

COUNTY OF ALBANY
REQUEST FOR PROPOSALS/ QUALIFICATIONS
FOR THE SELECTION OF A PROJECT MANAGEMENT AND ENERGY SERVICE
COMPANY (ESCO)
ALBANY COUNTY EXECUTIVE'S OFFICE
RFP/Q #2013-088

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SECTION 1: PURPOSE

- 1.1 The County of Albany is seeking proposals/qualifications for the selection of a Project Management and Energy Service Company (ESCO) as requested by the Albany County Executive's Office.
- 1.2 This Request for Proposal & Qualifications (RFP/Q) is for the purpose of obtaining responses from Energy Service Companies (ESCO) in order to evaluate the qualifications, experience and references of the ESCO as it relates to providing Albany County with cost savings through the implementation of energy performance contracting services on an as-needed basis for Albany County.
- 1.3 The objective of this RFP/Q is to solicit sufficient information from qualified respondents to obtain a better understanding of the ESCO's qualifications and experience relative to implementing future projects requested by the County. This RFP/Q is not a contractual offer or commitment to purchase services. Proposers must be bona fide providers of the products and services requested.
- 1.4 Through the selection of an experienced ESCO, the County seeks to maximize energy savings, efficiencies and related improvements to existing facilities and fixtures owned, operated and maintained by the County through capital improvements financed through an Energy Performance Contract (EPC). These services and improvements shall be delivered on a performance contracting basis which may allow the County to:

- Incur no initial capital costs
- Obtain an annual savings guarantee which will be equal to or greater than the total annual project costs
- Capture all available utility rebates
- Achieve significant long-term cost savings which are measured and verified
- Achieve a guarantee for cost savings
- Maintain consistent and reasonable levels of occupant comfort and building system functionality
- Capture benefits that may accrue as a direct result of any of the energy-related services and capital improvements such as environmental protection, hazardous material disposal or recycling, reduced maintenance needs, improved indoor air quality, additional building improvements, etc.
- Pay for the capital improvement with the long term energy savings

1.5 The ESCO will be encouraged to structure a project which provides the greatest possible energy, water, operational and maintenance savings and that are the most beneficial projects to the County. The County is interested in essential services and improvements that will reduce facility energy and/or water consumption, upgrade energy-related capital equipment, improve building operation and maintenance, and improve demand management and implement alternative energy sources.

1.6 Energy-related equipment and systems include, but are not limited to: heating, ventilating and air conditioning (HVAC) equipment; energy management and control systems; lighting systems including municipal infrastructure lighting; domestic hot water systems; building envelope.

1.7 Water systems include, but are not limited to: devices which reduce water consumption and sewage services such as automatic controls, low-flow faucet aerators, low flow toilets, cooling tower modifications, and irrigation system controls or modifications.

1.8 The County intends to develop a comprehensive range of energy conservation measures and services, including the design and installation of systems and/or maintenance programs to conserve energy and water and/or shift energy loads to on-site renewable power sources, which may include:

- Performance-contracting utility-demand reduction projects
- Innovative project financing
- Innovative project funding (sale of renewable energy credits, or greenhouse gas credits, or utility rebates)
- Installation or modification of new and existing equipment to reduce energy and water consumption associated with heating, ventilation and air conditioning systems, lighting systems, building envelope, domestic hot water system, water usage and irrigation systems, and other energy and water using devices
- Proactive maintenance and service programs and staff training
- Detailed investment grade energy audit with specific information
- Work associated with monitoring and verifying project savings

- Study and/or design of the subject work

- 1.9 The ESCO must have the demonstrated ability of providing general contracting services for an entity of the size and complexity of the County's proposed project. The ESCO must have the demonstrated technical and managerial capability to address a broad range of energy and water systems in buildings and throughout municipal infrastructure and must also be able to provide a comprehensive set of related services to capture the value of the improvements and any directly related ancillary benefits.
- 1.10 The ESCO shall provide evidence of financial stability and capability to fund all costs associated with its submission.
- 1.11 The ESCO shall make available a program that guarantees the energy savings of the energy conservation services financed. The ESCO's demonstrated ability to provide this guarantee will be an evaluation criterion.
- 1.12 The total cost of implementing the energy efficiency measures will include the cost of the investment-grade audit, preparation of the energy services proposal, project design, construction, administration, management fee (if applicable), commissioning, subcontractor bidding, bonding, insurance, overhead and profit, permits, taxes, client agency training, cost and savings guarantees, and other costs that may be agreed to by the ESCO and the County.
- 1.13 The financing term may not exceed the economic life of the energy efficiency measures, unless otherwise approved by the County of Albany.

