



January 26, 2016

Chris Johnson  
Manager, Community and Government Contracts  
Environmental Systems Research Institutes, Inc.  
380 New York Street  
Redlands, CA 92373-8100

Dear Mr. Johnson:

We are in receipt of Environmental Systems Research Institutes, Inc.'s Waiver of MWBE Participation Goal (BDC 333) in response to Solicitation 22802 for Information Technology Umbrella Contract – Manufacturer Based, Lot 4 – Implementation Services. Upon review of the provided documentation, **your request to waive the MWBE goals on this solicitation has been granted.**

As this is a multi-year contract and conditions may change over time, we encourage you to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

Included with this letter is a signed copy of your waiver application. If you have any additional questions, I can be reached at (518) 486-6866.

Sincerely,

A handwritten signature in black ink, appearing to read "Anuola N. Surgick".

Anuola N. Surgick  
Minority Business Specialist 2  
Office of MWBE & Community Relations

cc: Sharon Featherstone, OGS  
Sheila Long, OGS  
Ann Fisher, OGS



**Office of  
General Services**

**Office of Minority and Women-Owned  
Businesses & Community Relations**

**Design and Construction**

AN ISO 9001 2008 CERTIFIED ORGANIZATION  
Office of Minority and Women-Owned Business Enterprises  
29<sup>th</sup> Floor, Corning Tower  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12242  
Phone (518) 486-9234 FAX (518) 486-9285

**APPLICATION FOR WAIVER OF MWBE PARTICIPATION GOAL**

*(must be submitted before requesting final payment on the contract)*

**Section 1: Basic Information**

Contractor's Name: <b>Environmental Systems Research Institute, Inc. (Esri)</b>		Federal Identification Number: <b>95-2775732</b>	
Street Address: <b>380 New York Street</b>		E-Mail Address: <b>bids@esri.com</b>	
City, State, Zip Code: <b>Redlands, CA 92373</b>		Telephone: <b>(909) 793 - 2853</b>	
Contract Number: <b>Solicitation No. 22802</b>	<b>MWBE CONTRACT GOALS</b>		
	<b>MBE %</b>	<b>WBE %</b>	
	<b>10% / 15%</b> (Lot 1-10%; Lot 3-0%; Lot 4-15%)	<b>10% / 15%</b> (Lot 1-10%; Lot 3-0%; Lot 4-15%)	

**Section 2: Type of MWBE Waiver Requested**

MBE Waiver	<input checked="" type="checkbox"/> Total	<input type="checkbox"/> Partial	If partial waiver, please enter the revised MBE percentage:	
WBE Waiver	<input checked="" type="checkbox"/> Total	<input type="checkbox"/> Partial	If partial waiver, please enter the revised WBE percentage:	

Please explain the reason for the waiver request:

**LOT 4 SERVICE PACKAGES (IMPLEMENTATION SERVICES): See Attachment F-1**

**Section 3: Supporting Documentation**

Provide the following documentation as evidence of your good faith efforts to meet the MWBE goals set forth in the contract and in support of your waiver application:

- Attachment A.** List of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- Attachment B.** List of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- Attachment C.** Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- Attachment D.** Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract.
- Attachment E.** Identify dates of any pre-bid, pre-award or other meetings attended by contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the contract
- Attachment F.** Other information deemed relevant to the request.

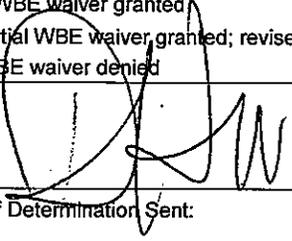
**Section 4: Signature and Contact Information**

By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Prepared By: (Signature) 	Date: <b>December 4, 2015</b>
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Name and Title of Preparer (Print or Type)  
**Chris Johnson, Manager Commercial & Govt Contracts**

**For OGS Use Only**

Reviewed By: <b>Anuola Surgick</b>	Date: <b>1/6/2016</b>
Decision:  <input checked="" type="checkbox"/> Full MBE waiver granted <input type="checkbox"/> Partial MBE waiver granted; revised MBE goal: _____ % <input type="checkbox"/> MBE waiver denied  <input checked="" type="checkbox"/> Full WBE waiver granted <input type="checkbox"/> Partial WBE waiver granted; revised WBE goal: _____ % <input type="checkbox"/> WBE waiver denied	
Approved By: 	Date: <b>1/26/2016</b>
Date Notice of Determination Sent: <b>1/26/16</b>	
<p><b>Comments:</b> We encourage you to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <a href="https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&amp;XID=2528">https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&amp;XID=2528</a>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.</p>	

**Esri MWBE WAIVER**

**ATTACHMENT F-1**

**NYCRR SECTION 142.8 – CONTRACTOR’S GOOD FAITH EFFORTS  
FOR LOT 4 – IMPLEMENTATION SERVICES**

**A) The contractor must document its good faith efforts toward meeting certified minority and women owned business enterprise utilization plans by providing, at a minimum:**

**1) Copies of solicitations of certified minority and women-owned business enterprises and any responses thereto:**

For reasons we detail below, no solicitations were issued in relation to this contract.

