



NEW YORK CITY DEPARTMENT OF  
DESIGN + CONSTRUCTION

**DAVID J. BURNEY, AIA**  
Commissioner

**CAROL DIAGOSTINO**  
Agency Chief  
Contracting Officer

January 23, 2009

**ADDENDUM NO. 1**

**PROJECT: C114NEWF, New Bronx Detention Complex at Hunts Point  
PIN: 8502009CR0002P**

**THE ADDENDUM IS ISSUED FOR THE PURPOSE OF AMENDING THE REQUIREMENTS OF THE REQUEST FOR PROPOSALS AND IS HEREBY MADE A PART OF SAID REQUEST FOR PROPOSALS TO THE SAME EXTENT AS THOUGH IT WERE ORIGINALLY THEREIN.**

**REQUEST FOR PROPOSAL**

- 1. Attachment 6, RFP 31, Pages 1- 4: Delete in its entirety and replace with the revised Attachment 6, RFP 31, Pages 1- 4 and the "Notice to all Prospective Contractors" attached to this addendum.**

Contact: [palaciob@ddc.nyc.gov](mailto:palaciob@ddc.nyc.gov)  
Phone No.: 718-391-1866

**By signing in the space provided below, the Proposer acknowledges receipt of this Addendum.**

**THIS ADDENDUM MUST BE SIGNED BY THE PROPOSER FOR THE CONTRACT AND ATTACHED TO THE TECHNICAL PROPOSAL.**

\_\_\_\_\_  
**Carol DiAgostino**  
Agency Chief Contracting Officer

\_\_\_\_\_  
**Name of Proposer**

By \_\_\_\_\_

Title \_\_\_\_\_



## **ATTACHMENT 6**

### **M/WBE PROGRAM**

#### **SUBCONTRACTOR UTILIZATION PLAN**

**Subcontractor Utilization Plan:** The Subcontractor Utilization Plan for this Contract is set forth on the following pages of this RFP. The Subcontractor Utilization Plan (Part I) indicates whether participation goals have been established for this Contract. If participation goals have been established for this Contract, the proposer must submit a Subcontractor Utilization Plan (Part II) with its Technical Proposal in a sealed envelope clearly marked as “Subcontractor Utilization Plan.”

**Contract Provisions:** Contract provisions regarding the participation of MWBE firms are set forth in Article 46 of the Contract. The proposer is advised to review these contract provisions.

**Waiver:** The proposer may seek a full or partial pre-award waiver of the Target Subcontracting Percentage in accordance with Article 46 of the Contract (See Part A, Section 10). The proposer’s request for a waiver must be submitted at least seven (7) consecutive calendar days prior to the proposal due date. Waiver requests submitted after the deadline will not be considered. The form for requesting a waiver of the Target Subcontracting Percentage is set forth in the Subcontractor Utilization Plan (Part III).

**Rejection of the Bid:** The proposer must fully complete the Subcontractor Utilization Plan (Part II) set forth on the following pages. Subcontractor Utilization Plans which do not include the required affirmations (on Page 2) will be deemed to be non-responsive, unless a full waiver of the Target Subcontracting Percentage is granted (Subcontractor Utilization Plan, Part III). In the event that the City determines that the proposer has submitted a Subcontractor Utilization Plan where the required affirmations are completed but other aspects of the Plan are not complete, or contain a copy or computation error that is at odds with the affirmation, the proposer will be notified by the Agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a completed plan to the Agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the date notice is emailed or faxed (if the proposer has provided an email address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

**ATTACHMENT 6**

Tax ID #: \_\_\_\_\_

PIN#: \_\_\_\_\_



The CITY OF NEW YORK

THE CITY OF NEW YORK

**Subcontractor Utilization Plan - Part I: Agency's Target**

This page to be completed by contracting agency

**Contract Overview**

Pin # 8502009CR0002P

FMS Project ID#: C114NEWF

Project Title Capacity Replacement Program-New 1,520-Bed Bronx Detention Complex at Hunts Point

Contracting Agency Department of Design and Construction

Agency Address 30-30 Thomson Ave City Long Island City State NY Zip Code 11101

Contact Person James A. Cerasoli Title Senior MWBE Compliance Analyst

Telephone # (718) 391-1549 Email cerasoli@ddc.nyc.gov

**Project Description** *(attach additional pages if necessary)*

New 1,520 Beds Bronx Detention Complex at Hunts Point

**(1)  Target Subcontracting Percentage**

Percentage of total contract dollar value that agency estimates will be awarded to subcontractors in amounts under \$1 million for construction and professional services.