CONTEXT OF PROJECT:

- 1.14 The County intends to use the ESPC project to address, meet, or exceed several goals to reduce utility costs, operating costs, and maintenance needs at select County facilities by retrofitting or replacing building systems, fixtures, exterior lighting, building envelopes and interior layout. The County seeks recommendations for consolidation of facilities and services to reduce maintenance costs and improve service delivery.
- 1.15 Once the County has selected an ESCO, the County may award an Investment Grade Audit (IGA) Agreement to the ESCO to begin the Audit Phase for specific facilities and fixtures. Based on the County Legislature's authorization, County staff will provide written authorization to proceed with the work. Should the County find the results of the Investment Grade Audit Report to be in the best interest of the County, County staff may request a proposal from the ESCO to provide the services necessary to complete the Implementation phase and the Post Construction/Guarantee Monitoring phase.

Audit Phase

- 1.16 County staff will develop and approve a project statement outlining the objectives for an audit of the proposed facilities or systems. The ESCO shall be responsible for reviewing and analyzing available data, collecting additional data, performing on-site energy models and other work necessary to document the existing energy usage and anticipated savings.

- 1.17 The Audit Phase concludes with a report from the ESCO, which provides a preliminary design of a recommended set of improvements, total project costs, schedule, and detailed description of the proposed method of calculating savings, preferably based on the international performance measurement and verification protocol and a savings guarantee. Costs of this phase may be included in the cost savings analysis to establish annual energy savings.

Implementation Phase

- 1.18 With a known scope of work, total project costs, schedule and established cost-savings measures to cover the total project costs of a defined task/project, the County may then elect to enter into the Energy Performance Contract Implementation Phase. In this phase, an Energy Savings Performance Contract (ESPC) Agreement will be negotiated with the ESCO to implement the final solution. The contract resulting from the negotiations will include a guaranteed saving with a final measurement and verification plan to establish methods necessary to determine energy saving. The ESCO will provide for engineering, procurement, construction, and commissioning, a 'turnkey' project. All outside resource support to be provided by the County (hard and soft costs) for this phase should be included with the assumption that they will be paid for from the savings generated. The Agreement will include provisions that the savings in each year are guaranteed to the extent necessary to make payments under the Agreement during that year.
- 1.19 All equipment provided by qualified vendors for this program will have a history of successful operating experience in similar installations and shall be in new and unused condition. This equipment shall be state-of-the-art with readily available replacement parts. All equipment used for this program shall be approved by the County prior to installation. The County has the right to select any or all of the equipment used for this program by manufacturer and/or brand, based upon the County's prior experience with, or standardization of the equipment and the County's knowledge of equipment quality and manufacturer's reputation.

Post Construction Guarantee/Monitoring Phase

- 1.20 After construction, the ESCO will provide a variety of services to ensure the anticipated metrics are achieved, such as a savings guarantee, staff training, follow-up monitoring, performance measurement/verification and contract maintenance services. The costs for the services in this phase will be included in the negotiations of the work and the guaranteed savings in the Implementation Phase.
- 1.21 Services may include but are not limited to the following: commissioning, continuous operations for all improvements, maintenance beyond the warranty period on installed measures is an optional service. County staff training on routine maintenance and operation systems, training of occupants, monitoring and verification for measurement and reporting of performance and savings from improvements, cost savings guarantee.

