

**February 14, 2011**

**Request for Proposals  
Construction Management Services**

Rehabilitation and Upgrades of City Parking Ramp II  
Niagara Falls, New York

**I. GENERAL**

The City of Niagara Falls (“City”), in cooperation with the USA Niagara Development Corporation (“USAN”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”), is seeking a Construction Management (“CM”) firm to coordinate and oversee a rehabilitation and upgrade project (the “Project”) at the City Parking Ramp II, which is attached to the former Rainbow Centre Mall<sup>1</sup> located in downtown Niagara Falls, New York. The Project site encompasses a City block bounded by Niagara Street to the north; First Street to the east; Old Falls Street to the south; and Rainbow Boulevard to the west.

The Project involves a series of capital maintenance items and upgrades to the ~1,600-space, ~573,000-SF, five-level parking structure, including, but not limited to:

- Concrete rehabilitation/repair (i.e., pre-cast quad tees with cast-in-place topping and, pre-cast beams and columns) and concrete sealing;
- Rehabilitation of expansion joints;
- Roof/skylight repair and/or replacement;
- Changes to the drainage system to lessen future concrete deterioration;
- Upgrades/repairs to fire suppression and life safety features; and
- The addition of a new elevator tower within the existing structure to access the southern portion of the ramp near Old Falls Street.

All work must be closely coordinated with an ongoing project being led by Niagara County Community College (“NCCC”) to convert a portion of the former Rainbow Centre Mall into a new stand-alone facility to house its tourism and culinary arts programs, to be known as the Niagara Falls Culinary Institute (“Culinary Institute”).

**II. BACKGROUND**

The former Rainbow Centre Mall/City Parking Ramp II was completed in 1982 as a single project, developed as a public/private partnership between the City and the Cordish Company

---

<sup>1</sup> Note: the former Rainbow Centre Mall was incorporated into City Parking Ramp II, primarily using most of its first two levels, with a light well and skylight occupying a portion of its upper three levels.

of Baltimore. The City owns both the Mall and the Parking Ramp; it entered into a 75-year leasehold agreement with Rainbow Square, Ltd (i.e., a local holding company established by the Cordish Company) for the exclusive rights to operate the Rainbow Centre Mall. The Mall was originally connected to the City-owned Wintergarden immediately to its south, an urban arboretum that was built upon the Old Falls Street right-of-way.<sup>2</sup>

In 1999, the Mall's primary anchor tenant closed, followed by a rapid pattern of closings by its remaining support tenants. In 2000, Rainbow Square, Ltd announced the closing of the Mall, with the exception of one year-long tenant and two seasonal establishments. Today, the Mall remains closed with the exception of a single seasonal gift shop that fronts upon the corner of Rainbow Boulevard and Niagara Street.

In 2009/2010, after evaluating a number of potential locations across the County, NCCC identified the former Rainbow Centre Mall as its preferred location for its Culinary Institute. The facility is planned to occupy ~70,000 SF of the former Mall that fronts upon the recently-restored Old Falls Street. The program for the facility also includes new student-run restaurants and selected retail establishments along the street level of Old Falls Street. Locating the Culinary Institute in a portion of the former Mall was facilitated through the Cordish Company gifting its leasehold rights—first to the NCCC Foundation and ultimately back to the City of Niagara Falls.

In November 2010, approvals were obtained from local, county, and state agencies on agreements to fund the Culinary Institute and associated rehab/upgrade of City Parking Ramp II to support this new use and other future uses in the balance of the former mall space. As part of these agreements, USAN was tasked with the responsibility of facilitating implementation of the Culinary Institute and assisting the City with the parking ramp rehab/upgrades. While these efforts will directly support the Culinary Institute, the actual design/construction of the Institute itself is being contracted directly through NCCC in coordination with USAN and the City.

