



# Division of Minority and Women's Business Development

## Request for Proposals

**NYS Division of Minority and Women's Business Development  
(DMWBD)**

**Cloud-Based Software Solution for NYS Certification and Business  
Development**

**PROPOSALS DUE: On or before 3:00 PM ET on  
November 1, 2021, 2021**

**Issued: October 8, 2021  
Submission Deadline: November 1, 2021 3:00 PM ET**

**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.

Designated Contacts for this Procurement:

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All contacts/inquiries shall be made by email to the following address:  
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This RFP is posted on the Empire State Development website:  
<https://esd.ny.gov/doing-business-ny/requests-proposals>

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## **I. OBJECTIVE**

New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation, on behalf of the Division of Minority and Women's Business Development (“DMWBD” or “Division”) is seeking proposals (“Proposals”) from qualified parties for the development, acquisition and deployment of a cloud-based, cutting edge software as a service (“SaaS”) solution and flexible evolving web application to support the Division’s business processes and activities efficiently.

Pursuant to the Reauthorization of Article 15-A of the New York State Executive Law, New York State agencies and authorities (“NYS Ag/Au” or “State Ag/Au”) are charged with establishing business participation goals for Minority- and Women-owned Business Enterprises (“MWBEs”) on state contracts and promoting employment opportunities for minorities and women in furtherance of economic development. The Division provides various services to support the efforts of the State, State contractors and MWBEs in advancing the objectives of Article 15-A, including for example, certifying eligible firms for MWBE certification, facilitating compliance by State Ag/Au, encouraging business development and engaging in outreach, training, education and other activities. The software solution and related web application that are the subject of this RFP are expected to support, automate, manage and/or facilitate all of the Division’s business activities and processes.

Each party that submits a Proposal to this RFP is referred to herein as a “Respondent.” A Respondent who is conditionally designated through this RFP process is referred to herein as a “Designated Provider.”

## **II. BACKGROUND**

The Division is organized into the following departments:

- Agency Services
  - The Agency Services unit is charged with the responsibility of receiving, analyzing and managing the Article 15A reporting of state agencies to the MWBE Division. The unit also provides training and clarification to state agencies regarding their use of MWBEs in their annual procurement cycle, and the applicability of Division guidance, resources and directives.
- Certification
  - The Certification unit reviews applications by businesses seeking MWBE certification or re-certification with New York State for compliance with Article 15-A and maintains a public directory of certified MWBEs. Work conducted in the Certification unit includes application and supporting documentation review, correspondence with applicants relating to all aspects of the application process, including: requesting additional documentation from applicants, analytical review and determinations of

application eligibility, review and assignment of industry code requests, reviewing, editing and accepting changes to certified firms vendor profiles and directory listings as needed.

- Customer Care
  - The Customer Care unit is the dedicated point of contact for general inquiries and information the Division. The unit is tasked with assisting all customers such as applicants, interested parties, and the general public. The work of the unit involves responding to inquiries relating to the application and certification process, sharing information relating to the work of the different units in the Division, and connecting relevant Division employees (e.g. Certification analysts or members of the Business Development unit) with customers. The unit's primary goal is to build trust and transparency by creating opportunities for customer engagement.
- Research, Operations, and Compliance
  - Research, Operations, and Compliance unit oversees centralized operations, compliance and research activities of the Division, including development and timely submission of reports. Coordinates with all State agencies and authorities on MWBE participation and oversee the business operations of the Division related to investigation, audit or inspection based on complaint, certification performance, Article 15-A compliance, customer service reports, business development impact, and overall Key Performance Indicators (KPIs) metrics for the Division.
- Business Development
  - The Business Development unit implements strategies and opportunities to provide valuable information and resources to MWBEs with the goal of aiding in their participation and success in NYS government contracting. The unit is tasked with identifying and understanding MWBE business needs and priorities informed by geography and industry, maintaining relationships with state agencies and authorities to better connect MWBEs to state contracting opportunities, and cultivating and maintaining relationships with MWBEs including business/industry associations. Some key services facilitated by the unit include: connecting certified MWBEs and interested parties with support programs and resources (e.g. technical assistance, education and business growth strategies), hosting workshops and events tailored for MWBEs, maintaining an active MWBE network and creating mentoring opportunities, and providing guidance and customer service.

