

INNOVATE NY FUND

Request for Proposals

Submissions are due no later than 4:00 PM, February 21, 2012.

1 Introduction

Pursuant to this Request for Proposals (“RFP”), New York State Urban Development d/b/a Empire State Development (“the Corporation”) seeks Proposals from applicants (“Applicants”) that are Investment Entities (defined below) for the Innovate NY Fund (“the Fund” or the “Program”). The Fund will make monies available to selected Investment Entities to increase the amount of seed stage investment capital available to eligible New York State (“State”) small businesses. The Program will make equity investments in funds managed by the Investment Entities, and the Investment Entities will make qualified investments in eligible small businesses in the State.

The Fund is authorized by the New York State Urban Development Act (the “Act”) Section 16-u. Please see the Innovate NY Fund Rules and Regulations (the “Program Regulations”); attached as Exhibit I. The Program Regulations include applicable definitions used in this RFP and Program information.

2 Purpose

The purpose of the Fund is to make capital available for eligible Investment Entities to fund businesses (“Beneficiary Companies”) that (a) are, or agree in writing to be, located in New York State; (b) are Seed Stage Businesses and New York State Small Businesses, as defined in the Program Regulations; (c) demonstrate a potential for substantial growth and job development in an Emerging Technology Field, as defined in the Program Regulations (also see Exhibit II); and (d) have the potential to generate additional economic activity in New York State. Investment priority shall be given to Beneficiary Companies involved in commercialization of research and development or high technology manufacturing with innovative business ideas and products that result in the development of high growth

businesses within the State and the concomitant creation of private sector jobs and tax revenues for the State.

3 General Requirements and Guidelines

(a) Eligible Applicants – Investment Entities

Eligible applicants may include regional and local economic development organizations, technology development organizations, research universities, and investment funds that make seed-stage investments in New York State companies (collectively “Investment Entities” and individually an “Investment Entity”).

(b) Award Amounts

Program awards to individual Investment Entities are expected to average four to six million dollars (\$4,000,000 to \$6,000,000).

(c) Eligible Investment in Beneficiary Companies

1. In order to be eligible for an investment that includes Program funds, a Beneficiary Company must be a Seed Stage Business. Prior to the investment of Program funds in a Beneficiary Company, the Beneficiary Company must agree, pursuant to a written agreement satisfactory to the Corporation, that the Beneficiary Company will be, located and remain located within the State for a period satisfactory to the Corporation. In the event a Beneficiary Company breaches this obligation, restitution must be made in a manner satisfactory to the Corporation, and such restitution will be specified in the investment agreements.
2. An Investment Entity shall not invest Program funds in a Beneficiary Company in an amount greater than five hundred thousand dollars (\$500,000), or seven hundred fifty thousand dollars (\$750,000) in the case of a biotechnology-related Beneficiary Company,

at any one time, unless the Beneficiary Company and the Investment Entity can demonstrate that exceeding the applicable investment limit will result in substantially greater growth, job development, and additional economic activity in New York State, and the Corporation consents to such investment in writing.

3. Program funds may be used for follow-on investments in portfolio companies, as defined in the Program Regulations, subject to the investment amount limits and exceptions set forth above.
4. Investments in Beneficiary Companies may take the form of equity or hybrid Investments, including convertible debt. (See Program Regulations for definitions.)
5. Investment entities will make individual investment decisions.
6. Beneficiary companies must be a Small Business, as defined in the Program Regulations.

(d) Matching Requirements

1. All investments will be co-investments. For individual investments, Program funds cannot be more than eighty percent (80%) of any single investment funding round in a Beneficiary Company; private sources of capital must account for at least twenty percent (20%) of each individual investment.
2. On an aggregate basis, all investments taken together must be leveraged with private sources of capital (excluding investment after the initial funding round) at a ratio equal to or greater than one to one (1:1) at all times.
3. Once the an Investment Entity has invested fifty percent (50%) of Program funds allocated to that Investment Entity, on an aggregate basis, investments shall be leveraged with private sources of capital (excluding investments after the initial funding round) at an increased ratio equal to or greater than two to one (2:1).
4. Funding provided by the State of New York, including, but not limited to, the Small Business Technology Investment Fund, shall not be counted toward satisfying the matching requirements for an Investment Entity.

(e) Commitment Period

The commitment period for Investment Entities to invest all Program funds in Beneficiary Companies shall generally be three years or less.