ESCO Deliverables

- 1.22 Description of the County facility and the buildings and systems that will receive ESCO equipment and services, these must include information on operating conditions (i.e. hours of operation, temperatures, lighting levels, etc.); identification of problem areas (i.e. indoor air quality, hazardous materials, maintenance, etc.); and other findings that will impact the costs or savings that will be achieved by the project.
- 1.23 Facility baseline energy consumption for at least a one-year calendar period. The baseline data is used to calculate the energy savings and determine the methodology for measuring and verifying the savings. The baseline data also is used to determine the cost of energy that will be used in the calculation of energy cost savings. If water savings or other cost savings are included in the project, the baseline data also includes water cost and consumption as well as other costs and frequency.
- 1.24 Description of energy efficiency measures proposed for installation and measures that have been analyzed but disqualified because of cost or other constraints. The County of Albany may use this information for future projects or for alternative financing beyond that offered by the ESCO.
- 1.25 Recommendations for replacement of existing equipment, and improvements to the existing equipment and operating conditions. Some of these improvements can result in low or no-cost operating savings that can be used to pay for higher cost measures, where measure bundling has been agreed to within the cost-effectiveness criteria.
- 1.26 Detailed schedule for project completion, including client agency facility schedules that affect the times that are available or not available for construction activity.
- 1.27 Services that the ESCO will be performing or will cause to be performed during the course of the project. These services may include but not be limited to: engineering design, construction management, preparation of operations and maintenance procedures, training of facility personnel on new equipment or procedures, project commissioning, warranty services and equipment maintenance. These services will be tailored to the project, the needs of the facility, the capabilities of Albany County's maintenance staff and the chosen financing methods.
- 1.28 The scope of this RFP/Q will limit activities to facilities or fixtures owned, operated or maintained by the County of Albany such as the Albany County Hockey Facility, Times Union Center and Garage, Correctional Facility, Department of Public Works, 112 State Street Office Building, 162 Washington Avenue Office Building, Health Department, Mercantile Building, Nursing Home, Courthouse, Judicial Center, Family Court, Cornell Cooperative Extension and street lighting, etc. The Albany County Sewer District will not be included at this time.
- 1.29 **A pre-proposal conference will be held on Monday, July 8, 2013 at 2:00 P.M., at the Albany County Office Building, 112 State Street, 8th Floor, CEO Conference Room**

#835, Albany, New York. This will be the only scheduled conference. Proposers interested in submitting Proposals are strongly urged to attend.

SECTION 2: RECEIPT OF PROPOSALS

2.1 Five (5) copies of the Proposal and other required documents must be submitted, sealed in an opaque envelope clearly marked with the name and number of the Proposal and the name and address of the Proposer. Proposals must be received no later than **4:30 P.M. on Friday, July 19, 2013**, at the following address:

Karen A. Storm
Albany County Purchasing Agent
112 State Street, **Room 820** (*PLEASE NOTE CHANGE OF ROOM #*)
Albany, New York 12207

2.2 The Proposal submitted by the individual Proposer(s) is the document upon which Albany County will make its initial judgment regarding the Proposer's qualifications, understanding of the County's scope and objectives, methodology, and ability to complete services under the contract.

2.3 Those submitting Proposals do so entirely at their expense. There is no express or implied obligation by Albany County to reimburse any company or individual for any costs incurred in preparing or submitting Proposals, preparing or submitting additional information requested by the County, or for participating in any selection interviews.

2.4 Submission of any Proposal indicates acceptance of the conditions contained in the RFP/Q, unless clearly and specifically noted otherwise in the Proposal.

2.5 Albany County reserves the right to reject any and all Proposals, in whole or in part, submitted in response to its RFP/Q.

2.6 Albany County reserves the right to waive any and all informalities and to disregard all non-conforming, non-responsive or conditional Proposals.

2.7 Albany County may, at any time by written notification to all Proposers, change any portion of the RFP/Q described and detailed herein.

2.8 Proposals will be examined and evaluated by the Albany County Executive's Office and the Department of General Services.

2.9 During the evaluation of Proposals, the County may require clarification of information or may invite Proposers to an oral presentation to amplify and or validate Proposal contents.

SECTION 3: QUALIFICATION OF PROPOSER

Provide a statement of Proposer qualifications including:

3.1 Provide the name, a brief history and description of your firm.

- a. Background information on the ESCO, including any subcontractors or sub-consultants.
- b. Describe the ESCO's financial qualifications and financial stability.
- c. Submit the most recent audited financial report summary.
- d. Current bonding capacity; bond rating; confirmation that company is currently bondable for 100% of a payment bond for construction of any project.
- e. Provide your company's accreditations by industry organizations, such as the National Association of Energy Service Companies (NAESCO), or pre-qualified for work through the U.S. Department of Energy for federal facilities or the U.S. Department of Defense. Describe the relevance or importance of any accreditations or pre-qualifications with regard to this project.
- f. Indicate your company's present project workload: projects in design, projects in construction and new projects that have not started.

