

**Wastewater Treatment Plant Long Term Capital Plan
Request for Proposals
City of Kingston
RFP #CK-EDSP-2014-002**

REQUEST FOR PROPOSALS



CITY KINGSTON NEW YORK

RFP Release Date: Thursday, May 15, 2014

Proposals Due: Friday, June 6, 2014 at 4:00pm local time.

It is recommended that proposals be submitted in advance, at least one day prior to the specified date and time to allow for a timely receipt. LATE PROPOSALS will NOT be considered.

Send a clearly marked original and five (5) copies of each proposal. Please use the above RFP number on all correspondence.

REQUEST FOR PROPOSAL DEFINITION:

An RFP defines the situation or object for which the goods and or services are required, how they are expected to be used and/or problems that they are expected to be addressed. Vendors are invited to propose solutions that will result in the satisfaction of the City's objectives in a cost-effective manner. The proposed solutions are evaluated against a predetermined set of criteria of which price may not be the primary consideration.

Shayne R. Gallo

John Tuey

Brian J. Woltman

Gregg Swanzey

Mayor

Comptroller

Purchasing Agent

Director, Economic Development & Strategic Partnerships

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The Term

The award term shall be for **seven months** commencing on Monday, **June 23, 2014** and expiring on **January 31, 2015**. A longer award term will not be considered.

RFP Contact Person

The Contact person for this project is Gregg Swanzey. All substantive RFP questions and/or inquiries should use the attached question form and be directed to him. He may be reached at:

Telephone: (845) 334-3962

Email: gswanzey@kingston-ny.gov

Fax: (845) 334-3965

Website: www.kingston-ny.gov/EcoDev

Proposals Due Date

All proposals must be delivered to the office of the City of Kingston Economic Development Office by **Friday, June 6, 2014 at 4:00pm local time** after which they will be publicly opened. No proposals shall be accepted or considered after that time. It is the responsibility of each Proposer to ensure that their proposal arrives on time.

RFP submissions shall be in a sealed envelope addressed to:

Gregg Swanzey, Director
Office of Economic Development & Strategic Partnerships
City of Kingston
420 Broadway
Kingston, NY 12401

On face of said envelope the following information shall be included:

- 1) NAME AND ADDRESS OF PROPOSER
- 2) NAME OF RFP

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Description

Notice is hereby given that the City of Kingston is seeking to retain a firm to provide engineering consulting services to develop an Engineering Planning Report funded through the New York Clean Water State Revolving Fund (CWSRF). The report will include a long range capital plan for the Kingston Wastewater Treatment Plant which is located at 91-129 East Strand Street located in the City of Kingston, Ulster County, New York.

All work shall be designed and conducted in accordance with the NY State Revolving Fund MWBE/EEO requirements for Non-Construction contracts published by the New York State Environmental Facilities Corporation, attached as Exhibit 1, and City of Kingston Procurement Policy contract provisions.

The anticipated start date of the study is Monday, June 23, 2014 with completion by January 31, 2015. The anticipated total project cost is approximately \$30,000.

The City of Kingston will select the most cost competitive bid submitted by a qualified firm.

Background

The Kingston Waste Water Treatment Plant (WWTP) is located on the northern banks of Rondout Creek at its confluence with the Hudson River. The facility is owned by the City of Kingston (population 24,000) and operations are contracted to CAMO Pollution Control, Inc. The plant provides secondary treatment of municipal wastewater prior to discharge in the Hudson River for the entire City of Kingston as the service population. The 6.8 million gallons per day (mgd) facility was constructed in 1930 and was upgraded from primary treatment to secondary treatment in 1972, expanded in 1994, with significant improvement and upgrades occurring in 2009. The elevation of the road surface in front of the plant is 3.54 feet NAVD88 and the 100 year flood elevation is 8 feet NAVD88. A long-range capital plan and funding for implementation is necessary. Consideration for relocating the plant to a higher elevation and more suitable location has been suggested in several studies including a Kingston Waterfront Flooding Task Force Recommendations recently released. In addition, new technologies, green infrastructure practices, and other mitigating strategies should be incorporated, where practical, to reduce risk, improve efficiency and reliability, and eliminate occasional impacts on the Hudson River Estuary.

The facility was impacted by Superstorm Sandy in the form of severe flooding which resulted in the wetting and submergence of several mechanical, electrical, and structural assets within the plant's systems. As a consequence of the flooding, the facility was unable to function and sewage treatment was suspended for a period of eight hours, resulting in the discharge of partially treated sewage to the environment. Without mitigation, in the future, such impacts

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would result in damage to the environment, as well as health and safety concerns for workers and the general public exposed to disease agents in the untreated waste stream. Extensive replacement and rehabilitation of assets have been necessary throughout the facility to restore the plant to its condition prior to Superstorm Sandy, such as cleaning and recoating of structures, replacement of electrical wiring and contacts, and refurbishment of mechanical assets. However, although this work will mitigate against losses to the plant in the event of a similar future flood event, it will not guarantee the plant will remain operational during the event.

Of all government operated facilities in Kingston, NY, the wastewater treatment plant is the largest consumer of energy, primarily electricity. The total energy costs associated with the operation of the wastewater treatment plant (WWTP) and sewers in 2010 were \$335,992. The WWTP total energy costs account for more than 21% of the City government's total energy costs (\$335,992 of \$1,590,415), second only to the operation of street lights and traffic signals. The total energy costs to operate the buildings and facilities at the WWTP were \$303,143, close to half (47%) of the total buildings and facilities energy costs for the City government (\$652,793). In 2010 the wastewater treatment facility (buildings, pumps and CSO stations) was the largest single user of the City of Kingston's government operations electricity consuming 2,525,109 kWh. The cost for the main plant and the annex was \$225,958 and including pumps and CSO stations the total electricity costs for wastewater and sewer was \$268,206. The electricity costs at the plant alone accounted for approximately 17% of the City's total energy costs, and approximately 26% of the government's overall electricity bill of \$1,012,384. The plant's electricity usage accounted for almost 40% of the government operations electricity, the largest percentage of the governments total electricity usage. Strategies that lead to greater efficiencies at the WWTP thereby reducing GHG emissions and electrical use are needed.

This planning project will look at alternatives that will mitigate against future and increasing hazards from flooding and sea level rise. It is a critical step for identifying the alternatives and formulating a plan for responding to climate change. Since the WWTP provides critical services for the City of Kingston and represents potential adverse implications for the Hudson River Estuary in the event of failure. Finally, there are likely to be opportunities for community revitalization if further steps are taken to mitigate against the impacts of the plant or if relocation of the plant is deemed to be a viable alternative that should be considered.