25%

**Subcontractor Participation Goals**

*Complete and enter total for each Construction or Professional Services, or both (if applicable)*

Group	Construction	Professional Services
Black American	_____ %	20 %
Hispanic American	_____ %	20 %
Asian American	_____ %	No Goal
Caucasian Female	No Goal	20 %
<b>Total Participation Goals</b>	<b>(2) _____ %</b>	<b>(3) 60 %</b>

\* Note: For this procurement, individual ethnicity and gender goals are not specified. Bidders/proposers may meet the Total Participation Goal through subcontracts with vendors certified in one or more of the ethnicity or gender categories.

Tax ID #: \_\_\_\_\_

PIN#: \_\_\_\_\_

**Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan**

This page and the next (Part II herein) are to be completed by the bidder/proposer. REQUIRED AFFIRMATIONS; Bidder/proposer must check the applicable boxes below, affirming compliance with M/WBE requirements or the bid/proposal will be deemed non-responsive.

Bidder/proposer  AFFIRMS or  DOES NOT AFFIRM [statement below]

It is a material term of the contract to be awarded that, with respect to the total amount of the contract to be awarded, bidder/proposer will award one or more subcontracts for amounts under one million dollars, sufficient to meet or exceed the Target Subcontracting Percentage (as set forth in Part I) unless it obtains a full or partial waiver thereof, and it will award subcontracts sufficient to meet or exceed the Total Participation Goals (as set forth in Part I) unless such goals are modified by the Agency.

Bidder/proposer  AFFIRMS that it intends to meet or exceed the Target Subcontracting Percentage (as set forth in Part I); or

AFFIRMS that it has obtained a full/partial pre-award waiver of the Target Subcontracting Percentage (as set forth in Part I) and intends to award the modified Target Subcontracting Percentage, if any; or

DOES NOT AFFIRM

**Section I: Prime Contractor Contact Information**

Tax ID # \_\_\_\_\_ FMS Vendor ID # \_\_\_\_\_

Business Name \_\_\_\_\_ Contact Person \_\_\_\_\_

Address \_\_\_\_\_

Telephone # \_\_\_\_\_ Email \_\_\_\_\_

**Section II: General Contract Information**

1. Define the industry in which work is to be performed.

- Construction includes all contracts for the construction, rehabilitation, and/or renovation of physical structures. This category does include CM Build as well as other construction related services such as: demolition, asbestos and lead abatement, and painting services, carpentry services, carpet installation and removal, where related to new construction and not maintenance.
- Professional Services are a class of services that typically require the provider to have some specialized field or advanced degree. Services of this type include: legal, management consulting, information technology, accounting, auditing, actuarial, advertising, health services, pure construction management, environmental analysis, scientific testing, architecture and engineering, and traffic studies, and similar services.

a. Type of work on Prime Contract (Check one):

b. Type of work on Subcontract (Check all that apply):

Construction  Professional Services  Construction  Professional Services  Other

2. What is the expected percentage of the total contract dollar value that you expect to award to all subcontracts? \_\_\_\_\_ %

3. Will you award subcontract(s) in amounts below \$ 1 million for construction and/or professional Services contracts within the first 12 months of the notice to proceed on the contract?  Yes  No

**Section III: Subcontractor Utilization Summary**

IMPORTANT: If you do not anticipate that you will subcontract at the target level the agency has specified, because you will perform more of the work yourself, you must seek a waiver of the Target Subcontracting Percentage by completing Page 22 (final page of this form).

Step 1: Calculate the percentage (of your total bid) that will go towards subcontracts under \$ 1M for construction and/or Professional services	Subcontracts under \$1M (4) (construction/professional services)	Total Bid/Proposal Value	Calculated Target Subcontracting Percentage
	\$ _____	÷ \$ _____	X 100 = _____ %
<ul style="list-style-type: none"> <li>• Subcontracts under \$1M (construction/professional services): Enter the value you expect to award to subcontractors in dollars for amounts under \$1 million for construction and/or professional services. This value defines the amount that participation goals apply to, and will be entered into the first line of Step 2.</li> <li>• Total Bid/Proposal Value: Provide the dollar amount of the bid/proposal.</li> <li>• Calculated Target Subcontracting Percentage: The percentage of the total contract dollar value that will be awarded to one or more subcontractors for amounts under \$1 million for construction and/or professional services. This percentage must equal or exceed the percentage listed by the agency on Page 19 (first page of this form), Line (1).</li> </ul>			
NOTE: The "Calculated Target Subcontracting Percentage" MUST equal or exceed the Target Subcontracting Percentage listed by the agency on Page 19 (first page of this form), Line (1).			

