



**Empire State
Development**

REQUEST FOR PROPOSALS

MOYNIHAN TRAIN HALL PROMOTIONAL PARTNERSHIP CONSULTING AND BROKER SERVICES

ISSUED: January 17, 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 a 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 VII).

Designated Contacts for this Procurement:

Primary Contact:	Ralph Volcy
Secondary Contact:	John Discolo
Additional Contact:	Matthew Bradley

All contacts/inquiries shall be made by email to the following address:

MSDC_PromotionalPartneship-RFP@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

**PROPOSAL DUE DATE AND TIME
February 12, 2020, By 2:00 PM EST**

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I. INTRODUCTION

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

II. OVERVIEW

Led by Empire State Development (“ESD”), New York State’s principal economic development agency, the Moynihan Train Hall project (the “Project”) brings the nation’s busiest transit facility—New York Pennsylvania Station (“Penn Station”)—into the 21st Century by transforming the landmark James A. Farley Post Office Building (“Farley Building”) into a state-of-the-art transportation facility and vibrant civic destination. The Project will dramatically enhance the experience of Penn Station’s nearly 700,000 daily visitors.

The Moynihan Train Hall (“Train Hall”) will feature a new, spectacular 92-foot high skylight that will rest upon the building’s original and architecturally-dramatic steel trusses. Providing service to all Long Island Rail Road (“LIRR”) and Amtrak trains, the 255,000 square foot Train Hall will be larger than Grand Central Terminal’s main hall and will nearly double total concourse space at the Penn Station Complex. The Train Hall will provide a direct connection to the Eighth Avenue Subway and create access to trains from 9th Avenue for the first time, bringing unparalleled regional transportation options within convenient reach of the booming Hudson Yards and Far West Side areas.

The Moynihan Train Hall provides a much-needed expansion of the Penn Station complex across 8th Avenue by creating new convenient access from the Farley Building to the existing train platforms that run below it. The Project is a public-private partnership under which a joint venture of Vornado Realty Trust and The Related Companies (the “Developer”) builds the train hall and manages the general contractor, Skanska, on behalf of ESD and the other public stakeholders, and will develop 700,000 square feet of retail, dining, and commercial office space within the Farley Building. The Project is on track for its targeted substantial completion date in the fourth quarter of 2020.

Responsibility for the various areas of the train hall will be shared among stakeholders. LIRR and Amtrak (the “Railroad Partners”) will each control areas comprised of their ticketing, office, and other back of house space to support their operations in the Train Hall. The Developer will control the commercial office and retail components. The main Train Hall concourse, five primary entries, halls, corridors and other open circulation and waiting space, spread out over the building’s first two floors, through which most passengers, visitors, tenants and shoppers will pass through for access, will be maintained and managed jointly as common elements by a condominium board and a property manager to be hired by the board.

ESD retained exclusive right to all advertising, media sales, and promotional activities in the publicly-facing common areas of the Train Hall and the Farley Building (referred to as the “Promotional

Platform” for purposes of defining the extent of ESD’s promotional rights). The scope of ESD’s advertising rights includes all public areas but does not extend to within the retail establishments and commercial office premises (and may not conflict with Developer’s leasing rights and its tenant’s lessee rights); however, opportunities to explore creative structures for collaborative and mutually beneficial partnerships with the Developer and its tenants are encouraged. The Developer and its tenants have limited rights to display signage within a tenant’s leasehold promoting the tenant’s own brand and products but otherwise do not receive any advertising rights. Therefore, sponsorship and advertising rights in the public-facing portions of the Train Hall and Farley Building are exclusively represented by the successful bidder.

The Promotional Platform includes a cutting-edge network of digital and static media assets to provide clear, accessible information to passengers, improve the visitor experience, and create revenue generating opportunities for ESD. ESD’s rights include all media sales and sponsorship rights from the revenue generating signage network (the “Network”), which includes a diverse array of assets purposefully integrated throughout the Train Hall.

