



**Division of
Science, Technology
& Innovation**

2020 CYBERSECURITY ASSISTANCE REQUEST FOR PROPOSALS

ISSUED: APRIL 24, 2020

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

Designated Contacts for this Procurement:

Primary Contact:	Ralph Volcy
Secondary Contact:	John Discolo
Additional Contact:	Cheyenne Keppler

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

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

SUBMISSION DEADLINE: MAY 18, 2020 by 4:00 PM EST

TABLE OF CONTENTS

I. Introduction.....	4
II. Program Overview and Requirements	4
A. Program Goals and Objectives.....	4
B. Cost Share, Contract Period, and Anticipated Funding	5
C. Eligibility and Program Requirements	6
D. Cost Share Requirements	6
E. Activities to Be Supported with ESD Funds.....	7
F. Reporting and Monitoring Requirements	8
G. Sample Contract	8
III. Submission Information	9
A. Timetable	9
B. Questions on the RFP	9
C. Submission Instructions.....	9
D. Proprietary Information	9
III. Proposal Components.....	9
A. Proposal Cover Page, Checklist, and Certification(s)	10
B. Table of Contents	10
C. Glossary of Terms Used.....	10
D. Executive Summary (Maximum of 1 Page)	10
E. Proposal Narrative (12 Page Limit).....	10
F. Budget	11
IV. Review Criteria and Process.....	12
A. Review Criteria.....	12
B. Review Process	12
V. GENERAL PROVISIONS	13
VI. CONTRACTUAL REQUIREMENTS.....	15
A. Conflicts of Interest.....	15
B. State Finance Law Sections 139-j and 139-k forms.....	16
C. Vendor Responsibility Questionnaire	17
D. Iran Divestment Act	18
E. Executive Order 177	18
F. Non-Discrimination and Contractor & Supplier Diversity Requirements	18
G. Contract Goals	21
H. Encouraging the Use of NYS Businesses in Contract Performance Form	24
I. Certification under State Tax Law Section 5-a.....	24
J. Schedule A	25
K. Project Sunlight.....	25

L. Insurance Requirements25
M. W-9 Form25

VII. Appendices to this RFP 26

A. Glossary of Terms Used287
B. Required Forms..... 28
C. Contractual Forms.....28
D. Diversity Practice Questionnaire 28

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. Program Overview and Requirements

A. Program Goals and Objectives

Empire State Development (ESD) anticipates selecting one bidder under this RFP. The selected bidder will perform assessments and assist with implementations of cyber security protocols for New York State defense companies. This assistance is expected to increase the number of New York State defense companies with achieving compliance to DFARS cybersecurity requirements detailed in NIST SP 800-171.

This program has the following objectives:

- Work with NYSTAR to form a marketing and outreach plan;
- Collaborate with NYSTAR and regional assets to promote the program;
- Increase awareness of cybersecurity needs and assessments;
- Provide a forum for knowledge and training in cybersecurity assessment and remediation;
- Provide financial assistance to New State defense companies who cannot achieve compliance due to financial restraints;
- Increase the number of New York State companies that are compliant with DFARS, NIST SP 800-171;
- Facilitate the use of follow-up assessments for reporting; and
- Provide resources to help companies that need cybersecurity assistance.

There will be three main tasks:

Task I. The task I objective is to establish a marketing and outreach plan with ESD which includes leveraging regional assets across the state and coordinating outreach to maximize the potential company assistance. A minimum of five webinars to introduce the program; highlight DFARS requirements and provide other pertinent information

Task II. The task II objective, is to plan and execute webinars and workshops for New York State defense companies to introduce the assistance program and answer questions regarding cybersecurity needs and regulations. These webinars and workshops should train companies to perform a NIST SP 800-171 self-assessment and determine if they need

additional resources to help perform the assessment and potential remediations. Experts in the field with various backgrounds should be leveraged to create the webinars and workshops. At the end of each webinar or workshop the trainees should have the option to take a self-assessment. Users will need to be required to log in and provide basic information to access the webinars. Trainee information and self-assessment data should be easily exported and tracked. At least 250 companies will be engaged through workshops and webinars.

