Request for Proposal and Statement Qualification for Accounting Audit Services

Issued: November 14, 2024

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – Letter ii).

Designated Contacts for this Procurement:

Primary Contact:	Julia Borukhov
Secondary Contact:	Jordan Kaplan

All contacts/inquiries shall be made by email to the following address:
AccountingAuditRFP@esd.ny.gov

Proposals must be uploaded to the designated Dropbox:
https://www.dropbox.com/request/kfK7onJ9Siyvg2FHQdFz

This RFP is posted on the Empire State Development website:
https://esd.ny.gov/doing-business-ny/requests-proposals

Submission Deadline: December 11, 2024, by 2:00 PM EST
Late submission will not be taken into consideration

Contents

I. INTRODUCTION 2
II. OVERVIEW 2
III. SCOPE OF WORK 7
IV. SCHEDULE OF DATES 7
V. SELECTION CRITERIA 8
VI. SUBMISSION OF PROPOSALS 8
i. Technical Proposal 8
ii. Administrative Proposal 11
VII. QUESTIONS 12
VIII. GENERAL PROVISIONS 12
IX. CONTRACTUAL REQUIREMENTS 15
i. Conflicts of Interest 15
ii. State Finance Law Sections 139-j and 139-k forms 16
iii. Vendor Responsibility Questionnaire 17
iv. Iran Divestment Act 18
v. Executive Order 16 18
vi. Executive Order 177 18
vii. Non-Discrimination and Contractor & Supplier Diversity Requirements 19
viii. Encouraging the Use of NYS Businesses in Contract Performance Form 25
ix. Certification under State Tax Law Section 5-a 25
x. Schedule A 26
xi. Project Sunlight 26
xii. Insurance Requirements 26
xiii. W-9 Form 27

I. INTRODUCTION

The mission of Empire State Development ("ESD") is to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

II. OVERVIEW

The New York State Urban Development Corporation d/b/a Empire State Development ("ESD" or the "Corporation"), New York Job Development Authority ("JDA" or the "Authority"), Harlem Community Development Corporation ("HCDC"), New York Convention Center Development Corporation ("CCDC") and New York Empowerment Zone Corporation ("NYEZ"), (collectively the "Companies"), hereby request a proposal from your firm for separately audited consolidated/combined financial statements for the Companies and subsidiaries, as well as a consolidated Federal Single Audit for the fiscal years ending March 31, 2026, 2027, 2028 with the option to extend the contract for two (2) one (1) year terms.

In order for these Companies to adhere to Public Authorities Law established by the New York Office of the State Comptroller, as well as to meet certain requirements in various Bond Resolutions, the audited financial statements must be completed no later than June 10 of each year.

From time to time, additional subsidiary corporations may require separately audited financial statements, the pricing of which will be negotiated with the contracted firm. In addition, the Companies may require management consulting and other professional services throughout the contract term.

History and Introduction to the Companies

Empire State Development

New York State Urban Development Corporation, which together with its subsidiaries does business as ESD, is a corporate governmental agency of the State of New York (the "State"), constituting a political subdivision and a public benefit corporation. Accordingly, for financial reporting purposes, ESD's consolidated financial statements are combined as a component unit enterprise fund in the State's annual financial report. Created by legislation in 1968, ESD has broad powers which can be utilized for civic, industrial or commercial development purposes. ESD is engaged in various activities for the State, three of which are highlighted below.

1. Economic Development Programs and Initiatives

ESD is the State's primary agent for economic development and job creation with ten regional offices throughout the State. The three regional offices in New York City, Albany, and Buffalo function as ESD's co-headquarters. ESD's mission is to promote a vigorous and growing State economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

To support its economic development mission, ESD:

- Invests strategically in infrastructure, innovation, place-making and revitalization, tradable sectors and workforce development;
- Is transparent and responsive to the needs of diverse communities across the State through the active participation of ten Regional Economic Development Councils;
- Supports the retention and health of existing businesses, the retention of populations, and the development of new businesses and industries that will contribute to the development of the 21st century economy;
- Promotes equality of economic opportunities for minority-and women-owned businesses;
- Provides early-stage support for new ventures, including the research and development of new technologies; and
- Strengthens New York State's innovation-based economy through partnerships with acclaimed universities, promoting entrepreneurialism through the development of incubators and next-generation manufacturing and technology hubs across the State.