Because the Division provides services to, works with or interfaces with various entities, the software solution that is the subject of this RFP is expected to be used in varying ways by the following entities or stakeholders: State Ag/Au, prospective and actual State contractors, prospective and actual certified MWBEs, the general public and State government and leadership.

The comprehensive software solution that is the subject of this RFP should help manage and facilitate the following business operations, services and activities:

- Electronic MWBE certification application submission, review and process management;
- Creation and management of a searchable directory of certified firms;

- State contract and subcontractor management (e.g. audits, payment tracking, purchasing and procurement card management, workforce diversity, etc. for Ag/Au);
- Management of compliance efforts by State agencies and authorities (e.g. submission of utilization reports, quarterly reporting, tracking of waiver requests, etc.);
- Outreach and event management;
- Customer relationship management, helpdesk services and inquiry tracking;
- Data analysis and report generation.

To learn more about the Division, please visit: <http://www.esd.ny.gov/MWBE.html>.

To learn more about the current platform being used by the Division, please visit: <https://ny.newnycontracts.com/>.

### III. DEFINITIONS

Definitions are for the purposes of clarification and information helpful in completing responses to this RFP.

**Agency Goal Plan:** The annual plan submitted by New York State agencies and authorities to the Division containing agencies' and authorities' goals for the utilization of MWBEs on state contracts in the following year, documents related to agencies' and authorities' organization-specific MWBE programs, and agencies' and authorities' plans to communicate opportunities for participation on state contracts to MWBEs.

**CSI Codes:** A numerical classification system, published by the Construction Specifications Institute, for groups of construction activities.

**Customizable Workflows:** A customizable process that reflects a series of sequential tasks that are carried out based on user-defined rules or conditions, to execute a business process. It is a collection of data, rules, and tasks that need to be completed to achieve a certain business outcome.

**Data integration:** Involves combining data residing in different sources and providing users with a unified view of them

**National Institute of Governmental Purchasing (NIGP) Commodity/Services Codes:** Coding taxonomy used primarily to classify products and services procured by state and local governments in North America.

**New-User Interface:** The means by which a user and a technology system interact; including how users input, access, and navigate data and communications through the technology.

**New York State (NYS) Contract Reporter:** The official publication and website of procurement activity for all New York State agencies, public authorities and public benefit corporations.

**North American Industry Classification System (NAICS):** classification system developed by the federal government which may be used to classify businesses establishments according to their business or economic activity.

**Onboarding:** Process of bringing new entity users to the system. Onboarding may require creation of a New User Interface with an individual agency or authority's financial systems.

**OpenBook:** A database of public contracting and expenditures maintained by the New York State Office of the State Comptroller. OpenBook may be accessed via - <http://www.openbooknewyork.com/>

**Public Authorities Reporting Information System (PARIS):** is the online reporting system that allows public authorities to submit contracting information to the Office of the State Comptroller (OSC).

**Stakeholder:** A user of the system with performance requirements within the system. Empire State Development (agency staff with system oversight), Agencies and Authorities (contract monitoring, utilization reporting, directory searches for appropriate certified firms for use on state contracts), vendors (non-certified, those applying for certification, and certified minority- and/or women-owned businesses), other users (the public, other organizations i.e., Small Business Administration, Small Business Development Corporation, Procurement Technical Assistant Centers, etc.).

**Statewide Financial System (SFS):** SFS is an online application that allows New York State agencies to manage accounting and financial records and functions.

**Utilization:** The use of a certified MWBE by an Ag/Au for MWBE credit under the codes in which the MWBE is certified by the MWBE Division.