An Advisory Committee will be formed including interested stakeholders from the Waterfront Advisory Committee and the Climate Action Task Force of the Kingston Conservation Advisory Council. In addition, key department heads in the City including Economic Development, Community Development, Planning, and Engineering will work with the Waste Water Treatment Plant supervisor and the consultant. It will be important to involve residents, businesses, and property owners on the waterfront and in the Rondout and Ponckhockie neighborhoods.

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Key Deliverable

An Engineering report shall be prepared in accordance with requirements identified in *Recommended Standards for Wastewater Facilities* (2004 edition), commonly known as the 10-State Standards <http://10statesstandards.com/waterstandards.html> or TR-16 Guides for the Design of Wastewater Treatment Works prepared by New England Interstate Water Pollution Control Commission <http://www.neiwpsc.org/tr16guides.asp> . Also see 21 NYCRR 2602.2(a)(22) New York State Clean Water Revolving Fund Regulations.

The engineering report should include the following sections:

Engineering Report Outline

1. Project Planning

- a. Location
- b. Environmental Resources Present
- c. Population Trends
- d. Community Engagement

2. Existing Facilities

- a. Location Map
- b. History
- c. Condition of Existing Facilities
- d. Financial Status of any Existing Facilities
- e. Water/Energy/Waste Audits

3. Need for Project

- a. Health, Sanitation and Security
- b. Aging Infrastructure
- c. Reasonable Growth

4. Alternatives Considered

- a. Description
- b. Design Criteria
- c. Map
- d. Environmental Impacts
- e. Land Requirements
- f. Potential Construction Problems
- g. Sustainability Considerations
 - i. Water and Energy Efficiency
 - ii. Green Infrastructure
 - iii. Other
- h. Cost Estimates

5. Selection of an Alternative

- a. Life Cycle Cost Analysis
- b. Smart Growth Analysis
- c. Non-Monetary Factors

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6. Proposed Project (Recommended Alternative)

- a. Preliminary Project Design
- b. Project Schedule
- c. Permit Requirements
- d. Sustainability Considerations
 - i. Water and Energy Efficiency
 - ii. Green Infrastructure
 - iii. Other
- e. Total Project Cost Estimate (Engineer's Opinion of Probable Cost)
- f. Annual Operating Budget
 - i. Income
 - ii. Annual O&M Costs
 - iii. Debt Repayment
 - iv. Reserves
- g. Debt Service Reserve
- h. Short-lived Asset Reserve

7. Conclusion and Recommendations

The ultimate goal of this engineering planning project is to initiate a planning process with a follow-up implementation plan to mitigate against future risk of flooding hazards and address local water quality problems.

The following minimum alternatives need to be considered for projects with *existing wastewater infrastructure*:

- rebuilding the existing wastewater infrastructure; and
- connecting to a regional wastewater treatment facility.

Proposal Submission

Interested firms should submit their bid along with five (5) copies of their Qualifications, to the address below no later than 4:00 p.m. on Friday, June 6, 2014. Qualifications shall include:

- Contract Organization;
- Identification and Resumes of Key Personnel;
- Statement of Understanding of the work to be done;
- Statement of Experience with similar kinds of work;
- Statement of Familiarity with NY Clean Water State Revolving Fund requirements;
- Statement of Availability of Key Personnel for the timely completion of the work;
- Statement of Organizational and Financial responsibility;
- Statement of Logistical and Familiarity with the Project Area;
- Fully executed Forms as included in Exhibits attached to this RFP.

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- d) Property Damage Liability - \$2,000,000.00 each occurrence
\$2,000,000.00 aggregate
- e) Automobile Liability - \$2,000,000.00 single limit
- f) Professional Liability - \$2,000,000.00 (identified as a claim made or an occurrence
policy)

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Please Return the Following Sheets with your Proposal

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Information Sheet

NAME OF PROPOSER: _____

ADDRESS: _____

TYPE OF ENTITY: Corp. _____ Partnership _____ Individual _____
LLC _____

If a non publicly owned Corporation: NAME OF CORPORATION: _____

List Principal Stockholders (holding over 5% of outstanding shares) _____

LIST OFFICERS: _____

LIST DIRECTORS: _____

DATE OF ORGANIZATION: _____

If a partnership:

PARTNERS: _____

NAME OF PARTNERSHIP: _____

DATE OF ORGANIZATION: _____

* If the business is conducted under an assumed name, a copy of the certificate required to be filed under the New York General Business Law must be attached.

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Reference Sheet

All Proposers shall be required to complete this form providing three (3) references of past performance. References should involve projects and/or service situations of similar size and scope to this RFP. References must have had dealings with the proposer within the last thirty-six (36) months. The City reserves the right to contact any or all of the references supplied for an evaluation of past performance in order to establish the responsibility of the proposer before the actual award of the RFP and/or contract. Completion of the reference form is required.

PROPOSER'S NAME: _____

DATE FILED: _____

Proposer's Address: _____

Reference's Name: _____

Address: _____

Telephone: _____ Contact Person: _____

Reference's Name: _____

Address: _____

Telephone: _____ Contact Person: _____

Reference's Name: _____

Address: _____

Telephone: _____ Contact Person: _____

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Affidavit of Non-Collusion

NAME OF RESPONDER: _____

BUSINESS ADDRESS: _____

I hereby attest that I am the person responsible within my firm for the final decision as to the prices(s) and amount of this proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this proposal have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition with any other contractor, responder or potential responder.
2. Neither the price(s), nor the amount of this proposal, have been disclosed to any other firm or person who is a responder or potential responder on this project, and will not be so disclosed prior to proposal opening.
3. No attempt has been made or will be made to solicit, cause or induce any firm or person to refrain from responding to this RFP, or to submit a proposal higher than the proposal of this firm, or any intentionally high or non-competitive proposal or other form of complementary proposal.
4. The proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from any firm or person to submit a complementary proposal.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any other firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by an firm or person to refrain from responding to this RFP or to submit a complementary proposal on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any project, in consideration for my firm's submitting a complementary proposal, or agreeing to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's proposal on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.
8. By submission of this proposal, I certify that I have read, am familiar with, and will comply with any and all segments of these specifications.

The person signing this proposal, under the penalties of perjury, affirms the truth thereof.

Signature & Company Position

Print Name & Company Position

Company Name

Date Signed

Federal I.D. Number

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Scoring Matrix for Consultant Ratings by City

The Selection Committee, including the City Engineer and Wastewater Treatment Plant Manager, shall make the selection of consultant based upon an evaluation of proposals. Proposals will be evaluated on the following criteria:

Criteria	Score (1 thru 5)	Relative Weight	Sub-Total
Proposer's prior experience on projects of this type and scope		.20	
Comments			
Proposer's prior experience and expertise of the personnel to be assigned to this Project		.20	
Comments			
Proposer's past record of performance on contracts, including such factors as cost control, expedience of design and approvals, ability to maintain schedule, quality of work, and responsiveness		.20	
Comments			
Proposer's ability to meet the Project schedule or proposed improvements to the schedule		.20	
Comments			
Proposer's cost factors		.20	
Comments			
			Total
Comments			

Score (1 thru 5) where one (1) is the lowest and five (5) the highest.