As part of the development/budgeting for the Culinary and Parking Ramp projects, the City of Niagara Falls contracted with Urban Engineers of New York, PC ("Urban") to update and supplement a 2003 conditions assessment for Parking Ramp II and undertake additional assessments of former mall features including skylights and roofing, and screening for environmental contamination and asbestos. As part of this work, Urban prepared an order-of-magnitude cost estimate of \$8.02 million in necessary repairs and upgrades. On January 10, 2011, the City awarded Urban with a supplement to their contract to undertake final design of these improvements, prepare contract documents and specifications, and provide construction administration ("CA") services.

It should be noted that the City is also undertaking a fast-track program of interior demolition, asbestos abatement, and environmental remediation focusing entirely on the interior spaces of the former Rainbow Centre Mall. The City is staffing its own management and inspection services for this effort and it would not be part of this contract for CM services.

---

<sup>2</sup> Note: The Wintergarden has since been razed and Old Falls Street has been restored to full traffic access.

### **III. BIDDING AND CONSTRUCTION**

The City intends to publicly advertise for competitive bids for construction of the Project. There are no Federal funds involved in this Project and thus work would not be bound by Federal Davis-Bacon wage rules, but rather by New York State Labor Department Prevailing Wage regulations.

It is anticipated that the design and construction documents for the Parking Ramp capital maintenance and upgrades are being advanced under the assumption that the Project would be let under "multiple prime" contracts in accordance with New York State's Wicks Law. Letting is anticipated in summer 2011.

### **IV. REFERENCE MATERIALS**

To assist in preparing proposals, an electronic version of Urban's 2010 Conditions Assessment report, entitled *Assessment Update & Preliminary Design Services: Rainbow Centre – City Parking Ramp II*, dated November 12, 2010 is available by contacting the City Engineering Department at 716.286.4410.

### **V. SCOPE OF SERVICES**

The following CM services are to be provided:

#### **A. Pre-Construction**

##### **1. Project Planning & Coordination**

Assist and fully coordinate City and USAN activities associated with Bid Package Solicitations for:

- General – Concrete Rehabilitation, Expansion Joints, Slab Sealing, Drainage Improvements, Painting, Stair Tower Rehab, Roof Repair/Skylight Replacement, and New Elevator Tower.
- Mechanical/Electrical Systems – Lighting, Life Safety, Elevator Installation.
- Others – as necessary.

It is assumed that the CM will initiate (kick-off) work with review of 60% design drawings by Urban.

##### **2. Review of Design Drawings and Prepare Bid Documents**

For each separate Bid solicitation, review the Pre-Final and Final Design Drawings (i.e., 60% and 90% design work), schedule, and specifications in a timely manner prior to City/USAN acceptance. Develop and assemble bid scoping documents, and provide all bid forms, front ends and general conditions/supplementary (special) conditions and City/USAN approved

contract and other notes necessary to complete Bid Documents. Supply and bind all necessary copies of the Bid Documents, and distribute to bid information clearinghouses approved by City/USAN. Assist City/USAN with preparation of Contract Reporter advertisements, distribution of Bid packages, scheduling of pre-bid meetings and site walk through(s) with Consultants.

### 3. Review of Engineer's Final Cost Estimates

Validate A/E's (i.e., Urban's) final pre-bid cost estimates. This shall include consultation with qualified contractors on the clarity of the specified work, and available disposal site(s) and price ranges for any regulated waste.

### 4. Bid Process Assistance

Lead efforts, in conjunction with Urban/City/USAN, to undertake contractor briefings, bid walk, disseminating bid information, investigation of contractor qualifications, bid opening and recommendation to award contract. Obtain schedule of values or similar breakdown of value of work in relation to schedule for purpose of administration. Review with City Engineer any proposed variances that may be requested from the New York State Department of Labor or other regulatory agency that affects the method and cost of remediation activities

## **B. During Construction**

### 1. Inspection Services

Provide a full time NYSDOL licensed Project Monitor and coordinate/undertake all inspections/sign-off of construction work, quality, quantities, invoice amounts, etc. and prepare reports/logs/manifests for the Project Record.