**Utilization Plan:** A document submitted by a bidder, prime contractor or grantee to a New York State agency or authority describing the MWBEs such bidder, prime contractor or grantee intends to utilize as subcontractors and suppliers towards the achievement of an MWBE participation goal on a state contract.

**Waiver:** The partial reduction or full elimination of an established MWBE goal on an Article 15-A qualified state contract.

**Workforce diversity:** The number of minorities and women as defined by Article 5-A working on a state contract. Including also, data related to their salaries, industry, region of employment on the state contract, and other associated data as required by the MWBE Division.

**Working Prototype:** This is the system with at least 90% full functionality, including the interface with SFS, but not yet populated with useable data.

## IV. SCOPE OF WORK

### A. Product Requirements

The Designated Provider will develop flexible, secure and modular SaaS solution that contains the following features and product requirements:

- i. Facilitate electronic MWBE certification application submission, review and process management
  - a. Enable electronic document intake, storage, retrieval, analysis, searchability and visualization to process and review applications for MWBE certification and/or removal of certification;
  - b. Create and maintain “MWBE Data Retrieval Tool” to facilitate document requests, retrieval, verification, and analysis from State agencies, such as the NYS Department of Taxation and Finance, and alert applicants when such data is requested and accessed;
  - c. Enable State Ag/Au submission of certification expedite requests for pending applications;
  - d. Retrieve application documents as an export or batch download;
  - e. Make preliminary or predictive determinations as to whether applicant satisfies eligibility requirements for certification;
  - f. Two-way electronic communication capability to interface with applicants to request information/documents, transmit information or documents and provide status updates
  - g. Estimate anticipated wait times (provided to MWBE applicants) throughout the four-phase application process based on prior analysis of application review speeds and complexity of individual applicant and enabled by data analysis and machine learning. Over time, the system should also leverage the same features to drive predictive analysis to determine potential issues with individual MWBE applications and denote (for internal review) probability of application success;
  - h. Application and certification audit capabilities;
  - i. Docket management, document management and administration (e.g., electronic communications, notifications, calendar, document intake, etc.) capabilities for the MWBE administrative appeals process.
- ii. Create and maintain a searchable directory of certified firms
  - a. Database or directory of certified firms that can be updated, searched or filtered based on various parameters including company name, NAICS code, business description, etc.
- iii. State contract and subcontractor management
  - a. Enable retrieval, tracking, processing, and recording of inter-Agency review and authorization requests relating to spending and purchasing controls;
  - b. Purchasing or procurement card management;
  - c. Audit capabilities;
  - d. Payment tracking functionality.
- iv. Management of compliance efforts by State agencies and authorities