Task III. The task III objective, is to assist companies that don't have the financial resources or the staff available to perform assessments. Follow on implementation projects will be on an as needed basis, determined by the assessment and if the company is ready to take on such tasks at the time. At least 67 defense related companies will be assisted with assessments. Companies receiving assistance should be from as many different regions within New York State as possible.

The selected applicant shall collaborate with ESD and other economic development organizations to promote the use of the program. ESD's investment in cybersecurity awareness and assistance is designed to significantly expand available resources to contribute to economic growth in New York State and assist the defense industry in becoming more resilient and competitive. Allowable uses of ESD funds are presented in Section I.F.

B. Cost Share, Contract Period, and Anticipated Funding

All proposals should reflect ESD funding and cost share. One award will be made in this competition. The awardee will enter into a contract with ESD which is anticipated to commence on or about June 1, 2020 and end on September 30, 2021. The grantee will be eligible to receive **ESD funding in the amount of up to that detailed below**, subject to the receipt of funds from the Department of Defense Office of Economic Adjustment and to support those allowable activities described in Section I.F.

Funding Source	Amount
ESD/Department of Defense	\$900,000
Required Matching Funds	\$112,000
Total Budget	\$1,012,000

The amount of ESD funds reimbursed to the awardee will be based on the amount of total eligible costs and the eligible matching funds expended (see Section 1.E.). ESD reserves the right to adjust the amount of an award recipient's funding based upon the availability of funds, the recipient's performance on assistance to New York State companies, and the recipient's ability to meet the matching funds requirements.

C. Eligibility and Program Requirements

For purposes of this RFP:

- Only non-profit organizations; or consortia thereof, are eligible to apply.

D. Cost Share Requirements

The requirement for cost share serves two purposes: It serves as an indicator of industry support and economic impact potential; and, it expands the service delivery capacity of the program. Required cost share for the recipient is about 15% of the total funding awarded to the recipient from eligible fund sources as defined below. Cost share funds must be expended during the contract period and Award Recipients must expend all cost share funds demonstrated in the Proposal. Cost share funds must be associated with a specific project directly benefiting the program and for which deliverables are defined.

There are two general categories of eligible cost share funds:

1. New York State Company Cash: Cash provided to the project by New York State companies (as defined in Appendix A) to support the ESD program-approved activities.
2. Applicant Support: Salaries and fringe benefit costs paid by the Applicant, not reimbursed by other New York State government sources or other Federal sources, for the portion of time dedicated staff work on eligible program activities. Dedicated staff is defined as management, business outreach, and/or support staff who spend at least 20 percent of his or her time on program specific activities that can be tracked by time keeping of hours. Dedicated staff does not include shared services of staff that work on general contract activities and whose services are designed to be recovered under the Center's indirect cost rate.

Limitations and Exceptions:

- No other New York State government funds are eligible for use as cost share funds for this program. This prohibition does not restrict an individual campus or university-affiliated research institute of the State University of New York or City University of New York systems from providing a portion of its operating funds for use as applicant support.
- No funds used as cost share funds in any other ESD program are eligible for use as cost share funds in this program.
- No other federal award funds are eligible for use as cost share funds for this program.
- No funds used as cost share funds in any other federal award program are eligible for use as cost share funds in this program.
- Cost share funds contributions must be provided in return for, and be traceable to, allowable objectives as defined in Section I.A.
- In-kind is not an eligible source cost share
- Indirect costs are limited to 25 percent of direct personnel costs (salaries plus fringe benefits) on cost share funds that will be recognized under the program.

E. Activities to Be Supported with ESD Funds

1. General Provisions:

The purpose of ESD's investment is to strengthen the defense supply chain and increase the competitiveness of defense suppliers, ultimately contributing to economic growth in New York State. ESD funds may only be used to support program activities that are intended to directly benefit defense companies in New York State. Eligible activities include but are not limited to:

- Marketing and outreach to increase awareness of cybersecurity and the cybersecurity program;
- Planning and executing workshops and webinars designed to work directly with defense companies to increase awareness and knowledge of cybersecurity;
- Training individuals on how to walk through and perform a cyber security self-assessment to increase compliance and help companies determine their confidence in performing these tasks;
- Training individuals from other entities on effective methods/strategies to improve technical knowledge of performing cybersecurity assessments and remediations for defense businesses in New York State;
- Performing assessments and remediation/implementation projects to increase the rate of cybersecurity compliance in New York State; and,
- Capturing metrics to determine the effectiveness of various activities supported under this program.