Esri develops and licenses Geographic Information System (GIS) Software to the general public as well as to the federal, state and local governments. These Software Offerings are detailed under Lot 1.

When our customers leverage Esri for professional services they tend to do so in one of two ways: via a consulting services contract to deliver on custom capabilities that they define in a scope of work, or through Service Offerings delivered as subscriptions or packages that leverage Esri expertise in our products.

Esri often collaborates with partners, including many MWBEs, in custom consulting services engagements where we team based on respective strengths of cost and expertise.

Our second category of professional services work can be grouped together as Service Offerings, which we have identified in Lot 4. For Lot 4, Esri’s offers supplemental service packages related to the Software’s use, as well as Educational Support (Training) and Premium Support Services.

We are requesting a MWBE waiver for these Service Offerings and a detailed Justification for each Service Offering is provided below for consideration:

**Lot 4 MWBE Waiver Justification – EEAP**

The Esri Enterprise Advantage Program is a sole source, productized, subscription service. The intent of the program is to support our clients in their implementation and deployment of our suite of software by providing guidance, best practices, and technical enablement. Leading this consulting effort is the program’s Technical Advisor. The Technical Advisor is a senior Esri consultant assigned to the account and responsible for understanding the customers’ business and GIS requirements, and enabling them to meet these objectives. To do this, the Technical Advisor leverages their understanding of Esri’s current products and future product road map, as well as their direct connection with Esri software developers and product management, in order to more clearly focus and coordinate Esri resources toward meeting customer end goals through the framework established by the program. This is only possible because the Technical Advisor is closely integrated with the Esri account and product teams and has proprietary information on Esri best practices for GIS implementation and deployment. As a result, the primary value the customer receives from this program is the guidance and direct, efficient access to key Esri resources and knowledge, coordinated by their Technical Advisor and delivered through the use of the program’s Learning and Services Credits. Given this, it would not be possible to outsource any aspect of the program to a third party as it would remove the primary reason for entering into the program and would not provide the intended value to our customer.

**Lot 4 MWBE Waiver Justification: Premium Support Services**

Premium Support Services is a subscription service that provides Esri customers with access to Prioritized Incident Management and Advanced Technical Support. This product is an enhanced extension of our standard technical support that assures technical support issues are responded to within a one hour time frame and assigns a Technical Account Manager to subscription holders that is familiar with their systems and will assure their cases are handled in a prioritized manner. The assigned Technical Account Manager interfaces with the development team directly here at Esri. Control can therefore be maintained here so quality and consistency can be closely monitored. Only our Senior Support Analysts are assigned to this program. This requires a level of experience, maturity and exposure to the technical support operations and problem solving processing here at Esri. Such exposure can only be obtained here at Esri. Additionally, tools have been integrated into Esri's business network that operate within our footprint. Without the integrated tools it would be difficult to maintain an efficient interface. This level of integration requires considerable investments of capital into technology infrastructure and highly trained staff. Given the nature of this program, it would highly difficult to outsource to a third party as it requires direct access to core Esri programmers and a high level of specialized infrastructure and training to assure time and quality standards are met.

**Lot 4 MWBE Waiver Justification: Jumpstart Packages, Workshop Packages and WebGIS Launch Kits.**

Esri's Jumpstart Packages, Workshop Packages and Web GIS Launch Kits (Implementation Support) are productized and standardized engagements that use proprietary implementation workflows to provide Esri customers with specific technical enablement services for a fixed price. The fixed price of these productized engagements is only possible because of the efficiencies and economies of scale gained by offering this product to the entire Esri customer base at a standard configuration. The scale of these offerings allows Esri to commit to delivering a highly specialized technical service within a specified time because it enables Esri to maintain a committed workforce that can provide the service in a consistent manner. Given the standardization and level of technical expertise required to deliver this service it would not be possible to provide this service on a smaller scale for the same fixed price and configuration. If a similar service were to be contracted to a third party the pricing and configuration would need to be customized based on the specific engagement and would no longer be considered an Implementation Support product, but instead a project based services engagement.

