

REQUEST FOR PROPOSALS
FOR
AN INDEPENDENT FINANCIAL AUDIT
OF THE
WESTCHESTER COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

DUE DATE IS NOVEMBER 10TH, 2009 BY 2:00PM

COUNTY OF WESTCHESTER
INDUSTRIAL DEVELOPMENT AGENCY
ROOM 903
148 MARTINE AVENUE
WHITE PLAINS, NEW YORK 10601

Contacts:

Theresa G. Waivada, Executive Director, tgw1@westchestergov.com
Michael S. Goodstein, Assistant Secretary, mgg8@westchestergov.com

Proposed RFP Timetable

- a. Release of Request for Proposals: October 20, 2009
- b. Final date for Submission of Questions: November 2, 2009
- c. Final date for Submission of Proposals: November 10, 2009
- d. Oral Presentations (Selected Proposers Only, if required) November 18, 2009
- e. Approximate date for Notification to Selected of Vendor November 25, 2009

Dates indicated above are subject to change at the sole discretion of the Agency.

Table of Contents

I. Statement of Purpose	1
II. Background	1
III. Scope of Audit	2
IV. Audit Methods and Programs	3
V. Proposal Requirements	3
VI. Administrative Information and Conditions	5
VII. Other Conditions and Limitations	6
VIII. Disclosure of Proposal Contents/State Finance Law.	7
Appendix I Non-Collusive Bidding Certification Required by Section 139-D of the State Finance Law	
Appendix II Non-Discrimination in Employment in Northern Ireland MacBride Fair Employment Principles	
Appendix III The Selected Standard Clauses for IDA Contracts	
Appendix IV Certification Pursuant to State Finance Law §139 1	

I. Statement of Purpose

The Westchester County Industrial Development Agency (hereafter referred to as “the Agency” or “IDA”) is soliciting proposals from accounting firms experienced in public finance and New York State public benefit corporation accounting to perform audits of the financial statements of the Agency, as required by Chapter 84 of the Laws of 2000. Additional audit services (defined herein) may also be required on an as needed basis. The required examination is to be performed primarily for the purpose of rendering an opinion by an independent firm of accountants to the Directors of the Agency on the consolidated financial statements of the Agency for each fiscal year during this engagement (Agency fiscal years 2009-2013), subject to two one-year renewals through 2015 upon mutually agreeable terms.

II. Background

Since the County of Westchester Industrial Development Agency formed in 1977, the Agency’s management was under the direction of the seven appointed members of the Board. Its by-laws required that Westchester County’s Commissioner of Finance served as the Treasurer of the Agency. Following the passage of the 2005 Public Authority Accountability Act (PAAA), the Agency adopted new by-laws, policies and procedures consistent with the Act.

As a result, the Agency has established its own financial systems separate from those of Westchester County. To insure continuity in consistency with municipal best practices, the by-laws establishes the position of Comptroller as its chief financial officer responsible for financial management, compliance and good practices establishing internal controls, as well as investment of agency funds consistent with its investment policy; and reporting to the Treasurer (an elected board member) and Agency.

The Executive Director serves as compliance officer. The Compliance Officer is responsible for insuring that the Agency complies with all financial and other reporting requirements imposed by structure, including those requirements in the General Municipal Law and the PAAA. [see Agency bylaws and policies at <http://www.westchestergov.com/ida>]. Further the Executive Director is responsible for providing the Agency and its Committee with detailed budget information prior to adoption of annual budget.

The Treasurer oversees the Comptroller.

An Audit Committee of three Board members including the Treasurer is responsible for the appointment, compensation and oversight of the public accounting firm. The Audit Committee offers its recommendations to the full Agency for action and/or adoption.