The Network’s featured asset is a set of four (4) LED video displays that together combine to form a digital canvas that is 14 feet high by 180 feet long—filling the entire eastern volume of the mezzanine above the Train Hall’s main concourse. The Network also includes seven additional (7) large-scale, high-resolution LED displays in the main entry halls and circulation areas, as well as dozens of LCD displays and static light boxes in key public areas of the building.

The Network will be managed independently from the passenger information systems to be supported by the Railroad Partners, though the Network and passenger information systems will share common infrastructure for efficiency and consistency. All hardware and software systems associated with the Network have already been procured, and respondents are not expected to provide Network technology or infrastructure.

The Promotional Platform also includes opportunities for onsite sponsored activations and events, subject to coordination with the Railroad Partners and Developer to ensure no impact on their operations or tenant rights. Proposals for integrated partnerships with the Developer’s retail, food and beverage, and commercial tenants may be considered; however, those potential partnerships are subject to the participation of the Developer.

ESD seeks guidance in developing a strategy to best leverage its Promotional Platform in the Train Hall to maximize potential revenue generation while also ensuring an unparalleled visitor experience. Utilization of the Network will form the foundation of the Promotional Platform, but the strategy should take a comprehensive look at all programs controlled by ESD (“ESD Managed Programs”: free public Wi-Fi, world-class public art installations, the train hall brand, signage, etc.) as well as potential engagements with other Project stakeholders (LIRR, Amtrak, and the Developer), to find creative opportunities to derive revenue, create a holistic identity, improve passenger trips, and further support public program enhancements.

To achieve these goals, ESD seeks guidance from a firm specializing in structuring innovative, multi-year, protected brand partnerships at high-traffic public-facing facilities.

MWBE & SDVOB Subcontractor Interest

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

III. SCOPE OF WORK

Every Respondent to this RFP ("Respondent" or "Bidder") should submit a proposal which clearly and concisely provides all of the information requested. ESD's objective in retaining a firm to provide brand partnership broker services is to streamline the monetization of ESD's Promotional Platform and other Managed Programs in the Train Hall, and to maximize potential revenue and achieve a higher quality passenger experience than would be possible with its in-house staff resources alone. The selected firm will serve as an agent for partnership opportunities and will be responsible for preparing a brand partnership strategy, marketing the opportunities, approaching brands, negotiating deals and contracts, and providing ongoing support and oversight of brand partners' performance on behalf of ESD.

The selected firm will report directly to ESD. Respondent should expect to work in close collaboration with ESD, its consultants, and related New York State Agencies, as well as from time to time, staff and consultants representing the other Project stakeholders, including the Project's design/build team, the Network vendors, the Developer, the Railroad Partners and the Farley Building's planned condominium board. The selected firm will be required to provide regular, transparent reports of the financial performance of all subcontracted partnership deals and promotional assets.

1. Brand Partnership Strategy
 - a. Background: review the Project's major design elements, construction status, brand identity, and materials relevant to the promotional Network, including detailed plans and specifications of the system procured, and information about expected audience, stakeholder and tenant restrictions, and preliminary analysis of advertising opportunities, and content experience priorities.
 - b. Perform research of any additional information needed.
 - c. Identify unique and innovative opportunities for exclusive or collaborative cross-promotion around ESD's goals, the Train Hall location and characteristics, and special events linked to the Train Hall's location or transportation connections.
 - d. Valuation: confirm or challenge previous analyses regarding monetization value of the Network and the cost-benefit feasibility of filling Network slots with a protected brand partnership approach (in place of, or in combination with, traditional transactional out-of-home advertising).

