliance with the requirements of the Contract and the 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, the Contractor shall be obligated to pay to the Agency liquidated damages.
- b. 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.
- c. 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 Agency, the Contractor shall pay such liquidated damages to the Agency within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

#### O. Service-Disabled Veteran-Owned Businesses Participation

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

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

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

# **ATTACHMENT A-1**

## **New York State Department of State**

### **II. Program Specific Clauses-Community Services Block Grant (4/14/20)**

#### **A. Applicable Laws**

The Contractor shall comply with all applicable provisions of the following statutes, regulations, policies and procedures, which are incorporated herein by reference as if fully set forth in text:

- a. Statutes:
  - i. NY Executive Law Article 6-D, as amended;
- b. Regulations:
  - i. Title 19, New York Compilation of Codes, Rules and Regulations, Parts 144, 400, 700 and 701.
- c. Policies and Procedures
  - i. The New York State Community Services Block Grant Application and Plan (State Plan), as amended;
  - ii. Informational Memoranda issued by the federal Department of Health and Human Services Office of Community Services; and
  - iii. CSBG Program Instructions, Fiscal and Program Memoranda, issued by the Department of State, as amended.

#### **B. Definitions:**

- a. **Community Based Organization:** A Contractor that meets the definition at N.Y. Executive Law § 159-e(4) and receives remainder funds pursuant to N.Y. Executive Law § 159-i.
- b. **Delegate Agency:** A private not-for-profit corporation, including religious organizations, with whom the Contractor has entered into a contract for the performance of certain portions of the Work Plan (Attachment C).
- c. **Eligible Entity:** A Contractor that meets the definition at N.Y. Executive Law § 159-e(1).
- d. **Poverty Guidelines:** The official poverty guidelines issued in the Federal Register by the United States Department of Health and Human Services, as amended.
- e. **Project:** The services to be performed by the Contractor as set forth more specifically in the Attachments to this Contract, entitled "Work Plan" and "Budget."
- f. **State Plan:** The Community Services Block Grant Application and Plan prepared by the NYS Department of State/Division of Community Services (Department) and received by the United States Department of Health and Human Services Office of Community Services, as amended.
- g. **Tribal Organization:** a Contractor that meets the definition at N.Y. Executive Law § 159-e(3) and receives remainder funds pursuant to N.Y. Executive Law § 159-i.
- h. **Unaudited Financial Statement:** an unaudited accounting of funds expended during a period, on forms prescribed by the Department.
- i. **Work Plan:** The document(s) prepared and submitted by each recipient as a condition for funding that includes the community assessment of need, community partnerships, and the services and activities to be performed, as provided in Attachment C of this Contract.

#### **C. Agreement and Program Year:**

- a. The Term and periods shall be in accordance with the contract Face Page. Funds are allocated for each federal fiscal year (FFY).

- b. The first FFY allocation shall be set forth in Attachment B of the Contract. Prior to the start of each subsequent FFY, the Department shall issue instructions for the completion of Attachment B to budget the estimated allocation amount for that subsequent FFY.
- c. The Contractor may request budget and/or work plan modifications within any FFY by submitting an amended Face Page, Attachment B and/or Attachment C, as applicable, along with the proper amendment forms provided by the Department. All modifications require written approval to be enacted.
- d. The Contractor may carry over unexpended funds to the next FFY, in accordance with the federal statutory requirements of 42 U.S.C. § 9907 and the applicable appropriation legislation. Carry over funds may be expended in accordance with an executed contract amendment.

#### D. Department Obligations

- a. To review, and approve or for cause deny, all contractually required submissions, Delegate Agency Agreements, if any, and other documentation evidencing the Contractor's performance of services as set forth in the CSBG Work Plan (Attachment C) and determine the Contractor's compliance with the Contract, State Plan and applicable statutes, regulations, policies, and procedures.
- b. To monitor performance and outcomes, as stated in the CSBG Work Plan (Attachment C) and take necessary action in accordance with the provisions of the Contract, State Plan and applicable statutes, regulations, policies, and procedures. Such actions may include, but shall not be limited to, in the discretion of the Department, termination, suspension, withholding of payments, disallowing costs, immediate implementation of a reimbursement payment method in lieu of any other payment method that may be stated in Attachment D of the Contract, demand for corrective action and all other rights and remedies available to the Department pursuant to the CSBG Act and the laws of the State of New York.
- c. The Department may conduct periodic onsite program and fiscal monitoring to verify program accomplishments and adherence to the Contract, State Plan, and applicable statutes, regulations, policies, and procedures. The Department may make unannounced visits, audits, site inspections, and perform other monitoring of the Contractor and its Delegate Agencies.
- d. The Department may reject any work, service, or activity performed by the Contractor that does not conform to the Contract, State Plan, or applicable statutes, regulations, policies, and procedures.

#### E. Terms applicable to all Contractors

- a. The Contractor shall use the Poverty Guidelines as a criterion of eligibility for the Project. The use of a percentage of the Poverty Guidelines will be set forth in the State Plan or program memoranda.
- b. The Contractor warrants that payment received pursuant to this Contract does not supplant or duplicate other services or programs administered or funded by the State or Federal Government.
- c. The Contractor shall begin performance on the date of commencement of the Contract Period and carry the Project forward expeditiously with adequate personnel. All time periods stated in the Contract are of the essence.
- d. The Contractor shall not make a claim for payment for work performed outside of the scope of the Contract.
- e. Charges to [Federal awards](#) for salaries and wages must be based on records that accurately reflect the work performed. (45 CFR §75.430(i)(1)) Time for staff charged to the contract must be based on actual work performed in support of the work plan in the currently approved contract and be documented in compliance with 45 CFR §75.430.
- f. The Contractor shall submit to the Department a timely annual report, including an accounting for the expenditure of funds for administrative costs and direct delivery of services, in the manner and form directed by the Department.
- g. Audits

