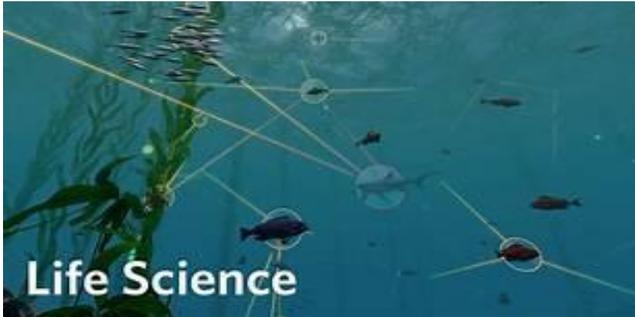
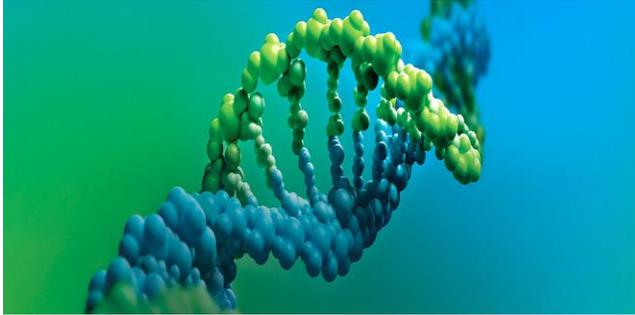




Empire State Development



REQUEST FOR PROPOSALS LIFE SCIENCE CONSULTING SERVICES

ISSUED: April 16, 2018

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. Respondents are prohibited from contact related to this procurement with any New York State employee other than the designated contact listed below.

For more information please refer to:

<http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>

Designated contact for this procurement: Ralph Volcy

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

PROPOSAL DUE DATE AND TIME: May 9, 2018, 2:00 PM EST

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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 (the “State”) through the efficient use of loans, grants, tax credits, real estate development, marketing, and other forms of assistance.

The purpose of this solicitation is to identify and engage a consulting firm to:

1. Refine and advance the ESD Life Science Initiative’s long-term strategy with an emphasis on executing new public-private partnerships to leverage the State’s significant investments in the life science industry
2. Aid in continuing implementation of current Life Science Initiative programs
3. Develop and advance a national strategic marketing plan for the ESD Life Science Initiative aimed at attracting companies and talent to New York State
4. Advance the development of an ESD infrastructure to best support the commercial life science industry in New York State

II. OVERVIEW

In late 2016, Governor Andrew M. Cuomo announced the creation of the New York State Life Science Initiative, designed to spur the growth of a new, world-class commercial life science sector in New York State. There is currently significant untapped life science innovation with commercial potential in the State, yet New York trails other states in metrics such as life science employment and life science venture capital funding.

Governor Cuomo has pledged to invest up to \$620 million to expand the State’s ability to commercialize its life science innovations through a mixture of tax incentives, grants for wet-lab and innovation space, investment capital for early stage life science companies, and matching funds for private sector partnerships. The \$620 million is expected to be allocated as follows:

- **Programs (\$320M):** Funding for strategic initiatives to enhance the New York State life science ecosystem
- **Refundable Research and Development (R&D) Tax Credit (\$100M):** Refundable tax credits for R&D expenditures, available for new life science companies
- **Excelsior Jobs Program Tax Credit for Life Science (\$100M):** Tax credits for job creation initiatives
- **Private Investment (\$100M):** Private matching funds allocated for venture capital investments

The ESD Life Science Initiative is currently implementing an economic development strategy designed to grow industry clusters around New York State. The primary goal of this strategy is to attract, start, grow, and retain life science firms in geographic areas with pre-existing life science activity.

III. SCOPE OF SERVICES

Following is the scope of services anticipated to be required of the selected Respondent by ESD for this engagement. It is anticipated that some of the services may require the use of sub-consultants.