In addition, the State Legislature has provided the Corporation with various statutory powers, including the power to issue bonds, offer tax benefits to developers, condemn real property and waive compliance, where appropriate, with certain local codes and laws. Financial assistance to organizations is provided primarily through State appropriated funds received by the Corporation and State supported bonds issued by the Corporation which are disbursed to projects. Federal funding is also received through various programs to provide assistance to small businesses, businesses who have sustained losses as a result of natural disasters and other purposes that spur economic development.

2. Subsidiaries and Economic Development Projects

In addition to assisting businesses, the Corporation continues to support major development and redevelopment efforts throughout the State through its consolidated subsidiaries, including Harlem Community Development Corporation, New York Convention Center Development Corporation, Moynihan Station Development Corporation, Erie Canal Harbor Development Corporation, USA Niagara Development Corporation, New York Empowerment Zone Corporation and Atlantic Yards.

The Lower Manhattan Development Corporation ("LMDC") was created as a subsidiary of ESD to assist in the economic recovery and revitalization of lower Manhattan following the events of September 11, 2001. LMDC's activities and programs are principally funded through Congressional appropriations administered by the United States Department of Housing and Urban Development, as part of its Community Development Block Grant Program.

In addition, ESD administers the economic development activities of the New York Job Development Authority ("JDA"). JDA is not a component unit of ESD for financial reporting purposes.

3. Economic Development Tax Incentives

ESD administers the Excelsior Jobs Program that provides job creation and investment incentives to firms in certain targeted industries, ranging from biotechnology to manufacturing. ESD also administers the New York State Film Tax Credit Program, which is designed to increase the New York State film production and post-production industry and the overall economic benefits to the State. In addition, ESD administers the New York City Musical and the Theatrical Production, Tax Credit Program, the Empire State Musical and Theatrical Production Tax Credit Program, and the Life Science Tax Credit Program.

These tax incentive programs abate taxes collected by the State of New York. ESD has no authority to tax or to collect taxes.

Federal Single Audit

In addition to the annual audits of ESD and its subsidiaries, a Federal Single Audit is required in accordance with the Single Audit Act Amendments of 1996 and Title 2 *U.S. Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). This audit is important to relate the expenditures of federal awards to the basic consolidated financial statements and other additional procedures.

New York Job Development Authority

The New York Job Development Authority is a public benefit corporation organized and existing under the laws of the State of New York. The Authority is a component unit of the State and, as such, its combined financial statements are included in the State's general purpose financial statements. The Authority's mission is to spur job growth and capital investment in New York State by using authority granted to it and by leveraging State guaranteed bonds to support low interest loans to manufacturers and other targeted industries throughout New York State.

The principal activity of the Authority is providing business and industry loans, described in the New York Job Development Authority Act (the "Act") as "Special Purpose Loans". All such loans are made to entities with operations in the State and are provided for real estate acquisition, construction, rehabilitation or improvement or machinery and equipment. The Authority requires security for the loans with the underlying assets and other available collateral.

The Authority finances these activities through repaid loan proceeds and the issuance of State guaranteed bonds and notes limited by the State Constitution and applicable legislation to an aggregate principal amount of $900 million outstanding at any time. To date, enabling legislation allows an aggregate principal amount of $750 million to be outstanding at any time. The Authority has the power to create local development corporations under Section 1804 of the Act and Section 1411 of the New York Not-for-Profit Corporation law.

Harlem Community Development Corporation

Harlem Community Development Corporation is reported as a consolidated subsidiary in ESD's consolidated financial statements. As a subsidiary of ESD, HCDC is a component unit of ESD and the State of New York for financial reporting purposes. Substantially all HCDC program and management/general expenses are funded by support from and advances administered by ESD and income derived from its federally funded Weatherization Program.

HCDC's mission is to formulate and implement a comprehensive program to revitalize the Harlem Community. This includes, but is not limited to, the development and rehabilitation of residential, commercial and industrial properties and the administration of grants under a weatherization program. HCDC targets projects that contribute to the redevelopment of vacant or underutilized commercial and retail property with the goal of attracting new businesses, retaining and growing existing businesses and creating employment opportunities for Harlem residents. Projects are developed in partnership with ESD, State and City agencies, multiple not-for-profits, private businesses and community-based organizations.

New York Convention Center Development Corporation

New York Convention Center Development Corporation is reported as a consolidated subsidiary in ESD's consolidated financial statements. As a subsidiary of ESD, CCDC is a component unit of ESD and the State of New York for financial reporting purposes.