(f) Guidelines and Requirements

1. The Corporation shall distribute Program funds promptly, pursuant to a disbursement process agreed to between the Corporation and the Investment Entity in order to enable the Investment Entities to fulfill commitments to Beneficiary Companies in a timely manner.
2. The Corporation and each Investment Entity receiving funds shall enter into one or more written agreements that are consistent and in compliance with the Act, including Section 16-u thereof, Program Regulations, and other applicable laws and regulation.
3. The Corporation may actively participate on the limited partner committee (or equivalent) with the participating Investment Entity and other investors.
4. Returns on investments or interest accrued with respect to Program funds received by an Investment Entity through the Fund shall be returned to the Corporation in accordance with the agreements entered into between the Investment Entity and the Corporation.
5. Each Investment Entity will be required to market the Fund to other potential investors and Beneficiary Companies.
6. Each Investment Entity shall deposit both returns and interest earned into a bank account in a State or Federal chartered banking institution satisfactory to the Corporation.
7. Applicants must be legally able to receive and use the proceeds as herein stated; meet any other requirements herein stated for the specific purpose of the Program; be in good standing with any other State programs, and be current with all reporting requirements.
8. The selected Applicants will assume responsibility for the performance of all required services, whether or not subcontractors are involved.
9. The Corporation will make best efforts to have Program Funds geographically distributed across the State and focused on important high growth sectors of the State economy.

Applicants must serve an area or areas that are located within the State of New York. Service delivery area(s) are to be identified by both the Corporation's Economic Development Regions ("EDRs") and individual counties. EDRs are defined as follows: Capital Region (Warren, Washington, Saratoga, Schenectady, Albany, Rensselaer, Greene and Columbia), Central NY Region (Oswego, Onondaga, Madison, Cortland, and Cayuga), Finger Lakes Region (Orleans, Genesee, Wyoming, Livingston, Monroe, Wayne, Ontario, Yates, and Seneca), Long Island Region (Suffolk and Nassau), Mid-Hudson Region (Sullivan, Ulster, Dutchess, Orange, Putnam, Rockland, and Westchester), Mohawk Valley Region (Oneida, Herkimer, Fulton, Montgomery, Schoharie, and Otsego), North County Region (Jefferson, Lewis, Hamilton, Essex, Franklin, Clinton and St. Lawrence), Southern Tier Region (Delaware, Broome, Chenango, Tioga, Tompkins, Schuyler, Chemung, and Steuben) Western NY Region (Niagara, Erie, Cattaraugus, Allegany, and Chautauqua), and New York City (Richmond, Kings, Queens, New York, and Bronx).

(g) Investment Entity Compensation and Returns

1. An Investment Entity may receive fees and Carried Interest on Capital Gains, as defined in the Program Regulations. The Applicant will be asked to propose a compensation structure, and will be evaluated in part on its competitiveness. Compensation to the Investment Entity and returns to the Corporation will be detailed in the agreements to be entered into between the Investment Entity and the Corporation.

4 Proposal Requirements

In order for a proposal submitted in response to this RFP to be considered, it must contain a completed application information sheet (Attachment A), an investment activities chart (Attachment B), and all of the information requested below. If certain requested information or attachments are not available or applicable, please note in the narrative, on the checklist (Attachment C) or within a particular attachment as necessary. Proposals that are not complete may not be reviewed by the Corporation. Please organize your proposal

in the order presented below and provide tabs for each of the four major sections of the proposal, as well as for each attachment. Each section in the application will have page limits. Please read each section carefully and adhere to the page limitations for each section.

(a) Executive Summary (3 page maximum)

Please provide a summary that includes the items below. Refer to attachments as necessary.

1. Summary of applicant's business or organization, ownership structure and range of activities.
2. Amount of Program funds requested.
3. Summary of total and New York State small business investment track record, including volume, typical profile of portfolio companies, typical structure of investment, typical participation and oversight of each portfolio company, typical compensation structure for applicant, co-investments secured, follow-on investments made, and overall investment performance.
4. Summary of proposed investment strategy and target market in the State (include target EDRs and counties to be served; if statewide, just identify as such, but include any particular areas of focus).
5. Summary of projected State small business investment volume utilizing Program funds over the next three years if award is received.
6. The expected amount and source of the match from the Applicant and potential co-investors on individual deals.
7. Summary of expected or typical outcomes, including investment returns, job creation and business launch or expansion outcomes.