- e. Content analysis: review and analyze target brand categories and ESD's non-revenue content needs to form a comprehensive asset utilization strategy.
 - f. Produce Brand Partnership Strategy summary document that includes:
 - i. Breakdown of recommended balance for content share-of-voice;
 - ii. Category mix and brands to target within those categories;
 - iii. Valuation goals and deal term recommendations, including length of agreements and any cross-promotional considerations; and
 - iv. Partnership acquisition approach and timeline.
2. Market the Moynihan Train Hall Opportunity
- a. In collaboration with ESD and its consultants, assist in the production of marketing materials highlighting the Train Hall's qualities to best attract high-value brand partnerships.
 - b. Approach and engage prospective brands directly.
3. Partnership Negotiations and Contracts
- a. Lead negotiations to secure best value deal terms.
 - b. Structure partnership contracts. Manage contracts on behalf of, and with oversight from, ESD.
 - c. Execute master agreement with ESD for ongoing umbrella management of brand contracts.
4. Ongoing Support (ESD to determine if ongoing support is needed at later date)
- a. Provide primary ongoing support for brand relationships throughout length of each brand contract term. Assist in developing unique opportunities for sponsorship of ESD, stakeholders, and Train Hall visitor-enhancement content.
 - b. Provide for onsite logistical coordination of promotional content and events as needed.
 - c. Collect all associated promotional fees, process transactions related to any contracts negotiated and executed on ESD's behalf, deliver securely to ESD, and provide accounting of all revenues as required for ESD's financial oversight.
 - d. Financial and deal term performance monitoring, as needed.
 - e. Strategy for renewal and/or acquisition of additional brand partners in the future.

Scope Timeline

Task/Activity	Date (Projected)
RFP Period	January-February 2020
Notice to Proceed (Target)	February 2020
Task 1: Brand Partnership Strategy	February 2020 – March 2020
Task 2: Opportunity Marketing	Beginning February 2020
Task 3: Partnership Negotiations and Contracts	April 2020 – December 2020
<i>Note: Train Hall Substantial Completion / Opening Date</i>	December 2020*
Task 4: Ongoing Support (Option)	January 2021 – January 2026**

*Targeted

**To be determined

IV. ADDITIONAL INFORMATION & NON-DISCLOSURE AGREEMENT

More detailed information regarding the digital and static assets comprising the Network will be available to qualified Respondents that execute a Non-Disclosure Agreement (NDA). Respondents should complete the NDA template, included in this RFP as Appendix B, and submit the completed document to the attention of Ralph Volcy at MSDC_PromotionalPartneship-RFP@esd.ny.gov.

ESD will provide a package of materials upon countersignature and full execution of the NDA. Materials will include a summary of:

- Facility plans;
- Network asset types, quantities and locations;
- Content loop priorities;
- Content restrictions; and
- An overview of ESD programs, including free visitor Wi-Fi network, public art, signage and branding.

NETWORK SPECIFICATIONS

- Hours of Operation: 19 hours per day (Train Hall operating hours)
- The Moynihan Train Hall displays will be driven by a flexible, sophisticated content management system (CMS) tailored specifically to meet the demands of today's digital advertising strategies.
- ESD will be responsible for ensuring Network reliability and access for brand partners, including Network maintenance, content scheduling and vendor technical support.
- Content: full motion video (limits per asset to be determined in consultation with selected Respondent), digital and static billboard images, and innovative brand activations and cross-sponsorship with public art and other passenger experience improvements.

CONTENT AND BRAND RESTRICTIONS

Respondent and brand partners will be prohibited from displaying any advertisements or other content on the Promotional Platform which violates any applicable Laws, is graphic in nature, pornographic or contains sexual content, advertises cigarettes, is political or religious in nature, conflicts with Developer's lessees or lease conditions. Respondent and brand partners will be subject to restrictions on advertising for services that compete directly with Amtrak's passenger rail service on the Northeast Corridor, or the services of the MTA and the Long Island Railroad.

The Developer is actively leasing the Farley Building's retail and office space. Selected Respondent will be expected to meet regularly with the Developer through Developer's leasing process in order to stay informed of tenants signed and to collaboratively establish tenant guidelines to ensure Respondent-brokered offers of exclusivity or other protected partnerships can be honored by ESD.

Compliance with restrictions is subject to ESD approval. ESD reserves the right to approve or disapprove a proposed brand partner or activation, at its sole discretion, and to determine if it conflicts with ESD, Developer, or Railroad Partner goals or operations.