- a. Monitor, manage and report on MWBE programmatic elements on various types of procurements and State contracting, including but not limited to Blended contracts (Federal and state funding); commodities; construction projects; discretionary purchases, exclusions, exemptions, federal spend, grants, HBITS contracting, Human Services spend, in-year exclusions, not-for-profit, OGS centralized contracts, p-cards, preferred sources, purchase orders, sole source, zero goal and requirements contracts;
  - b. Enable document intake from State Au/Ag and contractors, storage, retrieval, analysis and visualization to monitor State contracts for MWBE utilization and compliance, including for example, submission of utilization reports, quarterly reporting, waiver requests, etc.;
  - c. Ensure that any automated state contract MWBE goal setting feature within the system alerts the Ag/Au that such automated goal is only a recommendation, and that the Ag Au must confirm the parameters of the search as being sufficient and appropriate for the type of procurement under implementation. As well as keep sufficient documented good faith effort of the parameters of the MWBE vendor search;
  - d. Monitor, manage, audit and report on MWBE program compliance, including tracking of payments made to MWBE vendors updated through the SFS interface and other interfaces as necessary, reporting on payments to subcontractors, intake and searchable repository of utilization plans by internal and external stakeholders, etc.;
  - e. Monitor, manage, audit and report on workforce diversity compliance by contractors, subcontractors and State Au/Ag.
- v. Management of purchasing or procurement and controls
- a. Oversight of relevant procurement and purchasing activity conducted by Agencies and Authorities across the platform.
- vi. Outreach and event management based on geospatial analysis
- a. GIS Mapping to enable agencies and authorities to search by geographic location for certified MWBE firms to participate in their contracts, and allowing transparency to vendors and certified firms to see contracting opportunities in their regions;
  - b. Facilitation of MWBE business development through site-based trainings (i.e. how to conduct business with XYZ Agency), webinars, outreach notifications and virtual Town Halls;
  - c. Manage Agency Services interactions with Agencies/Authorities/Vendors, through support tickets, email, CRM system, trainings, etc.;
  - d. Database or repository of opportunities that can be updated by NYS Ag/Au with contracting, grant and related opportunities and can be searched or filtered by firms looking for such opportunities with self-service features;
  - e. Export and cross-link contracting opportunities for the NYS Contract Reporter website;
  - f. Two-way and mass communication capabilities including outreach notifications, alerts, and event tracking.
- vii. Customer relationship management, helpdesk services and inquiry tracking
- a. Creation and maintenance of a customer service chatbot that uses artificial intelligence and machine learning to leverage existing information and resources to answer basic applicant questions via a business messenger;



- b. Responsive customer service interface that leverages AI and machine learning to respond to user questions and requests via a chatbot feature;
  - c. Self-assessment tools for educational and informational use.
- viii. Data analysis and report generation
- a. Creation and maintenance of role-specific (e.g. Executive, Certification, Customer Care) metric dashboards that tracks and displays customizable key performance indicators. This tool should support the generation of both customizable and canned reports that pull information from multiple channels;
  - b. Dashboards with real-time analytics and data and customizable report creation functionality;
  - c. Audit capabilities;
  - d. Managerial Oversight of all Units, including but not limited to real-time information on number of certified firms, utilization rates, records processing rates, productivity, data integrity
- ix. User interface
- a. Easy-to-use and intuitive user interface that is expected to be used by a variety of persons including but not limited to the Division, NYS governmental entities and agencies/authorities, small and large businesses, prime and subcontractors and members of the public along with comprehensive instructional/guidance/training documents, presentations and other materials for both internal and external public-facing use, that may be updated or revised from time to time;
  - b. Creation, hosting, and maintenance of a web portal to facilitate a simple-to-navigate interface for all relevant users. The portal should support the certification application and review process, enable Agencies/Authorities/Vendors to upload and track contracting opportunities and reporting metrics, generate pre-made and customizable reports, and facilitate communication and information sharing;
  - c. Facilitation of electronic communications, alerts, outreach, and real-time collaboration between internal and/or external stakeholders;
  - d. Creation and maintenance of a cross-platform mobile application, designed to work on iOS and Android and accessible on phones and tablets, that provides user access to account management and maintenance, contracting opportunities, and relevant notifications;
  - e. Single gateway in a centralized location for storing and displaying MWBE data that can be shared among NYS Ag/Au.
- x. System-wide requirements
- a. Capable of customizing system or module of system with solutions for specialized needs;
  - b. Interoperability with the NYS Contract Reporter, Ag/Au data feeds, SFS, Paris, etc.;
  - c. Advanced Organization Management (tools for Project Management, assigning user roles, maintaining security of the system, etc.);
  - d. Secure document information and management; two-tier authentication for security;
  - e. Recognize and prevent submission or creation of duplicative documents;
  - f. Capable of recognizing, analyzing, searching and processing a variety of document formats including PDFs, Word, Excel, .txt and other commonly used file types;
  - g. Drag and drop functionality to upload or submit documents;

- h. Customizable views and dashboards.
- xi. Android/IOS/Windows App
  - a. Android/IOS/Windows based application that provides status updates, contracting opportunities, push notifications, etc.;
  - b. Contains features useful to certified and prospective MWBEs such as digital wallet certification, application status updates, pending action items on application, etc.