(b) Company Information and Management (7 page maximum for narrative portion)

1. Describe the Applicant's status as an eligible entity that is able to administer the Funds set forth in Section 2 of this RFP. Describe the Applicant's ownership and management structure. Please note whether Applicant is not-for profit or for profit entity, the year the Applicant was established, and the company focus or mission. (narrative)
2. Certificate of Incorporation. (Attachment D)
3. Bylaws. (Attachment E)
4. Annual Report, if available. (Attachment F)
5. Equal Employment Opportunity Policy, if available. (Attachment G)
6. Describe the roles, capacity, skills, size and experience of the Applicant's management team and list key staff. Include resumes/CVs in attachment, if available. (narrative and Attachment H)
7. List the active members and qualifications of the Investment Review Committee(s). Include resumes/CVs in attachment, if available. (narrative and Attachment I)
8. Describe the role of the Board of Directors and list individual Board members and their skills and experience. (narrative and Attachment J)
9. Provide a list of existing and potential co-investors. (Attachment K)
10. Describe the Applicant's operating policies and procedures, including deal sourcing, deal review and due diligence, investment approval, portfolio management, portfolio company monitoring and oversight, and financial management. (narrative and Attachment L)
11. Include audited financial statements for the past three years. If the most recent annual statements are more than six months old, the Applicant should submit an interim financial statement. (Attachment M)
12. Describe the Applicant's financial health and stability, and the overall financial performance over the past 3-5 years. Identify the type of financial statements included with the application - audited, reviewed, internally prepared; provide a narrative for significant items of note on financial statements. (narrative)

(c) Investment Experience and Track Record (13 page maximum for narrative portion)

1. Describe the Applicant's experience making investments in seed stage companies and highlight investments made in the State. Estimate the percentage and amount of investments that were directed to seed stage companies. (narrative)
2. Describe the current target markets (industries or geographic areas) in which the Applicant has particular expertise, and the Applicant's view of the current state of those geographic areas, sectors or industries. (narrative)
3. Detail any previous partnerships with government or quasi-governmental entities. (narrative)
4. Describe the Applicant's deal sourcing strategy and process. Describe how many equity investments are typically evaluated each year by the Applicant and, of these, how many commitments are made. Discuss how regional resource partners are used for sourcing and making investments (universities, incubators, angel networks, etc.). Please attach a list of regional resource partners. (narrative and Attachment N)
5. Describe all individual investment funds and performance over the past 5 years including the typical investment structure, list of capital sources and amount raised and deployed, fund focus, target company stage of development, geographic location of portfolio companies, range of investment size, total compensation including management fees and Applicant's share of return, realized returns, unrealized returns, overall return on investment, etc. Attach charts and data on both funds and individual portfolio companies, including information on type of business, industry segment, owners' background, investment performance, etc. Describe any economic development impacts for the fund and individual investments— new businesses launched, jobs created, revenues increased, number and amount of investments in minority and women-owned business enterprises (M/WBEs), number and amount of investments in low and moderate income communities, etc. (narrative and Attachment O)

6. Describe the co-investment secured for portfolio companies. Identify the sources and total ratio of co-investment to fund investment for portfolio companies. Include attachments as necessary. (narrative and Attachment P)
7. Describe the follow-on investment secured for portfolio companies. Identify the sources and total ratio of follow-on investment to initial fund investment for portfolio companies. Include attachments as necessary. (narrative and Attachment Q)
8. List all current and past awards from the Corporation and other NYS agencies. Also state whether the Applicant intends to apply to other Corporation or NYS program(s) in 2012-2013. (Attachment R)
9. Describe typical advisory services, company oversight, technical assistance or business coaching provided to portfolio companies, including whether services are provided by the Applicant or through partnerships. Provide examples and identify partners. (narrative)

(d) Proposed Investment Strategy (12 page maximum for narrative portion)

1. Describe the overall investment strategy, including the target geographic market and any target industries or sectors. Provide data on the target market as necessary, including estimates of market size and a demonstration of need for seed stage investments. (narrative)
2. Describe the Applicant's capacity to source, evaluate, and finalize investments in seed stage companies in the State, in line with the investment strategy described above. Describe the specific outreach and deal sourcing plan the Applicant would employ to identify potential investments. Identify existing and potential partners in the State. (narrative)
3. Describe the fund structure for the proposed investments. Would the investments be made from a dedicated fund, a sidecar fund to an existing fund, or some other structure? (narrative)