### 2. Wage Administration

Assist with obtaining New York State prevailing wage schedule, collecting reporting forms from contractors, verify accuracy, and related administration thereof; investigate complaints, and collect required information such as transcript of payrolls. Assist City/USAN with meeting any union site requirements, such as double gates, and public relation/media activities at the site(s).

### 3. Insurance and Bonds

Assist City/USAN with maintaining current file on all required insurance certificates, payment and performance bonds, and collection of all lien releases from contractors.

### 4. Staging Area

Coordinate with Contractors/Urban/City/USAN and with NCCC Culinary Institute Project Team on the general requirements of the construction contract, develop and maintain a site logistics plan, including set-up and removal of contractor staging area and adherence to safety guidelines.

## 5. Weekly Job Site Meetings

Host bi-weekly (or more frequent if required) job site and other coordination meetings over 12 month period among all entities involved in all aspects of the Project (Ramp and Culinary Institute), including:

- Contractors (i.e., Ramp Rehab and Culinary Institute);
- Project A/E and CM firms (i.e., Urban and NCCC-selected architect, engineer, and CM); and
- USAN, City, and NCCC staff.

Coordinate progress items and construction issues. Prepare and distribute minutes of progress meetings. Prepare and coordinate master schedule of multitude of activities at site and four week look-ahead schedule on bi-weekly basis.

## 6. Site Office

Establish General Requirements in the bid packages for Contractor's provision of on-site office in existing space or job trailer on-site including space, furniture and equipment for personnel of Engineer and Construction Manager.

## 7. Outside Agency Coordination

Coordinate with local and State governmental agencies (including traffic plan, Fire Department reviews, etc.) on elements of construction. Prepare project report data required for progress reports to State funding agencies (USAN/ESDC). Monitor all local, State, and Federal health and safety requirements of the construction contract by the Contractors/Subcontractors including reporting requirements to outside agencies. Ensure appropriate safety precautions are implemented by Contractors.

## 8. Affirmative Action/MWBE Reporting Requirements

Obtain New York State Certified MWBE Listings for Bid Package. Collect from Contractors/Subcontractors the Monthly Employee Utilization Report (MEUR) and MBE/WBE Compliance Report forms and submit to City/USAN. Administer Affirmative Action requirements of the construction contract.

## 9. Monthly Reports/Briefings

Prepare and present monthly report to USAN/City, as well as an abbreviated version at City Council meetings, on the progress of Parking Ramp rehab/upgrade elements, the progress versus schedule, draw downs versus schedule of values, etc.

## 10. Change Order Management

In coordination with Urban, collect/log in and review all Issues, RFI's and Change Order Requests as to their legitimacy and accuracy of cost proposals. Maintain spreadsheet/database and advise City/USAN on proposed and on-going changes to the scope and cost of

contracts/overall project costs. Receive all submittals from the Contractors, review, log-in, and forward to City Engineer. Review changes to the construction schedule and advise City/USAN staff on implications. Prepare parallel cost estimates for said changes prior to receipt of contractor costs. Assist in negotiation of change orders and prepare approved change orders for City/USAN approval.

#### 11. Project Cost Control Reporting

Review/Approve all Contractor Application for Payment submittals forwarded by Urban, and assist City/USAN in payment processing requirements, and submit to City for approval and Contractor payment. City/USAN will manage the overall Master Project Budget (i.e., budget of combined A/E costs, CM costs, interior demo/abatement/remediation costs, and ramp rehab/upgrade costs).

#### 12. Punch List Items

In coordination with the Urban, review and coordinate project punch list activities with City, USAN, and Contractors and assist in obtaining project close out data and reports.

#### 13. Environmental Safety Program

The CM shall develop a Project Safety Program for use of his staff only. The CM shall require all Contractors to submit their Safety Plans for review prior to beginning work. Plans shall comply with all OSHA, Federal, State and Local Codes for implementation on the Project. The CM shall provide staff or a Safety representative with appropriate level of OSHA training and certifications.