## **B. Mandatory Operational Requirements**

The software must leverage the following, as necessary:

- i. **Artificial Intelligence (AI)**
  - a. The software must be able to use AI to lead a user from an answer to one question to an appropriate next question to lead them to a final outcome, thereby reducing the routine elements of work. For example, if applying for certification, if a corporation, only data necessary for that organizational type will be required.
  - b. To leverage AI, all systems must connect and share data with each other to add value across touchpoints. This will enable AI systems to accelerate innovation and define the future of MWBE certification processing. The system should be able to learn from the MWBE vendor decisions and resulting utilization made by the various Ag/Au within the same industries. That should then allow it to make recommendations to the Ag/Au as to optimal goal setting as well as how to reduce the need for waivers. The final decision should still be human based documented good faith effort goal setting, but such recommendation would be helpful.
  - c. The use of AI will therefore support MWBE Senior Certification Analysts via providing critical information and support to ensure more informed decision making, enhanced capabilities, and increased productivity.
- ii. **Machine Learning**
  - a. The software should use machine learning and data from applicants, queries, etc. to provide auto-generated information or assessments to users. For example:
    - i. Determine which questions and answers are pertinent to a user's search query;
    - ii. Determine appropriate timeframes for application processing through each decentralized phase;
    - iii. Determine, based on certification applicant profile and submitted documents, if an application meets 15-A qualifications and alert certification analysts to anticipated data requests and issues with particular applications.This is a non-human interactive Q&A application. Ability to run algorithms for data analytics.
- iii. **Low-Code**
  - a. As defined by the industry, a visual software development method in which developers use drag-and-drop components. It uses less 'coding' than traditional programming, instead focusing on the reuse of code.
- iv. **Mobile Application**

- a. The software must be optimized for mobile applications, which can provide duplicative features as those found on the web-based application for IOS and Android. The cross-platform application must serve as a user-friendly communication platform that can provide smart notifications, either through user-driven search or one way push notifications, on certification application status (e.g. when an application enters a different phase in the decentralized process), alert the user when action is required (e.g. if a certification submits a request for additional information relating to an open application), provide opt-in notices for available contracting opportunities (dependent on user profile such as location and industry).
- v. Chat Features
  - a. To provide pertinent information and quick responses to common questions and requests, the software must be able to support a chatbot application as part of the online portal. The chatbot should offer question prompts and provide responses to common questions (e.g. frequently asked questions) and links to relevant materials and support. Communication should be direct and real-time and direct users to self-service solutions before offering to connect with a human agent. Help pop-ups whenever a user logs into the system: Welcome: How may we help you today?
  - b. To support the machine learning functionality a live chat feature must be an online, real time communication with the customer and, if necessary, provide contact information for our Customer Care team based on request complexity.
- vi. GIS Mapping
  - a. The software must be able to accept GIS data from a variety of sources to create a NYS State Map with certified vendor-specific work descriptions, as well as a feed that shows current contracting opportunities with Agencies and Authorities in NYS. It must include a search function for several parameters, such as industry codes, zip codes, latitude/longitude, counties, contract type (advertising, construction, etc.).
- vii. Smart Notification
  - a. To unify and make coherent all the real-time communications that a user is exposed to in their typical day-to-day the software should provide an opt-in notification capability. Users can opt to receive relevant information, either by e-mail or SMS, including information that:
    - i. Provides alerts and notifications of business development opportunity events that a user may have signed up for;
    - ii. Track customers throughout the certification life cycle by providing updates on upcoming recertification deadlines, etc.;
    - iii. Provide real-time updates of application status. This includes alerting users when requests are submitted in relation to their application, using predictive analysis to provide reasonable timeframes for phase complication, etc.
- viii. Data Analytics
  - a. In analyzing raw data, the software must be able to provide four types of data analytics: descriptive, diagnostic, predictive and prescriptive. Must be able to read PDFs and pull them into a format that it is readable. Must have a data processor.
- ix. Predictive Analytics

