

REQUEST FOR QUALIFICATIONS

REAL ESTATE AND PERSONAL
PROPERTY/FIXTURE APPRAISERS

Issued: November 21, 2018

Submission Deadline: January 17, 2019 by 2:00 PM EST

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

Designated Contacts for this Procurement:

Primary Contact:	Ralph Volcy
Secondary Contact:	John Discolo
Additional Contacts:	Michael Avolio

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

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



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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 through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

II. OVERVIEW

The purpose of this Request for Qualifications (“RFQ”) is to solicit submissions of qualifications from individuals and/or firms (collectively, “Firms”) with demonstrable experience in providing market-value appraisals of real estate and/or personal property of all types throughout New York State. Experience can include the preparation of appraisals of all types of interests (fee, leasehold, easement, etc.) in real property that can be vacant or developed for commercial, industrial and/or multi-unit residential use, as well as personal property, including fixtures.

The submissions will be considered in adopting a list of pre-qualified appraisers that can provide market value appraisals of property interests that are acquired and disposed of by ESD and its subsidiaries. Once adopted, ESD and its subsidiaries may select, from time to time as the need arises, one or more Firms from the pre-qualified list to provide appraisal services. It is expected that the list will remain in effect for 3 – 4 years after adoption. **Inclusion of a Firm on the pre-qualified list does not represent or guarantee that it will receive any contract for appraisal services during the effectiveness of the list.** Submission for consideration, however, will constitute a Firm’s agreement to enter into a contract on the terms and conditions set forth in Schedule A to ESD’s Standard Short Form Contract, available at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf, should the Firm be selected to provide services to ESD. Each party that submits a response (“Proposal”) to this RFQ is referred to herein as a “Respondent.”

ESD Strongly encourages State Certified Minority-Owned Business Enterprises and Women-Owned Business Enterprises (as well as Firms that are not yet certified but have applied for certification) to submit responses to this RFQ. 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 AppraisalServices@esd.ny.gov. Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

III. RFQ TIMELINE

The following are significant dates in this RFQ process:

Issuance of RFQ:	November 21, 2018
Deadline for RFQ Questions:	December 17, 2018 by 5:00 PM EST
Deadline for ESD to Respond to Questions:	December 24, 2018
Submission of Proposals Due Date (date and time):	January 17, 2019 by 2:00 PM EST
Interviews (if necessary):	January 21 – January 25, 2019
Announcement of Pre-Qualified List:	TBD

Please note, ESD reserves the right to change any of the dates stated in this RFQ. Notifications of changes in connection with this RFQ will be made available to all interested parties via ESD's website at <http://esd.ny.gov/CorporateInformation/RFPs.html>.

IV. REQUIRED PROPOSAL CONTENTS

ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or nonresponsive to the RFQ requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals. ESD also reserves the right to waive any informalities or irregularities in procedure or Proposals submitted.

In evaluating the capabilities of the Respondents, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFQ. ESD reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

Each complete Proposal must contain the following elements:

A. COVER PAGE

All Respondents must include the following information on the cover page of their Proposal:

1. The primary contact information of the individual who would be responsible for ESD's matters if the Respondent is selected for inclusion on the Pre-Qualified List. Contact information must include:
 - i. Name
 - ii. Title
 - iii. Phone number
 - iv. Email address
2. The current entity name as listed in the NYS Department of State Division of Corporations

database. If a Respondent is selected, this entity name provided shall be the only name listed on the Pre-Qualified List.

B. RESPONDENT INFORMATION

Below is the list of information and documentation required of each Respondent. Please provide the information in the same order in which it is requested. The responses to the foregoing items must be limited to an aggregate of 12 pages, in at least 12-point font, with standard margins printed on one-sided 8 ½ x 11-inch pages. Please mark this section, "Tab 1".

1. Provide a description of the Respondent's relevant experience in real estate and/or property/fixture appraisal services. A summary of representative projects should be provided, including the type and location of the property and property interest being appraised, the date of the appraisal, and the use for which the appraisal was prepared.
 - i. Provide evidence of public sector experience. Such experience is of interest but not required.
 - ii. Indicate whether services have been provided previously to ESD or any of its subsidiaries or affiliates, and, if so, identify the client entity and describe the services.
2. Provide the names of the principle individuals who would be responsible for ESD's matters, and a description of the relevant qualifications and experience of each individual.
3. If the Respondent is a State Certified Minority-Owned Business Enterprise ("MBE") or a Woman-Owned Business Enterprise ("WBE"), provide documentation evidencing registration. Respondents that are not certified but that have applied for certification should provide evidence of filing, including the filing date.
4. Provide at least three references with contact information. Information provided by references may be used by ESD for proposal evaluation purposes.