The best available price for the type and quality of products or services required must be sought for any ESD-funded expenditure. The applicant must retain documentation to support the solicitation process and/or choice of vendor for ESD expenses at an established threshold. Applicants procuring services must follow [New York State's Competitive Bid Requirements](http://www.osc.state.ny.us/localgov/pubs/lgmng/seekingcompetition.pdf) (<http://www.osc.state.ny.us/localgov/pubs/lgmng/seekingcompetition.pdf>). In pursuit of the specific goals and objectives of the Cybersecurity program, allowable uses of ESD funds include:

- Employment of professional and support staff;
- Purchase of equipment and/or fixtures;
- Purchase of materials and supplies;
- Travel to a company location for project-related activities, travel by the staff for outreach activities, or travel to an ESD meeting or ESD-hosted event for program related activities;
- Services subcontracted to partner organizations to assist in conducting the activities outlined in its proposal; and
- Other purposes explicitly approved by ESD **prior** to being incurred.

2. Limitations/Prohibitions:

- Indirect costs are PROHIBITED.
- No ESD funds may be used for capital construction, rehabilitation, or renovation.

- No ESD funds may be expended on basic research.
- No ESD funds may be expended on salaries for university faculty, staff or administration that have a vested and/or financial interest in any company benefiting from the program. Conflict of interest statements will be required by employees after designations are awarded and prior to establishing contracts under this program.

F. Reporting and Monitoring Requirements

The award recipient is expected to:

- Maintain an accounting system in accordance with generally accepted accounting principles (GAAP) that identifies all expenditures and revenues for activities supported by ESD and cost share funds. All expenses must be auditable to their original source and supporting documentation in conformance with GAAP must be maintained by the award recipient.
- Implement a project management system that allows for tracking the status of all projects and gathering economic impacts resulting from the assistance to New York State companies. ESD requires award recipients to report on New York State company and applicant impacts (delineated below) according to a format and standards established by ESD.

New York State Company Impacts:

The impact must result from the collaborative support with and/or industry-oriented education and training for a company, and must be substantiated by documentation (e.g., a signed letter from an executive officer of the company). ESD requires a “cause and effect” relationship that reasonably correlates the work to the impacts reported. Impacts that must be captured and tracked include:

- Companies participating in workshops and events, receiving program assistance, awarded grants, and others that are engaged;
- Jobs created and jobs retained;
- Increased company revenues;
- Cost savings;
- Capital improvements; and
- Other impacts that are agreed to by grantee and ESD.

G. Sample Contract

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

III. Submission Information

A. Timetable

Schedule of Dates	
Release of RFP	April 24, 2020
Deadline for submission of questions	May 4, 2020 by 4:00 PM EST
Deadline for ESD to respond to questions	May 7, 2020
Submission of Proposal (Date & Time)	May 18, 2020 by 4:00 PM EST
Anticipated Contract Start Date	June 1, 2020 or TBD

B. Questions on the RFP

All questions must be submitted in writing via email to cyber-security@esd.ny.gov with **“Cybersecurity Assistance Program” in the subject line. Please do not contact ESD by telephone. Questions must be received by ESD no later than May 4, 2020 by 4:00 PM, EST.** All inquiries must cite the particular RFP section in question.

C. Submission Instructions

Proposals must be electronically submitted to cyber-security@esd.ny.gov no later than **4:00 PM EST, on May 18, 2020.**

D. Proprietary Information

Some information contained in a proposal may be considered sensitive and the applicant institution may wish it not to be disclosed if possible. If this is the case, the applicant institution must identify the information it wishes to protect and request that it be protected.

ESD will take efforts to safeguard proprietary, confidential and sensitive information as allowed under the law, including the Freedom of Information Law (FOIL) (see Article 6 of the Public Officers Law). However, all information will be made available to those who are conducting the review of the proposals.