The New York State Senate and Assembly approved legislation in 1979 (the "1979 Act"), authorizing the first appropriation from the State's Capital Construction Fund (subsequently repaid from bond proceeds) to ESD for the acquisition and initial planning of a convention and exhibition center in the City of New York (the "Facility"). The 1979 Act also established CCDC as a subsidiary of ESD, to plan, design, develop and construct the Facility and amended the Public

Authorities Law to empower the Tri borough Bridge and Tunnel Authority to finance the cost of the Facility through issuance of negotiable bonds and notes. The Facility was completed and began operations in 1986 as the Jacob K. Javits Convention Center (the "Javits Center").

In 2004, the State legislature amended existing legislation to provide for the future expansion and renovation of the Javits Center. The legislation provided for the issuance of bonds to fund the planned expansion and renovation and establishment of a hotel unit fee of $1.50 a day imposed on New York City hotel room rentals to provide revenue to cover debt service payments on the bonds.

In 2009, the Corporation embarked upon a multi-year, approximately $500 million renovation and expansion that was completed in 2014. In April 2016, to facilitate an additional convention center expansion, the Legislature passed enabling legislation that provided a $1.0 billion New York State budget appropriation.

New York Empowerment Zone Corporation

The New York Empowerment Zone Corporation was incorporated in 1996 as an ESD subsidiary. NYEZ is reported as a subsidiary in ESD's consolidated financial statements. NYEZ's role is to administer a Memorandum of Understanding among the U.S. Department of Housing and Urban Development, the State and the City of New York, which provides for grants from all three parties to approved projects within the New York Empowerment Zone. The grants are restricted for economic development and community revitalization.

MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service-Disabled Veteran Owned Businesses (SDVOBs) may request that their firm's contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to AccountingAuditRFP@esd.ny.gov. Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

III. SCOPE OF WORK

The Companies require separate examination of their consolidated/combined financial statements for the purpose of expressing an opinion as to whether the statements present fairly, in all material respects, the financial position, results of operations and cash flows for the fiscal year ending March 31, 2026, 2027, 2028 with the option to extend the contract for two (2) one (1) year terms in accordance with accounting principles generally accepted in the United States of America ("USA"). Audit examinations should be made in accordance with auditing standards generally accepted in the USA and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

In addition, for each of the fiscal years covered by the contract, the Companies require, in general, the following Independent Auditors' reports:

- Independent Auditors' Report (report on consolidated/combined financial statements);
- Independent Auditors' Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards;
- Independent Auditors' Report on Investment Compliance;
- Any additional reports required, or that may become required, by Government Auditing Standards during the contract term.

The financial statements and the above listed reports must be completed and formally presented to the Companies no later than June 10 of each contract year so that the statements/reports can be presented to the requisite Audit Committees and Boards of Directors for statutorily required filing with designated parties by June 30.

IV. SCHEDULE OF DATES

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	November 14, 2024
Deadline for Submission of Questions	November 22, 2024
Deadline for ESD to Respond to Questions	December 3, 2024
Submission of Proposals (date and time)	December 11, 2024, by 2:00 pm
Interviews (if necessary)	Week of January 6, 2025
Announcement of Successful Bidder	January 13, 2025
Anticipated Contract Start Date	March 2026

Please note, the Corporation reserves the right to change any of the dates stated in this RFP.

V. SELECTION CRITERIA

In evaluating proposals submitted pursuant to this request, ESD places high value on the following factors, *not necessarily in order of importance*:

1. Experience as audit firm, including assigned audit team, on behalf of ESD, New York State agencies or public entities like ESD (15 pts).

2. Qualifications of proposed partners and associates (15 pts).

3. Demonstrated commitment of time and resources to ESD, New York State agencies or other public firms like ESD (15 pts).

4. Number, complexity and size of engagements handled by the respondent as audit firm for ESD, New York State agencies or public entities like ESD (15 pts).

5. Stability of staff and availability to and facility for working with ESD finance staff (10 pts).

6. Anticipated cost of services and willingness to work with ESD to minimize costs (10 pts).

7. Financial strength and stability of firm (5 pts).

8. Overall organization, completeness, and quality of proposal, including cohesiveness, conciseness, clarity of response and demonstrated understanding of ESD (5 pts).

9. Quantitative Factors (10 pts).

VI. SUBMISSION OF PROPOSALS

Every respondent to this RFP ("Bidder") should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

i. Technical Proposal

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. The Corporation requests that all Technical

Proposals be bound and organized with dividers identified to match the specific information requested below:

A. Table of Contents
B. Firm Experience and Qualifications
C. Staff Experience and Qualifications
D. Project Plan and Approach
E. Estimated Cost {if applicable}
F. Quantitative Factors

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

A. Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

B. Firm Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate relevant experience by providing the following:

<u>Background, Experience and Personnel</u>

1. A history of the firm's auditing experience for ESD or similar public entities.

2. A proposed audit plan outlining audit methodology and tasks to be performed in completing your audit(s) and review(s).

