

STATE UNIVERSITY OF NEW YORK

Purchase College

REQUEST FOR QUALIFICATIONS (RFQ)

PROPOSAL SU-050615, dated 06 May 2015

RFQ Number:
SU-050615

Dated:
May 06, 2015

Description:
Architectural and Engineering Services for
Green Infrastructure Grant Project

Contract Term:
Two (2) years

Calendar of Events – Procurement Timetable:

Release of RFQ to Vendors May 06, 2015
Open Question Period May 11 - May 20, 2015 COB
Pre-Bid Meeting May 15, 2015 @ 10:00AM
Addendum Release May 25, 2015
Proposal Due Date June 10, 2015 @ 1:00 PM
Anticipated Vendor Award Notification June 26, 2015
Vendor De-Briefing upon request after notice of award

Location of Service:

Purchase College
State University of New York
735 Anderson Hill Road
Purchase, New York 10577

Inquiries to:

Tom Kelly
Senior Energy Manager, Facilities Department
email tom.kelly@purchase.edu
fax 914-251-6944

Package Contains:

Pages

Part I: General 1-11
Part II: Detailed Specifications 12-15
Standard Contract Clauses Exhibit A
Affirmative Action Clauses Exhibit A-1
Attachments (Required Submission Forms):
1 - Offeror Information
2 - Use of New York State Businesses

Designated Contacts:

For New York State/SUNY administrative policy and procedure:

Nikolaus D. Lentner
Director of Purchasing & Accounts Payable
telephone 914-251-6070
fax 914-251-6075
email L@purchase.edu

For technical information and clarification of detailed specifications:

Tom Kelly
Senior Energy Manager, Facilities Department
telephone 914-251-5916
fax 914-251-6063
email tom.kelly@purchase.edu

Additional Designated Contact:

James Mwaura
Associate Director of Purchasing & Accounts Payable
telephone 914-251-6089
fax 914-251-6075
email james.mwaura@purchase.edu

PART I: GENERAL STANDARD INFORMATION AND INSTRUCTIONS

A. Purchase College is dedicated to environmentally sustainable practices. In an effort to conserve resources and reduce waste, the RFQ will only be available electronically in PDF format at the following website: <http://www.purchase.edu/purchasemeansbusiness> (and click Current Procurement Opportunities).

B. Qualifications Submission (hereafter, “Qualifications”)

When submitting Qualifications, you must:

1. Prepare a clearly readable document. Attach all required information.
2. Indicate any deviations from the specifications and if necessary attach separate documents and/or explanation.

3. **Sign the Qualifications document.** By signing you indicate full knowledge and acceptance of this Request for Qualifications ("RFQ") including Exhibits A and A-1. The Qualifications must be completed in the name of the proposer, corporate or otherwise, and must be fully and properly executed by an authorized person.
4. **1) Submit six (6) complete bound Qualifications, one of which must have original signatures. Additionally, submit one electronic version of the Qualifications on a portable "USB flash drive."** Qualifications should be sealed and submitted as specified in Part II. Qualifications are to be addressed to:

Nikolaus D. Lentner
Director of Purchasing & Accounts Payable
Purchasing & Accounts Payable Office
State University of New York
Purchase College
735 Anderson Hill Road
Purchase, NY 10577-1402

(2) Qualifications Envelopes and Packages

Envelopes and/or packages containing Offeror Qualifications should be clearly marked "**QUALIFICATIONS ENCLOSED**" and should state the **RFQ Number and Opening Due Date**. Failure to complete all information on the qualifications envelope or package may necessitate the premature opening of the package, and bids/proposals may be returned.

5. Qualifications must be received in the Purchasing & Accounts Payable Office by the due date and time. Offerers mailing their Qualifications must allow sufficient time to ensure receipt of their Qualifications by the time specified. Offerers are cautioned that, although using trackable mailing/courier/messenger services, Qualifications must be received in the Purchasing & Accounts Payable Office by the due date and time for consideration by the selection committee. While Qualifications may be signed for by Purchase College Mail Operations personnel prior to the due date and time, this does not guarantee that the Purchasing & Accounts Payable Office will receive the Qualifications by the Qualifications due time. **No Qualifications will be considered that is not physically received by the Purchasing & Accounts Payable Office by the Qualifications due date and time. Electronically transmitted Qualifications will NOT be accepted.**
6. (1) Qualifications Documents to be submitted at time of Bid:
 1. Attachment 1- Offeror Qualifications Submission Information
 2. Attachment 2- Encouraging Use of New York State Businesses in Contract Performance form
 3. Qualifications Package
 4. Architecture/Engineering Design Sub-consultant/MWBE Staffing List
http://www.suny.edu/sunypp/lookup.cfm?lookup_id=775
 5. MWBE Form 104 – Contractor’s EEO Policy Statement
http://www.suny.edu/sunypp/lookup.cfm?lookup_id=615
- (2) Awardee will be required to submit the following documents, however; prior to award, the College may request some of the following documents. If requested, documents must be provided within 7 (seven) calendar days of College request.
 1. MWBE Form 108 – EEO Staffing Plan
http://www.suny.edu/sunypp/lookup.cfm?lookup_id=621
 2. Vendor Responsibility Questionnaire
<http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3290s.pdf>
 3. Proof of Insurance:
 - a) Workers Compensation, form C-105.2
 - b) Disability Benefits, form DB-120.1
 - c) Liability (Comprehensive General Liability and Property Damage; and Automobile Liability and Property Damage)
 4. Form A, New York State Consultant Services, Contractor’s Planned Employment
<http://www.osc.state.ny.us/agencies/forms/ac3271s.doc>
 5. Form B, Affirmation with respect to State Finance Law §§139-j and 139-k
http://www.suny.edu/sunypp/documents.cfm?doc_id282
 6. Form C, Disclosure and Certification with respect to State Finance Law §§139-j and 139-k
http://www.suny.edu/sunypp/documents.cfm?doc_id283

C. Open Question Period

The College will allow for a question/answer period as indicated in the Calendar of Events– Procurement Timetable on page 1. All questions must be submitted in writing, citing the particular RFQ page, section and paragraph numbers where applicable. All questions must be E-MAILED, with the e-mail reference "**RFQ SU-050615 Green Infrastructure Project -**

Questions”, to arrive no later than the Close of Business on May 20, 2015, and directed to Tom Kelly at email tom.kelly@purchase.edu. Questions received after the closing date for inquiries will not be answered. Only written answers are official. All questions and answers will be issued as addendum to this RFQ, and will be posted to <http://www.purchase.edu/purchasemeansbusiness> by the date indicated on page 1.