To request confidential treatment of any portions of a proposal, an applicant institution must submit a letter with the proposal as **Appendix 3** specifically identifying the sensitive information and reasons it should be protected. The applicant institution must identify the information with a CONFIDENTIAL, PROPRIETARY or SENSITIVE stamp in the margin of each paragraph containing proprietary information and check the appropriate box on the cover page. An entire proposal cannot be excepted; only the paragraphs that contain confidential proprietary information.

III. Proposal Components

Applicant institutions are to ensure that proposals have been thoroughly reviewed for clarity and professional presentation. If proposals exceed the page limits and/or include materials not requested by the RFP, ESD will remove the extra pages and/or materials prior to the review.

During the review process, applicant institutions may be requested to submit additional written documents to answer questions or provide clarification of issues raised during the review process.

Assemble the proposal in the following order:

A. Proposal Cover Page, Checklist, and Certification(s)

Complete the proposal cover page, checklist and certification(s) as indicated on the template (see Appendix B to the RFP; all three forms are contained in one electronic document entitled “Proposal Cover Page, Checklist, and Certification”).

B. Table of Contents

A table of contents must be included delineating all major headings, sub-headings, and required appendices.

C. Glossary of Terms Used

Include an alphabetized glossary of technical terms and acronyms used in the proposal along with a **brief** definition of each item. **Include this glossary after the table of contents.**

D. Executive Summary (Maximum of 1 Page)

Include a non-proprietary executive summary, prepared in layman’s terms, that describes the activities and benefits that would result if the proposal were funded. This summary is **not to be** an abstract of information contained verbatim in the proposal narrative.

The executive summary must not contain any proprietary information and must be suitable for publication.

E. Proposal Narrative (12 Page Limit)

Address the specific review criteria presented below. All visual materials (such as charts, graphs, maps, photographs, and other pictorial presentations), footnotes, endnotes and citations must be included within the 10-page proposal narrative. All information provided in the proposal, taken as a whole, will be used in evaluating the proposal in accordance with the review criteria. If applicable, include the pertinent information below for any consortium members and/or partner organizations and specifically indicate which portions relate to each.

For the proposal narrative, follow the outline presented below:

1. Organization Experience and Qualifications

- a. Explanation of knowledge and experience in cybersecurity services and activities - limit 2 (two) pages
- b. Work/action plan including measurable deliverables and completion dates - limit 2 (two) pages
 - (a) Assistance capped at 80% of total project cost for companies
 - (b) Webinars and workshops> Expected format, roll-out, tracking metrics, and reporting
- c. References – 2 (Two) references – submit a single-sided 1 (one) page letter of support

per reference.

- 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 RFP, 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.
2. Project Readiness, team qualifications and team capacity
 - a. Demonstrate staff proposed have the knowledge and ability to perform the services described in the RFP. Explain the staff member roles in the project and how well they meet the qualification requirements addressed in the RFP. Explain when (number of days after award) activities will begin. – limit 2 (two) pages.
 - Include Resumes or Bios of staff - knowledge, experience and skills of the staff proposed to perform the scope of services.
 3. Ability to provide services across the state
 - a. Identify planned services/activities and use of third-party subcontractors (if applicable). List partner organizations and their role (i.e., meeting space, accessibility to students/companies, promotion, etc.) – limit to four (4) pages.
 - b. A detailed plan identifying all subcontracting opportunities associated with this project, with a description on how they would meet a 30% Minority and Woman-owned Business Enterprise (MWBE) goal and a 6% Service-Disabled Veteran-owned Business (SDVOB) goal mon this engagement.
 4. Use of Funds
 - a. Discuss in the narrative the manner in which ESD funds will be used with other funds to expand the applicant’s ability to deliver services.

F. Budget

Applicants must use the budget forms provided. Complete the budget forms following the directions included with the forms.

- Budget Form One – Projected Budget: Total Amount of ESD Funding Requested and Cost Sharing Funds Demonstrated.
 - Eligible Costs Include:
 - Equipment;
 - Materials;
 - Contractual costs (e.g. consultant fees);¹
 - Personnel (e.g. salaries);²

- Fringe Benefits; and
- Other direct costs directly related to executing the defined project.
- Ineligible Costs Include:
 - Overhead or administrative rate;
 - Indirect costs, that is, operational expenses that are not directly related to executing the project, for example office rent, utilities, non-project-specific personnel costs (a limited amount of indirect costs can be included as cost share funds);
 - Basic/scientific research (as opposed to applied research);
 - Capital construction, rehabilitation, or renovation; and
 - Other costs not related to the purpose of this funding.