NY State Revolving Fund
MWBE / EEO
Bid Packet for

Non-Construction Contracts

Effective October 1, 2013

New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
(800) 882 9721
P: (518) 402-7396 F: (518) 402-7456
www.efc.ny.gov

GUIDANCE FOR NON-CONSTRUCTION CONTRACTS

NEW YORK CLEAN WATER and DRINKING WATER STATE REVOLVING FUNDS

Administered by the New York State Environmental Facilities Corporation (EFC)

Contents of Bid Packet

- **PART 1: REQUIRED TERMS FOR PROJECT CONTRACTS AND SUBCONTRACTS**

The required contract language to be inserted into all non-construction contracts to satisfy Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE) & Minority & Women Owned Business Enterprise (MWBE) and some other Clean/Drinking Water State Revolving Fund (SRF) Program requirements

- **PART 2: GUIDANCE MATERIALS**

Guidance 1: Equal Employment Opportunity and Minority & Women-Owned Business Enterprise Programs

A description of the EEO & MWBE requirements as they relate to non-construction contracts funded in whole or in part by the New York State Revolving Funds – all contracts and subcontracts

- **PART 3: REQUIRED FORMS**

A list and summary description of forms required for the MWBE and EEO programs.

PART 1:

REQUIRED CONTRACT LANGUAGE

Required Terms for Project Contracts and Subcontracts

The following exhibit must be included in ALL non-construction contracts and subcontracts funded in whole or in part with SRF funds.

Check EFC's website (www.efc.ny.gov/mwbe) for updates.

Exhibit 1: EEO & MWBE Language & Goals and other program requirements

EXHIBIT 1
REQUIRED TERMS FOR PROJECT CONTRACTS AND SUBCONTRACTS

In accordance with the terms and conditions set forth in Section 5.1 of the Project Finance Agreement, Recipient agrees that the following language will be included in all contracts and subcontracts regarding the Project including but not limited to those relating to non-construction, engineering, architectural, legal and fiscal services, as required by federal and State laws, regulations, and executive orders applicable to this Project:

DEFINED TERMS:

The term “Bid Packets” means the New York State Revolving Fund (SRF) Bid Packet for Construction Contracts and Bid Packet for Non-Construction Contracts and Service Providers, available at www.efc.ny.gov/mwbe.

The term “contractor”, as used in this contract or subcontract, means, and applies to, all prime contractors, consultants and service providers as hereinafter defined, unless specifically referred to otherwise.

The term “subcontractor”, as used in this contract or subcontract, means, and applies to, any individual or business enterprise that has an agreement with a contractor.

The term “EEO policy statement” means a statement of the contractor and subcontractor setting forth at least the following:

- (i) A statement that the contractor will provide for and promote equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law, 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 and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on contracts relating to the Project.
- (ii) An agreement that all of contractor’s solicitations or advertisements for employees will state that, in the performance of the contract relating to this Project, all qualified applicants will be provided with equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.
- (iii) An agreement to 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 or harass on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law and that such union or representative will affirmatively cooperate in the implementation of the contractor’s obligations herein.
- (iv) An agreement to comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory constitutional non-discrimination provisions.

The term “EFC” means the New York State Environmental Facilities Corporation.

The term “EPA” means the United States Environmental Protection Agency.

The term “ESD” means the Empire State Development Corporation - Division of Minority and Women’s Business Development.

The term “Recipient” means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due hereunder are being paid in whole or in part.

The term “Service Providers” means professional services, such as legal, engineering, financial advisory or other professional services, supplies, commodities, equipment, materials, and travel.

The term “State” means the State of New York.

INTERPRETATION:

This contract is subject to Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the Regulations) and shall be considered a State Contract as defined therein. If any of the terms herein conflict with Article 15-A or the Regulations, such law and regulations shall supersede these requirements.

REPRESENTATIONS AND ACKNOWLEDGMENTS OF CONTRACTOR & SUBCONTRACTOR:

The contractor acknowledges that funds for the payment of amounts due under this contract are being provided in whole or in part subject to the terms and conditions of a grant agreement or a project finance agreement with EFC.

The contractor represents that it has submitted an EEO policy statement, an EEO Workforce Staffing Plan for Service Provider (Non-construction) Contracts (if applicable), and an MWBE Utilization Plan (prime contractors only), **prior to the execution of this contract.**

Suspension/Debarment - The contractor is not a debarred or suspended party under 2 CFR Part 180, 2 CFR Part 1532 and 40 CFR Part 32. Further, neither the contractor nor any of its subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations or with any party that has been determined to be ineligible to bid under Section 316 of the Executive Law.

EQUAL EMPLOYMENT OPPORTUNITY (EEO), AFFIRMATIVE ACTION, MWBE AND OTHER COVENANTS:

Contractor and subcontractor shall comply with all federal and State laws, regulations, and executive orders applicable to this Project, and shall provide such documentation, including periodic reports, as may be requested from time to time and as set forth in guidance documentation available at www.efc.ny.gov/mwbe, including but not limited to the Bid Packets.

With respect to this contract, the contractor and subcontractor shall undertake or continue existing programs of affirmative action and equal employment opportunity to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, color, national origin (including limited English proficiency), age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law. 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.

MWBE

MWBE Goals - The contractor agrees to pursue MWBE goals in effect at the time of execution of this contract. The MWBE goals shall be applied to the total amount being funded pursuant to the grant agreement or project finance agreement with EFC.

10/1/2012 – Present	MWBE Combined Goal*
All counties	20%

*May be any combination of MBE and/or WBE participation

Contractors shall solicit participation of MWBE contractors (including subcontractors, consultants and service providers) for SRF-funded projects in accordance with the aforementioned goals. The contractor must submit sufficient documentation to demonstrate good faith efforts to provide opportunities for MWBE participation for work related to the SRF-funded project in the event respective goals are not achieved. Guidance pertaining to documentation of good faith efforts is set forth in the Bid Packet.

The contractor agrees that for purposes of providing meaningful participation by MWBEs on the contract and achieving the goals, contractor will reference the directory of New York State Certified MWBEs found at the following internet address: ny.newnycontracts.com.

Subcontractors who in turn subcontract work shall also comply with MWBE requirements for that contract.