1. Life Science Initiative Strategy

In addition to continuing a cluster strategy, ESD aims to develop a long-term strategy that places New York State at the frontier of life science commercialization. This strategy will take advantage of New York State's unique strengths to support its life science ecosystem and advance the State as a leading hub for life science technological innovation. ESD is seeking a consulting firm with deep domain expertise in life science to assist in further development of this long-term strategy, with a critical focus on engaging private partners to develop public-private partnerships, advancing development of the life science ecosystem, attracting new companies, and creating jobs.

The consultant will:

- a) Advise on implementation of ESD's current cluster strategy through the development of strategic life science partnerships and investment opportunities; identify public-private partnership opportunities for the ESD Life Science Initiative; and engage private partners as identified.
- b) Support ESD to develop a detailed, long-term strategic plan to grow and differentiate New York State's commercial life science sector. This long-term strategy will leverage New York State's existing academic and industry assets to transform the State into a leading hub for commercial life science. The strategy must also promote synergies across the life science clusters in the State. To develop the long-term strategic plan, the consultant will utilize data and information already captured in a strategic assessment of the State's life science industry, recently carried out by ESD's Life Science Initiative. In addition, it is expected that the consultant will utilize their own knowledge of global and New York State life science trends to best develop the strategic plan.
- c) Support continuing implementation of all current ESD Life Science Initiative programs, as needed.

2. Marketing New York as a Life Science Hub

ESD is also developing a strategic marketing plan for the Life Science Initiative. The consultant will:

- a) Work with ESD staff to develop and implement a life science-focused strategic marketing plan to ensure that Governor Cuomo's \$620 million Initiative is well-known in the global life science community. This marketing strategy should promote the Initiative as a whole, in addition to its individual components.
- b) Conduct polling, collect survey data, or implement other methods to assess perceptions of New York State as a hub for life science among key stakeholders in the life science industry. This activity should be executed over time to best evaluate how perceptions of the New York State life science ecosystem evolve.

3. Life Science Initiative Operations Support

In addition to developing a long-term strategy and marketing plan, the consultant will support the ESD Life Science Initiative in carrying out its operations. In particular, the consultant will:

- a) Develop and implement key performance indicators and evaluation criteria for the Life Science Initiative. This will include the following activities:
 - Design and implement processes and internal infrastructure for collecting and evaluating data from individual ESD-funded initiatives;
 - Design and implement processes and internal infrastructure for collecting and evaluating data on the life science industry in New York State as a whole; and
 - Conduct quantitative analysis of the ancillary economic benefits of the ESD Life Science Initiative as a whole, as well as analysis of individually funded initiatives.
- b) Support ESD's annual evaluation of the Life Science Initiative, including supporting the ESD Life Science Division in generating an annual report. This report will include but is not limited to: the economic impact of the activities undertaken with State funds, the number and amount of federal funds procured after program approval, as well as such factors as jobs created and maintained, the average salary of the jobs created, and average salary of jobs retained. The consultant will work with ESD staff to ensure the data for this report are aligned with the data collection and evaluation practices used for ESD's annual agency report.
- c) Develop and implement an infrastructure at ESD to support the growing commercial life science sector in New York State. This will include development of a one-stop shop webpage resource for life science firms and institutions. This webpage will include but not be limited to: FAQ for life science firms, information on eligibility and how to apply for ESD programs, contact information for key staff, and other materials and services to best support the industry.

Deliverables

1. Strategy

- a) Long-term strategic plan report, with a comprehensive implementation roadmap, in written form.

2. Marketing

- a) Strategic marketing plan report, with a comprehensive implementation roadmap, in written form. This report should provide concrete, actionable steps ESD can implement to ensure that New York State is successfully branded as a commercial life science hub.
- b) Fully implemented system for collecting and evaluating data on how perceptions of New York State as a hub for life science evolve over time. This will include datasets and processes for updating datasets. It will also include a written plan for how to collect these data on an ongoing basis to evaluate the Initiative's marketing efforts over time.