4. Describe the projections and expected commitment period for making the Innovate NY investments. Describe the expected investment structure, average deal size, etc. (narrative)
5. Describe the expected amount and source of the required non-state matching funds, including general partner contributions, those secured from the Applicant's other public and private sources, and third-party co-investment. Identify how much of those amounts are currently in hand. Describe the capacity of the fund and the methodology used to raise the additional funds required. List specific potential investors, including any written expressions of interest and possible investment amounts. (narrative and Attachment S)
6. Identify the anticipated amount, timeline and possible source of funds for follow-on investments for Program portfolio companies. (narrative)
7. Identify any differences in the proposed strategy from existing operating policies and procedures, or differences in the way the Applicant typically provides advisory services or participates in company governance, as described in section 4 (c) 9. Identify any expected new partners and key staff, and include information on responsibilities, resumes and bios if not included in section 4 (b) 6, above. (narrative)
8. Propose a structure for restitution if Portfolio Companies move out of State, as described in section 3 (c) 1, above. (narrative)
9. Typical investment term sheet. (Attachment T)
10. Typical Limited Partner Agreement or similar investor agreement. (Attachment U)
11. Fees and Returns – Given the section on fees and fund manager compensation in section 4 (a) 3, please propose a compensation structure for the Investment Entity, including any and all fees, charges, expenses, profit-sharing, performance bonuses, or any other fees, costs and/or expenses that will be payable to the Fund manager by the Fund or its investors. (narrative)
12. Describe how the Applicant will market funds to its target market and to specific communities, such as underserved areas of the State or to M/WBEs. (narrative)

5 General Proposal Evaluation Criteria

Applicants shall be evaluated on criteria including, but not limited to, the applicant's: (a) track record of success in raising investment funds and successfully investing them; (b) financial and management capacity to source deals, perform due diligence, evaluate the commercial potential of emerging technologies, and to provide management expertise and other value-added services to beneficiary companies; (c) demonstration of need in target market for seed stage investments in target sectors; (d) ability to secure the required non-State matching investment; (e) competitiveness of the proposed compensation structure; (f) ability to secure partnerships with local or regional stakeholders; (h) ability to direct funds to underserved populations and communities; and (i) other criteria that the Corporation determines is relevant to making investment decisions consistent with the purposes of the fund as set forth in subdivision one of this section.

When awarding funds pursuant to this subdivision, the Corporation shall provide for adequate geographic distribution of awards to beneficiary companies throughout the state to the extent feasible.

6 Proposal Submission

The Applicant must address all of the information requested above. If requested information or attachments are not available or applicable, please note in the proposal. The total length of the Proposal narrative should not be longer than thirty-five (35) pages.

All proposals must be received no later than 4:00 PM on **February 21, 2012** (the "Closing Date"). Additional Information may not be submitted after the closing date, except upon written request by the Corporation. Five hard copies of the Proposal (four bound and one unbound) and one (1) electronic copy on CD or USB device must be submitted in a package with Applicant's names and address written on the outside. Each Proposal should be marked on the outside with "**Innovate NY Fund RFP**". All Proposals must be hand delivered or sent via certified mail or overnight courier to:

Empire State Development
Attention: Sharon Rutter, Director
633 Third Avenue
New York, NY 10017

All application materials are available at:

<http://www.esd.ny.gov/BusinessPrograms/InnovateNY.html>

7 Questions, Modifications, and Additional Information Request

All questions, comments, requests for clarification and other communications regarding this solicitation must be submitted to innovateRFP@esd.ny.gov. Answers to questions will be posted on a weekly basis at: <http://www.esd.ny.gov/BusinessPrograms/InnovateNY.html>

By submitting a Proposal, each Applicant authorizes the Corporation to contact any and all other persons identified in its Proposal or in any inquiry conducted by or on behalf of the Corporation or the State, and to obtain the release of pertinent financial and other information, as well as to obtain verification of the information provided by each applicant.

The Corporation will not be held liable for any costs incurred by any Applicant for work performed in the preparation and production of a submitted Proposal, including any requests for additional information, interviews or negotiations; nor for any work performed prior to written authorization from the Corporation to proceed. All Proposals submitted will become the property of the Corporation.

The Corporation reserves the right to:

- Reject any or all Proposals received;

- Select all, or fewer than all, Investment Entities responding to the RFP;
- Allocate funds in any amount, depending upon the number and quality of Proposals received;
- Interview any number of finalists prior to award and negotiate any element of a Proposal and require the submission of modifications or additions to Proposals as condition or further participation in the selection process;
- Reassign all or part of the award made to such Investment Entity to one or more other Investment entities that are already administering the Program, without an additional solicitation;
- Amend this RFP; and,
- Amend the Program guidelines and Program Rules and Regulations from time to time as necessary, during the life of the Program.

(a) General Conditions, Terms, and Limitations

1. Governance

The governing documents of each selected Investment Entity will provide for, among other things, the handling of conflicts of interest between the Investment Entity and the Beneficiary Companies, and their respective directors, members, partners, officers and employees.

2. Agreements

Once selected, the Corporation will outline the terms and conditions, as well as any provisions required by law, in the agreements executed with each selected Investment Entity.