Tax ID #: \_\_\_\_\_

PIN#: \_\_\_\_\_

**Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan – cont.**

Step 2:  
Calculate value of subcontractor participation goals

**Subcontracts under \$1M**  
(construction/professional services)

a.	Copy value from Step 1, line (4) – the total value of all expected subcontracts Under \$1M for construction and/or professional services	\$ _____	
		↓	↓
b.	<ul style="list-style-type: none"> <li>From line a. above, allocate the dollar value of "Subcontracts Under \$1M" by Construction and Professional Services.</li> <li>If all subcontracts under \$1M are in one industry, enter "0" for the industry with no subcontracts.</li> <li>Amounts listed on these lines should add up to the value from line a.</li> </ul>	Construction	Professional Services
	<b>Subcontracts under \$1M by industry</b>	\$ _____	\$ _____
	<ul style="list-style-type: none"> <li>For Construction enter percentage from Line (2) on Page 19.</li> <li>For Professional Services enter percentage from Line (3) on Page 19 (first page of this form).</li> </ul>		
c.	<ul style="list-style-type: none"> <li>Total Participation Goals Percentages must be copied from Part I, lines (2) and (3).</li> </ul>	Total Participation Goals	Total Participation Goals
		x _____ %	x _____ %
d.	Value of Total Participation Goals	\$ _____	\$ _____

Step 3: *Enter brief description of type(s) of subcontracts in amounts under \$1M anticipated, by Type of work, not by name of subcontractor*

✓ Subcontracts in Amounts Under \$1 M Scope of Work – Construction

: *Enter brief description of type(s) of subcontracts in amounts under \$1M anticipated, by Type of work, not by name of subcontractor*

✓ Subcontracts in Amounts Under \$1 M Scope of Work – Professional Services

**Section IV: Vendor Certification**

*I hereby 1) acknowledge my understanding of the M/WBE requirements as set forth herein and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder; 2) affirm that the information supplied in support of this subcontract utilization plan is true and correct; 3) agree, if awarded this Contract, to comply with the M/WBE requirements of this Contract and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this contract; and 4) agree, if awarded this contract, to make all reasonable, good faith effort to attain the Target Subcontracting Percentage as specified by the Agency, and to solicit and obtain the participation of M/WBEs so as to meet the required Subcontractor Participation Goals.*

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

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

**PART III - REQUEST FOR WAIVER OF TARGET SUBCONTRACTING PERCENTAGE**

**Contract Overview**

Tax ID # \_\_\_\_\_ FMS Vendor ID # \_\_\_\_\_

Business Name \_\_\_\_\_

Contact Name \_\_\_\_\_ Telephone # \_\_\_\_\_ Email \_\_\_\_\_

Type of Procurement  Competitive Sealed Bids  Other Bid/Response Due Date \_\_\_\_\_

PIN # (for this procurement) \_\_\_\_\_ Type of work on Prime Contract \_\_\_\_\_ Type of work on Subcontract (Check all that apply):

(Check one):

Construction

Construction

Other

Professional Services

Professional Services

SUBCONTRACTING as described in bid/solicitation documents (Copy this % figure from the solicitation)

\_\_\_\_\_ % of the total contract value anticipated by the agency to be subcontracted for construction/professional services subcontracts valued below \$1 million (each)

ACTUAL SUBCONTRACTING as anticipated by vendor seeking waiver

\_\_\_\_\_ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for construction/professional services subcontracts valued below \$1 million (each)

**Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)**

- Vendor does not subcontract construction/professional services, and has the capacity and good faith intention to perform all such work itself.
- Vendor subcontracts some of this type of work but at lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract.
- Other \_\_\_\_\_

**References**

List 3 most recent contracts/subcontracts performed for NYC agencies (if any)

CONTRACT NO. \_\_\_\_\_ AGENCY \_\_\_\_\_ DATE COMPLETED \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_ AGENCY \_\_\_\_\_ DATE COMPLETED \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_ AGENCY \_\_\_\_\_ DATE COMPLETED \_\_\_\_\_

List 3 most recent contracts/subcontracts performed for other agencies/entities (complete ONLY if vendor has performed fewer than 3 NYC contracts)