## VI. INSTRUCTIONS FOR PROPOSALS

### A. Submission Requirements

Proposals must include, at a minimum, the following items:

#### 1. Qualifications Statement

- a) Past Projects: List at least five (5) and no more than ten (10) projects completed by the prospective Consultant within the last five years which are most relevant to this Project. Each project description must include a client reference with phone number and other contact information.
- b) Current Projects: List all current projects and their current status, including percentage complete, for all team members assigned to the Project by the prospective Consultant and any subconsultants.
- c) Organizational Chart: Include an organizational chart identifying members of the Consultant's team as well as their respective administrative, management and professional responsibilities.
- d) Experience: Describe the roles, qualifications and relevant experience of each team

- member. Individual resumes of no more than one (1) page in length should be submitted for team members that are on the org chart and will actually work on the Project, stating registrations and licenses, professional and educational background. Identify prior working relationships among the Consultant and any subconsultants.
- e) Electronic Capability: Indicate the prospective Consultants computer systems and CADD capabilities and operations, formats, delivery systems, etc.
  - f) Insurance Coverage: Selected consultant will be required to provide coverages including, but not limited to Commercial General Liability; Commercial Automobile insurance; Errors and Omissions insurance; and evidence of Workers Compensation/ Employer's Liability insurance (see **Attachment A**). It should be noted that in addition to naming City of Niagara Falls as additional insured, USAN, and the NYS Urban Development Corp. d/b/a ESDC shall also be so listed. Certificates of Insurance shall be provided at the time of Notice to Proceed (NTP) execution and shall contain a 30-day prior written notice of cancellation to City.
  - g) Litigation - Submit a statement on any and all litigation during the past three (3) years and the current status of all such litigation and contingent liabilities based on such litigation over the last three (3) years.
  - h) State Law Sections 139-j and 139-k. Because the City is a municipal agency, State Finance Law Sections 139-j and 139-k apply to this solicitation. Compliance requires (1) that all communications regarding this solicitation, from the issuance of this solicitation through final award and approval of any resulting contract (the "Restricted Period"), be conducted only with the contact person listed below (see **Section VI., subsection C.**); (2) the proper completion and submittal as part of proposals by respondents of the following forms: (a) Offerer Disclosure of Prior Non-Responsibility Determinations Form, (c) Offerer's Affirmation of Understanding of and Agreement Form pursuant to State Finance Law, copies of which are appended to this solicitation (see **Attachment B**). These forms must be included in the bid proposal submission. A copy of State Finance Law Sections 139-j and 139-k can be found at:

[www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html](http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html)

All potential respondents are solely responsible for full compliance with the Procurement Requirements.

## 2. Work Schedule

The City intends to have the CM Consultant under contract in time for review of 60% design drawings by Urban; this will occur roughly 8-10 weeks prior to a Contract Reporter advertisement/Invitation to Bid. The construction work is estimated to be completed within an eight (8) month schedule.

Provide a task-by-task schedule that specifies the time (in days or weeks) that will be required for each task, work part, and item in the scope of services. Include a linear timetable, with significant milestones, which outlines the sequencing, overlapping, etc.,

of the individual tasks. The schedule should begin concurrently with execution of a professional services agreement or a letter to proceed, whichever is earlier. The schedule also should indicate the time allocated for team reviews/meetings and approvals. The timeline should be presented in weeks, starting in month one.

In addition, describe the process the Consultant would employ to maintain strict cost reporting and schedule controls on the work to be performed hereunder.

### 3. Fees

Proposals shall be prepared on a time-and-materials basis plus expenses, with a not-to-exceed price estimate:

- a) Provide person-hour breakout and hourly rate in chart format to aggregate fee for services described in tasks listed above.
- b) Describe projected reimbursable expenses by phase (Note: sales tax excluded).