D. Pre-Bid/Proposal Meeting

There will be a non-mandatory Pre-Bid/Proposal Conference at 10:00 AM on May 15, 2015 in the Facilities Building, Conference Room at Purchase College (*noted as building #26 on the campus map*), 735 Anderson Hill Road, Purchase, New York 10577.

For directions to Purchase College, see <http://www.purchase.edu/AboutPurchase/VisitorsGuide/Directions/>.

For a campus map, see <http://www.purchase.edu/AboutPurchase/VisitorsGuide/CampusMap.aspx>

E. Offeror De-Briefing Meeting

Upon notification of the selection and award of the contract, unsuccessful offerors are entitled to, and shall receive, upon request, a de-briefing of the results of their response to this Request for Qualifications. Requests for debriefing by an unsuccessful bidder should be made within thirty (30) days after the award of the contract.

F. Contract Award Protest Procedure

Upon notification of the selection and award of the contract, the Offeror whose Qualifications was not selected as the successful Qualifications is entitled to submit a Bid Protest in accordance with SUNY’s Contract Award Procedure (Document #7561). The SUNY’s Protest Procedure is available at http://www.suny.edu/sunypp/documents.cfm?doc_id=699. Please note that the Protest Officer is Nikolaus D. Lentner; contact information is located on page 1 of this RFQ.

G. Standard Contract Clauses

Any contract resulting from this RFQ shall include Exhibit A (Standard Contract Clauses, State University of New York State) and Exhibit A-1 (Affirmative Action Clauses, State University of New York), the provisions of which shall take precedence over any provision in the RFQ. These clauses relate to, among other things, assignment of the contract, availability of funds, non-discrimination, affirmative action, non-collusion, worker’s compensation.

H. Affirmative Action Policy

New York State Executive Order No. 6, regarding equal employment opportunities states:

It is the policy of the State of New York that equal opportunity be assured in the State's personnel system and affirmative action provided in its administration in accordance with the requirement of the State's Human Rights Law and the mandate of Title VII of the Federal Civil Rights Act, as amended. Accordingly, it is the responsibility of the State's Department of Civil Service to enforce the State's policy of ensuring full and equal opportunity for minorities, women, disabled persons and Vietnam era veterans at all occupational levels of state government.

In keeping with this policy, Purchase College mandates compliance internally and for all organizations with which it conducts business. The determination of contract award will include a review of evidence supplied by each Offeror regarding compliance with the State's Affirmative Action policy. Accordingly, an Offeror's Qualifications must include its organization's affirmative action policy, and agree that all presentations and materials will be free from racial, religious, or sexual bias.

I. Minority and Women-owned Business Enterprises

It is the policy of Purchase College and the State University of New York to take affirmative action to ensure that minority and women-owned business enterprises are given the opportunity to demonstrate their ability to provide goods and services at competitive prices.

GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION: For all State Contracts in excess of \$25,000.00 whereby each SUNY campus is committed to expend or does expend funds in return of labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby Purchase College is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Offeror shall exert good faith efforts to achieve a required participation goal of **fifteen percent (15%)** for certified Minority-Owned Business Enterprises and **fifteen percent (15%)** for certified Women-Owned Business Enterprises.

The MWBE directory can be accessed at <http://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

J. Gramm-Leach-Bliley Act

In performing this contract offeror will receive, maintain process or otherwise will have access to confidential information on students and/or customers of Purchase College. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal

Trade Commission's Safeguards Rule (16 CFR Part 314.2), you must implement and maintain a written Information Security Program in order to protect such customer information. Customer information is defined in relevant part under the Safeguards Rule as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in paper, electronic or other form" (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

The safeguards that contractor implements under the Program must comply with the elements set forth in 16 CFR §314.4 and must achieve the objectives enunciated in 16 CFR §314.3, namely to: 1) insure the security and confidentiality of student and/or campus customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer.

K. Proposal Confidentiality

All Qualifications submitted for Purchase College's consideration will be held in confidence. However, the resulting contract is subject to the New York State Freedom of Information Law (FOIL). Therefore, if an Offerer believes that any information in its Qualifications constitutes a trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed if requested, pursuant to FOIL, (Article 6 of the Public Officers' Law), the Offerer shall submit with its Qualifications a separate letter addressed to: Nikolaus D. Lentner, *Records Access Officer, Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, NY 10577-1402*, specifically identifying the page number(s), line(s) or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret and formally requesting that such information be kept confidential. Failure by an Offerer to submit such a letter with its Proposal identifying trade secrets will constitute a waiver by the Offerer of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets.

The proprietary nature of the information designated confidential by the Offerer may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire Qualifications be kept confidential is not advisable since a Qualifications cannot reasonably consist of all data subject to FOIL proprietary status.

L. Sustainable Procurement

It is expected that all offerors will support the purchase of products that will minimize any negative environmental impacts of the contract. In order to facilitate a healthy market in sustainable products, all parties involved in the procurement and utilization of materials must engage in both waste recycling and the initial purchase of products containing recycled content. It is in the interest of public health, safety and welfare and the conservation of energy and natural resources to use and promote environmentally responsible products, including packaging and transportation products and methods.