3. Auditing, Compliance and Reporting

See the attached Program Regulations. (Exhibit I)

4. **Non-Discrimination and Affirmative Action**

The Corporation, as part of its responsibility, recognizes the need to promote the employment of minority group members and women, and to ensure that certified M/WBEs have opportunities for maximum feasible participation in the performance of Corporation contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether M/WBEs had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("the Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of M/WBEs in state procurement contracting versus the number of M/WBEs that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide M/WBE program.

It is the policy of the State of New York and the Corporation to comply with all federal, State, and local laws, applicable case law policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed (religion), color, national origin, sex (including gender expression), sexual orientation, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, to follow the requirements of Article 15 of the Executive Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest, and to take affirmative action in working with contracting parties to ensure that New York State business enterprises and M/WBEs share in the economic opportunities generated by the Corporation's participation in projects or initiatives, and/or the use of Corporation funds. The Corporation's non-discrimination and affirmative action policy will apply to this initiative. Selected grantees are encouraged to use good faith

efforts to provide for the meaningful participation of M/WBEs, minority group members and women in the execution of this contract. A copy of each respondent's equal employment opportunity policy statement, if available, is requested.

The Corporation reserves the right to set Contract goals for minority and women business enterprise participation for subcontracts or other expenditures made pursuant to this solicitation from fund management and related professional fees, and may include relevant provisions to that effect in subsequent Contracts with the Investment Entity.

5. Confidentiality

To the extent permitted by law, all information regarding the structure, operating structure, financial condition, marketing plans, or other trade secrets and proprietary information of an applicant, in addition to all communication shall be confidential and exempt from public disclosures.

To the extent permitted by law, no full time employee of the State of New York or any agency, department, authority or public benefit the Corporation thereof shall be eligible to receive assistance under this Program.

8 Additional Considerations

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this solicitation. These Procurement Requirements (1) govern permissible communications between potential respondents and the Corporation; and (2) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this solicitation.

Compliance with the Procurement Requirements requires (1) that all communications regarding this solicitation, from the issuance of this solicitation through final award and approval of any resulting contract (the “Restricted Period”), be conducted only with the contact person(s) listed above; (2) the completion by respondents of the Offered Disclosure of Prior Non-Responsibility Determinations and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law 139-j(3) and 139-j(6), copies of which are attached to this solicitation as Attachments V and W, respectively; and (3) periodic updating of such forms during the term of any contract resulting from this solicitation

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

A copy of the Corporation’s Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k can be found as Exhibit III. Neither this summary nor the referenced Policy is a complete presentation of the provisions of the Procurement Requirements. A copy of Executive Order 127 can be found at www.ogs.state.ny.us/aboutogs/regulations/defaultProcurement.html and State Finance Law Sections 139-j and 139-k can be found at www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html . All potential Respondents are solely responsible for full compliance with the Procurement Requirements.

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits the Corporation from approving any such contract with any entity if that entity or any of its affiliates or subcontractors make sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the immediately preceding consecutive four sales tax quarters and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Applicants to this solicitation must include in their responses a properly completed Form ST-220-CA Contractor Certification to Covered Agency (Attachment X.)

Exhibits:

- Exhibit I: Innovate NY Fund Rules and Regulations
- Exhibit II: Public Authorities Law Section 3102-e
- Exhibit III: Corporation’s Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k

Attachments from Applicant:

- Attachment A: Applicant information sheet (provided)
- Attachment B: Investment activities chart (provided)
- Attachment C: Checklist (provided)
- Attachment D: Certificate of Incorporation
- Attachment E: Bylaws
- Attachment F: Annual report (if available)
- Attachment G: Equal Employment Opportunity Policy (if available)
- Attachment H: Management team and key staff
- Attachment I: Investment Review Committee
- Attachment J: Board of Directors
- Attachment K: Existing and potential co-investors
- Attachment L: Operating policies and procedures
- Attachment M: Audited financial statements for past three years

- Attachment N: Regional resource partners
- Attachment O: Fund information and performance
- Attachment P: Co-investment activity

- Attachment Q: Follow-on investment activity
- Attachment R: Current and past awards from the Corporation and other NYS agencies
- Attachment S: Investor information
- Attachment T: Investment term sheet
- Attachment U: Limited Partner Agreement
- Attachment V: Offerer Disclosure of Prior Non-Responsibility Determinations(provided)
- Attachment W: Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law 139-j (3) and 139-j (6) (provided)
- Attachment X: Form ST-220-CA Contactor Certification to Covered Agency (provided)