V. RFP SCHEDULE OF DATES

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

Release of RFP	January 17, 2020
Site Tour	January 28, 2020
Deadline for Submission of Questions	January 29, 2020 by 2:00 PM EST
Deadline for ESD to Respond to Questions	January 31, 2020
Submission of Proposals (date and time)	February 12, 2020 by 2:00 PM EST
Interviews (if necessary)	Weeks of February 17, 2020
Anticipated Announcement of Successful Bidder	Week of February 24, 2020
Anticipated Contract Start Date (tentative)	Notice to Proceed week of Feb. 24, 2020; Contract negotiations through March 2020.
Anticipated Contract Term	Seven years (2020 – 2027), assuming Brand Partnership Sub-Contract terms of up to five years. Optional renewals to be considered for terms up to five additional years (2032).

In order to participate in the Site Tour, Respondents must notify ESD of their interest by completing Appendix C and send it to the designated inbox by January 23 by 3:00 PM EST, at which point tour date options will be confirmed. Please note, ESD reserves the right to change any of the dates stated in this RFP.

VI. SUBMISSION OF PROPOSALS

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

i. Technical Proposal

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. ESD requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below:

- A. Table of Contents
- B. Firm and Staff Experience and Qualifications
- C. Project Plan and Approach
- D. Fee Proposal and Compensation Terms
- E. Diversity Practices

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

A. Table of Contents

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

B. Firm and Staff Experience and Qualifications (Maximum Two Pages in Length)

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

- Provide a brief overview of your firm, key executives, and likely Project staff. Respondents should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP.
- Provide total annual media revenue for the past three calendar years.
- Provide an overview of major partnerships you currently represent across the country, specifically similar asset types. Please enclose reference information for major comparable clients as well as performance metrics that demonstrate the value your firm has brought to the project, including the size of projects and the amount of revenue generated.

- Provide an overview of Respondent’s experience and relationships in the New York area, and key features that differentiate Respondent from competitors.

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 Respondent 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.

C. Project Plan / Approach (Narrative — Maximum Four Pages)

In this section of the Technical Proposal, Respondents should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

- Describe your general proposed approach to this Project that would maximize revenues and occupancy while enhancing the quality of the content and visitor experience.
- Include a comparison of this Project to Respondent’s previous experience and peer facilities, and provide an overview of Respondent’s proposed marketing strategy.

Responses for this section should take the form of a narrative (limited to no more than four pages total in length).

D. Fee Proposal and Compensation Terms

- Provide a detailed fee proposal and incentive structure.
- Provide a ten (10) year revenue forecast, that includes all relevant reasoning and assumptions. Assume up to eighty percent (80%) of time could be available on the Promotional Platform Network content loop for partner content—the remaining twenty percent (20%) would be reserved for digital art, facility bulletins, train hall updates, New York State messaging (e.g. “I Love NY” campaigns), and other experience non-revenue generating enhancements. Please break down projections into values for various anticipated brand sponsorship categories. Assume one-hundred percent (100%) of static assets are available for partner content.
- Provide a detailed proposed payment terms and schedule.

E. Diversity Practices

- Complete the Diversity Practices Questionnaire (Appendix A of this RFP)

ii. Administrative Proposal

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

- i. Conflict of Interest Attestation, submit with proposal
- ii. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- iii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iv. Iran Divestment Act Statement, submit with proposal
- v. Executive Order 177 Certification, submit with proposal
- vi. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - o [OCSD-2 - Staffing Plan](#)
 - o [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- vii. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- viii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- ix. [W-9 Form](#), submit with proposal

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

Submission of a Complete Two-Part Proposal

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

Full submissions must be delivered electronically to the attention of Ralph Volcy at MSDC_PromotionalPartnership-RFP@esd.ny.gov by 2:00 PM EST on February 12, 2020. Only complete submissions to the RFP will be reviewed. Completeness will be evaluated based on the response to the information requested in the RFP.

Late proposals will not be considered for award.