- i. The Contractor shall submit to the Department one (1) copy of the reporting package as set forth in 45 C.F.R. 75.512 and any management letters issued by the Contractor's auditor. The reporting package and any management letters must be submitted to the Department within nine (9) months following the end of the audited year or thirty (30) days following the issuance by the auditor, whichever is earlier.
- ii. The Contractor shall notify the Department not later than sixty (60) days following the end of the affected fiscal year if the Contractor is exempt from federal audit requirements pursuant to 45 CFR 75 Subpart F or New York auditing requirements pursuant to N.Y. Executive Law § 172-b.
- iii. The Contractor shall provide the Department with written notice of audit exit conferences with its auditors at least fifteen (15) business days prior to the scheduled date of each conference. The Department reserves the right to attend and participate in these conferences.
- iv. Audit Resolution
  1. The Department shall issue a written management decision for audit findings that relate to CSBG Federal Awards it makes to the Contractor within six (6) months of receipt of the audit report. The Contractor shall initiate corrective actions cited in the management decision immediately upon receipt.
  2. The management decision will clearly state whether or not the audit finding is sustained, the reason for the decision, and the expected auditee action. The management decision will describe any appeal process available to the auditee.
- h. The Contractor shall comply with and maintain written procedures for the procurement of all supplies, equipment and services, including bookkeeping, audit and legal services, provided these procedures comply with applicable law and, in the case of private not-for-profit contractors, the following terms and conditions:
  - i. Purchases not exceeding \$15,000. The Contractor may purchase commodities and services from, or may contract directly with, a responsible vendor of its choice for aggregate purchases not exceeding \$15,000. While competitive bidding is not required, the Contractor shall document steps taken to ensure that prices are reasonable in light of terms and prices offered by competitors.
  - ii. Purchases in excess of \$15,000 but not exceeding \$50,000. A Contractor may purchase commodities and services in accordance with i. above, with the added requirement that written confirmation by the successful vendor setting forth terms and conditions must be obtained and retained in the Contractor's file along with the basis for determining that the offered price is reasonable, or may contract by either of the following:
    1. Alternate A: If the Contractor has identified a responsible minority and/or woman-owned business source and has determined that the price offered is reasonable, the Contractor may purchase directly from the identified source.
    2. Alternate B: The Contractor may structure formal bidding using the procedure set forth in iii. below, which is required for all purchases in excess of \$50,000.
  - iii. Purchases in excess of \$50,000: The Contractor shall structure formal competitive bidding. Sealed bids shall be solicited from responsible bidders offering such commodities or services. Grantees should advertise in a manner that promotes and maximizes competition. The Contractor shall make every reasonable effort to obtain competition before the purchase of commodities or services. The Contractor must document and retain for audit any situation where reasonable competition is not available.
  - iv. Bidding requirements established by the Contractor shall enable all bidders to engage in bidding on a competitive basis.
  - v. The Contractor shall document and retain for audit the process followed in selection of the lowest responsible bidder.

- i. Any interest income generated from payments made under the terms of this Contract shall be retained by the Contractor and used to provide services to low-income persons in accordance with the purposes, goals, and requirements of CSBG.
- j. The Contractor shall maintain separate books and records for funds received through the CSBG Program. The Contractor shall also maintain separate books and records pertaining to the performance of the Project and expenditures made with funds provided pursuant to this Contract in a manner as to allow required reports to be submitted consistent with generally accepted accounting principles.
- k. The Contractor shall provide reasonable notice to the Department of all meetings of its board of directors, committees of the board, or governing body. The Department may attend such meetings.
- l. The Contractor shall cooperate with the Department and promptly implement and comply with any and all corrective actions required by the Department. The Contractor shall meet with the Department at such times as the Department shall request in order to advise and inform the Department on any and all matters related to the administration of the CSBG program.

F. Terms Applicable to Eligible Entities

- a. The Eligible Entity shall have a tripartite board pursuant to N.Y. Executive Law § 159-e(2).
- b. The Eligible Entity and its Delegate Agencies shall participate in the performance measurement system developed by the Office of Community Services in a manner and form directed by the Department.
- c. The Eligible Entity and its Delegate Agencies shall participate in the triennial comprehensive onsite review and assessment (TRACS) implemented by the Department in the manner and form directed by the Department. The Eligible Entity shall adopt the national organizational standards and prepare and submit the annual assessment (ACROS) in those years the triennial assessment is not being conducted.
- d. Not later than sixty (60) days following the end of a period or term of the Contract the Eligible Entity shall have Unaudited Financial Statements of all funds received and expended for the current period of this Contract prepared and submitted to the Department for review and approval.
- e. The Eligible Entity shall be responsible for ensuring that the audit reconciles with the Unaudited Financial Statements. Any discrepancies must be cited and explained in the audit.
- f. Upon receipt of the Unaudited Financial Statements, the Department shall review the statements and make a preliminary determination of any unexpended allocation or questioned cost.
- g. The Eligible Entity shall be notified in writing by the Department of the results of the review and the determination of any unexpended allocation.
- h. If, as a result of the review, the Department determines that there are disallowed costs, the Eligible Entity shall be instructed to reallocate and incorporate these amounts as an unexpended allocation from the preceding budget period into the total project cost of the Contract currently in effect by submission of a budget amendment.
- i. The Unaudited Financial Statements and audit will be the final project budget documents from which preliminary and final determinations of allowable costs will be made.

G. Terms Applicable to Community Based Organizations

- a. The Community Based Organization shall, throughout the Term of the Contract, be an organization incorporated for the purposes of providing services or other assistance to economically or socially disadvantaged persons and have a board of directors of which more than half of the members reside in the Community Based Organization's designated community.

H. Terms Applicable to Tribal Organizations

- a. The Tribe or Tribal Organization agrees to waive any claim of sovereign immunity for the limited purpose of enforcement of this Contract.

### **III. Program Specific Clauses – Office for New Americans (3/8/2019)**

#### **A. Assessment, Review, Inspection and Monitoring**

- a. The DOS/ONA may, in its discretion, conduct such reviews and assessments of services performed by the Contractor in accordance with State and federal laws and regulations; the approved budget and work plan found within the contract; and, any memoranda and directives issued by DOS/ONA, as they, in good faith, deem reasonable and necessary to ensure that the work is being performed in compliance with the contract documents as it deems necessary or appropriate. The Contractor shall promptly address any findings resulting from DOS/ONA monitoring, review and assessment, including but not limited to, promptly implementing and complying with any and all corrective actions required by DOS/ONA in accordance with DOS/ONA's monitoring and oversight responsibilities.
- b. DOS/ONA will take action with any Contractor that fails to meet the goals, standards, and requirements allowed under the Master Grants Contract.
- c. DOS/ONA reserves the right to make unannounced visits, audits, site inspections, and other monitoring to Contractors and delegate agencies, and to attend the Contractor's Audit entrance and exit conferences.
- d. Representatives of the DOS/ONA shall have the authority to reject any work, services, and activities performed by the Contractor which do not conform to the Contract Documents and were not conducted in accordance with applicable State statutes, rules and regulations. Expenses deemed unallowable may not be resubmitted.
- e. Representatives of the Contractor are required to meet with representatives of the DOS/ONA upon request.