3.2 Energy Project References

- a. Describe your company's past energy performance contracting experience involving public facilities or other municipal facilities.
- b. Provide access to a previously completed energy audit completed by the person(s) responsible for the project's technical design. This audit must include detailed energy, engineering and economic calculations. Include the status of the recommended projects. (Web based access or hardcopy).
- c. Describe the types of reports and information management systems your company used in the management of similar projects. Attach or make available examples of the progress or project reports to your past clients.

3.3 Provide the titles, specialties, degrees, registrations and years of experience for key personnel, which will be assigned to provide management and staffing for a proposed project with the County of Albany. Include information, key staff, major subcontractors and sub-consultants who are anticipated to provide services. (For proprietary reasons names are not required)

3.4 Describe your company's project approach for a typical Energy Performance Contract project and how your approach may be different for the County of Albany.

3.5 Provide information on three (3) similar Guaranteed Energy Performance Contracting projects. Include contact information such as municipality's name, name of representative overseeing the project, phone number and an e-mail address.

3.6 Provide any additional information that would distinguish your company in its service to Albany County.

3.7 Proposer shall include a completed "Vendor Responsibility Questionnaire" (Attachment "C") with the Proposal.

Proposer shall include a list of **all** legal or administrative proceedings, including New York State Department of Labor Investigations that are pending or have been concluded adversely against the Proposer within the last five (5) years.

3.8 In addition, Albany County may make such investigations it deems necessary to determine the ability of the Proposer to perform the work. The Proposer shall furnish to the County, within five (5) days of a request, all such information and data for this purpose as may be requested. The County reserves the right to reject any Proposal if the information submitted by, or investigation of, such Proposer fails to satisfy the County that such Proposer is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional Proposals will not be accepted.

SECTION 4: COST PROPOSAL:

4.1 **Markup:** Markups represent a percentage added to the base cost for the project. Markup costs are disclosed to provide a typical project costing approach for a project of similar scope and size. This disclosure will provide the open book pricing structure to be used by the successful Proposer for this project. Provide your company's proposed maximum allowable markups in the schedule on the Cost Proposal Form for each category listed on the schedule. (The use of margins in lieu of markups is not acceptable.) This format is required and must be completed in its entirety. Use only the categories provided. Ranges for markups are not acceptable.

a). Clearly describe how self-performed work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.). If self-performed work will be billed hourly, include markups proposed to be applied to the hourly rate. If a proposal is from a joint venture partnership, include proposed maximum allowable markups in the schedule format above for each participating company.

4.2 **Fees:** Provide your proposed maximum allowable fees in the Cost Proposal Form for each category listed on the schedule. This format is required and must be completed in its entirety. Use only the categories provided. Ranges for fees are not acceptable. If a proposal is from a joint venture partnership, provide proposed maximum allowable fees in the schedule format below for each participating company.

a). For each fee category listed on the schedule, describe how that fee is determined, how the fee is charged to the project and when it is applied. For example, fees might be based on a percentage of project cost.

4.3 Provide any other relevant information that will assist the County in evaluating your Proposal.

SECTION 5: PROPOSAL SUBMISSIONS

5.1 In order for the County to conduct a uniform review process of all proposals, proposals must be submitted in the format set forth below. Failure to follow this format may be cause for rejection of a proposal because adherence to this format is critical for the County's evaluation process:

SECTION I:

Title Page - The title page should reflect the Request for Proposal/Qualifications subject, name of the proposer, address, telephone number and contact person.

Table of Contents - The Table of Contents must indicate the material included in the proposal by section and page number.

SECTION II:

Qualification / Experience - The Qualification / Experience section must address proposer's qualifications and experience to carry out the requested service, inclusive of, but not limited to: qualification to do business in NYS, number of years in business and length of experience.

Qualifications of the ESCO including:

- a. Background information on the ESCO, including any subcontractors or sub consultants.
- b. Describe the ESCO's financial qualifications and financial stability.
- c. Submit the most recent audited financial report summary.
- d. Current bonding capacity; bond rating; confirmation that company is currently bondable for 100% of a payment bond for construction of this project.
- e. Provide your company's accreditations by industry organizations, such as the National Association of Energy Service Companies (NAESCO), or pre-qualified for work through the U.S. Department of Energy for federal facilities or the U.S. Department of Defense. Describe the relevance or importance of any accreditations or pre- qualifications with regard to this project.
- f. Indicate your company's present project workload: projects in design, projects in construction and new projects that have not started.