MWBE Utilization Plan (MWBE Utilization Plan requirements apply to contractors and are submitted prior to execution of a contract.) – Each contractor shall prepare and submit to the Recipient for approval an MWBE Utilization Plan, and any revision or amendment thereto, that provides information describing MBEs and WBEs to be utilized at various times during the performance of this contract. The MWBE Utilization Plan shall identify the contractor’s proposed MBE and WBE utilization for this contract and the MWBE participation goals for this contract as established by EFC. The MBEs and WBEs identified in the MWBE Utilization Plan must be certified by, or have applied for certification from ESD.

In the event that contractor’s approved MWBE Utilization Plan does not propose achievement of the MWBE participation goals for this contract, contractor shall complete a waiver request as hereinafter referenced.

Submission – Within 30 days of execution of this contract, contractor shall submit to the Recipient copies of all signed subcontracts, agreements, and/or purchase orders referred to in the MWBE Utilization Plan.

Compliance – Contractor agrees to adhere to its approved MWBE Utilization Plan for the participation of MWBEs on this contract pursuant to their respective MWBE goals.

Waivers – If contractor’s application of good faith efforts does not result in the utilization of MBE and/or WBE firms to achieve the aforementioned goals, prior to execution of a contract, the contractor shall complete the waiver request portion of the MWBE Utilization Plan and submit it to the Recipient. Contractor is entitled to receive a written notice of acceptance or denial within 20 days of receipt. Upon receipt of a notice of deficiency from Recipient, Contractor shall respond with written remedy to such notice within 7 days. Such response may include a request for a total or partial waiver of the aforementioned goals.

Contractor shall comply with the requirements set forth in the Bid Packets regarding waivers.

Required Reports - MWBE Monthly Report – Contractor agrees to submit a report to the Recipient by the 3rd business day following each end of month over the term of this contract documenting the progress made towards achievement of the MWBE goals of this contract.

EEO

EEO Workforce Staffing Plan – All Service Provider (non-construction) contractors and subcontractors shall submit an acceptable EEO Workforce Staffing Plan setting forth the anticipated work force to be utilized on such contract or, where required, information on the service provider's total work force, including apprentices, broken down by specific ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Recipient. The EEO Workforce Staffing Plan is submitted prior to execution of a contract.

Required Reports - EEO Workforce Utilization Reports – Applies to Service Provider (Non-construction) Contracts and Subcontracts

During the term of this contract, the contractor and subcontractor shall update and provide notice to the Recipient of any changes to the previously submitted Staffing Plan in the form of an EEO Workforce Utilization Report. Contractor shall submit this information on a quarterly basis during the term of this 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 EEO Workforce Utilization Report must be submitted to report this information. In the event a Contractor and Subcontractor's workforce does not change within the Quarterly period, the Contractor shall notify the Recipient in writing.

Required Reports - EEO Workforce Utilization Reports – Applies to Non-construction Contracts and Subcontracts

During the term of this contract, the contractor and subcontractor shall submit to the Recipient EEO Workforce Utilization Reports. Contractor and subcontractor shall submit this information on a monthly basis to report the actual labor hours utilized in the performance of this contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The EEO Workforce Utilization Report must be submitted to report this information.

All EEO Workforce Utilization Reports submitted by the contractor and subcontractor shall reflect a separation of the workforce utilized in the performance of this contract from contractor or subcontractor's total workforce. Contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided relates to the actual workforce utilized on this contract. If contractor or subcontractor fails to separate the workforce to be utilized on this contract from the total workforce as determined by Recipient contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided is contractor or subcontractor's total workforce during the subject time frame, not limited to work specifically under this contract.

Disadvantaged Business Enterprises - The contractor and subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor and subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor and subcontractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies. Contractors and subcontractors shall comply with the requirements set forth in the Bid Packets regarding Disadvantaged Business Enterprises.

REMEDIES:

Upon a determination by the Recipient of contractor's non-responsiveness, non-responsibility or breach as a result of a failure to comply with the requirements of Article 15-A and the Regulations, Recipient may withhold funds under this contract or take such other actions, impose liquidated damages or commence enforcement proceedings as set forth herein or as otherwise allowed by law or in equity.

If contractor or subcontractor fails to submit to Recipient an EEO policy statement consistent with the provisions set forth in clauses (i), (ii), (iii) and (iv) of the definition thereof and within the timeframe required

therefor, Recipient may declare this contract to be null and void.

Contractor and subcontractor agree that a failure to submit and/or adhere to its EEO policy statement, EEO Workforce Staffing Plan for Service Provider (Non-construction) Contracts (if applicable), and an MWBE Utilization Plan (contractors only), and any other required periodic reports, shall constitute a material breach of the terms of this contract, entitling Recipient to any remedy provided herein, including but not limited to, a finding of contractor non-responsiveness.

Liquidated or Other Damages - If it has been determined by the Recipient or NYSEFC that the contractor is not in compliance with the requirements herein or refuses to comply with such requirements, or if contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, in accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under this contract.

In the event a determination has been made by the Recipient or EFC which requires the payment of liquidated damages and such identified sums have not been withheld, contractor shall pay such liquidated damages to Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, contractor has filed a complaint with ESD pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director of ESD renders a decision in favor of Recipient.

RESTRICTIONS ON LOBBYING:

Contractor and subcontractor executing a contract in excess of \$100,000 agree to provide to the Recipient an executed Certification For Contracts, Grants, Loans, and Cooperative Agreements 40 CFR 34, in the form attached hereto, consistent with the requirements of 40 CFR Part 34.

PART 2:

GUIDANCE MATERIALS

Equal Employment Opportunity (EEO) and Minority & Women-Owned Business Enterprise (MWBE) Programs

A description of the EEO & MWBE requirements as they relate to non-construction contracts funded in whole or in part by the New York State Revolving Funds:

Applicability:

This guidance applies to service provider (non-construction) contracts are written agreements where the SRF recipient (Recipient) commits to expend funds for services (including legal, engineering, financial advisory or other professional services, and labor); supplies; commodities; equipment; materials; and travel, or any combination thereof.

Purpose of Documents:

This guidance is designed to complement the required contract language as set forth in Part 1, by providing additional information intended to assist SRF Recipients and bidders in complying with EEO, MWBE, and other requirements of the SRF programs, including:

- New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development)
- 40 Code of Federal Regulations (CFR) Part 33 – “Participation by Disadvantaged Business Enterprises in US EPA Programs”
- Restrictions on Lobbying

Service Providers are required to engage in procurement practices that will provide opportunities for meaningful participation of minority and women-owned business enterprises (MWBE) in providing labor, travel, equipment, materials, supplies, services (including legal, financial, engineering or other professional services), or any combination of the above, and practices to encourage the employment of minorities and women in the workforce.