The successful vendor shall comply, when applicable, with the policy of the State of New York and the State University of the State of New York that all purchases shall incorporate sustainable procurement policies and practices.

In accordance with the provisions of Section 165(3) of the State Finance Law:

The State University of New York is required to purchase recycled products, if available, made with recycled content in accordance with rules and regulations established by the State Department of Environmental Conservation in development of that agency's Recycling Emblems Program. If the cost of a recycled product does not exceed the cost of a product made without recycled content by 10% (or by 15% if over 50% of the recycled materials are generated from the New York State waste stream), the recycled product must be purchased.

M. 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 and a directory of minority and women-owned business enterprises is available from: NYS Empire State Development, New York State Department of Economic Development, One Commerce Plaza, Albany, New York 12210, phone 1-800-782-8369, email esd@empire.state.ny.us, website <http://www.empire.state.ny.us/>.

N. Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in SUNY contracts and strongly contribute to the economies of New York and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers/contractors for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers/contractors need to be aware that to the maximum extent practical and consistent with legal requirements, they are strongly encouraged to use responsible and responsive New York State businesses in purchasing commodities that

are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers/ contractors are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in SUNY contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under this contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. SUNY therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to New York State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question "Will New York State Businesses be used in the performance of this contract?" on the offerors information sheet included in this RFQ.

O. Restrictions on the Activities of Current and Former State Officers and Employees

Offerors and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth in Paragraphs 73 and 74 of the Public Officers Law, and the underlying principle of the law is to prevent conflicts of interest, and encourage ethical behavior. The law may be found on the following web site:

<http://www.jcope.ny.gov/law/ethics.html>.

While the two most relevant paragraphs of law are contained below, any questions relating to interpretation of the Public Officers Law should be directed to the Ethics Commission at (518) 432-8207 or (800) 873-8442 {(800) 87-ETHIC}.

Public Officers Law Paragraph 73(8)(a)(i) and (ii):

73. 8. (a) (i) No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency.

73. 8. (a) (ii) No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration. Former State employees may be retained by a Offeror under contract with a state agency, after he or she leaves State service, provided that they are not placed back at their former agency during their two year postemployment period or engaged in any other activities that would violate the lifetime bar provision of Public Officers Law Paragraph 73(8)(a)(ii). An individual who, following a hearing, is found to have knowingly and intentionally violated the provisions of Public Officers Law Paragraph 73(8)(a)(i) may be subject to a civil penalty in an amount not to exceed ten thousand dollars (\$10,000.00) for each violation.

P. Determination of Vendor Responsibility

New York State procurement law requires that State agencies award contracts only to responsible offerors. Additionally, the Comptroller must be satisfied that a proposed offeror is responsible before approving a contract award under Section 112 of the State Finance Law. Section 163 of the State Finance Law (SFL) requires that contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible offerer." Section 163 (9) f of the SFL requires that prior to making a contract award; each contracting agency shall make a determination of responsibility of the proposed offeror.

- a) In accordance with these procurement laws, Purchase College will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business. In doing so, Offerors are required to file the Vendor Responsibility Questionnaire online via the New York State VenRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the VendRep System Instructions available at <http://www.osc.state.ny.us/vendrep/index.htm> or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Offerors opting to file a paper questionnaire may obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm or may contact Purchase College for a copy of the paper form.
- b) The Offeror shall at all times during the Contract term remain responsible. The Offeror agrees, if requested by Purchase College, 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.

- c) Purchase College, at its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls into question the responsibility of the Offeror. In the event of such suspension, the Offeror will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Offeror must comply with the terms of the suspension order. Contract activity may resume at such time as Purchase College issues a written notice authorizing a resumption of performance of the Contract.
- d) Upon written notice to the Offeror, and a reasonable opportunity to be heard with appropriate officials or staff, the Offeror may be terminated by Purchase College at the Offeror's expense where the Offeror is determined by Purchase College to be non-responsible. In such event, Purchase College may complete the contractual requirements in any manner it deems advisable and pursue available or equitable remedies for breach.

Q. State Finance Law §§ 139-j and 139-k

- 1. a. Prior to approval by Purchase College, or, if applicable, the Office of the State Comptroller (OSC), of the contract for which this solicitation has been issued, an Offeror shall not communicate with Purchase College other than with the persons identified in this solicitation as Designated Contacts, or with a person who the Designated Contacts has advised the Offeror is also a Designated Contact.
- b. **The Designated Contacts for this RFQ are identified on page 1 of this RFQ.**
- i. Policy and Procedure of the State University of New York
State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2011, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential offeror or a person acting on behalf of the offeror, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a offeror involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential offeror nor a person acting on behalf of the offeror should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a offeror or a person acting on behalf of the offeror has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at: http://www.suny.edu/sunypp/documents.cfm?doc_id=430.