Resumes - Resumes of professional staff members who will be involved in the County engagement must be included in this section.

SECTION III:

References - The References section must include references from similar type projects.

Energy Project References

- a. Describe your company's past energy performance contracting experience involving public facilities or other municipal facilities.
- b. Provide access to a previously completed energy audit completed by the person(s) responsible for the project's technical design. This audit must include detailed energy, engineering and economic calculations. Include the status of the recommended projects. (Web based access or hardcopy).
- c. Describe the types of reports and information management systems your company used in the management of similar projects. Attach or make available examples of the progress or project reports to your past clients.
- d. Provide the titles, specialties, degrees, registrations and years of experience for key personnel, which will be assigned to provide management and staffing for a proposed project with the County of Albany. Include information, key staff, major subcontractors and sub-consultants which are anticipated to provide services.

SECTION IV:

Plan Implementation - The Plan Implementation Section must address the Scope of Services in terms of the proposer's plan to carry out the requested service.

Describe your company's project approach for typical EPC projects and what your approach would be for the County of Albany.

SECTION V:

Cost Proposal Section - The Cost Proposal Section must include all costs associated with the proposer's plan to carry out the requested service. The cost proposal forms furnished by the County must be included in this section.

SECTION VI:

Mandatory Documentation - The Mandatory Documentation Section must include: The Non-Collusive Bidding Certificate (Attachment "A"), Acknowledgment by Proposer (Attachment "B"), and Vendor Responsibility Questionnaire (Attachment "C"); Iranian Energy Divestment Certification (Attachment "D").

SECTION 6: PROPOSAL EVALUATION

- 6.1 Proposals will remain valid until the execution of a contract by Albany County, unless otherwise rejected consistent with this RFP/Q.
- 6.2 Proposals received will be evaluated by a committee with representation from the Albany County Executive's Office and the Department of General Services. Proposals shall be evaluated based upon the following:

<i>CRITERIA</i>	<i>WEIGHT</i>
Qualifications	60%
References	10%
Plan Implementation	15%
Costs	15%

6.3 Proposals will be examined and evaluated by the Albany County Executive’s Office and the Department of General Services with the advice of the Albany County Purchasing Agent to determine whether the requirements of this RFP/Q are met and to make a recommendation to the Albany County Executive, the Albany County Contracts Administration Board or the County Legislature for a contract award.

6.4 A notice of contract award shall not be binding upon the County until an agreement has been fully executed by both parties.

SECTION 7: TERM OF CONTRACT:

7.1 The ESCO may be engaged immediately upon award of the contract and directive of the County. The initial term of the Agreement between the County and the ESCO shall be four (4) years, with an option to renew for two (2) additional one-year terms.

7.2 The successful Proposer shall execute an agreement with the County of Albany in substantial conformance with this RFP/Q as prepared and approved by the County Attorney.

SECTION 8: ALTERNATIVES

8.1 Proposer may include in its Proposal items not specified in this RFP/Q, which it would consider pertinent. All such alternatives must be listed separately from the Proposal/Qualifications and the cost thereof must be separate and itemized.

SECTION 9: INDEMNIFICATION

9.1 The successful Proposer shall defend, indemnify and save harmless the County, its employees and agents, from and against all claims, damages, losses and expenses (including without limitations, reasonable attorneys’ fees) arising out of, or in consequence of, any negligent or intentional act or omission of the successful Proposer, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses and expenses.

SECTION 10: SPECIFICATION CLARIFICATION

10.1 All inquiries with respect to this Request for Proposals/ Qualifications must be directed to the Albany County Purchasing Agent as follows:

Karen A. Storm
Albany County Purchasing Agent
112 State Street, ***Room 820***
Albany, NY 12207
Telephone: (518) 447-7140
Facsimile: (518) 447-5588
Email: Karen.storm@albanycounty.com

10.2 All questions about the meaning or intent of the specifications must be submitted to the aforementioned designated person in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded as having received the proposal documents. Questions received less than four (4) days prior to the date of submission of Proposals will not be answered. The County will be bound only by responses given by formal written Addenda.

10.3 Other than the contact person identified in the Proposal, or their designee, prospective Proposers shall not approach County employees during the period of this RFP/Q process about any matters related to this RFP/Q or any proposals submitted pursuant thereto.

SECTION 11: MODIFICATION AND WITHDRAWAL OF PROPOSALS

11.1 Proposals may be modified or withdrawn at any time prior to the opening of Proposals by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted.