Failure to report on EEO participation or to meet all the requirements of MWBE & DBE regulations in a timely manner may result in withholding of disbursements of SRF funds or other remedies as cited in the SRF financing agreement. This may affect the Service Provider’s payments. If this is a project with a not-for-profit entity, please contact EFC for appropriate guidance.

Reference the EFC website to ensure the most recent forms and language. (www.efc.ny.gov/mwbe)

Guidance 1: EEO & MWBE Programs

The New York State Environmental Facilities Corporation (EFC) implements the New York State Revolving Fund (SRF) for both Clean Water and Drinking Water projects. This guidance outlines the activities that must be performed by each contractor on an SRF funded project in order to comply with federal and New York State laws and regulations.

I. EQUAL EMPLOYMENT OPPORTUNITY

A. WORKFORCE DIVERSITY

Service Providers are required to document their efforts to meet EEO goals for the employment of minorities and women on all SRF funded projects (EEO Workforce Utilization Report). The United States Department of Labor (DOL) has established EEO goals for employment of minority and women. The goals are available on EFC's website. (www.efc.ny.gov/mwbe - Refer to *Prime Contractor* Folder)

B. EEO POLICY STATEMENT

The EEO Policy Statement is documentation of a contractor's policy of non-discrimination in accordance with federal and State laws. The EEO Policy Statement must: be submitted to Recipient's MBO as part of any bid proposal; include language as defined above (see Required Terms for Project Contracts and Subcontracts – EEO Policy Statement definition); and be signed by each potential bidder.

The EEO Policy Statement can be found in the required forms section of this document and on EFC's website at www.efc.ny.gov/mwbe (Refer to *Prime Contractor & Subcontractor* folder).

C. EEO WORKFORCE STAFFING PLAN

With the Bid or when offering services, each Service Provider shall submit to the SRF Recipient an *EEO Workforce Staffing Plan* estimating the anticipated work force to be utilized on the project. The EEO Workforce Staffing Plan shall include information on the service provider's total work force, including apprentices, broken down by specific ethnic background, gender and Federal occupational categories.

Blank EEO Workforce Staffing Plans are found in the Required Forms section of this document and on EFC's website at www.efc.ny.gov/mwbe.

D. EEO WORKFORCE UTILIZATION REPORTS

Upon the execution of the contract and monthly thereafter, the contractor shall submit to the Recipient's MBO an *EEO Workforce Utilization Report* of the actual labor hours worked by ALL contractor AND subcontractor employees during the prior month period, on activities related to the contract, broken down by specific ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Recipient.

The *EEO Workforce Utilization Report* is part of the MWBE Monthly Payment Reports. Both the EEO Workforce Utilization Report and MWBE Monthly Report are found on the EFC website. (www.efc.ny.gov/mwbe - Refer to *Prime Contractor* folder).

All EEO Workforce Utilization Reports submitted by the contractor and subcontractor must reflect a separation of the workforce utilized in the performance of this contract from contractor or subcontractor's total workforce. The EEO Workforce Utilization Report must indicate that the information provided relates to the actual workforce utilized. If the contractor or subcontractor fails to separate the workforce to be utilized on this contract

from the total workforce as determined by Recipient, contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided is contractor or subcontractor's total workforce during the subject time frame, not limited to work specifically under a particular contract.

II. MINORITY & WOMEN-OWNED BUSINESS ENTERPRISE (Prime Contracts Only)

A. MWBE REQUIREMENTS – Non-Construction Contracts

Recipients, contractors and subcontractors must comply with New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development).

Non-construction contracts executed after October 13, 2010 with a value greater than \$25,000 funded with SRF financial assistance are subject to MWBE requirements.

Non-construction contracts, for the purposes of SRF MWBE compliance, are written agreements between an SRF Recipient and a Service Provider (or subcontractor) whereby the SRF Recipient commits to expend funds for the services (i.e. legal, engineering, financial advisory or other professional services, and labor); supplies; commodities; equipment; materials; and travel, or combination thereof in support of an SRF financed project.

Amendments or change orders for such non-construction contracts with a value greater than \$25,000 may be subject to MWBE requirements as well. The Prime contractor is to seek additional MWBE participation for the additional value of the contract.

If contracts with a value of \$25,000 or less have subsequent change orders or amendments that bring the total contract value to greater than \$25,000, the full value of the contract will then be subject to MWBE requirements.

B. MWBE PARTICIPATION GOALS (FAIR SHARE OBJECTIVES)

Based on the report The State of Minority and Women-Owned Business Enterprise: Evidence of New York (April 29, 2010) (NYS Disparity Study), there is a demonstrated availability of MWBEs throughout New York State. Contractors are required to solicit participation of MWBE contractors (including subcontractors, consultants, and service providers) for SRF funded projects.

MWBE participation goals will be based on the execution date of each respective contract, unless MWBE participation goals have been otherwise specified in an executed SRF financial assistance agreement.

10/1/2012 – Present	MWBE Combined Goal*
All counties	20%

*May be any combination of MBE and/or WBE participation

10/1/2011 – 9/30/2012	MWBE Combined Goal*
All counties	10%

*May be any combination of MBE and/or WBE participation

10/13/2010 – 9/30/2011	MBE Goals	WBE Goals
All other counties non-NYC	8.8%	8.8%
New York City and Long Island Region (Bronx, Brooklyn, Manhattan, Queens, Staten Island, Nassau, Suffolk)	18.8%	20.5%

C. RECEIVING CREDIT UNDER THE EFC MWBE PROGRAM

To receive MWBE participation credit, contractors performing work that have been identified in an approved MWBE Utilization Plan (See Subsection D1 below for more information) must be certified as an MBE or WBE by the Division of Minority and

Women's Business Development, Empire State Development Corporation (ESDC). Conditional credit will be given for firms that have applications pending with ESDC.

Prime contractors that are certified MWBE will receive credit for MWBE participation.

A list of firms certified in New York State can be found on the ESD website at ny.newnycontracts.com. Searches can be performed by the business name and commodity code or business description.

D. NON-CONSTRUCTION CONTRACTOR'S MWBE RESPONSIBILITIES

At the Time of Bid:

The completed forms listed below shall be part of the official bid submission by each competing contractor:

- **EPA Form 6100-3** "DBE Subcontractor Performance Form" – Each potential bidder shall complete this form and submit it to the MBO for each MWBE firm contacted during the bid or proposal preparation process, and make reasonable efforts to obtain signatures from the MBEs and WBEs contacted.
- **EPA Form 6100-4** "DBE Subcontractor Utilization Form" – This form shall be completed by each potential bidder and submitted to the MBO as part of the bid submission. On this form, each bidder offers their estimated plan for MBE and WBE utilization for their contract.