For more information concerning IDA, including its financial activities and audited financial statements, see the IDA website, <http://www.westchestergov.com/ida>

III. Scope of Audit

The Scope of Work to be furnished by the selected vendor responding to this RFP is to provide the deliverables, perform the tasks, and meet the requirements listed below and discussed in detail in the following sections. The audits and related work under the contract resulting from this RFP must be conducted in accordance with Generally Accepted Auditing Standards (GAAS), as promulgated by the American Institute of Certified Public Accountants, with Generally Accepted Government Auditing Standards (GAGAS), as promulgated by the United States General Accounting Office in its

publication, Government Auditing Standards, with standards issued by the Governmental Accounting Standards Board (GASB), Generally Accepted Accounting Principles (GAAP), and with other authoritative auditing guidance in effect. Opinions rendered shall indicate whether financial statements are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States. The scope of the audits must be planned to preclude the necessity for exceptions arising from scope limitations.

The audit must conform to the requirements of Part 210 and Chapter V of Title 2, "Accounting and Reporting for Public Authorities" of the official Compilation of Codes, Rules and Regulations of New York State.

A. Standard Annual Audit Services

The selected firm should be available to provide "Standard Annual Audit Services" to the Agency, as follows:

1. Consultation with accounting staff regarding accounting issues;
2. Annual audit of consolidated statements;
3. The preparation of a management letter;
4. An audit of the Agency's Investment Guidelines compliance; and
5. Report on the Agency's internal control structure over financial reporting.

It will be necessary for the auditor to make itself available to the Agency for the Agency's fiscal years ending December 31, 2009 through December 31, 2013. In addition to its independent audit and reporting, the Agency will be treated as a component unit of Westchester County for reporting purposes. Therefore, it will be necessary for the Agency's auditors to provide preliminary numbers by the third week in February of each year subsequent to the end of the fiscal year being audited, and deliver the final audit by March 30 of each year subsequent to the end of the fiscal year being audited.

B. Additional Audit Services

The successful firm should also be prepared to make itself available for "Additional Audit Services," as follows:

1. Provide all reports and other materials requested by the Agency electronically;
2. Print as many copies as the Agency requests of reports and other materials that are prepared pursuant to the audit engagement (approximately fifteen copies);

This list is not meant to be all inclusive as the needs of the Agency cannot be entirely anticipated as of this writing.

The contract will be reviewed at the conclusion of each year's audit to determine whether the selected firm will continue to provide services for the entire five-year period.

IV. Audit Methods and Programs

The nature and extent of the work to be carried out in the examination of the Agency will be agreed upon between the auditor and the Agency. It will include such tests of the accounting records and procedures as are deemed necessary, including but not limited to, the examination of supporting evidentiary material, the observation or written confirmation of selected assets, confirmation of certain liabilities and observation and discussion of operating practices. Appropriate techniques should be used to accomplish an effective and efficient audit.

V. Proposal Requirements

All submitted proposals will be reviewed for completeness. Failure to submit a complete proposal will result in disqualification. The following information must be included with the proposal, in separate parts, as indicated:

A. Technical

- *Partner, Supervisory and Staff Qualifications and Experience*

The staff providing services must be located in the metropolitan New York area.

The firm should identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists who would be assigned to the engagement and indicate whether each such person is (registered/licensed) to practice as a certified public accountant in New York. The firm also should provide information on the government auditing experience of each person with an emphasis on county government experience, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

The Westchester County IDA is particularly interested in the experience with New York governmental clients of the staff to assigned to the audit. The firm should provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. The firm also should indicate how the quality of staff over the term of the agreement will be assured.

- The names and resumes, including educational experience, of audit staff to be assigned to the examination and an indication of their experience and familiarity with State public authorities and municipalities and the accounting and auditing principles, practices, procedures and methods of New York State. Of particular interest will be your experience with governmental agencies and authorities that are primarily financing entities. Please specify the name of the individual accountable for the project.
- Equal Employment Opportunity reports on the composition of the firm's workforce.
- At least three references. Include one each from a municipality and public Agency with which individuals to be assigned to this audit have worked (and the name and contact number of the project manager within each entity).

- Identify and discuss fully, the nature of any conflict, actual or potential, your firm may have in connection with your firm’s involvement with the Agency.
- List all material investigations or judgments against your firm or its principals for the past five years.
- A proposed schedule, work plan and allocation of hours for each of the five years of the audit period, including critical dates and time estimates and project management and supervision structure.
- A statement to the effect that the price quoted is an irrevocable offer for 120 days from the date of submission.