VII. SELECTION CRITERIA

The Proposals will be evaluated based on the following criteria and judged on the best total value to ESD over the term of the contract.

Each Respondent shall provide complete responses to the questions in Section VI above, and should provide references, photographs, financial statements, written narrative, or other media, as required for each question.

RFP BID SCORING MATRIX		
Moynihan Train Hall		
Item #	Evaluation Criteria	
1	Company Background & Experience	40
1(a)	Firm overview, key executives, proposed Project team.	20
1(b)	Overview of brand partners currently represented across the country and demonstrated past project and sponsorship experience.	20
2	Narrative	20
2(a)	Proposed approach to attracting partners and structuring brand partnerships for this Project.	20
3	Fee Structure & Compensation Terms	35
3(a)	Proposed commission structure.	15
3(b)	Valuation projections and ability to deliver projected revenues	15
3(c)	Payment terms and schedule.	5
4	Diversity Practices	5
	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 A, submitted by each Respondent to the RFP.	5
	TOTAL POINTS AWARDED:	MAX PTS. (100)

Award will be made to the responsible firm whose submission is most advantageous to ESD by offering the best opportunity for generating sustained revenues and improving the facility experience. Because the fee structure will be set according to industry standards, as set forth above, ESD will determine which submission is most advantageous based on the assessment of the above qualitative factors in order to derive which submission represents the "best value" to ESD.

The selection committee may decide to interview only a certain number of the bidders based on a preliminary review of the submissions and the preliminary scoring results.

VIII. QUESTIONS

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section V (RFP Schedule of Dates) to MSDC_PromotionalPartnership-RFP@esd.ny.gov. Questions will not be accepted orally, and any

question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

IX. GENERAL PROVISIONS

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

- a. amend, modify or withdraw this RFP;
- b. revise any requirement of this RFP;
- 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 Bidder;
- g. communicate with any Bidder 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 RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- i. 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 ESD 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 ESD according to the achievement of the Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting contract. ESD 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 product.

The Contractor's performance will be assessed by ESD according to the achievement of the Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting contract. ESD 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 product.

Additional Services Requested

ESD 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 ESD, 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 ESD. It is highly desirable that staff assigned to work on this Project continue to work on this Project until completion. The Contractor should notify ESD of any proposed changes in staff immediately. ESD has an absolute right and discretion to approve or disapprove any proposed changes in staff. ESD, 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 ESD. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

X. PROCUREMENT FORMS AND REQUIREMENTS

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

i. Conflicts of Interest

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

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

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

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

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

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

iii. Vendor Responsibility Questionnaire

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

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

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

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

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

iv. Iran Divestment Act

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

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

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

v. Executive Order 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.

vi. 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, 15 percent for New York State-certified Minority-owned Business Enterprise ("MBE")

participation and 15 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). For purposes of this solicitation, ESD strongly encourages and expects the respondents to consider MWBEs in the fulfillment of the requirements of the Contract. ESD may establish a goal based on the scope of work and project description identified in the RFP response. Unless clearly identified, all reporting requirements below are only applicable if MWBE goals are assessed and established for this project.

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:

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

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

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

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

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

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

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

Equal Employment Opportunity Requirements

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

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

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

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

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

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

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

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

Form OCSD-2: <https://esd.ny.gov/sites/default/files/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 A).

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

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

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

Contract Goals

- A. ESD hereby establishes an overall goal of 3% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - c) If a Bidder fails to submit a request for waiver; or
 - d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

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

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

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

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

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

Breach of Contract and Damages

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

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

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

viii. 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.

ix. 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.

x. 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.

xi. 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 with no exclusion for advertising injury;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Umbrella/Excess Liability of \$4 million per occurrence and \$4 million in the aggregate;
- Must show evidence of Worker’s Compensation at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;
- Employer’s Liability insurance with limits no less than \$1,000,000 Bodily Injury each Accident, \$1,000,000 Bodily Injury by Disease - Policy Limit, \$1,000,000 Bodily Injury by Disease - Each Employee

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.

xii. W-9 Form

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

XI. APPENDICES