3. Operations

- a) Annual evaluation and ESD Life Science Initiative report for the Governor and Legislature, including all necessary figures and statistics for the report.
- b) Fully implemented system for collecting and evaluating data on the New York State life science industry as a whole and on all ESD life science programs individually.
- c) Fully functional ESD one-stop shop webpage for life science firms and stakeholders.

IV. Consultant Staff Requirements

Following are the requirements for the consultant staff assigned to this engagement:

- a) The consultant must commit at least two full time senior managers to the engagement, at least one of whom must possess expert knowledge of the life science industry, including basic research commercialization, pharmaceutical practices, and early-stage start-up development. At least one of the senior managers assigned the project must possess extensive strategy and management expertise.
- b) The consultant may use no more than two entry-level team members for the engagement.
- c) The consultant must commit an equal number of staff over the course of the entire engagement, with exceptions only at the approval of ESD. The consultant is prohibited from “front-loading” staff on the project.
- d) The consultant must commit to the engagement at least one dedicated full time team member with exceptional writing and communications skills who will be responsible for overseeing the generation of all written deliverables for the engagement. This team member must possess extensive experience communicating complex scientific and technical concepts through writing to a wide range of audiences.

V. 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	April 16, 2018
Deadline for Submission of Questions	April 23, 2018
Deadline for ESD to Respond to Questions	April 25, 2018
Submission of Proposals (date and time)	May 9, 2018 by 2:00PM EST

Please note ESD (the “Corporation”) reserves the right to change any of the dates stated in this RFP. ESD may at its discretion interview some or all of the Respondents to this RFP during the selection process. Respondents should be prepared to make themselves available for interviews during the period following submission of proposals.

VI. SELECTION CRITERIA

ESD anticipates that either a single Respondent or a collaborating Respondent team will be selected based upon ESD's determination of the best value. When evaluating Proposals, the following weighted selection criteria will be considered:

- Qualifications of Firm and Team (40%)
- Proposed Approach and Execution Plan (35%)
- Proposed Cost (20%)
- Diversity Practices (5%)

VII. SUBMISSION OF PROPOSALS

Every Respondent should submit a Proposal that 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. The Respondent 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.

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 New York State MWBE or SDVOB certification to ESDLifeS-CS@esd.ny.gov. Nothing prohibits an MWBE vendor from proposing as a prime contractor.

i. Technical Proposal

Required Proposal Contents:

ESD anticipates that the substantive portion of the Proposals (excluding resumes, org charts, procurement forms, and any samples of firm content) should not exceed ten pages. Proposals should address and include the following information:

1. Executive Summary, Experience, and Key Personnel

- a) Cover Letter summarizing key points of the Proposal and how the individual components will be undertaken under one contract.
- b) Contact information for a designated point of contact on this engagement including the name, address, phone number, and email address.
- c) Staffing proposal, including:

- Biography, resume, availability and qualifications for proposed key professionals with experience advising on comparable projects that will be available for this project. Please include writing samples from key staff responsible for generating written deliverables.
 - Proposed staff utilization plan for the project, including a detailed timeline describing how individual staff will be used over the course of the engagement
 - Professional licensing information
- d) If applicable, please also include a description of how each sub-consultant will work in connection with the broader consultant team to fulfill the Scope of Services, distinguishing the roles, qualifications, responsibilities, and commitment of each team member. Indicate if any of the team members are MBE/WBE (Minority Business Enterprise or Women's Business Enterprise) as certified by New York State.

2. Proposed Approach and Execution Plan

- a) The Proposal shall include a description of the consultant's approach and plan to execute the Scope of Services, including generation of all key deliverables. The Proposal should describe the proposed approach and execution plan for each sub-element of the Scope of Services.