B. Cost

- Proposers must submit cost proposals for Standard Annual Audit Services, which contains all pricing and staffing information relative to fulfilling the scope of services described in Section III. A of this RFP.

The proposal must state a flat fee for services. The proposal must also state the normal governmental rates charged by the firm and the discounted or preferred rate for each title/position expected to perform such services, as well as the estimated number of hours for each position used to calculate the fee.

- For Additional Audit Services, as contemplated in Section III. B of this RFP, proposers must submit a separate schedule of the hourly rates for each title/position expected to perform such services. The proposal must also state the normal governmental rates charged by the firm and the discounted or preferred rate to be charged to the Agency, for each title/position expected to perform such services, as well as the estimated number of hours for each position.
- Please indicate whether all of the rates cited in this section of the RFP are the lowest charged to your firm’s municipal clients, and if not, explain why.

Out-of-pocket expenses should not be separately categorized, and will only be reimbursed in accordance with the Agency’s standard schedule for these costs. Such expenses will be reviewed for reasonableness on a continuing basis.

VI. Administrative Information and Conditions

All proposals submitted must include a cover letter signed by a member of the proposing firm duly authorized to execute contracts on behalf of the firm. All Request for Proposals (RFP) should be in writing and addressed to:

Ms. Theresa G. Waivada,
 Executive Director
 County of Westchester
 Industrial Development Agency
 Room 903,
 148 Martine Avenue
 White Plains, New York 10601
 (hereinafter, the “RFP Contact”).

This RFP is a solicitation and not an offer of contract.

1. Inquiries

All questions about the RFP should be submitted via email to the RFP Contact: tgw1@westchestergov.com by 2:00 P.M. on November 2, 2009. Any other contact with IDA regarding this RFP is prohibited. Violation of this requirement may be grounds for eliminating a proposal from consideration. See also Section VIII of this RFP and Appendix IV.

Answers to all substantive questions will be furnished by email to prospective proposers who have specifically informed the RFP Contact, via email on or before November 4, 2009, of their interest in receiving same.

2. Submissions of Proposals

Interested auditing firms should submit six copies of their proposal in a sealed package. All proposals must be received at IDA's office no later than 2:00 P.M. on November 10, 2009.

3. Vendor Selection

Proposals will be evaluated by the Agency. An award will be made by the Agency as quickly as possible, but shall not be a binding agreement until definitive documentation has been signed by both parties.

4. Evaluation Criteria

Each proposal will be evaluated for its overall content, quality, and cost, based upon the following criteria:

- experience and qualifications of the proposing firm and the staff (including managerial) to be assigned to the project;
- soundness, practicality and thoroughness of the proposed approach to the project, including work schedules, task sequences and allocation of staff, including evidence of satisfactory, timely performance on similar projects;
- cost proposed (please make cost proposal a separate section and make sure it is for the five-year period)
- logical project organization and management;
- overall quality of the proposal;
- demonstrated understanding of the Agency's needs and operations;
- references; and
- interviews, if conducted.

5. Notification of Award and Contract

All proposers will be notified in writing of the contract award, if any. The successful proposer will be advised by the Agency, which will furnish the contract.

VII. Other Conditions and Limitations

Proposers may be requested to clarify the contents of their proposal. Other than to provide such information as may be requested by the Agency, no proposer will be allowed to alter its proposal or add any new information after the proposal due date.

The Agency will not be responsible for expenses incurred in connection with the preparation of submission of any proposal.

Proposers must fully execute both the MacBride Fair Employment Principles and Non-Collusive Bidding Certification statements at the end of this RFP upon submission of the proposal. In addition, Proposers are urged to review and consider "The Selected Standard Clauses for IDA Contracts" at the end of this RFP as these will only be modified under the most compelling of circumstances.

Only those proposers who furnish complete information will be considered for evaluation. No partial proposals will be considered. The Agency reserves the right to accept or reject any or all proposals, and request some or all respondents to provide oral presentation of their proposals.