- a. A facet of the data analytics functionality, the Predictive Analytics is essential for DMWBD to use past and current data to reliably forecast trends and behaviors to better service our customers.
- x. System Integration
  - a. DMWBD has many partner organizations which must be able to exchange, interpret, and present shared data in a way that is understood by the other. For example, we receive data from agencies and authorities that include contract details and utilization of certified firms on those contracts. These feeds come from various sources, and we must be able to have two-way communications when appropriate with these organizations.
- xi. Integration of Legacy Databases
  - a. This solution will require the importing of several legacy systems to include but not limited to .doc, csv, .xlsx.

### **C. Transition and Aftercare**

Deployment of software and development of the applications will run in parallel with an existing provider. The Designated Provider will be involved at the start of the programming solution, with ongoing support for the life of the contract. Upon completion of software development and validation, the Designated Provider must:

- i. Facilitate transition of data and information from the Division’s current platform to the new software;
- ii. Provide onboarding training (e.g. modules linked to specific tools) to ESD program staff, technical assistance, “Helpdesk” services and dedicated relationship manager(s) during the lifetime of the use of the Designated Provider’s software;
- iii. Provide live and pre-recorded trainings as well as training/user manual and updates on use of the platform and app to ESD and other State agencies and authorities as well as contractors, MWBEs and other members of the public or State government;
- iv. Provide an overview and training for application systems to ESD dedicated technical staff and enable information and process sharing to ESD technical team to ensure relevant ESD staff has the necessary tools and information to perform necessary maintenance, enhancements, and updates.
- v. Updating or upgrading the software for bug, security or other fixes and maintenance as well as customizing solutions as needed or requested during the lifetime of the use of the Designated Provider’s software.

### **D. ESD IT Project Deliverable Criteria**

The Designated Provider’s software must comply with the ESD IT Project Deliverable Criteria, attached as **Appendix A: ESD IT Project Deliverables**.

### **E. System Timeline**

The system will encompass five distinct phases of completion:

- i. Prototype
- ii. Testing of each module and verification that each module can be deployed
- iii. Training of ESD and Division users
- iv. Transitioning NYS Agencies and Authorities to new platform
- v. Enhancements and Deployment to the Public

## **F. Site/Platform Completion**

As used in this RFP, the term “complete” shall mean that all programming, testing, documentation and installation of the software, web application and platform have been received and accepted in writing by the Department’s Project Manager. This includes all source and object code; all graphics, templates, auto-fill documents and screens; all compiled and un-compiled project files; all training materials and agreed-upon documentation.

In addition, acceptance requires that the site, platform and mobile applications each operate as designed in the production environment for a period of fourteen consecutive days. The Contractor shall issue in duplicate a certification document and the Department’s Project Manager shall sign said document upon his/her satisfaction that the site meets the definition of complete as the term is used herein.

## **V. CONTRACTUAL INFORMATION**

### Contract Term

The successful respondent shall perform the work and provide the services set forth in this RFP as an independent contractor for a period of up to eighteen (18) months. The Contract may be extended for up to an additional twelve (12) months upon mutual agreement of the parties, formal amendment, and approval of the New York State Office of the State Comptroller. The total term of the contract shall not exceed three (3) years. If the contract is extended for the additional 12 month term, personnel expenses itemized in the Budget may be adjusted in accordance with the Consumer Price Index Urban (CPIU), or at other rates as may be documented from authoritative sources at the ESD’s discretion, not to exceed 3% annually from the previous 3 (year) term.