#### **B. Public Reports and Documents**

- a. The Contractor must include the logo provided by ONA on all client facing documents relating to grant services under this Agreement.
- b. The Contractor must include a link to the ONA website and phone number for the New York State New Americans hotline on all client facing documents relating to grant services under this Agreement.

#### **C. Extra Work**

- a. Extra work shall constitute work performed outside the scope of the Contract Documents. No claim for payment for extra work will be accepted.

#### **D. Subcontractor Expectations**

- a. Grantee(s) may not enter into any subcontract to perform services subject to this contract without first obtaining written approval from DOS/ONA regardless of the value. See Standards Terms of the Master Grant Contract Section IV: 4b, Subcontractors.
- b. DOS/ONA must be provided with copies of all Memorandums of Understanding between Contractors and subcontractors as soon as they are executed.
- c. Contractors are responsible for oversight of activities, funding and outcomes produced by subcontractors.

#### **E. Dedicated Space Requirements**

- a. Dedicated space sufficient to carry out the activities to be undertaken pursuant to the terms of this Agreement must be provided, set aside, and reserved by Contractor.
- b. The ONA Network budget can only be billed for justifiable space usage. Spaces can be used for non-ONA activities during the program off hours if the space during this time is not paid for by the ONA Network.
- c. All locations in which the Contractor provides services to clients under this Agreement must have a conspicuously posted New York State Office for New Americans Network sign/logo. A description of the site(s), hours of operations and programming within the dedicated space, should be made available to DOS/ONA upon request. Any other uses of the dedicated space and hours of those operations must also be made available.

**F. Client Confidentiality**

- a. Contractor must ensure confidentiality of all client information, including but not limited to personally identifying information and immigration status.

**G. Coordination of Services**

- a. Staff funded under this Agreement are expected to coordinate with other staff within their agency and with staff of other ONA funded organizations providing ONA services in their service area to ensure there is no duplication of efforts.
- b. At least one staff member from the organization is expected to join via phone or Internet DOS/ONA's webinar held monthly, to connect with state representatives and state resources.

# **ATTACHMENT A-2**

## **New York State Department of State**

### **Federal Requirements Applicable to the Community Services Block Grant (4/24/20)**

#### **I. Applicable Laws**

The Contractor shall comply with all applicable provisions of the following statutes, regulations, policies and procedures, which are incorporated herein by reference as if fully set forth in text:

##### **a. Statutes:**

- i. Title II of Public Law 105-285, as amended, codified at 42 U.S.C. § 9901 et seq.;
- ii. 31 U.S.C. §§ 3335, 6501, and 6503; and
- iii. Appropriations Acts including, but not limited to, Public Law 116-94.

##### **b. Regulations:**

- i. 2 CFR Part 25- Universal Identifier and System for Award Management;
- ii. 2 CFR Part 170- Reporting Subaward and Executive Compensation Information;
- iii. 2 CFR Part 175- Award Term for Trafficking in Persons;
- iv. 2 CFR Part 176- Award Terms for Assistance Agreements that include Funds under the American Recovery and Reinvestment Act of 2009, Public Law 111-5;
- v. 2 CFR Part 180- OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non Procurement);
- vi. 2 CFR Part 376- Nonprocurement Debarment and Suspension;
- vii. 2 CFR Part 382- Requirements for Drug-Free Workplace (Financial Assistance);
- viii. 31 CFR Part 205- Rules and Procedures for Efficient Federal-State Funds Transfers;
- ix. 45 CFR Part 16- Procedures of the Departmental Grant Appeals Board;
- x. 45 CFR Part 30- Claims Collection;
- xi. 45 CFR Part 75- Uniform Administrative Requirements, Cost Principles, And Audit Requirements for HHS Awards;
- xii. 45 CFR Part 80- Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964;
- xiii. 45 CFR Part 81- Practice and Procedure for Hearings Under Part 80 of this Title;
- xiv. 45 CFR Part 84- Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance;
- xv. 45 CFR Part 86- Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance;
- xvi. 45 CFR Part 87- Equal Treatment for Faith-Based Organizations;
- xvii. 45 CFR Part 91- Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;
- xviii. 45 CFR Part 93- New Restrictions on Lobbying;
- xix. 45 CFR Part 95- General Administration- Grant Programs;
- xx. 45 CFR Part 96, Subpart I- Block Grants (Community Services Block Grants);
- xxi. 45 CFR Part 97- Consolidation of Grants To The Insular Areas; and
- xxii. 45 CFR Part 100- Intergovernmental Review of Department of Health and Human Services Programs and Activities.

##### **c. Policies and Procedures**

- i. The New York State Community Services Block Grant Application and Plan (State Plan), as amended;
- ii. The General Terms and Conditions for Mandatory Grant Programs, effective October 1, 2019, and the Supplemental Terms and Conditions for the Community Services Block Grant issued by the Department of Health and Human Services, Administration for Children and Families (ACF), as amended.

## J. Statutory and National Policy Requirements

- a. Human Trafficking Provisions. These awards are subject to the requirements of Section 106(g) of the “Trafficking Victims Protection Act of 2000” (22 U.S.C. § 7104). The full text of this requirement is found at <http://www.acf.hhs.gov/grants/award-term-and-condition-for-trafficking-in-persons>.
- b. Mandatory Disclosures. These awards are subject to the requirements in 31 U.S.C. § 3321, 41 U.S.C. § 2313, and provisions found in Federal regulations at 45 CFR § 75.113 and Appendix XII of this part, and 2 CFR Parts 180 and 376 for debarment and suspension. Non-federal entities must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to comply may result in any noncompliance remedies, including debarment and suspension.

The Administration for Children and Families (ACF) is required to review and consider information about any current or potential recipient, subrecipient, contractor, or subcontractor contained in the Federal Awardee Performance and Integrity Information System (FAPIIS) (<https://www.fapiis.gov>) and System for Award Management (SAM). Non-federal entities may review and comment on any information about itself that has been entered into FAPIIS. ACF will consider any comments by the non-Federal entity, in addition to other information in FAPIIS to judge the grant recipient’s integrity, business ethics, and record of performance under Federal awards when completing its review of risk.