- 2. Each Offerer shall submit with its Qualifications a written affirmation of its understanding of the State University's procurement lobbying procedures and agreement to comply with such procedures. Please see form SFL-139jk-Form B: http://www.suny.edu/sunypp/documents.cfm?doc_id=282
- 3. Each Offerer shall submit with its Qualifications written disclosure as to whether the Offerer has been determined to be non-responsible within the previous four years by reason of having violated NY State Finance Law § 139-j or having intentionally provided false or incomplete information to a Governmental Entity with respect to its compliance with NY State Finance Law § 139-j; and certification that the Offerer has provided accurate and complete information with respect to the Offerer's compliance with NY State Finance Law §§ 139-j and 139-k within the previous four years. Please see form SFL-139jk-Form C: http://www.suny.edu/sunypp/documents.cfm?doc_id=283

R. Consultant Disclosure Legislation

Chapter 10 of the Laws of 2006 amends State Finance Law §§ 8 and 163 by requiring that offerors annually report certain employment information to the contracting agency, the department of Civil Service (DCS) and Office of the State Comptroller (OSC). As a result of these changes in law, State offerors will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked

and the amount paid to the offeror by the State as compensation for work performed by these employees This will include information on any persons working under any subcontracts with the State offeror. Offeror will follow all rules and regulations of Consultant Disclosure Legislation requirements. Please see web site <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/> (section XI.18.C). A properly completed Form A, *New York State Consultant Services, Contractor's Planned Employment, From Contract Start Date Through the End of the Contract Term*, AC 3271-S, must be submitted by successful offeror:
www.osc.state.ny.us/agencies/forms/ac3271s.doc

Form B, Contractor's Annual Employment Report, will be required annually for each period ending March 31.

S. Diesel Emissions Reduction Act of 2006 (the "Act")

The Offeror certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used by the Offeror, its Agents or Subcontractors under this Contract, will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of Best Available Retrofit Technology ("BART") and Ultra Low Sulfur Fuel ("ULSD"), unless specifically waived by DEC. Qualification for a waiver under this law will be the responsibility of the Offeror. Annually, but no later than March 1st, the Offeror shall complete and submit directly to the State University of New York ("SUNY"), via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and Contractors Annual Report forms at the Department of Environmental Conservation ("DEC") website: <http://www.dec.ny.gov/chemical/4754.html> for heavy duty vehicles used in the performance of this Contract for the preceding calendar year. The Offeror shall certify to SUNY, and submit with each application for payment, the Offeror and Subcontractor Certifications form, which states that the Offeror will comply with the provisions of Section 20.23."

T. Payment Terms

Payments under the resulting contract award shall be made to the Offeror, upon receipt of goods/services and properly approved and completed invoice/s submitted to the attention of Purchase College. The Offeror shall provide complete and accurate billing invoices in order to receive payment for its services. Billing invoices to be submitted must contain all information and supporting documentation required by Purchase College and the Office of the State Comptroller (OSC). Payment for invoices submitted by the Offeror shall only be rendered electronically unless payment by paper check is expressly authorized by the Chief Financial Officer or designee, in her/his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. The Offeror shall comply with the OSC procedures to authorize payments. Authorization forms are available at the OSC website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-474-4032. The Offeror acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the OSC's electronic payment procedures, except where the Vice President or designee has expressly authorized payment by paper check as set forth above.

Payment shall be made net 30 days from receipt of an acceptable invoice. Interest for any unpaid balance will accrue pursuant to Section 179g of the New York State Finance Law that is 30 days past receipt of a SUNY acceptable invoice.

U. Information Security Breach and Notification Act

Offeror shall comply with the provision of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa and State Technology Law, Section 208). Offeror shall be liable for the costs associated with such breach if caused by its negligent or willful acts or omissions, or the negligent or willful acts or omissions of its agents, officers, employees or subcontractors.

V. Additional Terms and/or Conditions:

1. The following items will be incorporated into, and made part of, the formal agreement: (1) Purchase College's RFQ; (2) the Successful Offeror's Proposal; (3) Exhibit A, Standard Contract Clauses; (4) Exhibit A-1, Affirmative Action Clauses; and (5) Contractor Disclosure Forms.
2. In the event of any inconsistency in or conflict among the document elements of the agreement described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Exhibits A and A-1; (2) Exhibit B, (3) the Agreement; (4) this RFQ; (5) the Successful Offeror's Proposal; and (6) Offeror's Disclosure Forms.
3. Consultant's Terms: Any terms that are attached or referenced with a submission shall not be considered part of the bid or proposal, but shall be deemed included for informational purposes only. The Consultant's standard terms and conditions will not be considered relevant to their proposal or the contract, and should not be included with their Qualifications. No extraneous terms will be incorporated into an agreement unless approved in writing by the Office of General Counsel. Acceptance and/or processing of a proposal shall not constitute acceptance of the extraneous terms.