- 2) **If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected.**

Please see our explanation above as to why we feel this is not applicable.

- 3) **Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements.**

No advertisements were issued relative to this effort because there are no subcontracting opportunities/ no defined scope with which to actively solicit MBE/WBE resources for Services Packages.

- 4) **Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses.**

Please see our explanation above as to why no solicitations were issued for Services Packages, EEAP, or Premium Support Services.

The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals.

Esri's Sales Representative, Carl Nylén, attended the Pre-Bid Conference held on January 23<sup>rd</sup>, 2015. Mr. Nylén did not solicit such organizations during the Conference, since as discussed above, the EEAP, PSS, or Jumpstart Packages do not lend themselves to be subcontracted.

**5) Information describing the specific steps undertaken to reasonable structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned businesses.**

Esri creates, submits and maintains a Small Business Commercial Subcontracting plan that is filed annually with the GSA in accordance with FAR Clause 52.219-9. For the year 2015, this plan is covered under GSA contract # GS-35F-5086H, and outlines Esri's efforts to meet separate dollar and percentage goals for small business (SB), HUBZone, small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB), service-disabled veteran-owned small business concerns (SDVOSB). Included in this plan are details of Esri's good faith efforts for outreach to and identification of various small business concerns including minority and women-owned enterprises. These efforts include:

1. Assist SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential SB, VOSB, SDVOSB, HUBZone, SDB and WOSB subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
2. Provide adequate and timely consideration of the potentialities of SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns in all "make-or-buy" decisions.
3. Counsel and discuss subcontracting opportunities with representatives of SB, VOSB, SDVOSB, HUBZone, SDB and WOSB firms.
4. Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Dynamic Small Business Search database [http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm) or by contacting SBA.
5. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small, or service-disabled veteran-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor's subcontracting plan. HUBZone small business concerns shall provide a copy of their Small Business Administration (SBA) certification. Each SB, HUBZone, SDB, WOSB, VOSB, and SDVOSB concern on record as a potential subcontractor shall complete a self-certification form stating their business size. A penalties clause for falsifying information will also be on the form according to the legal statute 15 U.S.C. 645(d). Note, the following notice will read near the business owner's signature. "NOTICE: In accordance with U.S.C. 645(d), any person who misrepresents a firm's proper size classification shall (1) be punishable by imposition of a fine, imprisonment, or both, (2) be subject to administrative remedies, and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act."
6. Develop and promote company policy statements that demonstrate the company's support for awarding indirect procurements to SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns.
7. Develop and maintain bidders' lists of SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns from all possible sources.
8. Ensure that SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns are included on the bidders' list for every subcontract solicitation for products and services they are capable of providing.

9. Ensure that subcontract procurement "packages" are designed to permit the maximum possible participation of SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns.
10. Review subcontract solicitations to remove statements, clauses, etc., which might tend to restrict or prohibit SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns.
11. Ensure that buyers document reasons for not selecting any low bids submitted by SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns.
12. Attend or arrange for the attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.
13. Directly or indirectly counsel SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns on subcontracting opportunities and how to prepare bids to the company.
14. Conduct or arrange training for purchasing personnel regarding the intent and impact of Section 8(d) of the Small Business Act on purchasing procedures.
15. Monitor the company's performance to achieve subcontract plan goals.
16. Prepare and submit timely reports.
17. Coordinate the company's activities during compliance reviews by Federal agencies.

**B) In addition to the information provided by the contractor in paragraph (A) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:**

- 1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract.**

While COTSS and the Lot 4 Services offerings are not feasible for subcontracting purposes, Esri does maintain a corporate policy and program for engaging with minority and woman owned businesses, as well as other small and disadvantaged businesses, in relation to its indirect spend as a company. Esri has submitted a copy of its small business plan that is filed with the General Services Administration, with this waiver request as Attachment F-2. This plan outlines Esri's efforts to engage, solicit from, and support small businesses, including woman and minority owned businesses.

- a) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified business that could, in the judgement of the State agency, perform work required by the State contract scope of work.**

There was not a defined Scope of Work in the Solicitation with which an MBE/WBE opportunity could be assessed for Lot 4 Services offerings, therefore there is no opportunity for participation by MWBE's under a resulting contract.

- b) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier.**

Because COTSS and the other Lot 4 Services offerings cannot be subcontracted, no solicitations, plans, or other documentation was provided to any party relative to a resulting contract.

- c) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions.**

Because COTSS and the other Lot 4 Services offerings cannot be subcontracted, no terms, conditions or provisions were extended to any party relative to a resulting contract.