3. A description of the audit team, including resumes of the partners and associates who would be assigned and regularly work on ESD audits. Indicate the percentage of time each of the foregoing individuals spends on public audits. Identify the partner in charge and, for this partner, please provide three client references relating to engagements like the type described in this RFP. Also include the percentage of time this partner will dedicate to the audit(s).

4. If you have not worked with ESD in the last five years, please provide a list of three audit engagements for a New York State agency/authority or other public entity. Include the entity name, the name of a contact person who can provide a reference, a description of the type of engagement, the scope of the engagement, and the amount and basis for the firm's fee calculation (for example, contract rate or hourly rate).

5. The firm's financial statements for at least the last three fiscal years.

6. The number of full-time employees in New York State in calendar years 2022, 2023 and at June 30, 2024.

7. Any other information which you believe would make your representation of the Companies superior to that of other recognized audit firms.

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

C. Staff Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP.

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

D. Project Plan / Approach

In this section of the Technical Proposal, Bidders should demonstrate their competence and capacity to undertake the services described in this RFP.

E. Estimated Cost

- The total proposed annual audit fee, including an annual cap, itemized for each of the companies as listed in this document, for each year mentioned.

- The normal hourly rate of each partner and associate whose resume is provided and the hourly rate you proposed to charge (as utilized to calculate the fee above).

- A schedule of all expenses which you anticipate will result in any additional charge and the rate of each. Please specify at what rate professional services or consulting outside of the audit will be billed.

- Any other fees or charges to ESD.

F. Quantitative Factors

ESD will award 10 points to respondents that are certified Minority or Women-owned Business Enterprises (MWBEs) as defined in section three hundred ten of the New York State Executive Law or Service-Disabled Veteran-owned Business Enterprises ("SDVOBs") as defined in section three hundred sixty-nine-h of the New York State Executive Law.

In order to be awarded points pursuant to the Quantitative Factor, the respondent must identify itself as an MWBE or SDVOB by providing the respondent firm's current MWBE and/or SDVOB certificate issued by New York State. Respondents identifying themselves as MWBEs must be listed in the directory of New York State-certified MWBEs ("MWBE Directory") as of the closing of the period for responses to this RFP. The MWBE Directory is available at: https://ny.newnycontracts.com/. Respondents identifying themselves as SDVOBs must be listed in the directory of New York State-certified SDVOBs ("SDVOB Directory") as of the closing of the period for responses to this RFP. The SDVOB Directory is available http://www.ogs.ny.gov/Core/SDVOBA.asp.

ii. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements**.** Accordingly, Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

i. https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf, submit with proposal
ii. https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf, submit with proposal
iii. Vendor Responsibility Questionnaire, submit with proposal or submit online (and include copy of submitted form with proposal)
iv. https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf, submit with proposal
v. https://esd.ny.gov/sites/default/files/EO16-certification.pdf
vi. https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf
vii. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
    - OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
    - OCSD-2 - Staffing Plan
    - OCSD-4 - MWBE and SDVOB Utilization Plan
viii. Encouraging the Use of NYS Businesses in Contract Performance Form, submit with proposal
ix. Certification under State Tax Law Section 5-a 220-CA or Affidavit, submit with proposal
x. W-9 Form, submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in Section IX of this RFP ("Procurement Forms and Requirements").

Submission of a Complete Two-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hardcopies) will not be accepted. When submitting each proposal, Bidders must comply with the following:

Technical and Administrative Proposals and all related documents must be uploaded to specific Dropbox:

https://www.dropbox.com/request/kfK7onJ9Siyvg2FHQdFz

Please use proper format: create a folder with company name – RFP title – date of Submission.

Example: Accounting Firm, Inc-Accounting Audit, RFP. – 12.11.2024

Included in that main folder should be two sub-folders, one for the Administrative Submission and one for the Technical Submission. The main folder should be uploaded to the Dropbox by choosing the following option: "Add Files → folders from computer". All documents in the folders should be properly labeled.

Please note: Late proposals will not be considered for award.