- c. Posting Federally Funded Disclaimer Language on Documents. In accordance with Section 505 of Public Law 115-31, the Consolidated Appropriations Act of 2017 is applicable to the mandatory grant programs. “When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all recipients receiving Federal funds included in this Act, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money; (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.”
- d. Salary Limitation- Federal Executive Level II. Federal funds for these grant programs consistently include a provision as part of the Consolidated Appropriations Act (e.g., Public Law 115-31, May 5, 2017) from Congress that the amount that “shall be used to pay the salary of an individual, through a grant or other extramural mechanism” including non-federal share, must not exceed the amount of the Federal Executive Level II salary for the calendar year. This amount is published annually by the U.S. Office of Personnel Management and can be found on their website at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries0wages/2017/executive-senior-level> under the “Rates of Pay for the Executive Schedule” link. This amount reflects an individual’s base salary exclusive of fringe benefits and any income that an individual may be permitted to earn outside of the duties of the non-Federal entity’s organization. This salary limit also applies to subawards, contracts, and subcontracts under an ACF grant or cooperative agreement.
  - i. Federal Funds Accountability and Transparency Act (FFATA) Requirements. Awards under these programs are included under the provisions of P.L. 109-282 the “Federal Funds Accountability and Transparency Act of 2006” (FFATA). Under this statute, the grant recipient is required to report information regarding executive compensation and all subawards, contracts, and subcontracts in excess of \$25,000 through the Federal Subaward Reporting System (<https://www.fsrs.gov/>) and in accordance with the terms found in Federal regulations at 2 CFR Part 170, including Appendix A.

- e. Smoking Prohibitions. In accordance with Title XII of Public Law 103-227, the “PRO-KIDS Act of 1994”, smoking may not be permitted in any portion of any indoor facility owned or regularly used for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs whether directly or through State, Territories, local and Tribal governments. Federal programs include grants, cooperative agreements, loans and loan guarantees, subawards, and contracts. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions or facilities used for inpatient drug and alcohol treatment.

The above language must be included in any subawards that contain provisions for children’s services and that all subawards shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000 per day.

- f. Micro-purchase and Simplified Acquisition Threshold for Financial Assistance. Due to statutory changes set forth in the National Defense Authorization Act for Fiscal Year 2018, which became law of December 12, 2017, the threshold for micro-purchases is now set at \$10,000.00, and the threshold for simplified acquisition is now \$250,000. In accordance with 41 U.S.C. § 1902(f), changes to the thresholds are not effective until implemented in the Federal Acquisition Regulations (FAR). However, pursuant to 2 C.F.R. § 200.102, OMB has issued an exception to allow grantees [recipients] to use these higher thresholds in advance of revisions to the FAR at 48 CFR Subpart 2.1 and the Uniform Guidance. Further, the National Defense Authorization Act for Fiscal Year 2017, which became law on December 23, 2016, establishes a uniform process by which institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations or independent research institutes can request a micro-purchase threshold above \$10,000.00. Prior to requesting a higher threshold, please contact the Grants Management Specialist (GMS) identified in your Notice of Award (NoA) or award letter for instructions to submit the request.

K. Cost Sharing or Matching (Non-Federal Share) of Program Funding

- a. Insular Areas. For any program that (a) requires a non-Federal share of program funding and (b) is available to several identified grant recipients, under the provisions of 48 U.S.C. 1469a(d), as amended, the Insular Areas, defined as American Samoa, Guam, the Northern Marian Islands and the U.S. Virgin Islands, are not required to provide up to \$200,000 of the non-Federal share of program funding. If, in any fiscal year, the non-Federal share exceeds \$200,000, the statutory Federal/non-Federal funding rates for that program will apply to all expenditures that exceed that threshold.

L. Financial Reporting

- a. Federal funds awarded under this grant must be expended for the purposes which they were awarded and within the time period allotted. Grant recipients are required to file periodic financial or program specific expenditure reports either quarterly or annually for each program.
- b. Electronic Submissions. Reports must be submitted electronically. Paper copies will not be accepted. The ACF mandatory grant recipients must submit periodic financial reports through two separate online reporting systems. Each system is secure and requires individuals to use a PIN, username, and password.
- i. On-Line Data Collection (OLDC) system is the online reporting mechanism and is located at <https://grantsolutions.gov>. The GrantSolutions Help Desk is open on Monday through Friday from 8:00 am to 6:00 pm ET (except for Federal Holidays). You may reach the Help Desk at 1-866-577-0771, 202-401-5282, or [help@grantsolutions.gov](mailto:help@grantsolutions.gov).
  - ii. HHS Payment Management System (PMS) is the online payment management mechanism and is located at <https://pms.psc.gov>. The PMS Help Desk is open Monday through Friday from 7:00 am to 9:00 pm ET (except Federal Holidays). You may reach the Help Desk at 1-877-614-5533 or [PMSSupport@psc.gov](mailto:PMSSupport@psc.gov).
- c. Obligation Period/Funding Period. Supplemental Terms and Conditions for the Community Services Block Grant. The two-year funding (project) period for this award is synonymous with the obligation period: from the first day of the Federal Fiscal Year for which these funds were awarded through the last day of the following Federal Fiscal Year. (i.e., October 1, Federal Fiscal Year 1 through September 30, Federal Fiscal Year 2.) Any Federal funds not obligated by the end of the obligation period will be recouped by ACF.
- d. Liquidation Period. Supplemental Terms and Conditions for the Community Services Block Grant. All obligated Federal funds awarded under this grant must be liquidated no later than 90 day after the end of the funding/obligation period. (i.e., December 31 following the end of the Federal Fiscal Year 2.) Any Federal funds from this award not liquidated by this date will be recouped by ACF.
- e. Financial Reporting Form. Supplemental Terms and Conditions for the Community Services Block Grant. Form SF-425, "Federal Financial Report."
- f. Submission Schedule. Supplemental Terms and Conditions for the Community Services Block Grant. Each annual report must be submitted within 90 days following the end of each Federal Fiscal Year.

- i. An interim report (covering Year 1 of the project period) is due 90 days following the end of Federal Fiscal Year 1;
- ii. A Final report (cumulative, covering the entire 2-year project period) is due 90 days following the end of Federal Fiscal Year 2.