Note: assume all job meetings will be held in Niagara Falls.

Specify hourly rates per person, and specify period that the rates apply to, and "multipliers", if any.

No extra work beyond the scope of the prospective Professional Services Agreement shall be performed by the Consultant unless the City shall, in writing, specifically direct such work to be performed, and an authorization for such work shall have been given by City. Additional compensation to Consultant shall be at the rates as negotiated between the Consultant and City. The City, at its option, may process extra work as negotiated amendments to its Agreement with Consultant.

### 4. Pre-proposal Site Visit

A non-mandatory Site Visit meeting is scheduled to be held on **February 23, 2011** at the Rainbow Centre Mall/City Ramp II. **Participation is permitted only by reservation; please contact Victoria Gemuend at the City Engineering Department at 716-286-4410 before February 21, 2011 if you wish to participate. IF NO PROSPECTIVE CONSULTANTS CONFIRM THEIR PLANNED ATTENDANCE AT THIS SITE VISIT BY THIS DATE, THE MEETING WILL BE CANCELLED.**

## B. Terms and Conditions

### 1. Addenda

The City may issue Addenda to this document any time up to seven (7) days prior to the proposal due date. The respondents may request, in writing, for interpretations of the addenda during this time period.

## 2. Verifying Existing Conditions:

Each respondent shall fully inform himself/herself as to all existing conditions and limitations under which the services are to be performed, and he/she shall include in the proposal a sum to cover the costs of all items necessary to perform the work. No allowance shall be made to the Consultant because of lack of such examination or knowledge. The submission of a proposal shall be construed as evidence that the Consultant has made such examination.

## 3. City Representation or Warranties:

The City makes no representations or warranties regarding the accuracy of any information provided for this RFP and will have no liability or obligation with respect to the same. The issuance of this RFP and the submission of a response by any firm or the acceptance of such response by the City does not obligate City in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by City and selected Consultant.

The City reserves the right (i) to amend, modify, or withdraw this RFP, (ii) to revise any requirement of this RFP, (iii) to require supplemental statements or information from any responding party, (iv) to extend the deadline for submission of responses thereto, (v) to negotiate or hold discussions with any respondent to correct deficient responses which do not completely conform to instructions contained herein, and (vi) to cancel, or reissue in whole or part, this RFP, if the City deems it in its best interest to do so. The City may exercise the foregoing rights at any time without notice and without liability to any respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of the responding party.

## 4. Affirmative Action and Equal Opportunity:

It is the policy of the City to comply with all federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

For this Project, the City is working with contracting parties to ensure that New York State Business Enterprises, Minority and Women-owned Business Enterprises (M/WBE's), Minority Group Members and women share in the economic opportunities generated by USAN's participation in projects or initiatives, and/or the use of ESDC/USAN funds. ESDC's non-discrimination and affirmative action policy will apply to this initiative. The selected consultant shall be required to use its best efforts to achieve M/WBE participation of not less than 10% of the total dollar value of the contract.

A copy of each respondent's equal employment opportunity policy statement and Staffing Plan (Schedule A-1) of the anticipated workforce to be utilized on the contract and Schedule of Minority/Women Owned Business Participation (Schedule A-2), shall be

included as part of the response to the RFP (see **Attachment B**). The ESDC Affirmative Action Unit ("AAU") is available to assist you in identifying New York State certified M/WBEs that can provide goods and services in connection with the contract. If you require M/WBE listings, please call the AAU at (212) 803-3225 or visit <http://205.232.252.35/> for ESD's searchable data base of M/WBE owned businesses.