ESD 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 RFQ, and the responsiveness of the Bidder to the client during the engagement. ESD reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what ESD deems to be the most effective and efficient manner.

5. Proposals must indicate whether the Respondent or any of its employees has experience in providing testimony as an expert witness in connection with any appraisal matter and, if so, the outcome of the litigation.
6. Proposals should also include a statement that there is no material or threatened litigation, or contractual or other business relationship, involving the Respondent or its principals, partners, associates or employees that would constitute a conflict of interest or appearance of impropriety in providing the services for which the Respondent seeks prequalification.

C. FEE PROPOSAL

Respondents must submit a completed Fee Proposal as provided in Appendix B. Please mark the Fee Proposal section, “Tab 2”. **An electronic excel document of this form must also be submitted with the Proposal.**

Respondents should submit hourly staff rates for **all** staff titles listed and for all New York State regions that they would like to be considered. If rates for a region are not provided, then Respondents will not be considered for projects within that region. The respondent’s base salary multiplier must also be included in Appendix B.

In listing their hourly rates, Respondents should include all costs, excluding out-of-pocket reimbursable expenses related to travel, but including overhead and profit. Reimbursable expenses will be reimbursed by ESD at standard governmental rates in accordance with Schedule A, available at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf.

ESD will negotiate maximum rates for any selected participants.

D. PROCUREMENT FORMS AND REQUIREMENTS

Selected Respondents will enter into contractual agreements with ESD. 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. Please mark the Procurement Forms and Requirements section, ‘Tab 3’. Procurement forms and requirements include the following:

1. [State Finance Law §§139-j and 139-k forms](#) (submit with Proposal)
2. [Vendor Responsibility Questionnaire](#) (submit with Proposal or online and include copy of submitted form with Proposal)
3. Iran Divestment Act Statement (submit with Proposal)
4. Non-Discrimination and Contractor & Supplier Diversity Requirements (submit with Proposal)
 - [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - [OCSD-4 – MWBE and SDVOB Utilization Plan-](#) Please note that the following “mandatory fields” do not need to be completed in this RFQ process:
 - Total Dollar Value of Contract/Grant
 - ESD Contract/Project Number
5. [Encouraging the Use of NYS Businesses in Contract Performance Form](#) (submit with Proposal)
6. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#) (submit with Proposal)
7. [W-9 Form](#) (submit with Proposal)
8. [EO177 Form](#) (submit with Proposal)

Additional information about these items, and ESD’s procurement requirements, can be found in **Section VIII: Procurement Forms and Requirements.**

V. SELECTION CRITERIA

ESD will establish a review committee to evaluate Proposals. Proposals may be reviewed by ESD and other State officials. The establishment of the Pre-Qualified List is subject to approval by the ESD Board of Directors.

When evaluating Proposals, the following selection criteria, with the accompanying weightings, will be considered and used to calculate an overall Proposal score:

Criteria		Weighting
Experience	<ul style="list-style-type: none"> Relevant Firm experience and the qualifications and experience of the staff proposed to be assigned to the ESD engagement. 	50%
Proposal	<ul style="list-style-type: none"> Overall organization, completeness, and quality of the proposal, including cohesiveness, clarity of response and demonstrated understanding of ESD and the relevant programs. 	20%
Anticipated Costs	<ul style="list-style-type: none"> Anticipated cost of services and willingness to work together with ESD, and its subsidiaries and affiliates, in order to minimize costs. 	20%
Diversity Practices	<ul style="list-style-type: none"> Diversity and commitment to equal opportunity programs 	10%

ESD reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of Respondents' Proposals and to ensure a full and complete understanding of each Proposal. ESD shall undertake to pursue uniformity in the questions it asks Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. ESD reserves the option to hold oral interviews as part of the selection process; Respondents who are invited for an interview will receive additional instructions upon their invitation.

DIVERSITY PRACTICES

ESD's Office of Contractor and Supplier Diversity will score each application for diversity practices. Up to 10% will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix C, submitted by each Respondent to the RFQ.