4. The resulting agreement shall be binding upon its execution by both parties and, if required by New York State law, upon the approval of the Attorney General and the Office of the State Comptroller.
5. The agreement may be revised at any time upon mutual consent of the parties in writing. Such written consent will not be effective until signed by both parties and, if required by New York State law, approved by the Attorney General and the Office of the State Comptroller.
6. The relationship of the Successful Offerer to Purchase College shall be that of independent prime consultant.
7. Compliance with the post-employment restrictions of the Ethics in Government Act is required.
8. Proposed prices should reflect all discounts including educational discounts. Pricing reductions are encouraged and acceptable at any time during the contract period.
9. The submission of a Proposal constitutes a binding offer to perform and provide said services. Such binding offer shall be firm and not revocable for a period of 180 days after the deadline for Proposal submission and will continue thereafter until the Successful Offerer notifies Purchase College otherwise, in writing. Such deadline may be further extended by mutual agreement.
10. In the event Successful Offerer uses partners, subcontracts or subcontractors, the Successful Offerer will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this RFQ. For the resulting agreement, the Successful Offerer will be the prime contractor.
11. Purchase College will not be liable for any costs associated with the preparation, transmittal, or presentation of any Proposals or materials submitted in response to this RFQ or the costs of any services performed prior to receiving approval of the agreement from New York State. All proposals and materials submitted in conjunction with proposals shall become the property of Purchase College for use as deemed appropriate, respecting all copyrights.
12. Purchase College will be the interpreter of all contract documents and make the final determination of the intent and meaning of all contract documents including the vendor's bid proposal. Purchase College shall be the determinant and make the final determination.
13. This RFQ and the resulting contract shall be governed by the Laws of the State of New York.
14. Public announcements or news releases regarding this RFQ or any subsequent award of a contract must not be made by any Offerer without the prior written approval of Purchase College.
15. The Successful Offerer(s) is responsible for compliance with all applicable rules and regulations pertaining to cities, towns, counties and State where the services are provided, and all other laws applicable to the performance of the resulting contract. The Successful Offerer shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.
16. Indemnification - The Successful Offerer shall hold harmless and indemnify Purchase College, the State University of New York and the State of New York, their officers and employees from and against any injury, damage, loss or liability to persons or property resulting from or arising out of (a) the agreement, and (b) the acts, omissions, liabilities, or obligations of the Successful Offerer, any affiliate, or any person or entity engaged by the Successful Offerer as an expert, consultant, independent contractor, subcontractor, employee or agent.
17. Liability - The Successful Offerer will be responsible for the work, direction and compensation of its employees, consultants, agents and contractors. Nothing in the resulting agreement or the performance thereof by the Successful Offerer will impose any liability or duty whatsoever on Purchase College and/or the State University of New York including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.
18. Liability Insurance –Prior to the commencement of work, the Successful Offerer will provide, at its sole cost and expense, Certificates of Insurance which shall remain in force throughout the term of the agreement, or any extension thereof, from an insurance company authorized to do business in the State of New York with a combined liability insurance policy with limits no less than **Three Million Dollars (\$3,000,000)** per individual for bodily injury and no less than **Five Million Dollars (\$5,000,000)** for property damage. Such policies shall name PURCHASE COLLEGE and the STATE UNIVERSITY OF NEW YORK as an additional insured (in the case of fire insurance, as its insurable interest may appear). Such policy shall designate Purchase College, as the loss payee and shall contain a provision that Purchase College shall receive at least thirty (30) days' notice prior to material change, cancellation or expiration of any such policy. The certificates of such insurance should be delivered to: *Director of Purchasing & Accounts Payable*,

Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, NY 10577-1402. Offeror will be responsible to submit updated certificates throughout the duration of the contract term. When possible please send certificates electronically or via fax. Each Certificate must include the specific Contract number and the name of the Contract Officer. Offeror is required to obtain any permits, insurance, bonds, etc., normally required for his/her business and employees.

Each insurance carrier must be rated at least "A-"Class "VII" in the most recently published Best's Insurance Report. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to The State University of New York and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. The Offeror shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

In addition to any liability or obligations of the Consultant to the University that may exist under any other provisions of this Agreement or by statute or otherwise, the Consultant shall be liable to and hold harmless and indemnify the University from and against any damages, lawsuits, claims and liabilities, excluding the University's attorney fees and court costs, which the University may sustain, be subject to or be caused to incur by virtue of as a result of any claim, demand, lawsuit, proceeding, action or cause of action in connection with the Project for:

1. Any infringement of any claimed copyright or patent right of designs, plans, drawings or specifications resulting from the use or adoption of any designs, plans, drawings or specifications furnished by the Consultant; or
2. Any negligence of the Consultant, its agents, employees, officers, sub-consultants or subcontractors for which the Consultant is legally liable.

The Consultant represents that its sub-consultants, subcontractors, agents, employees and officers shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform in connection with the Project.

The Consultant shall procure and maintain at its own cost and expense, until final acceptance by the University of all of the construction work of the Project and the expiration of the one (1) year general guarantee, errors and omissions insurance, including contractual liability, from an insurance company that cites the University as a named insured. Such policy shall be approved by the University and authorized to do business in the State of New York, covering the Consultant for all services performed hereunder with a limit for each occurrence equal to one-half of the University's budget for the Project or one million dollars (\$1,000,000), whichever shall be the lesser amount. The Consultant shall furnish to the University, with its Pre-Bid Report, a certificate of insurance which shall contain a provision that the insurance will not be canceled unless the insurer shall provide the University with fifteen (15) days' written notice of cancellation. Neither the procurement nor the maintenance of such insurance shall in any way affect or limit the obligations, responsibilities or liabilities of the Consultant hereunder.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Consultant or the University beyond such as may legally exist irrespective of this Article or this Agreement.

19. Workers Compensation Insurance & Disability Benefits Coverage - All employees in the hire of the Successful Offeror shall be adequately and properly covered by Workers' Compensation Insurance and Disability Benefits coverage in all work concerned in and about the Purchase College premises. Such policies shall name PURCHASE COLLEGE and the STATE UNIVERSITY OF NEW YORK as an additional insured and are to be written by recognized and well-rated insurance companies authorized to transact business in the State of New York. Prior to commencement of work, proof of coverage of Workers Compensation Insurance and of Disability Benefits Coverage will be required to be submitted. For further information, see: <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>.
20. Any firm or individual that participated in the development or preparation of this RFP is not eligible for award of the resulting contract.
21. The Successful Offeror will be responsible for the work, direction and compensation of its employees, consultants, agents and contractors. Nothing in the resulting agreement or the performance thereof by the Successful Offeror will impose any liability or duty whatsoever on Purchase College including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.
22. In the event the Successful Offeror is required to be reimbursed for travel, Offeror shall be reimbursed at rates not to exceed the current NYS Schedule of Allowable Reimbursable Travel Expenses. Refer to the U.S. Government Administration Rates for Travel at: <http://www.gsa.gov>