11.2 If within twenty-four (24) hours after the Proposals are opened, any Proposer files a duly signed written notice with the County and promptly thereafter demonstrates to the reasonable satisfaction of the County that there was a material and substantial mistake in the preparation of its Proposal, that Proposer may withdraw its Proposal and the Proposal Security will be returned. Thereafter, that Proposer will be disqualified from making a further or additional proposal on the work contemplated by this RFP/Q.

11.3 Each proposal shall state that it is an irrevocable offer for a period of ninety (90) days from the Proposal opening date. After expiration of the irrevocable offer period, if no contract award has been made, a Proposal may be withdrawn if the Proposer does so in writing directed to the County Purchasing Agent; otherwise, Proposals remain in effect consistent with the terms of this RFP/Q.

SECTION 12: PROPOSAL SECURITY

12.1 No proposal security is requested for this Proposal.

SECTION 13: INSURANCE AND SECURITY REQUIREMENTS

13.1 The successful Proposer will be required to procure and maintain at its own expense, the following insurance coverage:

- (a) **Worker's Compensation and Employer's Liability Insurance:** A policy or policies providing protection for Employees in the event of job related injuries.
- (b) **Automobile Liability Insurance:** A policy or policies of insurance with the limits of not less than \$500,000 combined for each accident because of bodily injury sickness or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of any automobile.
- (c) **General Liability Insurance:** A policy or policies or comprehensive all-risk insurance with limits of not less than:

Liability For:	Combined Single Limit
Property Damage	\$1,000,000
Bodily Injury	\$1,000,000
Personal Injury	\$1,000,000

- (d) **Errors and Omissions Insurance:** A policy or policies with limits not less than \$1,000,000.

13.2 Each policy of insurance required shall be of form and content satisfactory to the Albany County Attorney:

- (a) Albany County shall be named as an additional insured on all liability and errors and omissions policies. **Proposal number must appear on insurance certificate.**
- (b) The policy shall not be changed or canceled until the expiration of thirty (30) days after written notice to Albany County. It shall be automatically renewed upon expiration and continued in force unless Albany County is given at least thirty (30) days written notice to the contrary.

13.3 No work shall be commenced under the contract until the successful Proposer has delivered to the County Purchasing Agent or his designee proof of issuance of all policies of insurance required by the Contract to be procured by the successful Proposer. If at any time, any of said policies shall expire or become unsatisfactory to the County, the successful Proposer shall promptly obtain a new policy and submit proof of insurance of the same to the County for approval. Upon failure of the successful Proposer to furnish, deliver and maintain such insurance as above provided, the contract may, at the election of the County, be forthwith declared suspended, discontinued or terminated. Failure of the successful Proposer to

procure and maintain any required insurance shall not relieve the successful Proposer from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the successful Proposer concerning indemnification.

SECTION 14: REMEDY FOR BREACH

14.1 In the event of a breach by CONTRACTOR, CONTRACTOR shall pay to the COUNTY all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the COUNTY to procure a substitute contractor to satisfactorily complete the contract work, together with the COUNTY's own costs incurred in procuring a substitute contractor.

SECTION 15: CASH DISCOUNT

15.1 Cash discounts may be offered by a Proposer for prompt payment of bills, but such cash discounts will not be taken into consideration in determining the low Proposer.

15.2 For purposes of any applicable cash discount, the payment date shall be calculated from the receipt of invoice or final acceptance of the goods, whichever is later.

SECTION 16: FREEDOM OF INFORMATION LAW

16.1 Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. Proposers intending to seek an exemption from disclosure of these materials under the Freedom of Information Law (New York State Public Officers Law, Sections 84-90) must request the exemption in writing, at the time of the submission of the materials, setting forth the reason for the claimed exemption. In addition, the proposer must mark each page of its submission on which there appears any material claimed to be protected as confidential or proprietary with the following legend, in bold face, capital letters at the top of each page: "THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE NEW YORK STATE FREEDOM OF INFORMATION LAW". Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

SECTION 17: MACBRIDE PRINCIPLES

17.1 Contractor/Proposer hereby represents that said contractor/proposer is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. [3] for 1993, in that said contractor/proposer either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under section 4 of Local Law No. [3] in 1993, including, but not limited to, imposing

sanctions, seeking compliance, recovering damages, declaring the contract/proposer in default and/or seeking debarment or suspension of the contractor/proposer.