VII. QUESTIONS

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section IV (Schedule of Dates) to AccountingAuditRFP@esd.ny.gov. Questions will not be accepted orally, and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

VIII. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Bidder or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

i. amend, modify or withdraw this RFP;
ii. revise any requirement of this RFP;
iii. require supplemental statements or information from any responsible party;
iv. accept or reject any or all responses hereto;

v. extend the deadline for submission of responses hereto;
vi. negotiate potential contract terms with any Bidder;
vii. communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
ix. extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

All information submitted in response to this RFP is subject to the Freedom of Information Law ("FOIL"), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The Contractor's performance will be assessed by the Corporation according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Corporation, services which fail to meet applicable professional standards, and which result in obvious or patent errors in the progression of its work.

Additional Services Requested

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has an absolute right and discretion to approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its

Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

IX. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Bidder's submission pursuant to Section VI of this RFP, as well as information about ESD's procurement requirements.

i. Conflicts of Interest

Respondent must attest it has read, understood and will comply with the following provisions https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

A. Gifts and Offers of Employment: Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

B. Disclosure of Potential Conflicts: Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

C. **Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

ii. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) 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 RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.
Bidders must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:
https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.
The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by 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 Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that 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. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:
https://intranet.apps.esd.ny.gov/Finance/SF_Law139_JK.pdf. All potential Bidders are solely

responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

All Bidders to this RFP must be "responsible," which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain "responsible" throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System ("Vend-Rep System"). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at https://portal.osc.state.ny.us. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, Bidders are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

In addition, please see link to EO-192: https://www.governor.ny.gov/news/no-192-executive-order-imposing-continuing-vendor-integrity-requirements-state-contracts

iv. Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

> "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 paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: https://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf

v. Executive Order 16

In accordance with New York State Executive Order 16 ("EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

> "By submission of a 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 in compliance with EO-16."

The required certification for can be found at: https://esd.ny.gov/sites/default/files/EO16-certification.pdf and must be signed and included in all Proposals.

vi. Executive Order 177

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at: https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf and must be signed and included in all Proposals.

vii. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of ESD contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation, based on the current availability of MBEs and WBEs. A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: https://ny.newnycontracts.com. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that a respondent may arrange to provide such evidence via a non-electronic

method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at OCSD@esd.ny.gov.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

   ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

a) If a respondent fails to submit an MWBE Utilization Plan;
b) If a respondent fails to submit a written remedy to a notice of deficiency;
c) If a respondent fails to submit a request for waiver; or
d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions **SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**. The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition,

replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a quarterly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf
Form OCSD-2: https://esd.ny.gov/sites/default/files/media/document/OCSD-2-Staffing-Plan-07-16-24.pdf
Form OCSD-3: https://esd.ny.gov/sites/default/files/media/document/OCSD-3-Workforce-Utilization-Report-070124.xlsx
Form OCSD-4: https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf

Form OCSD-5: https://esd.ny.gov/sites/default/files/media/document/OCSD-5-Waiver-Request-Form-073124.pdf
Form OCSD-6: https://esd.ny.gov/sites/default/files/media/document/OCSD-6-Compliance-Report-073124.pdf

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

A. ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: https://online.ogs.ny.gov/SDVOB/search. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.

B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:

(a) If a Bidder fails to submit an SDVOB Utilization Plan;
(b) If a Bidder fails to submit a written remedy to a notice of deficiency;
(c) If a Bidder fails to submit a request for waiver; or
(d) If ESD determines that the Bidder has failed to document good faith efforts.

F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

(1) Copies of solicitations to SDVOBs and any responses thereto.

(2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

(3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.

(4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report
In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages
In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

viii. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf.

ix. Certification under State Tax Law Section 5-a

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 ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over $300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

x. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

xi. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

xii. Insurance Requirements

The selected Bidder will be required to provide the following insurance (at a minimum and to the extent applicable):

- Commercial General Liability of $2 million per occurrence and $4 million in the aggregate;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than $1 million;
- Cyber Liability with a limit of not less than $3 million;
- Professional Liability with a limit of not less than $1 million;
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;

The New York State Urban Development Corporation d/b/a Empire State Development ("ESD" or the "Corporation"), New York Job Development Authority ("JDA" or the "Authority"), Harlem Community Development Corporation ("HCDC"), New York Convention Center Development

Corporation (“CCDC”) and New York Empowerment Zone Corporation (“NYEZ”), (collectively the “Companies”), and any additional subsidiary corporations the Corporation may specify in writing, must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of the Companies and any additional subsidiary corporations the Corporation may specify in writing.

xiii. W-9 Form

Provide a completed W-9 form (https://www.irs.gov/pub/irs-pdf/fw9.pdf), submit with proposal.