NOTE: The EEO Policy Statement should be completed and submitted at this time. See EEO section.

Prior to Award of the Contract:

- **EPA Form 6100-2 "DBE Subcontractor Participation Form"** - Distribute the form to MWBE Subcontractors who are listed on the 6100-4 form. Submit documented proof (e.g. email, letter, certified mail receipt) to the MBO that the 6100-2 form was sent to the MWBE Subcontractors. (See Required Forms)

NOTE: The EPA forms are not required for projects valued at \$250,000 or less in a year.

After Award of the Contract:

Each prime contractor is obligated to seek MWBE participation and document their good faith efforts to meet MWBE goals.

1. MWBE Utilization Plan

- a. **Due Date:** MWBE Utilization Plans and any revision or amendment thereto, are required to be submitted to the MBO no later than the date of execution of the contract.
- b. **Preparation:** Each contractor shall prepare an MWBE Utilization Plan that provides information describing MBEs and WBEs to be utilized during the term of the contract. The MWBE Utilization Plan will reflect the EFC MWBE goals that apply to the contract as well as the contractor's anticipated MWBE participation. The contractor will transmit the completed MWBE Utilization Plan form, with all pages filled out, to the MBO. Blank MWBE Utilization Plan forms are available on the EFC website. (www.efc.ny.gov/mwbe)

Utilization Plan revisions or amendments must be submitted to the MBO, preferably with the next monthly report.

- c. **NYS Certified:** The MBEs and WBEs identified in the MWBE Utilization Plan must be certified by, or have applied for certification from:

Empire State Development Corporation
 Division of Minority and Women's Business Development
 625 Broadway
 Albany, New York 12245
 Phone: 1-800-782-8639
 ny.newnycontracts.com

- d. **Supplier Credit:** Credit for MBE/WBE participation shall be granted for MWBE firms performing a commercially useful business function according to custom and practice in the industry.

"Commercially useful functions" normally include:

- i. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
- ii. Manufacturing or being the first tier below the manufacturer of supplies or equipment; or
- iii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a contractor.

MBE/WBE goal crediting:

- i. For MWBE suppliers who are manufacturers, fabricators, or official manufacturer's representatives who are warehousing such goods, up to 100% of the MBE/WBE objective may be credited.
- ii. For non-manufacturer suppliers, up to 25% of the MBE/WBE objective may be credited.
- iii. No credit will be granted for MBEs and/or WBEs acting merely as a passive conduit of funds from one firm to another.

- e. **Broker Credit:** Firms that are identified as brokers (on the ESD website or at EFC's discretion) may only be credited up to 25% of their full contract value.
- f. **Waiver Request:** If the contractor's application of good faith efforts does not result in the utilization of MBE and/or WBE firms to achieve the aforementioned goals or a specialty equipment/service waiver is requested, the contractor shall complete the waiver request portion of the MWBE Utilization Plan, attach appropriate documentation, and submit it to the MBO.
See Section F for more information.

- g. **MWBE Utilization Plan Acceptance vs. Notice of Deficiency:** The MBO will evaluate a completed MWBE Utilization Plan. Upon review and application of the requirements set forth in this guidance, if the MBO finds the UP acceptable, they will forward to EFC for review. If the MBO finds the UP insufficient, they will work with the contractor to address deficiencies before submitting to EFC for review. A written notice of acceptance or denial will be issued by EFC within 20 business days of receipt of the UP. Upon notice of deficiency to the contractor from either the MBO or EFC, the contractor shall respond with a written remedy to such notice within seven (7) business days.

In coordination with the MBO, EFC will accept a Utilization Plan upon consideration of many factors, including the following:

- i. The Utilization Plan indicates that the MWBE proposed goals for the project will be achieved;

- ii. A prime contractor, who is a certified MBE or WBE, will be credited for up to 100% of the category of their certification. However, good faith efforts to seek participation in the other category are required;
 - iii. Adequate documentation to demonstrate good faith effort as described in Section D2.
- h. **UP Acceptance:** Within 10 days of the final acceptance of a MWBE Utilization Plan or Waiver Request, EFC will post the approved MWBE Utilization Plan or Waiver Request on the EFC website. www.efc.ny.gov/mwbe.
- i. **Conditional UP:** In coordination with the MBO, EFC may issue conditional acceptance of Utilization Plans pending submission of additional documentation that demonstrates there will be an increase in MWBE participation.
- j. **Revisions of the MWBE Utilization Plans:** If project conditions change such that the information submitted in the MWBE Utilization Plan is no longer valid, the contractor shall indicate the changes within the next monthly report to the MBO. At EFC's discretion, a completely revised MWBE Utilization Plan form and good faith effort documentation may be required to be submitted.
- k. **Projects co-Funded with other state/federal agencies:** In the event EFC is providing financial assistance to a project that is also financially supported by other state/federal agencies, EFC may defer to the MBE and WBE participation goals established for the project by those agencies.

2. Good Faith Effort Documentation

Prime contractors shall solicit participation of MWBE firms (including subcontractor, consultants and service providers) for SRF-funded projects in an effort to meet the appropriate goals. In the event respective goals are not achieved, the contractor must submit sufficient documentation to demonstrate good faith efforts have been made to provide opportunities to certified MWBE firms to participate in SRF-funded projects.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with or obtaining supplies or services from MBEs or WBEs.
- Printed screenshots of the directory of Certified Minority and Women Owned Businesses (MWBE directory) on ESD's website (ny.newnycontracts.com) on a statewide basis, if appropriate, for both MBEs and WBEs that provide the services or equipment necessary for the contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.
- Copies of timely solicitations and documentation that the contractor offered relevant plans, specifications, or other related materials to MBE and WBE firms on ESD's MWBE directory to participate in the work, with the responses.

The contractor is to offer sufficient advance notice proportional to the size and complexity of the contract to enable MBEs and WBEs to prepare an informed response to the solicitations for participation as a subcontractor or supplier. The solicitations and responses are required to be documented in a log to be submitted in the case where the goal is not met. The log should consist of the list of MBE and WBE firms solicited, their contact information, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email)

and the contact information, the contacts name and the outcome. If a bid was received, the bid price should also be included in the log. See a sample log entry below:

Date	M/WBE Type	Company	Scope of work	Contact Name	Phone/ Email	Solicitation Format	MWBE Response	Negotiation Required?	Selected? If not, Explain

If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first, e.g. fax followed by phone call. Any bids received from non-MWBE firms should also be tracked on the log.

Submit the EPA 6100-3 and 6100-4 forms that are required as part of all bids or proposals. A properly completed EPA 6100-3 form is good indication of a contact to an MWBE and their response to the contact. If solicitations do not result in obtaining sufficient participation of MWBE firms due to non-responsiveness, please contact the MBO or EFC MWBE representative for support.