VI. PROPOSAL SUBMISSION INSTRUCTIONS

A. PROPOSAL SUBMISSION

Three (3) hard copies, one (1) electronic copy (in the form of a flash drive) of the Proposal identified by “**Appraisers RFQ**” must be received by ESD by **January 17, 2019 at 2:00 PM EST** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Ralph Volcy, ESD Procurement Unit Re: Appraisers RFQ

In addition, an electronic copy of the Fee Proposal Form must be included on the flash drive. It is the responsibility of each Respondent to ensure timely submission of their Proposal. Proposals received after the scheduled date and time cannot be accepted.

Respondents accept all provisions of this RFQ by submitting a Proposal and are responsible for the accuracy of their submissions.

B. RFQ INQUIRIES

ESD will accept written questions via email from prospective Respondents regarding the RFQ. Please submit questions to: AppraisalServices@esd.ny.gov

Written questions must include the requestor’s name, e-mail address, and the prospective Respondent Team represented, and must be received by December 17, 2018 by 5:00 PM EST. Responses to all timely and appropriate questions will be posted on ESD’s website on December 24, 2018 at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in this RFQ, notification should be sent immediately via e-mail requesting written clarification or modification to this RFQ. Should ESD find it necessary, an addendum or modification to this RFQ will be posted on the ESD website: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

Other than emails to the designated email account for the RFQ, at AppraisalServices@esd.ny.gov, no contact related to this RFQ with ESD Directors, ESD staff or consultants, or any other governmental entity (except for a member of the State Legislature or State legislative staff), is allowed during the procurement period of this RFQ. Any such contact by a Respondent will be grounds for disqualification.

VII. STATEMENT OF LIMITATIONS

The RFQ submissions from Respondents, and any relationship between the State and Respondents arising from or connected or related to this RFQ, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFQ.

1. By responding to this RFQ, Respondents are deemed to accept and agree to this Statement

of Limitations. By submitting a response to this RFQ, Respondent acknowledges and accepts ESD's rights as set forth in the RFQ, including this Statement of Limitations.

2. ESD reserves the right to: (i) amend, modify, or withdraw this RFQ; (ii) revise any requirements of this RFQ; (iii) require supplemental statements or information from any Respondent; (iv) accept or reject any or all Proposals; (v) extend the deadline for submission of Proposals; (vi) negotiate or hold discussions with any Respondent and correct deficient Proposals that do not completely conform to the instructions contained herein; and (vii) cancel, in whole or part, this RFQ, for any reason or for no reason. ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.
3. All information submitted in response to this RFQ, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of Respondent, or (3) critical infrastructure information. Respondents should identify portions of their Proposals and accompanying documents they believe fall under these exemptions by submitting their Proposals in both redacted and un-redacted form. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Along with the redacted version, Respondents may provide a detailed justification for the portions of their Proposal they believe fall into the exemptions discussed above.

Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. The identified information will be reviewed and a determination will be made as to whether the information is exempt from disclosure under FOIL. The State's determination may be appealed pursuant to POL §89(5)(c). Please note that if Respondents do not submit a redacted version, their Proposals may be released in un-redacted form if requested under FOIL.

4. ESD reserves the right, in its sole discretion, without liability, to utilize any or all of the RFQ Proposals, including late responses, in its planning efforts. ESD reserves the right to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this RFQ (collectively, the "Response Information") for any purpose. Each Respondent must grant an unconditional and perpetual license without charge to ESD to use any copyright or other legally protected rights in and to the Response Information. By submitting a Proposal, each Respondent waives any and all claims against ESD and the State relating to the retention or use of the Response Information.
5. This RFQ shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the RFQ. ESD will not be responsible for any costs incurred by Respondents related to preparing and submitting a Proposal in response to this RFQ, or attending oral presentations, or for any other associated costs.
6. To the best of ESD's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of Proposals.
7. Should ESD determine that negotiations with a selected Respondent will not result in an

executable contract, ESD may begin negotiations with a different Respondent without again requesting Proposals.

VIII. PROCUREMENT FORMS AND REQUIREMENTS

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

A. 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 RFQ. These Procurement Requirements: (1) govern permissible communications between potential Respondents and ESD or other involved governmental entities with respect to this RFQ; (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 RFQ. Compliance with the Procurement Requirements requires: 1) all communications regarding this RFQ, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the Designated Contacts; 2) completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations; 3) 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 ESD website under “RFQs/ RFQs”); and 4) periodic updating of such forms during the term of any contract resulting from this RFQ.

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:

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 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 and 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.

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

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. All members of a Respondent Team, including consultants, must complete the

forms required above.