### C. Submission Address/Contacts

Six (6) copies of your proposal must be received by **4:00 P.M., March 7, 2011**. Proposals should be submitted to:

**Thomas Radomski, P.E., City Engineer**  
**Niagara Falls Engineering Department**  
**745 Main Street**  
**PO Box 69**  
**Niagara Falls, NY 14302-0069**

IN ACCORDANCE WITH ALL QUESTIONS, COMMENTS, REQUESTS FOR CLARIFICATION AND OTHER COMMUNICATIONS REGARDING THIS SOLICITATION MUST BE IN WRITING AND SUBMITTED VIA EMAIL TO:

**Victoria Gemuend**  
**Niagara Falls Department of Engineering**  
[Victoria.Gemuend@niagarafallsny.gov](mailto:Victoria.Gemuend@niagarafallsny.gov)

CONTACT WITH ANY OTHER PERSON REGARDING THIS SOLICITATION IS PROHIBITED BY LAW.

Written questions will be accepted through the close of business on **March 1, 2011**. All questions and requests for clarification will be responded to in writing and disseminated to all persons and organizations having expressed a formal interest in this solicitation.

Please be advised that under no circumstances will the City obligate itself to consider a proposal which is received after the deadline or does not include the basic items described above. All costs associated with the preparation of a proposal under this solicitation are the sole responsibility of the firm submitting the proposal and will not be reimbursed or paid for by the City.

### D. Proposal Review and Selection

Based on its review of the RFP proposals, the City, in coordination with USAN, may select a short list of responders to interview within seven (7) days of receipt of proposals. The City will notify each responder via e-mail, as to whether its proposal has been selected for short list interviews to be held at Niagara Falls City Hall. Following final selection of the Consultant, the City will prepare a contract defining all Project terms and conditions and the selected consultant's responsibilities.

# Attachment A: INSTRUCTIONS FOR CITY OF NIAGARA FALLS STANDARD INSURANCE CERTIFICATE

Standard Insurance Requirements apply to the following classifications:

- Construction and Maintenance
- Purchase of, or lease of, merchandise or equipment
- Professional Services
- Property Leased to Others or Use of Facilities or Grounds
- Concessionaire Services
- Livery Services
- All purpose Public Entity Contracts

The Provider of any of the above classifications shall obtain, at his own costs and expense, the following insurance coverage with insurance companies licensed in the State of New York with a Best Rating of at least B+ and shall provide a Certificate of Insurance and a **Binder of Insurance Coverage** as evidence of such coverage to the City of Niagara Falls before commencement of work and/or lease or delivery of merchandise or equipment.

Certificate should be made to the City of Niagara Falls, New York, City Hall, 745 Main Street, P.O. Box 69, Niagara Falls, N.Y. 14302-0069, and should reference the operation.

Prior to non-renewal, cancellation of insurance policies, or material change, at least 30 days advance written notice shall be given to the Certificate Holder.

All Certificates of Insurance shall be approved by the Law Department prior to the inception of any work.

Minimum coverage with limits and provisions are as follows:

**A. Comprehensive General Liability:**

With a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,500,000.00 per occurrence and \$3,000,000.00 annual aggregate. The coverage shall include:

- \* Premises and Operations
- \* Products and Completed Operations
- \* No exclusion for X C U coverages (explosion, collapse and underground)
- \* Independent Contractors
- \* Broad Form Property Damage
- \* Contractual Liability
- \* Fire Legal Liability
- \* Personal Injury Liability (Coverage A, B, and C)
- \* Liquor Liability (if alcoholic beverages are to be dispensed under NYS license.)

If the work to be performed is undertaken pursuant to a home improvement contract and a City right-of-way permit is required only by reason of the installation, repair or replacement of a driveway, apron, or sidewalk within the City right-of-way, then the limits of liability for comprehensive general liability set forth in this section shall be \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

The City of Niagara Falls shall be named as an Additional Insured on the General Liability Policy with the following provisions:

1. The insurance company or companies issuing the policies shall have no recourse against the City of Niagara Falls for payment of any premiums or for assessments under any form of policy.
2. The insurance shall apply separately to each insured (except with respect to the limit of liability.)

