

MEMORANDUM OF UNDERSTANDING

between

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

doing business as

EMPIRE STATE DEVELOPMENT

and

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

I. INTRODUCTION

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) dated as of this November 28, 2012 is by and among the New York State Urban Development Corporation doing business as Empire State Development (“Empire State Development” or “ESD”) and the City of New York (the “City”) acting through its Department of Small Business Services (“SBS”) (ESD and SBS collectively, the “Parties”), acting as representatives of New York State and New York City, respectively.

Empire State Development is New York’s chief economic development agency. Within Empire State Development is the Division for Small Business, which oversees a range of programs and resources beneficial to small business development and growth.

SBS makes it easier for companies in New York City to form, do business and grow by providing direct assistance to business owners, fostering neighborhood development in commercial districts, promoting financial and economic opportunity among minority- and women-owned businesses, and preparing New Yorkers for jobs and linking employers with a skilled and qualified workforce.

II. PURPOSE

Empire State Development and SBS are joined by a common mission to help small businesses and minority/ women owned businesses (M/WBEs). This MOU relates to joint efforts to help small businesses and M/WBEs secure surety bonds for construction and transportation related projects let by New York State and New York City agencies, designed to increase contracts awarded to small businesses and M/WBEs.

New York State has recently launched the New York State Surety Bond Assistance Program (“NYSBAP”). NYSBAP is an integrated program that provides technical assistance, training, and credit collateral support to contractors in need of surety bonds.

New York City has launched a new set of initiatives, referred to as *Compete to Win*, to help New York City small businesses and M/WBEs compete for and win City contracts. *Compete to Win* currently includes the following initiatives:

- NYC Teaming. NYC Teaming helps firms create partnerships that allow them to bid on larger contracts or pursue new City contracting opportunities.
- Upfront Capital Loan. Upfront Capital Loan connects vendors to short-term working capital loans to help fund upfront expenses of labor and equipment for M/WBEs and other small businesses awarded contracts with participating City agencies (Department of Transportation, Department of Design and Construction, Department of Parks and Recreation, Department of Citywide Administrative Services, Department of Environmental Protection).
- Technical Assistance. The Technical Assistance program provides free workshops and one-on-one assistance to prepare firms to compete for and perform on City contracts.
- Bond Readiness. Bonding Readiness helps small businesses, including M/WBEs, secure surety bonds for City construction projects.
- NYC Construction Mentorship. The NYC Construction Mentorship Program provides certified construction firms who bid on designated contracts with partnering agencies with greater access to City construction opportunities, a customized growth plan developed with a construction management firm, management classes, and on-the-job training services for contract winners.

The Parties will work together in the spirit of cooperation and open communications to coordinate these programs and initiatives, consistent with law, with the primary goal of meeting the needs of the small business and minority/ women owned business community.

Each Party has separate services and resources which, when delivered in coordination with each other, will provide maximum benefits to the small business and minority/ women owned business contractors served.

In order to further their common goals, the Parties agree to the following:

III. SCOPE AND RESPONSIBILITIES

Empire State Development Undertakings:

Within the limits of its available resources, Empire State Development will:

- Make NYSBAP available for contractors doing work with City agencies;
- Provide credit collateral support for contractors bidding on work with City agencies, if qualified and approved by the NYSBAP, in the form of a guarantee on bid bonds and an irrevocable line of credit for payment and performance bonds;

- Facilitate the inclusion of City contractors in the training components of NYSBAP as appropriate;
- Work together with the designated City agency contacts to ensure that contracts under the NYSBAP are performing satisfactorily;
- Collaborate with SBS in its *Compete to Win* program, and other relevant small business assistance programs;
- Link contractors approved by the NYSBAP with a business counselor from New York State Business Development Center (SBDC), if technical assistance is not provided by a City Business Solution Center (BSC) or through a collaboration between the SBDCs and BSCs;
- Assist SBS in crafting outreach and marketing materials to be circulated to agencies, contractors and relevant stakeholders;
- Update SBS on any changes to the NYSBAP, or when funds are near depletion;
- Provide information on ESD access to capital related programs that could benefit contractors working on City agencies' jobs; and
- Coordinate with SBS to quantify and report on business development outcomes related to this collaboration.

New York City Department of Small Business Services Undertakings:

Within the limits of its available resources, SBS will:

- Identify contractors that would be a good fit for NYSBAP from the *Compete to Win* programs and other sources;
- Provide a list of upcoming projected construction contracts of City agencies in the \$1 million - \$2 million range;
- Conduct outreach and marketing to all City construction small business and minority/ women owned business contractors on NYSBAP using the sample marketing materials provided by ESD;
- Identify City contacts at each agency to work regularly with NYSBAP to monitor the contract that is being guaranteed, provide contract and contractor status updates, and relay information on any possible problems so they can be addressed jointly by the agency, SBS, and ESD;
- Coordinate the relationships at City agencies and facilitate the production of monthly project updates where a guarantee is outstanding;
- Coordinate with the agency regarding funds control on specific contracts, if requested by the contractor and required by the surety company and it is appropriate for the particular agency;
- Act as liaison between City agencies and NYSBAP to help ensure that the City agencies release the surety bonds as soon as possible once a project is substantially complete, in line with New York City laws, regulations, and agency procedures;
- Coordinate with ESD to quantify and report on business development outcomes related to this collaboration.

IV. TERM

The Parties shall cooperate under this MOU from the date of full execution thereof until the MOU is terminated by one or both Parties as per paragraph VI below.

V. AMENDMENT

The Parties agree to consult each other on any amendment, modification or clarification to the provisions of this MOU. This MOU may only be amended or modified in writing by both Parties and shall be consistent with applicable laws, regulations and ESD and SBS policy.

VI. TERMINATION

Either Party may discontinue its participation under this MOU at any time, with or without cause, upon thirty (30) days written notice to the other Party.

VII. RELATIONSHIP

This MOU does not authorize the expenditure of any funds. Accordingly, this MOU shall not be interpreted as creating any binding legal obligations between the Parties nor shall it limit either Party from participating in similar activities or arrangements with other entities. Nothing contained herein shall be construed to create any association, partnership, joint venture or relation of principal or agent or employer and employee with respect to ESD and SBS.

VIII. NOTICES

All notices required by this MOU shall be delivered by messenger or overnight delivery service to the following:

To ESD:

633 Third Avenue, 33rd Floor
New York, New York 10017
Attn: Steve Cohen, Deputy Commissioner

To SBS:

110 William Street, 7th Floor
New York, New York 10038
Attn: Deputy Commissioner, Business Development Division

IX. SIGNATURES

The signatories below represent that they have the authority to make such commitments on behalf of their respective organization:

IN WITNESS WHEREOF, the Parties have executed this MOU effective the day and year first above written.

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT**

BY: _____

NAME: Steve Cohen

TITLE: Deputy Commissioner, Senior Vice President

**NEW YORK CITY DEPARTMENT OF
SMALL BUSINESS SERVICES**

BY: _____

NAME: Andrew Schwartz

TITLE: First Deputy Commissioner