B. VENDOR RESPONSIBILITY QUESTIONNAIRE

All Respondents to this RFQ must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out their obligations under this RFQ, and in addition must demonstrate that both the Respondent Team and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, Respondents 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(s) remain “responsible” throughout the term of any 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 RFQ.

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. Respondents should include a copy of their Vend-Rep submission receipt or paper questionnaire in their Proposals.

To enroll in and use the Vend-Rep System, Respondents should consult 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 (www.osc.state.ny.us/vendrep) and execute accordingly pertaining to the company's trade industry. Per the Vend-Rep 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).”

C. 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, 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>

D. 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 (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

1) Business Participation Opportunities for MWBEs

ESD has an agency-wide overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15% for New York State-certified Women-owned Business Enterprise (“WBE”) participation. For purposes of this solicitation, ESD will establish a goal based on the scope of work, project description identified in the RFQ response and the current availability of MBEs and WBEs. A contractor (“Contractor”) on any contract resulting from this RFQ (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. 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.

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 supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the Contract. 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 the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, 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 RFQ, such finding constitutes a breach of contract and ESD may issue 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 Proposal, 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 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, Respondents are required to submit an MWBE Utilization Plan with their 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.

If a notice of deficiency is issued, Respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting a written remedy in response to the notice of deficiency to OCSD at OCSD@esd.ny.gov. 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 Proposal.

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

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

Respondents 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.

Respondents 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.

2) Equal Employment Opportunity Requirements

By submission of a Proposal in response to this RFQ, Respondent agrees with all of the terms and conditions in [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN- OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#) located online at <https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf>.

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 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.

Respondent is required to submit a Minority- and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its Proposal.

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.

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 monthly 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 subcontractors 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.

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>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.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 Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix C).

3) Participation Opportunities for New York State-Certified Service-Disabled Veteran-Owned (SDVOB) 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, Bidders/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, Bidder/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>.

Bidder/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.

E. 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, Respondents to this RFQ are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of any 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>.

F. CERTIFICATION UNDER STATE TAX LAW SECTION 5-A

Any Contract resulting from this RFQ is 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 RFQ 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 (https://cdn.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 RFQ will require periodic updating of the certifications contained in Form ST-220-CA. Proposals that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for award. Only the Respondent completes Form ST 220-CA, but Form ST 220-CA requires detailed information from sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by Respondent and

all Respondent Team members and sub-consultants.

G. CONTRACTUAL AGREEMENTS

Selection of a Following final selection of a Respondent or Respondents for inclusion on the Pre-Qualified List is not a guarantee that any contract will be awarded to any prequalified Respondent. Following ESD board approval of the Pre-Qualified List, ESD will may prepare one or more Contracts defining all project terms and conditions and selected Respondents' responsibilities.

H. PROJECT SUNLIGHT

This RFQ 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 RFQ) 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 should consult the Laws of 2011, Ch. 399 for guidance.

I. INSURANCE REQUIREMENTS

Selected respondents will be required to provide appropriate insurance coverage as determined by ESD prior to Contract finalization.

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as an additional insured on a primary and non-contributory basis on some policies. All policies above should include a waiver of subrogation in favor of ESD.

J. W-9 FORM

Respondent must submit a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) with their Proposal.

K. EO 177 CERTIFICATION

In accordance with Executive Order No. 177 (issued on February 3, 2018, available here: <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>) any entity that provides goods or services to ESD must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the New York State Human Rights Law. Accordingly, all bidders must submit an EO 177 certification form with their proposal.

IX. GENERAL PROVISIONS

The issuance of this RFQ and the submission of a Proposal by any Respondent or the

acceptance of such Proposal by ESD does not obligate ESD in any manner. ESD reserves the right to:

- A. amend, modify or withdraw this RFQ;
- B. revise any requirement of this RFQ;
- C. require supplemental statements or information from any responsible party;
- D. accept or reject any or all responses hereto;
- E. extend the deadline for submission of responses hereto;
- F. negotiate potential contract terms with any Respondent;
- G. communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;
- H. cancel, or reissue in whole or in part, this RFQ, if ESD determines in its sole discretion that it is its best interest to do so; or
- I. extend the term of any agreement on terms consistent with this RFQ.

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

X. APPENDIX

Below is a list of appendices attached to and made a part of this RFQ:

Appendix A: Map of New York State Regions

Appendix B: Fee Proposal

Appendix C: Diversity Practice Questionnaire