- Copies of any advertisements of sufficient duration to effectively seek participation of certified MBE and WBEs timely published in appropriate general circulation, trade and MWBE oriented publications, together with listing and dates of publication of such advertisements. A log should be kept of the responses to the ads, similar to the log for MWBE firm solicitation and should include the non-MWBE firms that responded and the bid prices. Any negotiations should be documented in the log.
 - Documents demonstrating that insufficient MBEs or WBEs are reasonably available to perform the work. Based on the NYS Disparity Study, there is a presumption of MBE and WBE statewide availability, unless information is submitted indicating otherwise.
 - A written demonstration that the contractor offered to make up any inability to meet the project MWBE participation goals in other contracts and/or agreements performed by the contractor on another SRF funded project.
 - The date of pre-bid, pre-award, or other meetings scheduled by the Recipient, if any, and the contact information of any MBEs and WBEs who attended and are capable of performing work on the project.
 - Any other information or documentation that demonstrates the contractor conducted good faith efforts to provide opportunities for MWBE participation in their work. For instance, prime contractors and MBOs should develop a list of MWBE firms that have expressed interest in working on SRF funded projects
 - The use of certified Disadvantaged Business Enterprises (DBE), Small Business Administration (SBA), and Veteran-Owned Small Businesses (VOSB) may be considered as a demonstration of Good Faith Efforts.
- 3. Subcontract Agreements** - The contractor shall submit copies of all legally signed subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution. These subcontracts and/or purchase orders must include the following information:
- a. Actual dollar amount of the subcontract;
 - b. A job description of the work to be performed by the subcontractor;
 - c. Signatures of both parties;
 - d. Date of execution;
 - e. MWBE language (included in this bid packet); and
 - f. A signed EEO Policy Statement Agreement (See Required Forms).

NOTE: Purchase orders must be sent with copies of both sides of cancelled checks.

- 4. Monthly Reports** - The contractor must submit monthly MWBE payment reports supplemented with proof of payment to the MBO. Blank monthly report forms are available at www.efc.ny.gov/mwbe or from the MBO. Monthly reports should be submitted to the MBO within 3 business days after the end of each month being reported.

As part of the Monthly Report, the contractor must provide documentation to the MBO that subcontractors have been paid within 30 days of receipt of payment from the Recipient.

The final monthly payment report must reflect all Utilization Plan revisions or amendments.

5. Other Service Provider Responsibilities:

- a. Continue good faith efforts to seek opportunities for MBE and WBE participation even if proposed goals have been achieved. In addition, any revisions to an MWBE Utilization Plan must be documented in the next monthly report to the MBO for approval.
- b. Provide written notification to the MBO and EFC of any termination of an MBE or WBE subcontractor. This should be reported as part of the revised MWBE Utilization Plan.
- c. The EEO poster shall be displayed at the project site in a visible location. The EEO poster is at <http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm>
- d. Provide timely and complete responses to inquiries from either the MBO or EFC staff as requested.
- e. Make all MWBE & EEO documents and records available upon request to EFC staff, the MBO, or their authorized representatives.
- f. Manage the project in a manner that creates meaningful opportunities for participation by MBEs and WBEs.
- g. Provide programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination on the basis of race, color, national origin (including limited English provision), age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.

Additional guidance and requirements pertaining to the preparation and submission of the MWBE Utilization Plans can be found in the Exhibit 1: Required Terms for Project Contracts and Subcontracts.

NOTE: Failure by the contractor to receive acceptance of the MWBE Utilization Plan by the Recipient or EFC may result in withholding of progress payments. Such withholding of progress payments shall not relieve the contractor of any contract requirements including the completion of the project within the specified contract time.

E. SUBCONTRACTOR'S MWBE RESPONSIBILITIES

Subcontractors are those individuals or business enterprises that contract directly with contractors. Subcontractors should:

1. Maintain their MWBE certifications, and notify the contractor and MBO of any change in their certification status.

2. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.
3. Maintain business records that should include, but not be limited to, contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
4. Complete and submit the EPA Form 6100-3 "DBE Subcontractor Performance Form" to the contractor prior to submission of the bid. Provide a receipt of EPA Form 6100-2 "DBE Subcontractor Participation Form" to the contractor prior to award of contract.
5. Ensure that a required EEO Policy Statement is included in each subcontract. Additionally, signed versions of each subcontract should be sent to the MBO within 30 days of execution.
6. Provide programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination on the basis of race, color, national origin (including limited English provision), age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.
7. Notify the MBO and EFC when contract problems arise, such as non-payment for services or when the subcontractor is not employed as described in the MWBE Utilization Plan.
8. Perform the subcontracted scope of work in a professional and timely manner.

F. WAIVER REQUESTS

1. Each contractor is required to create meaningful opportunities for certified MWBE participation and to offer the MWBE certified firms a fair share of their work. After making good faith efforts to create meaningful opportunities, a contractor may find that it is not possible to meet the MWBE goals. In that case, the contractor shall request for an MWBE waiver.
2. Even if an MWBE waiver is granted, EEO information must still be submitted. The EEO information is submitted as part of the Monthly Report.
3. **Preparation:** The contractor shall complete the waiver request portion of the MWBE Utilization Plan and submit it to the MBO along with adequate good faith effort documentation.
4. **Waiver Review:** The MBO and EFC will review each waiver request based on the good faith effort criteria presented above and the documentation submitted with the waiver request. EFC will not issue any automatic waivers from MWBE responsibilities. A full or partial waiver from the MWBE goals can be requested.
5. **Specialty Equipment/Service Waiver:** A specialty equipment/service waiver may be granted in cases where:
 - a. equipment is made by only one manufacturer,
 - b. the contract specifications call for equipment that is not available through an MWBE supplier;
 - c. the equipment is constructed on site by specially trained non-MWBE labor;
 - d. the service is not available through an MWBE (such as work done by National Grid);
 - e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or
 - f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted demonstrating that there are no MBE/WBE firms capable of completing this portion of the contract, the specialty amount of the contract may be deducted from the total contract amount and the goals would be applied to the MWBE Eligible Amount. This determination is made at the discretion of the MBO and EFC.

Example:

\$200,000	-	\$50,000	=	\$150,000
(Contract)		(Specialty equipment/service)		(MWBE Eligible Amount)

The MWBE goal is applied to the remaining balance.

A request for this specialty equipment/service deduction can be completed by filling out section two of the MWBE Utilization Plan and submitting it to the MBO. The request must include a copy of the page from the contract where the equipment/service is described and the cost of each item. Additional documentation may be requested by the MBO or EFC.