VIII. Disclosure of Proposal Contents/State Finance Law.

Information submitted to the IDA, including the information contained in proposals submitted in response to this RFP, may be subject to disclosure under the New York Freedom of Information Law ("FOIL") and other laws. If a vendor is submitting information that it believes is protected from disclosure under FOIL or similar laws, it should clearly identify, at the time of submission, the information at issue and the basis for non-disclosure. If the IDA receives a request for disclosure of the identified information and the IDA determines that the identified information is required by FOIL or any other law to be disclosed, the IDA will use reasonable efforts to notify the vendor prior to disclosing the information in order to enable the vendor to take such action as the vendor deems appropriate. Copies of executed contracts are not exempt from disclosure under FOIL and similar laws.

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements (1) govern permissible communications between potential respondents and the IDA or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP.

Compliance with the Procurement Requirements requires that (x) all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact person listed below; (y) the completion by respondents of the Certification at Appendix IV as part of their proposal; and (z) periodic updating of such forms during the term of any contract resulting from this RFP.

The Procurement Requirements also require the IDA staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. For the purpose of compliance with State Finance Law Sections 139-j, contact with Michael Goodstein is considered permissible.

APPENDIX I

**NON-COLLUSIVE BIDDING CERTIFICATION
REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

- [1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
- [2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
- [3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 200__ as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING FOR THE PARTNERS OR PRINCIPALS THAT WOULD PARTICIPATE ON THIS ENGAGEMENT:

NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

_____	_____
_____	_____
_____	_____

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

NAMES LEGAL RESIDENCE

President

Secretary

Treasurer

President

Secretary

Treasurer

Identifying Data:

Potential Contractor: _____

Street Address: _____

City, Town, etc. _____

Telephone: _____ Title: _____

If applicable, Responsible Corporate Officer Name

Title

Signature

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

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

By _____ By _____
(Name) (Name)

Title Title

Street Address Street Address

City and State City and State

APPENDIX II

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

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

(1) has business operations in Northern Ireland;

Yes ____ or, No ____ if yes;

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

Yes ____ or, No ____

Signature

APPENDIX III

SELECTED STANDARD CLAUSES FOR IDA CONTRACTS (Subject to more stringent conditions that may be outlined in the RFP)

ARTICLE I

RELATION OF CONSULTANT TO THE IDA

- 1.1 **SUPERVISION BY THE IDA.** The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of the IDA provided that neither the IDA's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act pursuant to this Agreement.
- 1.2 **CONSULTANT'S PERSONNEL.** The Consultant shall designate in writing to the IDA one individual, satisfactory to the IDA, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be the IDA's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon the IDA's written request.
- 1.3 **APPROVAL OF SUBCONSULTANTS.** The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of the IDA. The Consultant shall inform the IDA in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.
- 1.4 **CONSULTANT AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this Agreement, the Consultant's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of the IDA. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as, or claim to be acting in the capacity of an employee, or agent of the IDA.
- 1.5 **CONFLICT-OF-INTEREST.** The Consultant represents that:
 - (a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

- (b) No officer, employee, agent or director of the IDA, or any of its subsidiaries shall be admitted to any share or part hereof or to any benefit to arise here from.
- (c) No officer, employee, agent or director of the IDA, or any of its subsidiaries shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of the IDA, or any of its subsidiaries have any interest, direct or indirect, in this Agreement or the proceedings thereof.

ARTICLE II

DOCUMENTS AND RECORDS

- 2.1 **MAINTENANCE OF RECORDS.** The Consultant shall, until three years after completion of its services hereunder or termination of this Agreement by the IDA, maintain and shall require each Subconsultant to maintain (a) complete and correct records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement and (b) complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultant) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder. Consultant shall make such books and records available to the IDA or its authorized representatives for review and audit at all such reasonable times as the IDA shall from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.
- 2.2 **OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Consultant under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of the IDA, and the IDA shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specification and other documents without payment of any additional royalty, charge or other compensation to Consultant. Upon request of the IDA during any stage of the work, Consultant shall deliver all such material to the IDA.

The Consultant agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of the IDA, except that Consultant may retain copies of such reports and other documents for general reference use.