**Attachment A:**  
**INSTRUCTIONS FOR CITY OF NIAGARA FALLS**  
**STANDARD INSURANCE CERTIFICATE**

- B. Auto Liability:** (if licensed vehicles are to be used in the operation)  
With a combined single limit for Bodily Injury and Property Damage of \$1,000,000.00 each occurrence, the coverage shall include Owned, Hired and Non-owned autos (Symbol 1 should be designated for Liability Coverage on Business Auto Policy.)
- C. Excess Umbrella Liability:**  
If General Liability and/or auto limits are lower than required in the above sections, Umbrella Liability or Excess Liability to the required limit is acceptable.
- D. Owners Protective Liability:** (on contracts for construction which exceed a cost of \$100,000.00)  
With a minimum limit of \$1,500,000.00 each occurrence and \$3,000,000.00 aggregate. Named insured shall be the City of Niagara Falls, New York.
- E. Professional Liability:**  
If the contract includes professional services (engineers, architects, etc.), contractor will carry professional liability insurance with a minimum limit of one million dollars (\$1,000,000.00).
- F. Property Insurance:** (if applicable)  
Contractor shall purchase and maintain property insurance upon the work at or off the site to 100% of the contract completed value. This insurance shall include the interest of the Owner, Contractor, and Sub-contractors in the work; shall insure against the perils of fire and extended coverage; shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the Work is completed and accepted by the owner.
- G. Statutory Workers' Compensation and Employers Liability:**  
All contractors doing business with or vendors entering upon City of Niagara Falls property shall carry the above insurance in compliance with the Worker's Compensation Law of the State New York.
- H. Performance and Payment Bond:** (where applicable)  
A performance and payment bond shall be issued by a Surety company who is licensed by the Insurance Department of the State of New York in favor of the City of Niagara Falls in the amount of not less than one hundred (100) percentum of the total amount and shall be delivered before commencement of lease or assumption of operations under contract.

**Note: If the contract is for Professional Services only (engineers, architects, etc.), Paragraphs D, F, and H will not apply.**

Revised May 2006

## **Attachment B:**

### **Compliance with State Finance Law Sections 139-j and 139-k & Required Forms for Non-Discrimination/Affirmative Action**

# Compliance with State Finance Law Sections 139-j and 139-k

(Completed *Offerer's Affirmation of Understanding/Agreement & Offerer's Disclosure of Prior Non-Responsibility Determinations*  
to be included in proposal)

**SCHEDULE A-2**

**SCHEDULE OF MINORITY/WOMEN OWNED BUSINESS PARTICIPATION**

*(No substitutions may be made on this submission except by prior written approval from Empire State Development)*

Name of Respondent \_\_\_\_\_

Project: \_\_\_\_\_ Service: \_\_\_\_\_

Address \_\_\_\_\_

Respondent's Contract Amount: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Name/Address/Phone No. of Minority/Women-owned Business	MBE or WBE	Joint Venture, Subcontractor or Supplier	Scope of Work to be Performed	Proposed Contract Price or Purchase Amount & Percentage

**CERTIFICATION:** I, \_\_\_\_\_ (Print Name), the \_\_\_\_\_ (Title), do certify that (i) I have read this Schedule of Minority/Women Owned Business Participation and (ii) to the best of my knowledge, information and belief the information herein is complete and accurate.

Signature \_\_\_\_\_ Date \_\_\_\_\_

*Forward to:*  
Empire State Development  
Affirmative Action Unit - Laverne Poole  
633 Third Avenue  
New York, NY 10017  
Office: (212) 803-3224 Fax: (212) 803-3223

## Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

### Background:

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

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

### Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law § § 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

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

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

## **Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations**

### **Background:**

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

### **Instructions:**

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.