IV. Review Criteria and Process

For the review of eligible proposals, ESD has established the following criteria to be applied in accordance with the review process set forth in Section IV.B. In addition to addressing the review criteria stated below, refer to the proposal instructions in Section III of this RFP for specific items that must also be addressed.

A. Review Criteria

1. Organization Experience and Qualifications (25 points)
 - a. Knowledge and experience in cybersecurity services and activities. (10 Points)
 - b. Work/action plan including measurable deliverables and completion dates. (10 Points)
 - c. References relevant to supporting goals and objectives of the proposed Center. (5 Points)
2. Project Readiness, team qualifications and team capacity (25 points)
 - a. Demonstration that team members proposed have the knowledge and ability to perform the services cited.
3. Ability to provide services across the state (25 points)
 - a. Identification of planned services and activities; use of third-party subcontractors (if applicable); and partner organizations and their role.
4. Use of Funds (20 points)
 - a. Quality of the applicant institution's justification/rationale for the use of the requested funds. Quality of the applicant institution's cost share fund expenditure plan. (10 Points)
5. Diversity Scoring (5 points)
 - a. ESD's Office of Contractor and Supplier Diversity will score each application for Diversity Practices. Up to 5 points will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix D, submitted by each Respondent to the RFP

B. Review Process

Reviewers may include ESD staff, staff from federal or other State agencies, and individuals

selected from the science, business, and academic communities. The reviewers will adhere to the process described in this section and will apply the review criteria detailed above. ESD may limit the number of proposals a reviewer is required to evaluate. Each proposal will be reviewed and scored by at least three reviewers.

Scoring: Reviewers will independently evaluate and assign a preliminary score to proposals that have been accepted by ESD. The *preliminary scores* for a proposal will be combined to provide an *initial average score* for that proposal.

After the initial average scores are calculated, reviewers will convene as a group to review these preliminary scores and discuss the proposals in accordance with the review criteria. At the conclusion of the discussions, each reviewer will individually provide a *final score* for each proposal based upon the panel's discussions.

In the event that two or more proposals have the same final score and the score is high enough for the applicants to be considered for funding the review panel will hold an additional session to review only those affected proposals. The review panel will deliberate until there is a consensus regarding the selection.

ESD reserves the right to reject any and all proposals. ESD may recall this RFP at any time prior to award announcement and may also reject proposals for deficiencies; waive technicalities, irregularities, and omissions; or solicit new proposals. ESD reserves the right to act in accordance with the best interests of the people of New York in its interpretation of this RFP.

Applicants and/or their surrogates are prohibited from contacting any ESD staff to advocate on behalf of a proposal submitted in response to this RFP. Violation of this restriction will disqualify an applicant's proposal from the competition.

V. GENERAL PROVISIONS

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

- i. amend, modify or withdraw this RFP;
- ii. revise any requirement of this RFP;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any Bidder;
- vii. communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. extend the term of any agreement on terms consistent with this RFP.

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

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

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

Required Approvals

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

Performance

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

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

Additional Services Requested

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive

and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

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

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

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

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

VI. CONTRACTUAL REQUIREMENTS

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

A. Conflicts of Interest

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

- i. **Gifts and Offers of Employment:** Respondent has not and shall not during this

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

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

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

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

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the 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.

Bidders 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 Bidders during the Restricted Period, make a determination of the responsibility of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at: http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

C. Vendor Responsibility Questionnaire

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

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

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

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company’s trade industry. Per the website, Bidders are to “Select

the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

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

D. Iran Divestment Act

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

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

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

E. Executive Order 177

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

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

F. Non-Discrimination and Contractor & Supplier Diversity Requirements

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

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE

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

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

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.

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

MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

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

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

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and 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.

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%20Utilization%20Plan.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%20-%20Contractor%20Compliance%20Payment%20Report.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 Exhibit D).