M. Program Reporting. Supplemental Terms and Conditions for the Community Services Block Grant.

- a. The required annual program report required under 45 CFR § 96.82, including the number of individuals receiving services under this program, the Federal and State cost of those services, and the service methodology should be submitted to the program office.

N. Real Property and Tangible Personal Property Reporting

- a. Real Property Reports (SF-429s), OMB Control No. 4040-0016. There are only a few ACF grant programs that have explicit statutory authority to use federal funds to purchase, construct, and/or renovate a property. When real property is used for these purposes, a Federal interest is established. This interest does not expire. So long as a Federal interest remains, the title holding recipient (on behalf of subrecipients) must submit a report on the property annually in the OLDC system. When the property is no longer needed, the recipient (and on behalf of subrecipients) must submit in OLDC a request for disposition instructions. After which ACF will approve one of three options prescribed under 45 CFR § 75.318, eliminating the Federal interest.

In accordance with program specific requirements, recipients (and on behalf of subrecipients) are required to submit the OMB approved Real Property Status Report SF-429 and Attachments, in which there is a Federal interest. The collection of SF-429 forms must be used for awards that establish a Federal interest in real property.

- i. SF-429. The Cover Page must be submitted along with the other SF-429 Attachments (A, B, and C).
  - ii. SF-429 Attachment A. The Annual General Report is due annually and follows the same reporting cycle as the annual Federal Financial Report or program specific Expenditure Report.
  - iii. SF-429 Attachment B. The Acquire or Improve Request may be submitted at any time to request prior approval to use federal funds to acquire or improve property.
  - iv. SF-429 Attachment C. The Disposition or Encumbrance Request may be submitted at any time to request disposition instructions. Recipients (and on behalf of subrecipients) may be required to provide compensation to the U.S. Treasury when acquired or improved real property is sold or retained.
- b. Tangible Property Report (SF-428s), OMB Control No. 4040-0018. Recipients and subrecipients that purchase any tangible personal property (e.g., equipment with a unit cost of \$5,000 or more and residual supplies with an aggregate fair market value exceeding \$5,000) are required to submit the OMB approved Tangible Personal Property form SF-428. Recipients are required to submit the forms on behalf of subrecipients.
    - i. SF-428. The Cover Page must be submitted along with the other SF-428 Attachments (B, C, and S).
    - ii. SF-428 Attachment A. The Federally Owned Property Annual Report is not applicable to ACF grant programs.
    - iii. SF-428 Attachment B. The Final/Award Closeout form on Acquired Equipment purchased with Federal Funds is due at the end of a Federal Assistance Award. This form may not apply to some mandatory grant programs. Please see program specific Supplemental Term and Conditions for applicability.
    - iv. SF-428 Attachment C. The Disposition Request form on Acquired Equipment is due at any time other than award closeout. Recipients (and on behalf of subrecipients) may be required to provide compensation to the U.S. Treasury when acquired equipment is sold or retained for use on activities not sponsored by the Federal government.
    - v. SF-428 Attachment S. The Supplemental Sheet may be submitted with SF-428 Attachment B or C to provide additional information.

O. Grant Payments

- a. Notice of Award. All mandatory grant program Notice of Award payments will be made available through the HHS PMS. Questions pertaining to payments should be directed to: HHS Division of Payment Management, P.O. Box 6021, Rockville, MD, 20852, or PMS Help Desk at 877-614-5533, or PMSSupport@psc.gov. Other questions should be directed to the ACF Regional or Headquarters Grants Officer contact listed on the Notice of Award.
- b. Returning Funds/Interest. Unless otherwise directed in the financial or program specific expenditure report, the HHS Program Support Center (PSC) serves as a centralized point for returning grant interest and funds according to established federal law, policies, procedures, and regulations. PMS prefers that repayment be completed as an electronic transfer or by check. Please refer to the PSC Returning Funds/Interest instructions at: <https://pms.psc.gov/grant-recipients/returning-funds-interest.html>

P. Sub-recipient Monitoring and Management

- a. According to the Applicability table in 45 CFR §75.101(b)(1), the exceptions described in §75.101(d) and §75.101(e), all mandatory grant programs must comply with §75.303- Internal Controls and the Subrecipient Monitoring and Management requirements described in subpart D, and §75.351 through §75.353.
- b. Unless otherwise stated, grant recipients and subrecipients must refer to the HHS-specific language in 45 CFR Part 75 rather than 2 CFR Part 200.

Q. Federal Certifications

- a. The Contractor shall complete and comply with the federal certifications provided at Attachment E.

R. Construction of Facilities

- a. Except as provided in paragraph (b), grants made under this Contract (other than amounts reserved under 42 U.S.C. § 9903) may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this subtitle, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.
- b. Waiver- The Secretary of the U.S. Department of Health and Human Services (DHHS) may waive the limitation contained in paragraph (a) upon a State request for such a waiver, if the Secretary of DHHS finds that the request describes extraordinary circumstances to justify the purchase of land or the construction of facilities (or the making of permanent improvements) and that permitting the waiver will contribute to the ability of the State to carry out the purposes of this subtitle.

S. Political Activities

- a. Treatment as a State or local agency. For purposes of 5 U.S.C. § 15 et seq., any entity that assumes responsibility for planning, developing, and coordinating activities under this subtitle and receives assistance under this subtitle shall be deemed to be a State or local agency. For purposes of paragraphs (1) and (2) of section 1502(a) of such title, any entity receiving assistance under this subtitle shall be deemed to be a State or local agency.
- b. Prohibitions. Programs assisted under this subtitle shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel, in a manner supporting or resulting in the identification of such programs with
  - i. Any partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office;
  - ii. Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

iii. Any voter registration activity.

T. Terms Applicable to Eligible Entities

- a. The Eligible Entity shall have a tripartite board pursuant to 42 U.S.C. § 9910.
- b. The Eligible Entity shall inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this Contract about the availability of child support services and refer eligible parents to the child support offices of State and local governments.

**Attachment B-1**  
**NEW YORK STATE DEPARTMENT OF STATE**  
**New York State Office for New Americans**

Applicant: \_\_\_\_\_

Budget Period: \_\_\_\_\_ to \_\_\_\_\_

Cost Categories		Total Project Cost by Category (dollar value):
1.	Personnel Services	
2.	Fringe	
3.	Travel	
4.	Advertising & Printing	
5.	Non-Personnel Cost	
6.	Administrative Cost Rate ( ___ %)	
<b>TOTAL PROJECT COST</b>		

**Personnel Services**

<b>Title</b>	<b>Annual Salary</b>	<b>(%)</b>	<b>Total</b>

Justification: Completely justify all positions. Describe duties and contributions to the project. Include a brief description of duties/responsibilities for each position

**Personnel Services Total (dollar value):**

**Fringe**

Describe and justify each fringe cost in detail, including fringe rate, and what is included as part of fringe benefits

**Fringe Total (dollar value):**

**Travel**

Describe and justify all travel in detail, including cost per item. Justify the need for travel and how it will benefit the project.

**Travel Total (dollar value):**

**Advertising & Printing**

Describe and justify all printing and advertising costs in detail, including cost per item. Justify the need for printing and advertising, and how it will benefit the project.

**Advertising & Printing Total (dollar value):****Non-personnel Services**

Describe and justify all non-personnel services in detail, including cost per item. Justify the need for these non-personnel services, and how they will benefit the project.

**Non-personnel Services Total (dollar value):****Administrative Cost Rate**

Describe administrative cost rate to be applied to the grant. Specify whether the rate will be federally approved indirect cost rate, 10% de minimis rate, agency determined direct allocation methodology. Include the categories to which the rate will be applied.

**Administrative Cost Rate (dollar value):**

**Attachment C.  
Sample Program Work plan**

NEW YORK STATE  
Office for New Americans

**Contract #:**

**Organization Name:**

**1. Required Activities:** The contractor will provide the following services, outlined below:

REQUIRED ACTIVITIES	SERVICE DESCRIPTION	DOCUMENTATION REQUIREMENTS	EXPECTED QUANTITIES
<p>Instruct client in English-for-Speakers of- Other-Languages (ESOL) training, using teaching professionals</p>	<p>Each ONA Opportunity Center – ESOL will provide ESOL by offering live short-term intensive ESOL either through in person instruction or via a synchronous instructor led online classes to a cohort of clients every quarter.</p> <p>Each ESOL class funded under this grant will have a paid ESOL instructor. The minimum qualifications for an ESOL instructor, whether paid or volunteer, under this grant are a certificate in teaching ESOL, such as CELTA, and/or two years of demonstrated ESOL teaching experience. <u>In addition, for ASL instructors teaching both ESOL and ASL students, the instructor must have either Provisional or Qualified and Professional certifications from the American Sign Language Teachers</u></p>	<p>(1) Record of the name, contact information of each client instructed.</p> <p>(2) Record of the associated number of hours of instruction received.</p> <p>(3) Report of the topics covered.</p> <p>(4) Record of the schedule of classes offered with dates, times, and locations of classes.</p> <p>(5) Record of registration dates.</p> <p>(6) Record the results of the pre-and post- instruction cycle exam.</p> <p>(7) List of the outreach materials supporting the service.</p> <p>(8) Client satisfaction surveys.</p> <p>(9) Client income verification documentation.</p> <p>(10) ESOL teacher resume and any relevant certifications</p>	<p>Each ONA Opportunity Center – ESOL will be required to provide seventy-five hours of ESOL training to each client per quarter, of which 50 hours, at a minimum, should be dedicated to teacher-led classroom or remote instruction.</p> <p>In three out of the four quarters in a year, Opportunity Centers - ESOL will be required to register a minimum of 60 clients. In the other quarter, the registration requirement will be a minimum of 40 registered clients.</p> <p>Grantees must ensure that a minimum of 70 percent of the registered cohort in a quarter complete a minimum of 75 hours of instruction a quarter</p>

REQUIRED ACTIVITIES	SERVICE DESCRIPTION	DOCUMENTATION REQUIREMENTS	EXPECTED QUANTITIES
	<p><u>Association (ASLTA) or equivalent certification from an accredited source. If a supplemental instructor is only teaching an AASL class, that individual does not need the CELTA and/or two years of demonstrated ESOL teaching experience.</u></p>		
<p>Provide guidance as to resume building, interview techniques and employment opportunities to clients that attend ESOL program</p>	<p>ONA Opportunity Centers – ESOL must provide individual guidance on resume building, interview techniques and employment opportunities to all clients that attend ESOL programs funded under this grant. Such support can be provided with ONA guidance and oversight through collaboration with available state/local employment service providers and/or available Cell-Ed resources including its WorkReady Suite of programs which offers remote training in essential work skills, career coaching, and job placement.</p>	<ol style="list-style-type: none"> <li>(1) Record of clients assisted, dates, and type of assistance provided</li> <li>(2) Record of any referrals made</li> <li>(3) Client Income verification documentation</li> </ol>	<p>Provide guidance on resume building, interview techniques and employment opportunities to all clients that attend ESOL program</p>

<b>REQUIRED ACTIVITIES</b>	<b>SERVICE DESCRIPTION</b>	<b>DOCUMENTATION REQUIREMENTS</b>	<b>EXPECTED QUANTITIES</b>
Host workforce development workshops	<p>ONA Opportunity Centers – ESOL must host workshops on workforce topics for any interested new American. Topics may include, but are not limited to resume writing, interviewing, and sector specific job trainings. All workshops must be approved by ONA prior to being held</p>	<ul style="list-style-type: none"> <li>(1) Record of the dates, locations, and topics of the seminar.</li> <li>(2) A list of names and contact information of clients attending the seminars.</li> <li>(3) Record of needs assessments/surveys of clients to determine locations and dates of seminars</li> <li>(4) Record of ONA prior approval</li> <li>(5) Client income verification documentation</li> </ul>	<p>ONA Opportunity Centers - ESOL must host ten (10) workshops a year.</p>
Work with the ONA hotline to prompt use in the community and share information regarding services delivered under this grant.	<p>Each ONA Opportunity Center - ESOL is required to do the one or more of the following:</p> <ul style="list-style-type: none"> <li>(1) Promote the ONA hotline among clients and within the new American community.</li> <li>(2) Ensure that the ONA hotline number is included on outreach and marketing materials promoting services under this grant.</li> <li>(3) Share contact information, class schedule, and registration information with the ONA hotline.</li> </ul>	<ul style="list-style-type: none"> <li>(1) Copies of outreach materials with the hotline phone number included.</li> <li>(2) Records of correspondence with the ONA hotline staff detailing the sharing of information regarding services.</li> </ul>	<ul style="list-style-type: none"> <li>(1) All outreach materials with ONA branding will include the hotline material.</li> <li>(2) At the beginning of each quarter, ONA Opportunity Centers - ESOL will share class schedule, and registration information with the ONA hotline.</li> </ul>