W. Purchase College has the right to:

1. Reject any and all Qualifications received in response to this RFQ in part or entirely.

2. To terminate any resulting contract for: (1) unavailability of funds; (2) cause; (3) convenience; (4) in the event it is found that the certification filed by the Offeror in accordance with New York State Finance Law § 139-j and 139-k was intentionally false or intentionally incomplete, and if applicable, the Department of Taxation and Finance Contractor Certification Form ST-220CA was false or incomplete. Upon such finding, Purchase College may exercise its termination right by providing written notification to the Offeror in accordance with the written notification terms of the contract.
3. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
4. Request references and to contact any or all references.
5. Waive requirements or amend this RFQ upon notification to all Offerers. Mandatory requirements may be eliminated if unmet by all Offerers.
6. Adjust or correct cost or cost figures with the concurrence of the Offerer if mathematical or typographical errors exist.
7. Negotiate with Offerers responding to this RFQ within the requirements necessary to serve the best interests of the Purchase College.
8. Purchase College reserves the right to change any dates specified for the review and selection process.
9. Begin contract negotiations with another Offerer in order to serve the best interests of Purchase College, should Purchase College be unsuccessful in negotiating a contract with the Successful Offerer within an acceptable time frame.
10. Reject any or all portions of any offer, to negotiate terms and conditions consistent with the solicitation, and to make an award for any or all remaining portions.
11. Request clarifications from Offerers for purposes of assuring a full understanding of responsiveness, and further to permit revisions from all Offerers determined to be susceptible to being selected for contract award, prior to award.
12. Advise Successful Offerer of an objectionable employee(s) and/or subcontractor(s) and request their removal from the project. Such removal shall not be reasonably withheld by the Offeror.
13. Termination without cause: Either party may terminate the resulting contract by giving ninety (90) days written notice to the other party.
14. Waive minor irregularities.
15. Purchase College will not be liable for any costs incurred by respondents in the preparation and production of a Qualification or the costs of any services performed prior to receiving approval of the agreement from New York State. All Qualifications, and materials submitted in conjunction with the Qualifications, shall become the property of Purchase College for use as deemed appropriate, respecting all copyrights.
16. Purchase College reserves the right to modify or amend the requirements of this RFQ after its release. All offerors will receive written notification of any modifications to the requirements of this RFQ. If any modifications make compliance with the original Procurement Timetable impractical, the College will adjust the timetable accordingly. Any RFP modifications will be posted to: <http://www.purchase.edu/purchasemeansbusiness> (and click Current Procurement Opportunities).
17. Offerors who submit Qualifications in response to the RFQ may be required to give an oral presentation to representatives of Purchase College and/or allow a site visit to the main or branch office. The site visit may include a demonstration of on-line inquiry access services. This shall provide an opportunity for the Offeror to clarify or elaborate on the Qualifications, but shall in no way change the original Qualifications. Purchase College shall schedule the time and location.
18. The successful offeror will be notified by the College by telephone and confirmed by letter.
19. By submitting Qualifications, the offeror agrees that she/he will not make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.

20. Offerors may be requested to provide evidence that the award of an Agreement will not result in a conflict of interest with regard either to other work performed by the offeror or to potential conflict of interest among offeror staff.
21. Omissions, inaccuracy or misstatements may be sufficient cause for rejection of the Qualifications.
22. Purchase College reserves the right to reject separable portions of any offer, to negotiate terms and conditions consistent with the solicitation, and to make an award for any or all remaining portions.
23. All Offerors and offeror employees must be aware of and comply with the requirement of the New York State Public Officers Law, and all other appropriate provisions of New York State Law and resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the Qualifications response, each offeror guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc. involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the RFQ process and in other civil or criminal proceedings as required by law.
24. Subcontractors
 - Except for vendors designated by the College, the offeror must indicate in their Qualifications response a statement giving the name and address of all proposed subcontractors. Said statement must contain a description of the portion of the work which the proposed subcontractors are to perform/provide and any information tending to prove that the proposed subcontractors have the necessary skill, experience and financial resources to provide the service in accordance with the Request for Qualifications (RFQ).
 - The offeror shall have sole responsibility to the College for the acts or defaults of said subcontractors of such subcontractor's officers, agents and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the offeror to the extent of its subcontract.
 - The offeror shall execute with each of its subcontracts and shall require all subcontracts to execute a written agreement which shall bind the latter to the terms and provisions of this Request for Qualifications insofar as such terms and provisions are applicable to the work to be performed by such subcontractors.

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PART II: DETAILED SPECIFICATIONS

SCOPE OF SERVICES

QUALIFICATIONS:

- A. Purchase College is looking to solicit architectural and engineering design services for the development of bioswales and porous pavement green infrastructure on campus.
- B. This project is the subject of a Green Infrastructure Grant Program award from the New York State Environmental Facilities Corporation. Purchase College seeks an innovative environmentally conscious design consultant licensed in the state of New York with expertise in the fields of landscape design and hydrology.
- C. The required services shall be as outlined in this Request for Qualifications (RFQ). To be considered for this project prospective consultants shall submit the following:
 1. Provide firm introduction and mission statement. Demonstrate firm's qualifications for work outlined in this RFQ. List experience with publicly bid work, applicable codes, construction administration, and coordination required for this type of project. Show understanding of the local construction market. Emphasize what distinguishes your firm from others responding to this RFQ.
 2. State the experience and qualifications of the firm's key personnel in the planning, organizing and execution of projects similar in scope. Outline potential sub-consultants of the prime in the context of the project scope, formal reporting lines of team proposed organization chart. Demonstrate overall design ability of potential key personnel and those of sub-consultants.
 3. Specific expertise and successful completion of projects similar in size and scope as described in the (RFQ). Indicate previous experience on campus contexts, standards and systems.
 4. Provide your firm's proposed approach to this specific project and scope. Demonstrate ability to adhere to the schedule (or submit your proposed schedule and reasons). List current staff workloads and responsibilities, and their abilities to provide complete deliverables for each phase of the project. Outline intent on management of potential sub-consultants, and past experiences in keeping cost estimates within Project Budget.
 5. Demonstrate ability of a good faith effort to provide opportunities to M/WBE firms. Provide documents as required in the RFQ, to show your firms and any sub-consultants to be uses to achieve these goals. List names, addresses, monetary amounts, and scope of work to be performed by M/WBEs. Note sub-consultant's experience entering into partnerships, joint ventures, or other successes.
 6. Provide references to confirm experience and qualifications.