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

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

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

G. Contract Goals

- i. ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding

compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

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

iii. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

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

iv. Request for Waiver

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

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

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

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

Waiver requests should be sent to OCSD.

v. Required Good Faith Efforts

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

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the

Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

E. Other information deemed relevant to the waiver request.

vi. Monthly SDVOB Contractor Compliance Report

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

vii. Breach of Contract and Damages

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

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

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

<http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSINCONTRACTPERFORMANCE.pdf>.

I. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-

consultants.

J. Schedule A

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

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

K. Project Sunlight

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

L. Insurance Requirements

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

- Commercial General Liability of \$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;

NYS 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.

M. W-9 Form

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

VII. Appendices to this RFP

Appendix A – Glossary of Terms Used

Appendix B – Required Forms (Documents must be provided with the proposal)

Appendix C – Contractual Requirement Forms (Documents must be provided with the proposal)

Appendix D – Diversity Practices Questionnaire (Document must be provided with the proposal)

Appendix A

Glossary of Terms Used Throughout the RFP

The following definitions apply to the terms used in this RFP. Terms defined herein are capitalized throughout the text of the RFP. Terms used within a definition that are also defined in this appendix are noted in italics.

Applicant: An eligible Partner, Partner Organization, University, or University-Affiliated Research Institute, or a collection of such institutions requesting designation as an SBIR Center under this RFP.

Authorized Organizational Representative: The institution's duly authorized representative with authority to enter legal agreements on behalf of, and commit resources of, the organization.

Award Recipient/Grantee: An Applicant that is selected for award by ESD under this RFP.

Cost Share Funds: A non-reimbursable component of a project's total cost that is reflective of the Applicant's and industry's commitment to the program. Refer to Section I.E. of this RFP for specific Matching Funds requirements.

ESD: Empire State Development is the umbrella organization for economic development activity in New York State involving both Department of Economic Development (DED) and a public authority in the form of Empire State Development Corporation; however, awards (contracts) through this competition will be administered by (through) DED.

Indirect Cost(s) or Indirect Cost Rate: Defined by Federal OMB Circular A-87 as the rate used for allocating those common costs that cannot be specifically allocated to a particular project or activity. A cost may not be allocated as an Indirect Cost if any other cost incurred for the same purpose in like circumstances has been assigned as a direct cost.

New York State Company, New York Company or Company in New York: A for-profit enterprise with a permanent place of business located in New York State employing a full-time workforce. The company's New York facility must either be (1) the intended recipient of the Center's assistance or (2) directly benefit from the Center's assistance. The Center's assistance must also demonstrably enhance the company's economic activity in New York.

Partners or Partner Organizations: Those organizations that will assist the Applicant in achieving its mission. Subject to the limitations of Section I.D. of the RFP, Partner Organizations may include, but are not limited to, other schools or departments within the Applicant, Manufacturing Extension Partnership centers, NYS Certified Business Incubators and Innovation Hot Spots, Centers of Excellence, other Centers for Advanced Technology, technical and community colleges, Small Business Development Centers, Empire State Development programs, and other similarly focused not-for-profit organizations and programs.

Proposal: A response to this Request for Proposals submitted by an Applicant.

Small New York State Company: A New York State Company with its principal place of business in New York that employs 100 or fewer persons in total, including any parent companies or subsidiaries.

APPENDIX B: Required Forms

- RFP Coversheet and Checklist
- RFP Budget Form- (applicant must provide an Excel file)

APPENDIX C: Administrative Proposal (Contractual Requirement Forms)

1. Conflict of Interest Form

<https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>

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

http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law_139_JK.pdf

3. Vendor Responsibility Questionnaire -

https://esd.ny.gov/CorporateInformation/Data/RFPs/111511_VendorNotforprofit.pdf

4. Iran Divestment Act -

<https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>

5. Executive Order 177 -

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>

6. Non Discrimination and Contractor and Supplier Diversity Forms -

<https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

<https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

<https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

7. Encouraging Use of New York State Businesses in Contract Performance -

<https://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>

8. NYS – Form ST-220-CA or State Tax Law 5-A Affidavit of Non-Applicability -

<https://esd.ny.gov/sites/default/files/ST220CA.pdf>

https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf

9. W9 Form -

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>

APPENDIX D: Diversity Practices Questionnaire

<http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSDDiversityPracticesQuestionnaire.pdf>