**ATTACHMENT D  
PAYMENT AND REPORTING SCHEDULE**

**I. PAYMENT PROVISIONS**

In full consideration of contract services to be performed the State Agency agrees to pay and the contractor agrees to accept a sum not to exceed the amount noted on the face page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

**A. Advance Payment and Recoupment Language (if applicable):**

1. The State agency may make an advance payment to the Contractor at the discretion of the State during each annual period, in the amount of up to 25% of the budget as set forth in the most recently approved applicable Attachment B form (Budget).
2. Recoupment of any advance payment(s) shall be recovered by crediting 33.3% of the total advance of subsequent quarterly claims will be reduced by such amount until the advance is fully recovered within the first three quarters of the contract period.
3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period: _____	Amount: _____	Due Date: _____
Period: _____	Amount: _____	Due Date: _____
Period: _____	Amount: _____	Due Date: _____
Period: _____	Amount: _____	Due Date: _____

**B. Interim and/or Final Claims for Reimbursement**

Claiming Schedule (*select applicable frequency*):

- Quarterly Reimbursement  
Due Date: 30 days after each contract quarter
- Monthly Reimbursement  
Due Date: \_\_\_\_\_
- Biannual Reimbursement  
Due Date: \_\_\_\_\_

- Fee for Service Reimbursement  
Due Date: \_\_\_\_\_
- Rate Based Reimbursement  
Due Date: \_\_\_\_\_
- Fifth Quarter Reimbursement  
Due Date: \_\_\_\_\_
- Milestone/Performance Reimbursement  
Due Date/Frequency: \_\_\_\_\_
- Scheduled Reimbursement  
Due Date/Frequency: \_\_\_\_\_

## II. REPORTING PROVISIONS

### A. Expenditure-Based Reports (*select the applicable report type*):

- Narrative/Qualitative Report  
The Contractor will submit, on a quarterly basis, not later than \_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract.
- Statistical/Quantitative Report  
The Contractor will submit, on a quarterly basis, not later than \_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.
- Expenditure Report  
The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.
- Final Report  
The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 60 days after the end of the contract period.

Consolidated Fiscal Report (CFR)<sup>4</sup>

The Contractor will submit the CFR on an annual basis, in accordance with the timeframes designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

## **B. Progress-Based Reports**

### 1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (see Table 1 below for the annual schedule).

### 2. Final Progress Report

Final scheduled payment will not be due until 30 days after completion of the agency's audit of the final expenditure report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is at project completion. The agency shall complete its audit and notify vendor of the results no later than 60 days later. The Contractor shall submit the report not later than 30 days from the end of the contract.

## **C. Other Reports**

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

---

<sup>4</sup> The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

**TABLE I – REPORTING SCHEDULE**

<b>PROGRESS REPORT</b>	<b>PERIOD COVERED</b>	<b>DUE DATE</b>
MWBE Utilization Plan (if applicable)	Contract period, as amended	Within 2 weeks of MWBE hire
MWBE Utilization Report (via NYSCS)	Contract period, as amended	3/31* 6/30* 9/30* 12/31*
MWBE Workforce Utilization Report	Contract period, as amended	3/31* 6/30* 9/30* 12/31*
	*Due every year during the contract period, as amended.	

# APPENDIX F – MWBE Utilization

NYS DEPARTMENT OF STATE

## MWBE COMPLIANCE FORM – *Submit as Attachment 3*

### DEPARTMENT OF STATE (DOS) - MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) PROGRAM

Article 15-A of the NYS Executive law was enacted on July 19, 1988, to promote equality of economic opportunities for MWBEs and to eliminate barriers to their participation in state contracting.

The contract's specific MWBE goals can be identified in the RFP, RFA and/or the budget page in applicable contracts. All applicable contracts, including contracts supported with federal funding which do not have a DBE component, are assessed for MWBE goals.

**For grants, certain items are exempted from the goal calculation. These include:**

- |  |                                  |  |
|--|----------------------------------|--|
| ✓ Personal services (i.e. payments to staff for labor), staff benefits, training | ✓ Utilities, postage, telephones | ✓ Certain rentals and repairs                      |
| ✓ Travel reimbursements  | ✓ Sole source contracts          | ✓ Unemployment insurance and tuition reimbursement |
|  | ✓ Operating transfers            |  |

Note: The portion of matching fund/local share is not included in the goal calculation.

### Your responsibilities under Article 15-A are:

#### 1. To Make Good Faith Efforts (GFE)

You will be required to make "GFE" to provide meaningful participation to MWBEs as subcontractors or suppliers in the performance of contracts.

Documentation of GFE includes, but is not limited to **(5 NYCRR §142.8)**:

- Evidence of outreach to MWBEs: mail, email, phone calls and follow up;
- Written responses by MWBEs to the grantee/vendor's outreach;
- Copies of search(es) of the directory and advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
- Attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the grantee with MWBEs including dates and location;
- Information describing specific steps undertaken to reasonably structure the contract scope of work to maximize opportunities for MWBE participation; and
- Information describing non-MWBE subcontractors' efforts to engage MWBEs to undertake part of the project's work or to procure equipment/ materials/supplies.

#### 2. Required MWBE Reporting for Contracts with Utilization Goals

Within ten days of receipt of the award notification from DOS, submit:

1. Form A
2. Form B (for contracts > \$250,000)
3. Form D or D-1.

For non-federally funded contracts, once the contract is executed, set up an account in the New York State Contract System (system) to:

- Submit MWBE utilization plan (if required)
- Report MWBE utilization
- Track and monitor transaction on the contract.

Throughout the contract term:

- Report MWBE utilization through the system OR submit Form F
- Quarterly MWBE Utilization

**Waiver Request** – Form E can be submitted if there are no opportunities for MWBE participation, or to demonstrate the GFE to meet the contractual goals.

Only the use of **New York State-certified** MWBEs will count towards meeting NYS contract goals:

- The NYS MWBE Directory is located at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

**By signing, the applicant confirms that they understand the MWBE requirement, as summarized above, and agree to show due-diligence and to make good faith efforts to provide meaningful participation by MWBEs, whenever possible, if awarded the contract.**

\_\_\_\_\_  
Signature:

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

FORM A

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project \_\_\_\_\_ being \_\_\_\_\_ developed \_\_\_\_\_ or \_\_\_\_\_ services \_\_\_\_\_ rendered \_\_\_\_\_ at \_\_\_\_\_

M/WBE

EEO

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
(2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
(4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

- (a) This organization 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 programs of affirmative action to ensure that minority group members 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 on state contracts.
(b) This organization shall state in all solicitation 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 disability or marital status.
(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.
(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The 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.
(e) This organization will include the provisions of sections (a) through (d) of this agreement 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 State contract

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_

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

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison (Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_\_\_percent Minority and Women's Business Enterprise Participation

\_\_\_\_\_percent Minority Business Enterprise Participation

\_\_\_\_\_percent Women's Business Enterprise Participation

\_\_\_\_\_  
(Authorized Representative)

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

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

**FORM C  
WORK FORCE EMPLOYMENT UTILIZATION**

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Contractor's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Contractor's Address:</b>		

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

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran			
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		(M)	(F)	(M)	(F)
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	
<b>PREPARED BY (Signature):</b>										<b>TELEPHONE NO.:</b>				<b>DATE:</b>			
										<b>EMAIL ADDRESS:</b>							

NAME AND TITLE OF PREPARER (Print or Type):	Submit completed form to: NYS Department of State Bureau of Fiscal Management 99 Washington Ave, Ste. 1110 Albany, NY 12231
---	---

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'.  
Contact the DOS MWBE Program at (518) 474-2754 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

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

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**ISLANDER**

- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN affiliation or community recognition. NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL**

any person who: - has a physical or mental impairment that substantially limits one or more major life activity(ies)  
- has a record of such an impairment; or  
- is regarded as having such an impairment.

- **VIETNAM ERA VETERAN**

a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

- **GENDER**

**Male or Female**

**FORM D**  
**M/WBE UTILIZATION PLAN**

**INSTRUCTIONS:** This form must be submitted within ten (10) business days after the respondent receives notice from Department of State that the grant is being awarded or within two weeks following the procurement of any MWBE-applicable purchase or contractual service undertaken in furtherance of the Contract. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name:

Address:

City, State, Zip Code:

M/WBE Goals in the Contract: MBE 15% WBE 15%

Federal Identification No.:

Project/Contract No.:

Telephone No.:

Region/Location of Work:

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

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

<b>PREPARED BY (Signature):</b>	<b>DATE:</b>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		<b>FOR M/WBE USE ONLY</b>	
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.		<b>REVIEWED BY:</b>	<b>DATE:</b>
		<b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date:	
		<b>Contract No.:</b> <b>Project No. (if applicable):</b>	
<b>Contract Award Date:</b>		<b>Estimated Date of Completion:</b>	

	<p><b>Amount Obligated Under the Contract:</b> <b>Description of Work:</b> <b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ <b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p>
--	--

## MWBE COMPLIANCE CERTIFICATION LETTER (FORM D-1)

I, \_\_\_\_\_, a duly authorized representative of \_\_\_\_\_ (hereinafter, "Applicant"), acknowledge by my signature below that Applicant is committed to show due-diligence and to comply with the established MWBE goals and requirements set forth in RFA No. \_\_\_\_\_ (hereinafter, the "RFA") with the NYS Department of State (DOS).

Applicant understands that submitting an MWBE Utilization Plan – Form D will be a requirement if awarded the Contract. As hereby authorized and directed by DOS, Applicant acknowledges and agrees that, following contract execution, it shall submit the MWBE Utilization Plan – Form D for the Contract within two weeks after the selection of any vendor or subcontractor for the provision of MWBE-applicable purchases or contractual services to be undertaken in furtherance of the Contract. The Contractor shall be required to adhere to any such MWBE Utilization Plan in the performance of the Contract, and a failure to so submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. It is further acknowledged and agreed that this document shall not under any circumstances be construed as constituting a waiver or release, in whole or in part, of any provision of the RFA or Contract or of any rights, obligations or remedies that may be available to DOS or Contractor.

Date:

Signature:

Contract Number:

\_\_\_\_\_  
Name:

Contract Description:

Title:

Contact Information:

**REQUEST FOR WAIVER FORM E**

**INSTRUCTIONS: THE REQUEST FOR WAIVER MUST INCLUDE DETAILED “GOOD FAITH EFFORT” JUSTIFICATION/DOCUMENTATION, AS DEFINED IN THE REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS (NEXT PAGE). INCOMPLETE REQUESTS WILL BE RETURNED UNPROCESSED**

Offeror/Contractor Name:	Federal Identification No.:
Address:	Solicitation/Contract No.:
	Contact Name & Phone No.:
City, State, Zip Code:	M/WBE Goals: MBE      %      WBE      %

By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.

Contractor is requesting a (check applicable):

	Type of waiver	Total	Partial
<input type="checkbox"/>	1. MBE Waiver – A waiver of the MBE Goal for this procurement is requested.	%	%
<input type="checkbox"/>	2. WBE Waiver – A waiver of the WBE Goal for this procurement is requested.	%	%
<input type="checkbox"/>	3. Waiver Pending ESD Certification (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development: _____		

PREPARED BY (Signature): \_\_\_\_\_ Date: \_\_\_\_\_

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:
<b>Please submit the Request for Waiver to the Program administering the Grant.</b>  (DOS PROGRAM ENTER NAME/CONTACT/ADDRESS)	***** FOR DMWBD USE ONLY *****	
	REVIEWED BY:	DATE:

	<p>Waiver Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional</p> <p><input type="checkbox"/> Notice of Deficiency Issued</p> <p>*Comments:</p>
--	--

**M/WBE 104** (Revised 1/15)

**DOS FORM E** (Revised August 2017)  
*G:/affaction/MWBE PROGRAMS/ MWBE Forms*

**MWBE REQUEST FOR WAIVER: REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS**

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

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

**Note:**

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



D = Manufacturing  
E = Transportation, Communication and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)  
F/G = Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)  
G52 = Construction Materials (e.g., lumber, paint, law supplies)  
H = Financial, Insurance and Real Estate Services  
I = Services  
I73 = Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)  
I81 = Legal Services  
I82 = Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)  
I83 = Social Services (Counselors, vocational training, child care)  
I87 = Engineering, architectural, accounting, research, management and related services