B. Method of Award / Proposal Evaluation Criteria:

The submitted proposals will be reviewed by an internal committee at the College. The criteria below will be the basis of review with the 3 firms earning the highest composite score being short-listed for final consideration. These firms will then be invited to the college for formal interviews from which the College will select one of these firms as the awardee (or tentative awardee) firm for this project. The College will, then, begin negotiating fees.

(Do **not** submit a fee proposal as part of this submission).

- | | |
|-------------------|---|
| - up to 20 points | Experience with Similar Projects |
| - up to 15 points | Staffing Experience |
| - up to 15 points | Project Organization / Design Team |
| - up to 10 points | Scheduling / Workload of Design Team |
| - up to 5 points | Past Experience with Purchase College and/or SUNY or other colleges |
| - up to 10 points | Completeness/Responsiveness of proposal; Understanding of Project Scope |
| - up to 15 points | Team Organization of Resources |
| - up to 10 points | MBE-WBE status and staffing |

ESTIMATED PROJECT SCHEDULE:

Release of RFQ to Vendors	May 06, 2015
Open Question Period	May 11 – May 20, 2015
Pre-Bid Meeting	May 15, 2015
Addendum Release	May 25, 2015
Proposal Due Date	June 10, 2015
Anticipated Vendor Award Notification	June 26, 2015
Start Design	June 27, 2015
Preliminary Analysis & Design Package Due	July 23, 2015
College Review & Comments Due	August 07, 2015

Finalized Design & Pre-Construction Bid Package Due
College Review & Comments Due
Final Bid Package Due
Release Bid Package
Construction Bids Due
Anticipated Construction Contract Award
Begin Construction
End Construction

September 16, 2015
September 30, 2015
October 21, 2015
November 02, 2015
December 01, 2015
February 20, 2016
April 01, 2016
October 03, 2016

PROJECT DESCRIPTION:

- A. The scope of work for this project will include a survey and analysis of the W1 and W2 parking lots, and proposing modification/renovations to implement bioswales and porous pavement to mitigate stormwater runoff. Funds were made available through a grant from the NYS Environmental Facilities Corporation. The total drainage area for the parking lot is 165,527 square feet where 13,664 square feet will be utilized for the bioswale area. The College preliminarily envisions 5,400 square feet of space will be required for porous pavement installation to mitigate stormwater runoff.
- B. The awarded firm will need to provide schematic and design development, construction documentation, and construction administration services. This should include, but not be limited to:
 - Investigation and analysis of existing conditions at W1 and W2 parking lots and the most suitable porous pavement campus location. College will provide previously done surveys, reports, and studies.
 - Based on review and analysis, make recommendations for installation of the proposed green infrastructure measures, and establish a priority list of needs based on available funding as well as items to be addressed at a later date. This may include construction budgets for the work recommended.
 - Develop construction bidding documents that the College will use to solicit pricing from contractors.
 - Assist the College in the review of submitted contractor bids and make recommendations for award to the College.
 - Construction administration services during construction implementation.
 - Review of contractor generated close-out documents.

CONSULTANT'S BASIC SERVICES

- A. Provide all Design services in connection with the required green infrastructure projects listed above, including but not necessarily limited to the following:
 - a. Field verification of existing conditions (College will provide all available documentation).
 - b. Design modifications/renovations options for College to review and approve.
 - c. Generate construction bid documents.
 - d. Generate construction budgets.
- A. Design services shall be comprehensive, include all phases (Schematic Design thru Construction Administration).
- B. The Construction Documentation is to indicating removal of any hazardous materials. College will provide all available information to Consultant.
- C. The Construction Documents developed must address all applicable codes, existing structural and site related conditions as required for construction of the green infrastructure projects as described.
- D. Consultant shall determine staffing and any sub-consultants necessary for the timely performance of the services required to meet the College's program requirements. Contracts for sub-consultants shall be the responsibility of the Consultant.
- E. Consultant shall periodically advise the College of the progress of the planning, design, and construction of the Project. Any anticipated delays shall be immediately brought to the College's attention.

- F. Consultant shall have attendance, together with its sub-consultants, at all conferences reasonably required by the College and shall be responsible for taking, preparing and distributing minutes of all such conferences.
- G. Consultant shall be responsible for all coordination as it relates to its design services between its consultants and College's consultants and/or College's designated personnel.

DOCUMENT / DRAWING REQUIREMENTS

Schematic / Design Development

- A. College shall provide the following to Consultant:
 - a. Available drawings of all spaces in both ACAD and PDF formats when available.
 - b. Any existing drawings that the College has for architectural and MEP's for all the buildings if applicable.
 - c. Feasibility Study performed in June 2014.
 - d. Scope and/or documents illustrating work the college will be implementing Summer 2015.
 - e. Campus standards for front-end/project manual.
- B. Consultant shall prepare plans that are code compliance and complete.
- C. Consultant shall submit required plans and drawings that outline and explain the proposed work. If the proposed modifications/renovations impact existing mechanical, electrical, telecommunications and/or fire alarm systems, the Consultant will document this and will also include these changes in the construction documents.
- D. Consultant shall prepare an analysis of the probable cost of the complete Project, based upon square footage, volume and/or systems involved.