G. PROTESTS/COMPLAINTS

Subcontractors or contractors who have any concerns, issues, or complaints regarding the implementation of the SRF MWBE/EEO Program, or wish to protest should do so in writing to the project MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate to develop additional information, if warranted, and determine whether action is required. If the subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

H. WASTE, FRAUD AND ABUSE

Subcontractors, contractors, service providers, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the MWBE & EEO Program should notify the project MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the USEPA – Office of Inspector General Hotline at (888) 546-8740 or the New York State Office of Inspector General at (800) 367-4448.

I. REMEDIES

If a Recipient makes a determination that a contractor has been non-responsive, is non-responsible, or is in breach as a result of a failure to comply with the requirements of Article 15-A and the Regulations, Recipient may withhold funds under the contract or take such other actions, impose liquidated damages or commence enforcement proceedings.

If a contractor or subcontractor fails to submit to Recipient an EEO policy statement within the required timeframe, Recipient may declare the contract to be null and void.

A failure to submit and/or adhere to an EEO policy statement and an MWBE Utilization Plan, and any other required reports, shall constitute a material breach of the terms of the contract between contractor and Recipient, and justify a finding of contractor non-responsiveness.

Liquidated or Other Damages - If it has been determined by the Recipient or EFC that the contractor is not in compliance with the requirements herein or refuses to comply with such requirements, or if contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, in accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference

between:

1. All sums identified for payment to MWBEs had the contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under this contract.

In the event a determination has been made by the Recipient or EFC which requires the payment of liquidated damages and such identified sums have not been withheld, contractor shall pay such liquidated damages to Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, contractor has filed a complaint with ESD pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director of ESD renders a decision in favor of Recipient.

J. RESTRICTIONS ON LOBBYING

Each contractor and subcontractor which has a contract with Recipient exceeding \$100,000 shall provide to the Recipient an executed certification on the form provided, that it will not expend appropriated federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, officer or employee of Congress or any employee of any Member of Congress in accordance with the provisions of 40 CFR Part 34, and to maintain such certification for their own records.

PART 3:

REQUIRED FORMS

FOR NON-CONSTRUCTION CONTRACTS

All MWBE & EEO required forms can be found on the EFC website (www.efc.ny.gov/mwbe)

The following (Attached) SRF forms are required for the bidding process:

1. EPA Form 6100-2 “DBE Subcontractor Participation Form”
This form is to be distributed to all MWBE subcontractors and proof of distribution should be submitted to the MBO.
2. EPA Form 6100-3 “DBE Subcontractor Performance Form”
This form should be completed by each MWBE subcontractor contacted during the bid preparation process for non-construction contracts, maintained in the contractor’s files, and submitted to the MBO with the bid.
3. EPA Form 6100-4 “DBE Subcontractor Utilization Form”
This form should be completed by the Service Provider as an estimate of which MWBE subcontractors will be used on the project, maintained in the contractor’s files, and submitted to the MBO with the bid.
4. EEO Policy Statement
To be completed by all Service Providers and submitted to the MBO with the bid. This form may be included in the contract.
5. Lobbying Certification
To be completed by all Service Providers and subcontractors (over \$100,000) and submitted to the Recipient with the bid.

The following (Non-Attached) SRF forms are required subsequent to the bid award:

1. MWBE Utilization Plan and/or Waiver Request
These forms are completed by the Service Provider and submitted to the MBO *no later than date of execution of the contract*.
2. EEO Staffing Plan
This form is completed by the Service Provider and submitted with the Utilization Plan to the MBO. It summarizes the character of the work force related to the contract, including subcontracted staff.
3. EEO Workforce Utilization Report
This form is completed by the Service Provider and submitted on a Quarterly basis to the MBO. It summarizes the character of the actual work force related to the contract, including subcontracted staff.
4. MWBE Monthly Report Form
To be completed by the Service Provider and submitted to the MBO.



Environmental
 Protection Agency

EPA Form 6100-2

**Disadvantaged Business Enterprise Program
 DBE Subcontractor Participation Form**

NAME OF SUBCONTRACTOR¹	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

<hr/> Subcontractor Signature	<hr/> Title/Date
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¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental
Protection Agency

Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Participation Form to this address.



Environmental
 Protection Agency

EPA Form 6100-3

**Disadvantaged Business Enterprise Program
 DBE Subcontractor Performance Form**

NAME OF SUBCONTRACTOR ¹		PROJECT NAME	
ADDRESS		BID/PROPOSAL NO.	
TELEPHONE NO.		E-MAIL ADDRESS	
PRIME CONTRACTOR NAME			
CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR	
Currently certified as an MBE or WBE under EPA's DBE Program? <input type="checkbox"/> Yes <input type="checkbox"/> No Signature of Prime Contractor Date Print Name Title _____ _____ Signature of Subcontractor Date _____ Print Name Title			

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental
Protection Agency

Disadvantaged Business Enterprise Program DBE Subcontractor Performance Form

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Environmental
Protection Agency

OMB Control No: 2090-0030
Approved: 05/01/2008

EPA Form 6100-4

**Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form**

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors¹ will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATE D DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor

Date

Print Name

Title

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental
Protection Agency

**Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form**

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**AGREEMENT TO ABIDE BY EQUAL EMPLOYMENT OPPORTUNITY
POLICY STATEMENT REQUIREMENTS
NEW YORK STATE REVOLVING FUND (SRF)**

I, _____, am the authorized representative of _____.

Name of Representative

Name of Contractor/Service Provider

I hereby certify that _____ will abide by the equal employment

Name of Contractor/Service Provider

opportunity (EEO) policy statement provisions outlined below.

- (i) A statement that the contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status 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 will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on contracts relating to the Project.
- (ii) An agreement that all of contractor's solicitations or advertisements for employees will state that, in the performance of the contract relating to this Project, all qualified applicants will be afforded equal employment opportunities without discrimination on the basis of race, creed, color, national origin, sex, age, disability or marital status.
- (iii) An agreement to 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.
- (iv) An agreement to comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory constitutional non-discrimination provisions.

Blank EEO Policy Statements are available at www.efc.ny.gov/mwbe, if needed.

If contractor fails to submit to Recipient an EEO policy statement consistent with the provisions set forth above in clauses (i), (ii), (iii) and (iv) and within the timeframe required thereof, Recipient may declare this contract to be null and void.

X

Contractor/Service Provider Representative

Once completed, please provide to the Prime Contractor and/or the community MBO

**CERTIFICATION
FOR
CONTRACTS, GRANTS, LOANS, AND
COOPERATIVE AGREEMENTS
40 CFR 34**

SRF Project No.: _____

The undersigned each certify, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grant, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: _____
Name:
Title:
Date: _____

Contract ID: _____