- 17.2 In the case of a contract which must be let by competitive sealed bidding, whenever the lowest bidder has not agreed to stipulate to the conditions set forth in this section, and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer the contract to the County Legislature, which shall determine whether the lowest bidder is responsible. In making such determination, the County Legislature may consider, as a factor bearing on responsibility, whether the lowest bidder discriminates in employment in Northern Ireland.
- 17.3 As used in this section, the term “contract” shall not include contracts with government and non-profit organizations, contracts awarded pursuant to an emergency procurement procedure or contracts, resolutions, indentures, declarations of trust or other instruments of authorizing or relating to the authorization, issuance, award, sale or purchase or bonds, certificates of indebtedness, notes or other fiscal obligations of the County, provided that the policies of this section shall be considered when selecting managing underwriters in connection with such activities.
- 17.4 The provisions of this section shall not apply to contracts for which the County receive funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

SECTION 15: AFFIRMATIVE ACTION REQUIREMENTS

- 15.1 It is the policy of the County of Albany that Minority Business Enterprises (MBE) and Woman Business Enterprises (WBE) are afforded the maximum opportunity to participate in the performance of contracts, in excess of \$100,000, let by the County and its several agencies and authorities. The County commits itself to a goal oriented Contract Compliance Program which assures that Minority Business Enterprises and Woman Business Enterprises are considered in awarding contracts for goods, services and construction. Furthermore, it is the policy of the County of Albany that contractors/proposers and subcontractors utilize minority and women labor to the greatest extent feasible.
- 15.2 In proposing on this contract, the Proposer acknowledges an understanding of this policy. The contractor/proposer shall carry out the policy by making every reasonable effort to award contracts and subcontracts to MBEs and WBEs and utilizing minority and women labor in the performance of this contract.
- 15.3 In an effort to assist Proposers with compliance attached you will find the following: Article SC19-Affirmative Action Plan and Department of Affirmative Action Compliance Forms.

SECTION 16: INTERPRETATION

16.1 In the event of any discrepancy, disagreement or ambiguity among the documents which comprise this BID/RFP/Q/RFQ, and/or, the Agreement (between the County and the successful bidder/proposer) and its incorporated documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) the Agreement; 2) the RFP/Q, RFQ, RFB; 3) the Contractor's proposal or bid.

SECTION 24: NON APPROPRIATIONS CLAUSE

17.1 Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

SECTION 18: IRANIAN ENERGY SECTOR DIVESTMENT

18.1 Contractor/Proposer hereby represents that said Contractor/Proposer is in compliance with New York State General Municipal Law Section 103-g entitled "Iranian Energy Sector Divestment", in that said Contractor/Proposer has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

18.2 Any Contractor/Proposer who has undertaken any of the above and is identified on a list created pursuant to Section 165-a (3)(b) of the New York State Finance Law as a person engaging in investment activities in Iran, shall not be deemed a responsible bidder pursuant to Section 103 of the New York State General Municipal Law.

18.3 Except as otherwise specifically provided herein, every Contractor/Proposer submitting a bid/proposal in response to this Request for Bids/Request for Proposals must certify and affirm the following under penalties of perjury:

- (a) "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief,

that each bidder is not on the list created pursuant to NYS Finance Law Section 165-a (3) (b).

Albany County will accept this statement electronically in accordance with the provisions of Section 103 of the General Municipal Law.

18.4 Except as otherwise specifically provided herein, any Bid/Proposal that is submitted without having complied with subdivision (a) above, shall not be considered for award. In any case where the Bidder/Proposer cannot make the certification as set forth in subdivision (a) above, the Bidder/Proposer shall so state and shall furnish with the bid a signed statement setting forth in detail the reasons therefor. The County reserves its rights, in accordance with General Municipal Law Section 103-g to award the Bid/Proposal to any Bidder/Proposer who cannot make the certification, on a case-by-case basis under the following circumstances:

- (1) The investment activities in Iran were made before April 12, 2012, the investment activities in Iran have not been expanded or renewed after April 12, 2012, and the Bidder/Proposer has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or
- (2) The County of Albany has made a determination that the goods or services are necessary for the County to perform its functions and that, absent such an exemption, the County of Albany would be unable to obtain the goods or services for which the Bid/Proposal is offered. Such determination shall be made by the County in writing and shall be a public document.