TYPE OF WORK. \_\_\_\_\_ AGENCY/ENTITY \_\_\_\_\_ DATE COMPLETED \_\_\_\_\_

Manager at agency/entity that hired vendor (Name/Phone No.) \_\_\_\_\_

TYPE OF WORK. \_\_\_\_\_ AGENCY/ENTITY \_\_\_\_\_ DATE COMPLETED \_\_\_\_\_

Manager at agency/entity that hired vendor (Name/Phone No.) \_\_\_\_\_

TYPE OF WORK. \_\_\_\_\_ AGENCY/ENTITY \_\_\_\_\_ DATE COMPLETED \_\_\_\_\_

Manager at agency/entity that hired vendor (Name/Phone No.) \_\_\_\_\_

**VENDOR CERTIFICATION: I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.**

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

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

**Shaded area below is for agency completion only**

**AGENCY CHIEF CONTRACTING OFFICER APPROVAL**

Signature: \_\_\_\_\_

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

**CITY CHIEF PROCUREMENT OFFICER APPROVAL**

Signature: \_\_\_\_\_

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

**NOTICE TO ALL PROSPECTIVE CONTRACTORS**

**PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT**

**ARTICLE I. M/WBE PROGRAM**

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

**If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "Subcontractor Utilization Plan"), and are detailed below.**

**The Contractor must comply with all applicable M/WBE requirements for this Contract.**

Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

**PART A**

**PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS**

1. The **Target Subcontracting Percentage** applicable to this Contract is set forth on Schedule B, Part I to this Contract (see Page 1, line (1)).

The "**Target Subcontracting Percentage**" is the percentage of the total Contract which Agency anticipates that the prime contractor for this Contract would in the normal course of business award to one or more subcontractors for amounts under \$1 million for construction and professional services.

A prospective contractor may seek a full or partial pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below. To apply for the full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at \_\_\_\_\_ or via facsimile at (\_\_\_\_) \_\_\_\_\_. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The **Subcontractor Participation Goals** established for this Contract are set forth on Schedule B, Part I to this Contract (see Page 1, line (2) and/or line (3)).

The **Subcontractor Participation Goals** represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under \$1 million.

3. If **Subcontractor Participation Goals** have been established for this Contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under \$1 million, Contractor shall be subject to the **Subcontractor Participation Goals**, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

4. If **Subcontractor Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, Part II Subcontractor Utilization Plan (see Page 2-3) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under \$1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the **Target Subcontracting Percentage**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below.

**THE BIDDER/PROPOSER MUST COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). SUBCONTRACTOR UTILIZATION PLANS WHICH DO NOT INCLUDE THE REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT VENDOR HAS SUBMITTED A SUBCONTRACTOR UTILIZATION PLAN WHERE THE REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE PLAN ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE AFFIRMATION, THE VENDOR WILL BE**

NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED PLAN TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE VENDOR HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

5. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5), i.e., a contract valued at or below \$3M (for projects in New York City) where the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any of the Wicks trades, regardless of what point in the life of the contract such subcontracts will occur, at the time of bid submission.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), by emailing DSBS at [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), by calling the DSBS certification hotline at (212) 513-6311, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7<sup>th</sup> floor. Eligible firms that have not yet been certified may contact DSBS (as indicated above) in order to seek certification.

7. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's Subcontractor Utilization Plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its Subcontractor Utilization Plan in accordance with Local Law 129 and Part A, Section 11 below.

9. Where a Subcontractor Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

10. Pre-award waiver of **Target Subcontracting Percentage**. Agency may grant a full or partial waiver of the **Target Subcontracting Percentage** to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts for under one million dollars represented by the **Target Subcontracting Percentage**. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.

11. Modification of Subcontractor Utilization Plan. A Contractor may request a modification of its Subcontractor Utilization Plan (**Subcontractor Participation Goals**) after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5), i.e., a contract valued at or below \$3M (for projects in New York City) where the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its Subcontractor Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's Subcontractor Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Subcontractor Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(a) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(b) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;

(d) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs

and/or WBEs in the Subcontractor Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(e) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

(g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(h) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

12. If **Subcontractor Participation Goals** have been established for this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

## **PART B**

### **MISCELLANEOUS**

1. The Contractor shall take notice that, if this solicitation requires the establishment of a Subcontractor Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the Subcontractor Utilization Plan.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.

4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005,

and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required **Subcontractor Participation Goals**.

## **ARTICLE II. ENFORCEMENT**

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements this Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency may determine that one of the following actions should be taken:

(a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;

(b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;

(c) making a finding that the Contractor is in default of the Contract;

(d) terminating the Contract;

(e) declaring the Contractor to be in breach of Contract;

(f) withholding payment or reimbursement;

(g) determining not to renew the Contract;

(h) assessing actual and consequential damages;

(i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in

carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

(j) exercise rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or

(k) take any other appropriate remedy.

4. Whenever Agency has reason to believe that an MBE or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129), or has violated any provision of Section 6-129, Agency shall notify the commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

5. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

6. The Contractor's record in implementing its Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a Subcontractor Utilization Plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.