3. Diversity Practices

- a) ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using the attached Diversity Practices Scoring Matrix Appendix A. Up to 5 points will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix A, submitted by each Respondent to the RFP.

ii. Cost Proposal

Required Proposal Contents:

Respondents must provide an estimate of cost based on the Scope of Services along with a summary of hourly rates plus any anticipated reimbursable expenses. Please note that any contract in excess of \$250,000 or one year will require approval from the ESD Board of Directors.

iii. Administrative Proposal

Required Proposal Contents:

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Respondent must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Respondents 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 Respondent's proposal.

- i. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- ii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iii. Iran Divestment Act Statement, submit with proposal
- iv. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - o [OCSD-1 - MWBE Participation / EEO Policy Statement](#)
 - o [OCSD-2 - Staffing Plan](#)
 - o [OCSD-3 – Workforce Utilization Report](#)
 - o [OCSD-4 - MWBE Utilization Plan](#)
- v. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- vi. [SDVOB Utilization Plan](#) , submit with proposal
- vii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- viii. [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.

Submission of a Complete Three-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 will not be accepted. When submitting each proposal, Respondents must comply with the following:

- a) The Technical Proposal, Cost Proposal, and Administrative Proposal must be submitted in separately sealed packages (which may be submitted within one complete package for mailing);
- b) “Original” documents must have an original signature and be clearly marked “Original”;
- c) The outside packaging for each set of sealed proposals must be clearly marked (Technical, Cost, and Administrative);
- d) The original and each copy must be marked as **“RFP – Life Science Consulting Services Proposal submitted by [Respondent’s name]”**
- e) Each Respondent must submit:
 - o Five (5) hardcopies and one (1) text-searchable electronic copy via email to ESDLifeS-CS@esd.ny.gov of the *Technical Proposal*.
 - o One (1) original hardcopy and one (1) electronic copy via email to ESDLifeS-CS@esd.ny.gov of the *Cost Proposal*.
 - o One (1) original hardcopy and one (1) electronic copy via email to ESDLifeS-CS@esd.ny.gov of the *Administrative Proposal*.

A complete package (Technical Proposal, Cost Proposal, and Administrative Proposal) must be received by the deadline in the schedule of dates in this RFP. Proposals should be sent to the following address:

Empire State Development
633 Third Avenue 35th Floor
New York, New York 10017-8167
Attention: Ralph Volcy
RFP: "Life Science Consulting Services"

Late proposals will not be considered for award.

VIII. 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 V (Schedule of Dates) to ESDLifeS-CS@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.

IX. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Respondent 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 Respondent;
- vii. communicate with any Respondent 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 Respondent.

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.

X. CONTRACTUAL REQUIREMENTS

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

i. 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 Respondents 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 below; the completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer'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.

Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent 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:

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf.

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

ii. Vendor Responsibility Questionnaire

All Respondents 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 Respondents 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. Respondents 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.

Respondents 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, Respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

iii. 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 Respondent and each person signing on behalf of any Respondent 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 Respondent 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: <http://www.ogs.ny.gov/about/regs/ida.asp>

iv. 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

NEW YORK STATE LAW

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 15 percent for New York State-certified MWBE participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement 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. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

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, Form # 4, 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.

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/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.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.

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Exhibit A).

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 (“SDVOBs”), 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, Respondents/Contractors are strongly encouraged and 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.

For purposes of this procurement, ESD conducted a comprehensive search and determined that the contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Respondent/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the contract for the provision of services and materials.

The directory of New York State Certified SDVOBs can be viewed at:

<http://ogs.ny.gov/Core/SDVOBA.asp>.

Respondent/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the contract.

v. Encouraging the Use of New York State 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, Respondents 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>.

vi. 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 Respondents 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.

vii. 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_0.pdf

Please note Respondents do not need to complete the entire Schedule A with the submission of their Proposal. However, Respondents 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 Respondents will need to accept these terms prior to contract execution.

viii. 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, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

ix. Insurance Requirements

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

- Commercial General Liability of \$1 million per occurrence and \$2 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;
- 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;

New York State Urban Development Corporation d/b/a Empire State Development (ESD) 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 ESD.

x. W-9 Form

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