ARTICLE III

TERMINATION

- 3.1 **OPTIONAL TERMINATION BY THE IDA.** The IDA at anytime, in its sole discretion, may terminate this Agreement or postpone, delay all or any part of the Agreement upon written notice to the Consultant. In the event of such termination, postponement, or delay, the IDA shall pay the Consultant for reasonable professional time and out-of-pocket expenses incurred by Consultant to the date notice of such action are received by Consultant. The Consultant agrees to cause any agreement or contract entered into by Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provision of this Section 3.1.

ARTICLE IV

PROVISIONS REQUIRED BY LAW

- 4.1 **CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS.** The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all material applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.
- 4.2 **CONSULTANT TO OBTAIN PERMITS, ETC.** Except as otherwise instructed in writing by the IDA, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the IDA or the Consultant in connection with this Agreement.
- 4.3 **NON-DISCRIMINATION.** The Consultant during the performance of this Agreement specifically agrees that the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
- 4.4 **NO ASSIGNMENT WITHOUT CONSENT.** The Consultant agrees that:
- (a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of the IDA;
 - (b) If the prohibition of Section 4.4(a) be violated, the IDA may revoke and annul this Agreement and IDA shall be relieved from any and all liability and obligations hereunder to the Consultant and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Consultant and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

ARTICLE V

OTHER STANDARD PROVISIONS

- 5.1 **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

5.2 ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

5.3 CONFIDENTIALITY. Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and the IDA and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from the IDA, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as the IDA may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

5.4 INDEMNIFICATION. Notwithstanding anything to the contrary contained herein, Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or Sub consultants, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to this Agreement. Consultant agrees to defend, indemnify and hold the indemnittees (the State of New York and the IDA) harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage to property, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or its Sub consultants, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the indemnittees by reason of claims against Consultant or its Sub consultants, or their employees, agents, servants, independent contractors and subcontracts for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the indemnittees for reasonable attorneys' fees incurred in connection with the above. Consultant shall be solely responsible for the safety and protection of all its Sub consultants, or the employees, agents, servants, independent contractors, or subcontractors of Consultant or its Sub consultants, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Sub consultants, or their respective agents, employees, servants, independent contractors or subcontractors.

This Article shall survive the expiration or earlier termination of this Agreement.

5.5 MISCELLANEOUS. The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any part of the Agreement.

APPENDIX IV

Certification Pursuant to State Finance Law §139

This form shall be completed and submitted with your proposal. Failure to complete and submit this form may result in a determination of non-responsiveness and disqualification of the proposal.

I. Affirmation relating to procedures governing permissible contacts:
(Proposer must check applicable box)

Proposer: affirms does not affirm

that it understands and has to date and agrees hereinafter to comply with the Agency's procedures relative to permissible contacts for this procurement as required by State Finance Law §139-j (3) and §139-j (6) (b).

II. Disclosure of Findings of Non-Responsibility and Prior Contract Terminations or Withholdings under the 2005 Procurement Lobbying Law:

1. Has any "governmental entity," as defined by State Finance Law §139-j and §139-k, made a finding in the last four years that the firm was not responsible?

No Yes

2. If yes, was the basis for any such finding(s) the intentional provision of false or incomplete information required by State Finance Law § 139-j and §139-k, and/or the failure to comply with the requirements of State Finance Law §139-j (3) relating to permissible contacts?

No Yes

If yes, please provide details regarding each finding of non-responsibility below. (Attach additional pages, if necessary)

Governmental Entity: _____

Date of Finding: _____

Basis of Finding: _____

3. Has any "governmental entity" as defined in State Finance Law §139-j and §139-k terminated or withheld a procurement contract with the firm due to the intentional provision of false or incomplete information required by such Laws and/or the failure to comply with the requirements of State Finance Law §139-k(3) relating to permissible contacts?

No Yes

If yes, please provide details below. (Attach additional pages, if necessary)

Governmental Entity: _____

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding of Contract:

The undersigned acknowledges and states that all information provided to the Agency with respect to State Finance Law § 139-j and § 139-k is complete, true and accurate.

Signature of Authorized Officer Date

Title

Address