Construction Documents

- A. Provide separate plans, sections, elevations, details and all graphic illustrations necessary to accurately bid and complete the construction of the Project. This shall also include any alternates and/or deductive alternates.
- B. Drawings shall be in conformance with all applicable building code requirements that govern the work of this project.
- C. Include an updated detailed estimate with each submission of the design phase.
- D. The Consultant shall prepare for approval, a complete set of final contract documents and specifications in the College format setting forth in detail and describing the work to be performed by the contractor. This should indicate the finish and the quality of materials and workmanship to be required of the contractor. This shall include but not be limited to: any required drawings and sketches, a comprehensive Project Manual which shall include SUNY Standard Documents, the NYS procurement requirements, General Requirements for Construction and the Technical Specifications.
- E. All contract documents shall contain a New York State licensed design professional's seal and signature. The title page of the Project Manual shall be signed and sealed.
- F. Provide (2) sets of drawings and specifications for each design phase submission.

BID PHASE REQUIREMENTS:

- A. The bid period phase includes, but is not limited to, the reproduction and distribution of bid documents, pre-bid and walk-thru meeting attendance, responses to bidder inquiries, preparation of addenda, review and recommendation of bids, and submission of record documents.
- B. The consultant shall submit (3) copies of the final construction documents including addenda to the College Representative. After the Bidding Period, submit (2) electronic CD copies of the Drawings and Specifications.

CONSTRUCTION ADMINISTRATION PHASE REQUIREMENTS:

- A. The Construction Administration period phase includes, but is not limited to, review of construction schedule, review of submitted RFI's, shop drawings and samples, attendance at bi-monthly site meetings, preparation of sketches and bulletins, and project closeout.

- B. Consultant shall provide field administration as required for this construction project and inspection of the work designed, in an effort to guard the University against inferior materials or workmanship. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that the Project is constructed in accordance with the drawings and specifications. Through the use of such care, diligence and efforts and any action taken by the Consultant in accordance with this Agreement or under each construction contract, the Consultant does not, however, guarantee that a contractor will not breach its construction contract, but the Consultant shall use all reasonable care and diligence and exercise its best efforts to discover any breach and, after it becomes aware of any breach, it shall immediately notify the University thereof. In the event of such breach, the Consultant shall submit to the University its recommendations for appropriate remedial action.
- C. Consultant shall be responsible for coordination of reviews and site issues with their sub-consultants.
- D. Consultant will review contractor's time progress schedule. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that the completion date for the construction of the Project, as set forth in the contract, is met, and, to this end, it shall periodically review the construction progress and performance and advise the College of the same. Each construction contract for the Project shall provide that time is of the essence for the completion and construction of the Project and the Consultant agrees to assist the University in an effort to achieve the specified completion date by advising the College of actions that could be taken to prevent or eliminate delays. The Contractor shall have responsibility for its time, means and methods of construction and for construction site safety.
- E. The Consultant shall review and comment upon shop drawings and samples furnished by each contractor within fifteen (15) working days of receipt or sooner if time sensitive. Contractor shall be responsible to previewing that submittals are in conformance with the specifications, and if item is a re-submittal, that the Consultants comments and notes have been incorporated prior to re-submittal review.
- F. The Consultant shall be responsible for the preparation of technical documents, if any, and procedural forms for the execution of Change Orders. They will also be responsible for review and recommendations of price quotes from the Contractor for proposed Change Orders and the evaluation and recommendation of the Contractor's responses. They will act as the college's agent in authorization, upon formal written approval by the college, of all Change Orders. Except in the case of an emergency which threatens loss or injury to persons or property, neither the consultant nor any of its representatives can authorize any change order to a construction contract or change in the work covered by the construction contract.
- G. Consultant shall review and make recommendations on partial and final payment requisitions submitted by construction work.
- H. Consultant shall conduct field meetings, held at regular intervals, with representatives of the various trades and of the contractors and College representatives engaged in the construction of the Project and the preparation and distribution of the minutes of such meetings.
- I. Consultant shall provide inspection of the Project thirty (30) to forty-five (45) days prior to the time the College is to take over, use, occupy or operate any part or all of the Project and furnish a punch list and/or report to the College of work the contractor still needs to complete, repair, replace, or test. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that contractor work items remain on the punch list / or report until they are satisfactorily completed.
- J. Consultant shall review and approve the Contractor's assemblage of written guarantees, manuals, and as-built drawings required as part of the Contractor's Close-Out documentation, as they are in compliance with Consultant's Project Manual and/or technical requirements.

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The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "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, licensor, 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. **PROHIBITION AGAINST ASSIGNMENT** Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law,

this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, 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 its knowledge and belief 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 it to SUNY a non-collusive bidding certification on Contractor's behalf.

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

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies 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, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities 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. SUNY 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 SUNY 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, SUNY's or the State's right to discovery in any pending or future litigation.

11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York by a payee, for payment for

the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York 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 State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) 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;

(2) at SUNY's request, 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

(3) 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.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY 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, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of 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 Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have 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(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992.

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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 SUNY;

(b) The Contractor has complied with the Federal Equal Employment 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 Search 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 SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

21. RECIPROCITY AND SANCTIONS

PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business,

30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall 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).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

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

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

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

1. DEFINITIONS. The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an 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.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a

Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University):

1(a) Contractor and its 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. For these purposes, affirmative action 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.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment

opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, 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; (ii) 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; (iii) At the request of the University 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, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

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

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

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

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal

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

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements 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.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor

responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-

owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBES, including those firms listed on the Directory of Certified Minority and Women- Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107). Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS

Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
- ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

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

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

7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

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

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University 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.

8. Quarterly MWBE Contractor Compliance Report.

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5th 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.

9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all

State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. Contractor shall exert good faith efforts to achieve a participation goal of fifteen percent (15%) for Certified Minority-Owned Business Enterprises and fifteen percent (15%) for Certified Women-Owned Business Enterprises.

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

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

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 University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

Attachment 2

ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, offeror/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Offeror/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, offeror/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects offeror/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Offeror/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this Contract? Yes_____ No_____

If yes, identify New York State businesses that will be used and attach identifying information: