



**OLYMPIC REGIONAL**  
**NEW YORK**  
**DEVELOPMENT AUTHORITY**

**REQUEST FOR PROPOSAL AND QUALIFICATIONS**  
**AUDITING SERVICES**

This RFP is posted under “About ORDA – Request for Proposals” on ORDA’s website:  
[www.orda.org](http://www.orda.org)

**Issued: August 1, 2008**

**Submission Deadline: September 30, 2008, by 2:00PM EST**

Designated Contact for this Procurement:

Kathleen R. Bushy, Director of Finance

All contact/inquiries shall be made by e-mail to the following address:  
[Bushy@orda.org](mailto:Bushy@orda.org) (No phone calls, please).

Prepared by: Susan Bombard

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# 1 Introduction

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The New York State Olympic Regional Development Authority (“ORDA” or the “Authority”) is requesting the submission of proposals from individuals and corporations to provide audit services to the Authority for the fiscal years ending March 31, 2009, 2010, and 2011.

These services shall include an audit of the financial statements of the Authority and an expression of an opinion as to whether the financial statements are presented fairly, in all material respects, in accordance with U.S. Generally Accepted Accounting Principles (GAAP). The Audit shall follow the Generally Accepted Auditing Standards (GAAS), as well as the standards for financial audits contained in *Government Auditing Standards*, as issued by the Comptroller General of the United States.

In addition, a review and report (that does not include the expression of opinion) of the internal control procedures over financial reporting and tests of compliance shall be completed in accordance with provisions of applicable laws, regulations, contracts, agreements, and grants.

## 1.1 Key Dates

It is anticipated that a contract will be awarded in response to this Request for Proposal, in accordance with the following timetable:

Table 1 – Auditing Services RFP Timetable

RFP Released	August 1, 2008
Application Inquiries Due	August 20, 2008
Official Responses to Inquires (On or about)	September 1, 2008
Proposal Submission Deadline 2:00 PM (EST)	September 30, 2008
Proposal Evaluation and Selection (on or about)	October 31, 2008
Contract Award	December 1, 2008
Contract Start	April 1, 2009

**ORDA reserves the right to change any of the dates stated in this RFP. ORDA shall notify all firms receiving the RFP immediately if a change(s) occurs.**

## 2 Background

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### 2.1 History/Mission

Established by the New York State Legislature (Article 8, Title 28, NYS Public

Authorities Law) on July 3, 1981, ORDA was given the mandate to manage and promote the sports facilities used to host the 1980 Olympic Winter Games. State and Local government cooperatively created a long term solution to protect the public's investment in the Lake Placid Olympic facilities through the establishment of ORDA. New York State had contributed \$44 million to the construction and operation of the 1980 Olympic facilities while the federal government and the organizing committee provided an additional \$150 million investment. ORDA's legislative mandate is to:

- ◆ Institute a comprehensive, coordinated program of activities utilizing the Olympic facilities in and around Lake Placid, New York, in order to insure optimum year-round use and enjoyment of these facilities to the economic and social benefit of the Olympic Region and to minimize the financial burden on state and local government by maximizing revenue opportunities.
- ◆ Improve the physical fitness and recreational education of the people of New York and the United States.
- ◆ Develop, implement and supervise a comprehensive, coordinated program for the management, promotion and scheduling of a wide range of national and international athletic training and competitive opportunities that maximize the utilization of the Olympic facilities.
- ◆ Develop, construct, operate, manage and maintain facilities for the training and housing of amateur athletes in connection with the United States Olympic Committee's training center program and ORDA's conduction of national and international sporting events.

The Authority has hosted over 250 major national and international events during its tenure. They have included 11 World Championships and over 75 World Cup competitions in bobsled, luge, alpine racing, ski jumping, speed skating and freestyle skiing. ORDA manages these competitions with its events, marketing, communications, finance, timing and scoring, engineering and corporate marketing departments.

## **2.2 Facilities**

The Authority operates and maintains the following facilities:

- ◆ **The Olympic Center**

The Olympic Center includes four ice surfaces: the 1932 Arena, the 1980 Arena (home of the “Miracle on Ice”) and two practice rinks. It is a world-class, year-round training facility for speed skating, figure skating, hockey, and is available for recreational skating, conventions and concerts. In 1994, the 1932 & 1980 Lake Placid Winter Olympic Museum opened in the Olympic Center. The ORDA Box office, finance office, and administrative offices are also located in the Olympic Center.

- ◆ **The Olympic Speed Skating Oval**

This outdoor oval is one of three refrigerated 400-meter skating ovals in the United States, and is the site of Eric Heiden's record five gold medals in 1980. It is open in the winter months (Dec. - Mar.) for competitive training, events, and recreational skating.

- ◆ **The MacKenzie-Intervale Ski Jumping Complex**

This complex is home to winter and summer ski jumping and freestyle skiing. The large (120-meter K point) and normal (90-meter K point) jumps were used for the 1980 Olympic Winter Games. In addition, there are three smaller hills used for development programs. A combination of ceramic tiles and plastic mats allow the jumpers to train and compete in non-snow months. The Kodak Sports Park, completed in 1988, is America's foremost water ramp training and competitive facility for freestyle aerial skiing and mogul skiing. In summer, skiers in both disciplines utilize the facilities heated 750,000 gallon pool. In the winter, launching ramps and a steep landing hill are utilized for training and to host world-class events in freestyle aerals, inverted aerial maneuvers, and trampoline training.

- ◆ **The Olympic Sports Complex**

Located five miles from Lake Placid at Mt. Van Hoevenberg, the attractions include the world's newest combined bobsled, luge, and skeleton run built in 1999. There is a 50 kilometer (31 mile) cross-country skiing network built for the 1980 Games and a biathlon target range. Athletes train year-round at the facility. In the winter, the public can take bobsled and luge rides, tour the complex, and ski the extensive cross-country network of groomed and set track trails. In the summer months wheeled bobsled rides are available, as well as a mountain biking center, and a summer biathlon training facility.

- ◆ **Gore Mountain Ski Area**

Gore Mountain Ski Area, located in North Creek, New York, is situated in the heart of the majestic Adirondack Mountains, a 6.3 million-acre park, the largest state park in the country. Gore is best known for its intermediate terrain, one of New York's newest gondolas and a high speed triple chair that whisks skiers from the base to the upper mountain. The Gore Mountain area has a strong skiing tradition dating back to the 1930s. Run by the State of New York since 1964 and managed since 1984 by the Olympic Regional Development Authority, Gore has seen extensive improvements in the past several years, most recently the Northwoods Gondola in the fall of 1999. Gore Mountain is a four-season playground, offering scenic gondola rides and events in the summer in addition to superb skiing and riding during the winter months with breathtaking views of the

surrounding Adirondacks. Gore also operates the North Creek Ski Bowl, which offers tubing and skiing.

- ◆ **Whiteface Mountain Ski Center**

Whiteface has the greatest vertical drop east of the Rockies at 3,430 feet. In addition to being a favorite among recreational skiers and snowboarders, all of the race trails are fully sanctioned for international competition. There are 73 trails ranging from beginner to expert, and out-of-bounds skiing and riding. In the non-winter months, Whiteface operates as a mountain bike center, is used as a site for festivals, offers summer gondola rides, and offers visitors the opportunity to enjoy a drive up the Whiteface Mountain Veterans Memorial Highway to the summit.

## **2.3 Additional Background information**

Working collaboratively with the office of the Governor, ORDA has significantly expanded and improved the Olympic venues and facilities, investing over \$40 million dollars in them. In addition, with the support of the State of New York, ORDA was able to construct the \$16 million dollar U.S. Olympic Training Center at Lake Placid, one of only three in the country.

ORDA is also a major promoter of tourism in the Adirondack region of upstate New York. In 2005, an economic impact study was conducted by the Technical Assistance Center at SUNY Plattsburgh that determined that the total impact of ORDA's activities was the creation of 1,138.5 local jobs (over and above the people employed by ORDA). The study found that statewide, 1487 additional jobs were created as a result of ORDA operations. The study found the overall economic impact of ORDA facilities and operations in the primary study area was \$323,709,866 in 2004-2005, and \$356,179,578 in New York State over the same period.

From figure skating shows and major concerts at the Olympic Center to major world competitions in winter sports, the organization has allowed Lake Placid to proudly carry the banner of the "Winter Sports Capital of the World."

## **3 Request for Proposal (RFP) Overview**

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### **3.1 Scope of Services**

For each year of the contract, the Contractor shall thoroughly examine the financial statements of the Authority for the fiscal year ending March 31. The examination must be made in accordance with U.S. Generally Accepted Accounting Principles (GAAP).

The examination shall also follow Generally Accepted Auditing Standards (GAAS), as well as standards for financial and compliance audits contained in Government Auditing Standards (GAGAS) as issued by the Comptroller General of the United States. Such examination must include sufficient tests of the accounting records and other auditing procedures, as the Contractor considers necessary for the purpose of expressing an opinion on such financial statements.

In addition, for each fiscal year covered by the contract, the Authority requires the following:

- ◆ Internal Control Letter/Report as required by GAGAS and the New York State Public Authorities Accountability Act (NYSPAAA).
- ◆ Management Letter.
- ◆ Report on compliance with investment guidelines including New York State Office of the Comptroller Investment Guidelines for Public Authorities and Section 2925 (3) (F) of the State of New York Public Authorities Law – Investments of Public Authorities.
- ◆ Board of Directors letter containing observations which the contractor believes are of value to the Authority.
- ◆ Post-Audit consultation session with appropriate staff of the Authority.

The audited financial statements and report thereon, as well as all other required reports, must be completed and formally presented to the Authority no later than June 15 of each contract year, to ensure that the statements and reports can be filed with the appropriate parties by June 30.

## **3.2 Qualifications**

The Proposer must:

1. Be a member of the American Institute of Certified Public Accountants (AICPA).
2. Employ CPA's properly licensed by the University of the State of New York, and registered by the State Education Department or other applicable state's regulatory agency.
3. Shall meet all required independence standards, including the Government Accounting Office (GAO) Standards for Audit of Governmental Organizations, the AICPA Rules' of Independence, and those of any other regulatory agencies.

4. Shall maintain at its own expense, professional liability insurance to protect the firm from claims for errors and omissions arising from work as specified by this RFP, commercial general liability, workers compensation, and New York State disability benefit insurance. A certificate of insurance with the Authority listed as an additional insured is required once a contract is awarded. The selected CPA firm will be required to maintain professional liability coverage for at least three years after the completion of any work. The adequacy of the insurance shall be subject to the approval of the Authority.

The contractor must submit with their proposal verification of the licensure as a certified public accountant of each partner, in-charge accountant, and staff accountant that the contractor proposes to be involved in conducting the Authority audit.

Annually, the contractor must submit to ORDA the name of the lead auditor and reviewer, to ensure compliance with the Public Authority Accountability Act.

### **3.3 Submission of RFP Responses**

Proposals submitted in response to this Request for Proposal (RFP) must be received no later than **2:00 P.M. (EST) on September 15, 2008**. Proposals should be sent to:

Kathy Bushy  
Director of Finance  
Olympic Regional Development Authority  
2634 Main Street  
Lake, Placid, NY 12946

An **original (with an original signature) and three (3) copies** of the entire proposal (including appendices) should be submitted in a sealed envelope clearly marked **Audit Services Request for Proposal**. The Technical and Cost proposals should each be submitted in separately sealed envelopes within the envelope marked "Audit Services Request for Proposal". Both envelopes containing the Technical and Cost Proposals should clearly be labeled as such, and should also contain an original and three copies. No faxed or electronic submissions will be accepted. Any response not received by the deadline will be returned unopened, and will not be considered. The Authority will not assume any responsibility for late or misdirected proposals.

### **3.4 Questions**

All questions and requests for clarification regarding this RFP should be submitted to the following e-mail address by **August 20, 2008**: [Bushy@orda.org](mailto:Bushy@orda.org). Questions **will not** be accepted orally. Questions received after the above date will not receive a response

All questions and requests for clarification properly received will be responded to in writing by mail, e-mail, or facsimile and disseminated to all persons and organizations having expressed an interest in this solicitation.

### **3.5 Restriction of Communications**

Pursuant to §139-j and §139-k of the State Finance Law, this solicitation includes and imposes certain restrictions on communication between ORDA and a prospective bidder during the procurement process. A prospective bidder is restricted from making contact from the date of issuance of this RFP through the final award and approval of the Procurement Contract by ORDA (the “Restricted Period”), to other than the Designated Contact for Procurement.

The Designated Contact for this Procurement is:

Kathy Bushy  
Director of Finance  
Olympic Regional Development Authority  
2634 Main Street  
Lake Placid, NY 12946  
E-Mail: [Bushy@orda.org](mailto:Bushy@orda.org)

Prospective bidders are prohibited from contact related to this procurement with any other ORDA employee, representative, or Board Member during the Restricted Period. ORDA employees are required to obtain and report certain information when contacted by prospective bidders during the Restricted Period, and make a determination of the responsibility of bidders, and to make such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, the prospective bidder and its subsidiaries, related or successor entities, will be determined to be a non-responsible bidder and will not be awarded the contract pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period may result in a debarment from obtaining State Governmental Procurement Contracts.

A copy of State Finance Law §139-j and §139-k can be found at:  
<http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

Any questions regarding this RFP must be submitted in accordance with the process defined in section 3.4.

### **3.6 Addenda: Errors and Omissions**

If a respondent discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, immediately notify the contact person, Kathy Bushy, of such error via email and request clarification or modification to the document. This notice must be given prior to the final filing date for submission of proposals. Modifications shall be made by addenda, provided that any such modification would not materially benefit or disadvantage any particular respondent. Such clarification may be given by written notice, email, or facsimile to all parties who have been furnished an RFP.

No one is authorized to amend the specifications of this solicitation in any respect by any oral statement or to make any oral representation or interpretation in conflict with the provisions of the specifications.

If a bidder fails, prior to the final filing date for submission, to notify the Authority of a known error or an error that reasonably should have been known, the bidder shall assume the risk. If awarded the contract, the bidder shall not be entitled to additional compensation or time by reason of the error or its late correction.

### **3.7 Important Information Affecting Proposers**

ORDA reserves the right to:

1. Accept or reject any and all proposals, and to amend, modify or withdraw this RFP at any time.
2. Revise any requirements of this RFP.
3. Require supplemental statements or information from any responding party.
4. Extend the deadline for submission of responses thereto.
5. Accept a proposal and any subsequent proposal for the contract from other than the lowest cost bidder consistent with the criteria for the evaluation process (Section 5.1).
6. Waive or modify minor deviations in the proposals received after prior notification to the bidders.
7. Correct any arithmetic errors in the proposals.
8. Interview proposers prior to selection.
9. Negotiate contract terms and conditions with successful proposer.

ORDA may exercise the foregoing rights at any time without notice and without liability to any respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses prepared hereto will be prepared at the sole cost and expense of the responding party.

A respondent accepts all provisions of this RFP by submitting a proposal, and is responsible for the accuracy of its submission.

The Authority will not reimburse for any expenses incurred in connection with this RFP, including the costs of preparing the response and or providing additional information and travel expenses relating to an interview. All material submitted in response to this RFP will become the sole property of the Authority.

The issuance of this RFP and the submission of a response by a contractor or the acceptance of such response by ORDA does not obligate ORDA in any manner whatsoever. Legal obligations will only arise upon the execution of a formal contract by ORDA and the contractor selected by ORDA.

## **4 Proposal Requirements**

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### **4.1 Technical Proposal**

Following is a listing of the information required to be provided by the proposer. A proposal that does not provide all the information requested below may be subject to rejection. Your proposal should contain sufficient information to assure the Authority of its accuracy. Proposers are requested to keep their submissions to the shortest length possible, consistent with addressing each information request completely.

1. Cover Letter A cover letter, which will be considered an integral part of the proposal, must be signed by an individual authorized to bind the bidder contractually. This cover letter should indicate that the signer is authorized, whether by title or position, to sign on behalf of the bidding firm. The Authority reserves the right to reject any proposal that contains an unsigned cover letter. The letter must also contain the following:
  - a. The firm's name, address, email address, telephone and fax number, as well as the same information for the Authority's primary contact person concerning the proposal.
  - b. A statement to the effect that the price quoted is an irrevocable offer for 180 days from the date of submission.
  - c. A statement to the effect that the firm is willing and qualified to perform all services identified in Section 3.1 above, and that

the firm meets the qualification outlined in Section 3.2.

- d. A statement that the firm authorizes the Authority to make any necessary examinations or inquires in order to make a determination as to the qualification of the proposer.
  - e. A statement that the firm will accept the standard terms and Conditions of New York State as identified in Section 7 of this RFP.
  - f. A statement certifying to the truth and accuracy of all statements, answers and data contained in the firm's proposal.
2. Executive Summary The proposal should include an executive summary which thoroughly describes your firm's understanding of the RFP's goals and objectives, your firm's capacity to carry out the type of assignments described in Section 3.1 of this RFP and a short narrative that summarizes your firm's accounting and auditing services expertise.
3. General Qualifications The following information is considered important to the Authority in determining the selection of a firm. Please provide descriptive information demonstrating your firm's qualifications and a statement as to why your firm should be chosen. The Authority requests that each proposer provide the following information:
- a. Provide a brief description of the firm's qualifications and ability to perform the services described herein. Identify the engagement partner, manager, in-charge accountant, and other staff who will be assigned to the audit, and provide a brief resume describing pertinent experience for all staff to be assigned.
  - b. Describe recent auditing experience similar to the type of work requested. Provide a history of the firm's auditing experience for ORDA or similar public entities. Provide a detailed listing of engagements for similar entities, as well as the name, title, and telephone number of at least three similar entities that can be contacted in regards to your engagement with them.
  - c. Provide a copy of your firm's most recent peer review.
  - d. Provide an audit plan detailing how you would accomplish the scope of work defined in this RFP. The plan should cover what audit work will be performed to allow the firm to issue all required reports and provide the services indicated in this RFP.

- d. Provide a schedule which shows the estimated total hours by staff level for audit services for the initial year of the engagement.
4. Additional Information The proposer must provide statements regarding The following:
- a. Provide a statement regarding any conflict of interest, potential or actual, that may arise from the proposing firms involvement in providing services to the Authority
  - b. Disclosure of any litigation, administrative proceeding, disciplinary action, violation of or investigation involving the alleged violation of any federal or state regulatory agency rules in which your firm was involved, whether currently ongoing or concluded. Specify the nature of any such matter, corrective measures undertaken and penalties assessed, if any. If none, include a statement that there are no past or present civil or criminal legal investigations, or pertinent litigation and/or regulatory actions involving your firm.
  - c. The proposal must contain a statement that the firm is willing and ready to provide any services requested or required within this RFP in a timely manner.
  - e. Describe your firm's policy regarding affirmative action and opportunity programs, including the percent of minority and women employees for the firm.

## 4.2 Cost Proposal

The following is listing of information required to be provided by the bidder. A cost proposal that does not include all of the information may be subject to rejection. Please provide the information in the same order that it is requested.

1. Provide a separate fixed fee schedule for each of the fiscal years covered by this RFP.
2. Provide the firm's hourly billing rates for the engagement partner, manager, in-charge account, and other staff proposed to be assigned to the audit.
3. Indicate whether the rates proposed are above the rates currently charged to other public entities in New York.

4. Provide the firms charge for itemized out of pocket expenses, including travel, meals and lodging, or disbursements or other services for which the firm would expect reimbursement.

## **5 Evaluation of Proposal**

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### **5.1 Evaluation Criteria**

A committee comprised of Authority staff will review and evaluate the proposals. The evaluation will identify bidders with the highest probability of satisfactorily performing the specific duties described in Section 3.1 of this RFP and will be conducted in a comprehensive and impartial manner. The contract will be awarded to the highest composite score, as determined on a best value basis. "Best Value" is defined in the State Finance Law as "the Offerer which optimizes quality, cost and efficiency among responsive and responsible bidders." The evaluation criteria are as follows:

1. **Responsiveness to the RFP** (including overall organization, completeness, and quality of the proposal, including cohesiveness, clarity of response, and demonstrated understanding of ORDA). (35 percent)
2. **Experience of Firm** in general and in particular, as audit firm on behalf of ORDA or public entities similar to ORDA, and qualifications of proposed partners and staff. (35 percent)
3. **Cost** (30 percent)

In addition to the above criteria, customer references may be checked for the firms in the beginning stage of evaluation. ORDA reserves the right to re-evaluate any ranking or score as a result of reference checks. The inability to contact a reference will not be looked upon favorably

During the evaluation process, the Authority may require clarification of information from a firm. If specific sections of the written proposal require clarification, the Authority will identify the section(s) and information requested via email. The bidder must respond by the deadline stated in the correspondence. In addition, the Authority may use the proposal, interviews, and the Authorities investigation of a firm's qualifications, experience, ability or financial standing, and any other material or information submitted by the firm during the course of evaluation and selection under this RFP.

### **5.2 Interviews (If Necessary)**

The Authority reserves the right to conduct interviews should they be deemed necessary.

The purpose of the interview is to further document the proposer's ability to provide the required services, and to provide the selection committee with an understanding of how the services will be rendered. The interview will be evaluated on the basis of whether it substantiates the characteristics claimed by the proposer in their written response to this RFP.

## **6 Award of Contract**

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Upon contract award(s), public announcements or news releases pertaining to the contract shall not be made without the prior written consent of ORDA.

This Request for Proposal, the proposal submitted by the successful firm, and the engagement letter shall serve as the basis for the contract with the Authority.

## **7 Contractual Requirements**

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### **7.1 Appendices**

Important information affecting bidders is contained in the Appendices hereto attached. Bidders should carefully examine all appendices and ensure the following:

- ◆ The “Standard Clauses for all New York State Contracts” (Appendix A-1), shall be included in the awarded contract.
- ◆ The Non-Collusive Bidding Form (Appendix A-2), the Contractors Disclosure of Contacts Form (Appendix A-3), and the MacBride Fair Employment Form (Appendix A-4) must be signed and submitted with the proposal.
- ◆ Equal Employment Opportunity (EEO) Policy Statement (Appendix A-5) must be submitted with proposal.
- ◆ Complete requirements under Article 15-A of the Executive Law including the Work Force Employment Utilization Form (Appendix A-6).
- ◆ All Procurement Lobbying Forms (Appendix A-7) must be completed and submitted with the proposal to certify compliance with the Procurement Lobbying Law, and must include the disclosure of any prior findings of non-responsibility.
- ◆ Signed copies of the “Proposer Guarantees” (Appendix B), “Proposers Warranties” (Appendix C), and “Authority to Submit Proposal” (Appendix D) **must** be completed and submitted with the proposal.

## 7.2 Additional Provisions

In addition to the provisions in Appendix A, the contracting firm will be bound to the following:

1. Relationship between the Authority and the Contractor The relationship of the selected proposer to the Authority will be that of an independent contractor.
2. Modification of Contract Any modification to the original contract signed between the Authority and the successful proposer must be in writing and will require the mutual consent of both parties.
3. Termination of Contract The contract may be terminated by the Authority upon thirty day written notice for any reason, or immediately for cause. In event of such termination, the contractor will be entitled to reasonable compensation for acceptable services performed through the date of termination. The Authority reserves the right to terminate the contract in the event that it is determined that the certification by the offerer filed in accordance with New York State Finance Law 139-K was intentionally incomplete or falsified.
4. Interpretation The contract shall be construed and interpreted in accordance with the laws of New York State. New York State shall be the forum for all disputes. Federal, State, County and local laws, resolutions, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the responding firms shall in no way be cause for relief from responsibility. Contractors are to be in full compliance with applicable New York State Statutes, along with any and all federal rules and regulations.
5. Disputes and Dissatisfaction In the event the Authority or the Contractor is dissatisfied with the other's performance under the contract, either party must notify the other in writing. The other part must make a good faith effort to solve the problem or settle the dispute amicably.
6. Contractors Liability The Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Authority, any work which fails to meet applicable professional standards and which results in obvious or patent errors in the progression of its work.
7. Workpaper Retention and Availability The Contractor shall maintain its audit records generated within the context of this engagement for a period of not less than seven years following the completion of an annual audit. Upon reasonable advance notice, the Authority from time to time may

inspect and make appropriate copies of the contractors audit records that relate to this engagement. The Contractor shall cooperate with other independent auditors conducting audits of Authority records, and with any subsequent auditors for the examination of the Authorities financial statements upon the specific request of the Authority for a period of seven years after final payment under the contract.

8. Confidential Information ORDA may be required to disclose proposal responses under the definition of a “public record.” By submitting a proposal, the proposing firm agrees that ORDA may copy the proposal for purposes of facilitating the evaluation of the proposal or to respond to requests for public information. By submitting a proposal, the proposing firm consents to such copying and warrants and represents that such copying will not violate the rights of any third party. Any documents submitted which contain confidential information must be marked on the outside as containing confidential information, and each page upon which confidential information appears must be marked as containing confidential information. The confidential information must be clearly identified to the reader where it appears. ***All copies of the proposal submission, as well as the original, must be marked in this manner.*** If there is any challenge to ORDA withholding of information on the basis of trade secret, the proposing firm shall bear any legal costs associated with the defense of the withholding of that information.
9. Omnibus Procurement Act It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

Empire State Development  
Division for Small Business  
30 South Pearl Street – 7th Floor  
Albany, NY 12245  
Phone: (518) 292-5220  
Fax: (518) 292-5884

A directory of certified minority and women-owned business enterprises is available from:

Empire State Development  
Minority and Women's Business Development Division  
30 South Pearl Street – 2nd Floor  
Albany, NY 12245

Phone: (518) 292-5250  
Fax: (518) 292-5803

Bidders located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer to offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the State in efforts to get foreign countries to recognize offset credits created by the procurement contract.

The contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through a listing with the New York State Department of Labor, or providing such notification in a manner consistent with collective bargaining agreements or contracts. The contractor agrees to document these efforts and provide said documentation upon request.

For your convenience, a requirements checklist has been provided in Appendix E to assist you in your proposal submission.

## Appendix A-1: Standard Clauses for NYS Contracts

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
  
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
  
3. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
  
4. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of

\$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**5. 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.

**6. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**8. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to

an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**9. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERALEMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers. (b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the 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:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and

if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

**12. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**13. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**14. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**15. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**16. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under

bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**18. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**19. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women- owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**20. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**21. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

## A-2: Non-Collusive Bidding Certification

### NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW SECTION 139-D, Statement of Non-Collusion in bids to the State:

By submission of this proposal, the Offeror \_\_\_\_\_ certifies, that (s)he is \_\_\_\_\_ of \_\_\_\_\_ and, under penalty of perjury, affirms:

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

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

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

4. The proposal was not made in the interest of or on behalf of any undisclosed person, Partnership, company, organization or corporation.

5. Each person signing the proposal certifies that:

[a] He is the person in the Consultant's organization responsible within that organization for the decision as to prices being offered in the proposal and that he has not participated and will not participate in any action contrary to (1-4] above; **or**

[b] He is not the person in the Consultant's organization responsible within that organization for the decision as to prices being offered in the proposal but that he has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate, in any action contrary to (1-4) above, and that as their agent, does hereby so certify; and that he has not participated, and will not participate in any action contrary to (1-4) above.

\_\_\_\_\_  
Offeror Signature

Sworn to before me this \_\_\_\_\_

Day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(SEAL)

Notary Public

**Appendix A-3: Contractor Disclosure of Contacts**

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:**

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

_____	_____
_____	_____
_____	_____
_____	_____

**IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:**

NAME

LEGAL RESIDENCE

_____	_____
President	_____
_____	_____
Secretary	_____
_____	_____
Treasurer	_____
_____	_____
President	_____
_____	_____
Secretary	_____
_____	_____
Treasurer	_____

**Identifying Data:**

Potential Contractor \_\_\_\_\_

Address \_\_\_\_\_

**Street**

\_\_\_\_\_  
**City, State, Zip Code**

Telephone # \_\_\_\_\_ Title \_\_\_\_\_

*If applicable, Responsible Corporate Officer*

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

*Joint or combined bids by companies or firms must be certified on behalf of each participant.*

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

BY \_\_\_\_\_

**Name**

BY \_\_\_\_\_

**Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Street**

\_\_\_\_\_  
**Street**

\_\_\_\_\_  
**City, State, Zip Code**

\_\_\_\_\_  
**City, State, Zip Code**

## **A-4 MacBride Fair Employment Principles**

### **NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10 percent or greater ownership interest, or an individual or legal entity that holds 10 percent or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable).

(1) has business operations in Northern Ireland:

Yes \_\_\_\_\_ or, No \_\_\_\_\_ if yes;

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

Yes \_\_\_\_\_ or, No \_\_\_\_\_

---

Signature

---

Date

## **A-5: EEO Policy Statement**

State agencies shall include in all State contracts and all documents soliciting bids or proposals for State contracts the following language:

(1) Contractors and subcontractors shall undertake or continue existing programs of affirmative action 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, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(2) Prior to the award of a State contract, the Contractor shall submit an Equal Employment Opportunity ("EEO") Policy Statement to the contracting agency within the time frame established by that agency.

(3) The Contractor's EEO Policy Statement shall contain, but not necessarily be limited to, and the contractor, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:

(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 programs of affirmative action 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 on State contracts.

(b.) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(c.) At the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

(4) Except for construction contracts, prior to an award of a State contract, the contractor shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender,

and Federal Occupational Categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency.

(5) After an award of a State contract, the Contractor shall submit to the contracting agency a work force utilization report, in a form and manner required by the agency, of the work force actually utilized on the State contract, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the contracting agency.

(Note: The Contractor shall include the language of the above provisions in every subcontract in such a manner that the requirement of the provisions will be binding upon each subcontractor as to work in connection with the State contract, including the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on the State contract.)

## **A-6: Contractor's Requirement Under Article 15-A**

Article 15-A of the Executive Law, signed into law on July 19, 1988, provides specific rules, regulations and procedures for minority and women business participation in certain State contracts.

The Authority is required to implement the provisions of Article 15-A for all its contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for contracts in excess of \$100,000 for real property renovation and construction. The agency has established a goal of 2 percent for minority business enterprises (MBE) participation and 4 percent for women owned business enterprises (WBE) participation for this procurement.

In order to be awarded a contract with the Authority, every bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

### **POLICY AND PROVISIONS**

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBE's) in State contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE subcontractors or suppliers in the performance of the contract.

For the purpose of determining a contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver there from, the contracting agency shall consider:

- (a) Whether the contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,
  - (i) whether or not certified minority or women-owned businesses which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
  - (ii) whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and
- (b) Whether there has been written notification to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and

(c) Whether the contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

1. **GOALS** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBE's currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.

2. **UTILIZATION** - The Contractor may count as M/WBE participation: subcontracting part of the contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the contract from certified firms.

3. **MINORITY AND WOMEN-OWNED BUSINESS OFFICER** - The Contractor shall designate a M/WBE business officer and assign the officer the responsibility and authority to monitor the M/WBE program for the contract. This contracting agency's staff is available to help in identifying certified M/WBE's.

4. **REQUIRED REPORTS** - The Contractor is required to submit a Utilization Plan. The required Utilization Plan requires a list of New York State certified minority and women-owned businesses that have agreed to participate in fulfilling the terms and conditions of the contract. The Contractor must also submit the MBE/WBE Letter of Intent to Participate. The Letter of Intent to Participate is a commitment by the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on the contract are agreed to. Any modifications or changes to the agreed participation by certified M/WBE's, over the term of the contract, must be reported on a revised Utilization Plan.

5. **NONDISCRIMINATION** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of the contract.

## **POST AWARD**

The contracting agency will monitor the Contractor's compliance with the Utilization Plan by requiring the Contractor to submit to the Office, the following forms quarterly:

1. Cumulative Income Statements
2. Affirmation of Income Payments

All questions regarding compliance to Article 15-A requirements or copies of the forms should be addressed to the contracting agency.

The telephone numbers and addresses for Empire State Development are as follows:

Empire State Development  
633 3rd Avenue  
New York, NY 10017-6706  
Telephone: (212) 803-2200

Empire State Development  
Division of Minority and Women's Business Development  
30 South Pearl Street  
Albany, NY 12245  
Telephone: (518) 292-5250

## SERVICE AND/OR CONSULTANT FIRMS INSTRUCTIONS FOR COMPLETION

**PURPOSE:** The *Work Force Utilization Report for Service and/or Consultant Firms* is prepared by all contractors, and subcontractors, if any, providing services (skilled or non-skilled) or professional consulting services to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the contract specific work force can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific work force cannot be separated out, the contractor's total work force is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

### GENERAL INFORMATION:

1. *Name of contracting state agency* and state agency code (five digit code).
2. *Reporting period* covered by report (mm/dd/yy to mm/dd/yy); check to indicate *Quarterly* or *Semi-Annual* Report.
3. *Contractor firm name* (prime contractor on summary report submitted to agency) and *address* (including city name, state and zip code); check if the contractor is a NOT-FOR-PROFIT.
4. *Type of Report:* check to indicate whether report covers (i) the *Contract Specific Work Force* or (ii) the *Company's Total Work Force* (in the event the contract specific work force cannot be separated out).
5. Contractor *Federal Employer Identification number* or payee identification number (prime contractor i.d. on summary report); check to indicate prime or subcontractor report.
6. *Contract Amount* is dollar amount based on terms of the contract.
7. *Contract Number* is the agency assigned number given to the contract (seven digits).
8. *Location of work* including county and zip code where work is performed.
9. Indicate *Product or Service provided* by contractor (brief description).
10. *Contract start date* is month/day/year work on contract actually began.
11. Contractor's *estimate of the percentage of work completed* at the end of this reporting period.

**FEDERAL OCCUPATIONAL CATEGORIES:** The contractor's work force is broken down and reported by the nine *Federal Occupational Categories (FOC's)* consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Managers, Professionals, Technicians, Sales, Office and Clerical (Administrative support), Craft Workers, Operatives, Laborers and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

**TOTAL NUMBER OF EMPLOYEES:** Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total work force, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) thru (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- ◆ *Black (not of Hispanic origin):* all persons having origins in any of the Black African Racial groups;
- ◆ *Hispanic:* all persons of Mexican, Puerto Rican, Dominican, Cuban, Central; or South American or either Indian of Hispanic origin, regardless of race;
- ◆ *Asian or Pacific Islander:* all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;
- ◆ *Native American or Alaskan Native:* all persons having origins in any of the original peoples of North America.

**TOTAL PERCENT MINORITY** = sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

**TOTAL PERCENT FEMALE** = total number of female employees in the FOC (column 2) divided by the total number of all employees in that FOC (column 1 + column 2).

**TOTALS:** column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

**SUBMISSION:** The work force utilization report is to be completed by both prime and subcontractors and signed and dated by an *authorized representative* before submission. This Company Official's name, official title and telephone number should be printed or typed where indicated on the bottom of the form.

The *prime contractor* shall complete a report for its own work force, collect reports completed by each subcontractor, and prepare a summary report for the entire combined contract work force. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR pursuant to Article 15-A of the Executive Law*.

**WORK FORCE EMPLOYMENT UTILIZATION REPORT  
SERVICE AND/OR CONSULTANT FIRMS**

Agency \_\_\_\_\_ Code \_\_\_\_\_ Reporting Period \_\_\_\_\_  
 Check one:  Quarterly Report  Semi-Annual Report

Contractor Firm Name \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Report:  Contract Specific Work Force  Check if NOT-FOR-PROFIT

Federal ID/Payee ID No. _____  Check One <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor  Contract Amount: \$ _____	Contract No. _____ Location of Work _____ County _____ Zip _____ Product/Service Provided: _____  Contract Start Date: _____ Percent of Job Completed _____
--	---

Number of Employees

Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native		Total Percent Minority Employees	Total Percent Female Employees
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office and Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
<b>TOTALS</b>												

Company Official's Name _____ Signature _____ _____	Title _____ Company Official's Date _____ Telephone Number _____
---	---

## A-7: Procurement Lobbying Forms

Pursuant to State Finance Law §§139-j and 139-k, this Project Definition includes and imposes certain restrictions on contact with the Olympic Regional Development Authority during the procurement process. The term “Contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the governmental procurement. In addition to obtaining the required identifying information, the Authority must inquire and record whether the person or organization that made the contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or contact the Governmental Entity.

An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers for this project definition through final award and approval of the contract to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a) the end of the restricted period. This period is hereby termed the “Restricted Period.”

**Designated contacts are identified below.** Olympic Regional Development Authority employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The designated permissible contact for this procurement is:

Kathy Bushy  
Director of Finance  
Olympic Regional Development Authority  
2634 Main Street  
Lake Placid, NY 12946  
[bushy@orda.org](mailto:bushy@orda.org)

All firms responding to the Project Definition **must** complete the forms found in this Attachment A-10 (and listed below) and submit them with the proposal.

### PROCUREMENT LOBBYING FORMS:

- Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)
- Offerer’s Certification of Compliance with State Finance Law §139-k(5)
- Offerer Disclosure of Prior Non-Responsibility Determinations

**Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**

The New York State Finance Law §139-j (6) (b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer’s understanding of and agreement to comply with the Governmental Entity’s procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

As a “Governmental Entity,” the Olympic Regional Development Authority must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. Designated contact for this procurement is Kathy Bushy.

<p>_____ affirms that it understands and agrees to comply with the (Name of Offerer/bidder’s firm)</p> <p>procedures of the Olympic Regional Development Authority relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).</p> <p>By: _____ Date: _____ (PRINT Name of Authorized Representative)</p> <p>Signature: _____</p> <p>Title: _____</p> <p>Contractor Address: _____</p> <p>_____</p> <p>_____</p>
---

**Offerers Certification of Compliance  
with State Finance Law §139-k (5)**

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the Olympic Regional Development Authority with respect to State Finance Law §139-k is complete, true and accurate.

Olympic Regional Development Authority must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity.

**Offerer Certification of Compliance with State Finance Law §139-k (5)**

**II. Offerer Certification:**

I certify that all information provided to the Olympic Regional Development Authority with respect to State Finance Law §139-k is complete, true and accurate.

<p>By: _____ Date: _____ (PRINT Name of Authorized Representative)</p> <p>Signature: _____</p> <p>Title: _____</p> <p>Contractor Address: _____ _____ _____</p>
---

## Offerer Disclosure of Prior Non-Responsibility Determinations

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

\_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

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

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle): No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):  
No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): No Yes

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

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

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

No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By (PLEASE PRINT): \_\_\_\_\_

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

\_\_\_\_\_

Signature

## **Appendix B: Proposer Guarantees**

The proposer certifies it can and will provide and make available, as a minimum, all services set forth in the RFP.

The proposer has read Section 7, Contractual Requirements, and agrees that the rights and prerogatives as detailed in that Section are retained by the Authority.

The proposer agrees to be bound by the Contractual Requirements delineated in Section 7.

Signature of Official: \_\_\_\_\_

Name (print): \_\_\_\_\_

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

Company: \_\_\_\_\_

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

## **Appendix C: Proposer Warranties**

Proposer warrants that it is willing and able to comply with New York laws with respect to foreign (non-New York) corporations.

Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.

Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the written permission of the Authority.

Proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature of  
Official: \_\_\_\_\_

Name (print): \_\_\_\_\_

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

Company: \_\_\_\_\_

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

## Appendix D: Authority to Submit Proposal

### Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF: \_\_\_\_\_ }  
SS.: \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

On the day \_\_\_\_\_ of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_ known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he resides at \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

\_\_\_\_\_ (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.

\_\_\_\_\_ (If a corporation): \_he is the of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

\_\_\_\_\_ (If a partnership): \_he is the of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

\_\_\_\_\_ (If a limited liability company): \_he is a duly authorized member of \_ LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company

Sworn to before me this \_\_\_\_\_  
Day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ (SEAL)  
Notary Public

## Appendix E: Requirements Checklist

Date \_\_\_\_\_

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Reviewer's Name

### *Does the Proposal...*

#### **Cover Letter**

1. Include a signed cover letter?

By an individual who is authorized to bind the proposer contractually and is indicated by the title or position held with the firm? Yes\_\_\_\_ No\_\_\_\_

2. Does the cover letter include:

- a. Firm's Name, address, email address, telephone number and fax number, as well as the same information for the Authority's primary contact person ?  
Yes\_\_\_\_ No\_\_\_\_
- b. A statement that the price quoted is an irrevocable offer for 180 days from the date of submission? Yes\_\_\_\_ No\_\_\_\_
- c. A statement in effect that the firm is willing and qualified to perform all services identified in Section 3.1 of the RFP, and that the firm meets the qualifications in Section 3.2? Yes\_\_\_\_ No\_\_\_\_
- d. A statement that the firm authorizes the Authority to make any necessary examination or inquires in order to make a determination as to the qualification of the proposer? Yes\_\_\_\_ No\_\_\_\_
- e. A statement to the effect that the firm will accept the standard terms and conditions of New York State, as identified in Section 7 of the RFP? Yes\_\_\_\_ No\_\_\_\_
- f. A statement certifying the truth and accuracy of all statements, answers and data contained in the proposal? Yes\_\_\_\_ No\_\_\_\_

#### **Executive Summary**

3. Does the proposal contain an executive summary that describes the firm's understanding of the RFP's goals and objectives and the firm's capacity to carry out the type of assignments described in the RFP? Does it include a short narrative of the firm's accounting and auditing consulting expertise? Yes\_\_\_\_ No\_\_\_\_

## General Qualifications

4. Did you provide a brief description of the firm's qualifications and ability to perform the services described herein, and identify the engagement partner, manager, in-charge accountant, and other staff who will be assigned to the audit, and provide a brief resume describing pertinent experience for all staff to be assigned? Yes\_\_\_ No\_\_\_
5. Does the proposal include a description of the firm's recent auditing experience with ORDA or similar public entities, and provide full contact information for similar engagements performed by the firm? Yes\_\_\_ No\_\_\_
6. Did you include a copy of your firms most recent peer review? Yes\_\_\_ No\_\_\_
7. Did you provide an audit plan as required? Yes\_\_\_ No\_\_\_
8. Does the proposal include a schedule showing the estimated total hours for staff for the initial audit year? Yes\_\_\_ No\_\_\_

## Additional Information

9. Did you provide a statement concerning conflicts of interest? Yes\_\_\_ No\_\_\_
10. Did you provide a disclosure statement concerning litigation, administrative proceedings, etc. as required? Yes\_\_\_ No\_\_\_
11. Did you provide a statement that the firm is willing and ready to provide the services requested or required within this RFP in a timely manner? Yes\_\_\_ No\_\_\_
12. Did you describe your firm's policy regarding affirmative action and opportunity programs, and include the percentage of minority and women employees of the firm? Yes\_\_\_ No\_\_\_

## Cost Proposal

13. Did you provide a separate fixed fee schedule for each of the fiscal years covered by this RFP? Yes\_\_\_ No\_\_\_
14. Did you provide the firm's hourly billing rates for the engagement partner, manager, in-charge account, and other staff proposed to be assigned to the audit? Yes\_\_\_ No\_\_\_
15. Did you indicate whether the rates proposed are above the rates currently charged to other public entities in New York? Yes\_\_\_ No\_\_\_
16. Did you Provide the firms charge for itemized out of pocket expenses, including travel, meals and lodging, or disbursements or other services for which the firm would expect reimbursement? Yes\_\_\_ No\_\_\_

## Appendices

17. Did the firm file the following documents:

The Non-Collusive Bidding Certificate (App. A-2)	Yes___ No___
The Contractors Disclosure of Contacts (App. A-3)	Yes___ No___
MacBride Fair Employment Principles (App. A-4)	Yes___ No___
Equal Employment Opportunity Policy Statement (App. A-5)	Yes___ No___
Contractor Requirements Under Article 15-A (App. A-6)	Yes___ No___
Procurement Lobbying Forms (App. A-7)	Yes___ No___
Proposer Guarantees (App. B)	Yes___ No___
Proposer Warranties (App. C)	Yes___ No___
Authority to Submit Proposal (App. D)	Yes___ No___