6. If yes, please provide details below.

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

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

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

# Non-Discrimination/ Affirmative Action Forms

(A copy of the prospective Prime Consultant's Equal Employment Opportunity Policy Statement and completed Schedules A-1 & A-2 to be included in proposal)

**SCHEDULE A-1**

**STAFFING PLAN**

Project/RFP Title \_\_\_\_\_ Location of Contract \_\_\_\_\_

County \_\_\_\_\_ Zip \_\_\_\_\_

Contractor/Firm Name \_\_\_\_\_ Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Check applicable categories: (1) Staff Estimates include:

Subcontractors \_\_\_\_\_

(2) Type of Contract:

Construction Consultants \_\_\_\_\_

Total Workforce \_\_\_\_\_

Services/Consultants \_\_\_\_\_

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

**CERTIFICATION:**

I, \_\_\_\_\_ (Print Name), the \_\_\_\_\_ (Title), do certify that (i) I have read this Staffing Plan and (ii) to the best of my knowledge, information and belief the information herein is complete and accurate.

Signature \_\_\_\_\_ Date \_\_\_\_\_ Telephone Number \_\_\_\_\_

Forward to:

Empire State Development  
Affirmative Action Unit - Laverne Poole  
633 Third Avenue  
New York, NY 10017

Office: (212) 803-3224

Fax: (212) 803-3223

**CONTRACTORS STAFFING PLAN**  
*Instructions for Completion*

**PURPOSE:**

The Contractors Staffing Plan is prepared by all contractors providing good, products and merchandise, or services (skilled and non-skilled) or professional consulting services (inclusive of professional construction consultant services) to a state agency. The plan is required prior to the award of a contract and contains the anticipated staff assignments during the contract. **In instances where that cannot be identified, the contractor may identify the total work force of the company.** The form will be reviewed by state agencies for the purposes of equal employment opportunity requirements.

**GENERAL INFORMATION:**

1. **Project/RFP Title:** describe the project for which you are competing as indicated on the RFP/RFB document.
2. **Location of Contract:** the company's location and postal zip code.
3. **Contractor/Firm Name:** the company that will be providing the workforce. Include *address* with city name, state and zip code.
4. **Check applicable categories:**  
(1) *Staff Estimated include: Contract/Project Staff* (check in cases where the workers to be assigned can be determined, **Total Work Force** (check in the event the contract work force cannot yet be determined, **Subcontractors** (check if the work force for the project is that of a subcontractor).  
(2) *Type of Contract: Construction Consultants, Commodities, Services/Consultants* (check appropriate box).

**TOTAL ANTICIPATED WORK FORCE:**

1. **Federal Occupational Category:** The contractor's work force is broken down and reported by the nine Federal Occupational Categories (FOC's) consistent with the Federal government's EEO-1 categories for the private sector labor force. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.
2. **Total Number of Employees:** Record the total number of all persons employed in each FOC regardless of ethnicity (either to be assigned to the contract/project staff OR in the company's total work force, as indicated by the categories selected in number 4 (1) Staff Estimated, of the General Information. Report the number of male employees in column (1), and the total number of female employees in column (2) for each FOC. In columns (3) through (10), report the number of male and female *minority* group member, based on the following defined groups:

**Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups.

**Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race.

**Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

**Native American or Alaskan Native:** all persons having origins in any of the original peoples of North America.

**TOTAL PERCENT MINORITY:**

Add all minority group members (male and female) columns (3) through (10), divide by the total numbers of all employees in that FOC (columns 1 + 2). Post the percentage result for that FOC. [Total number of minority employees (columns 3 through 10) / Total number of employees (columns 1 and 2)].

**TOTAL PERCENT FEMALE:**

Divide the number of female employees (column 2) in the FOC, by the total number of both Male and Female (column 1 + 2). Post the percentage result for that FOC. [Total female employees (column 2) / total number of employees (columns 1 and 2)].

**TOTALS:**

To compute the column totals, add vertically. *Total Percent Minority Employees and Total Percent Female Employees* should be calculated as shown above, using the summed column totals.

The Contractors Staffing Plan is to be completed by the prime contractor and signed and dated by an authorized representative before submission. The *Company Official's Name, Title, Telephone Number, Signature and Date* signed should be provided where indicated on the form.