To the extent needed, each individual Ag/Au that requires a user interface customized to their own individual financial systems may establish a separate contract under its respective Business Unit and Department ID using the same contract number specified by ESD’s contract. The Ag/Au will work directly with the vendor to establish the scope of work (SOW) and budget and will make payment directly to the awarded vendor. ESD reserves the right to review and approve the SOW prior to each separate contract execution. ESD reserves the right to sign off on each SOW as it is completed to ensure that such programming meets ESD’s requirements of the system.

## VI. SCHEDULE OF DATES

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

<b>Release of RFP</b>	<b>October 8, 2021</b>
<b>Deadline for Submission of Questions</b>	<b>October 15, 2021 by 5:00 PM EST</b>
<b>Deadline for ESD to Respond to Questions</b>	<b>October 22, 2021</b>
<b>Submission of Proposals (date and time)</b>	<b>November 1, 2021 by 3:00 PM EST</b>
<b>Interviews (if necessary)</b>	<b>November 3-9, 2021 (Estimated)</b>
<b>Announcement of Successful Bidder</b>	<b>November 15, 2021</b>
<b>Anticipated Contract Start Date</b>	<b>November 25, 2021</b>

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

*Late proposals cannot be accepted.*

## VII. SELECTION CRITERIA

### **Minimum Qualification Requirements:**

Responses to this RFP must include information about Bidder's current capabilities, past experiences working with other states and large municipalities and how those experiences may inform or impact work with New York State as it relates to operating models, leading practices, and process improvements.

- a) Prior to the proposal due date for this RFP, the successful Bidder must have been in business for a minimum of five (5) years, performing relevant quantitative analyses, such as those described in Scope of Services of this RFP.
- b) Each Bidder must provide the names and addresses of at least three (3) business references.
- c) Prospective Bidders must possess adequate financial resources and organizational capacity to perform the services described in this RFP in an efficient and effective manner, with financial resources to pay expenses in advance of receipt of payment from ESD. ESD prefers a letter from a Certified Public Accountant (CPA) indicating that the Bidder has sufficient working capital, positive net worth, and has or can obtain a line of credit. ESD will also accept a letter from a party other than a CPA (such as an attorney, bank officer, corporate attorney, parent holding company) familiar with and attesting to the financial condition of the Bidder.
- d) The successful Bidder must adopt strict privacy and confidentiality protections to adequately protect the confidentiality of all data. All data transmissions must be encrypted. Throughout the course of this project, the successful Bidder may have access to confidential company information. The successful Bidder for this project must agree to protect confidential information and to sign non-disclosure agreements prepared by ESD. All information provided to, collected or otherwise obtained by the successful Bidder, the successful Bidder's staff and all subcontractors is proprietary and may not be disclosed in perpetuity, to any party other than ESD itself without ESD's express written approval.

The proposals will be scored in the following manner:

Firm Experience and Qualifications	20 Percent (20%)
Staff Experience and Qualifications	15 Percent (15%)
Project Plan and Approach/ Methodology	35 Percent (35%)
Cost Proposal and Budget/ Use of Funds	20 Percent (20%)
Diversity Practices Questionnaire	10 Percent (10%)

## VIII. SUBMISSION OF PROPOSALS

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

### i. Technical Proposal

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

- A. Table of Contents
- B. Firm Experience and Qualifications
- C. Staff Experience and Qualifications
- D. Project Plan and Approach
- E. Estimated Cost
- F. Diversity Practices

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

#### *A. Table of Contents*

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

#### *B. Firm Experience and Qualifications*

ESD’s entire MWBE program depends upon the successful implementation of this system.

Proven reliability is paramount. Therefore, prospective vendors must be able to demonstrate previous successful implementation of a similar web-based software solution, preferably for a federal, state, county or other governmental certification program, although verifiable success on similar commercial projects is allowed. Such implementation must have included integration of existing legacy databases providing dynamic database access and update capabilities. Particular attention will be given to prior experience in the design, programming and implementation of comparable internet-

based applications systems and the hosting of such systems. Successful Bidders should detail at least one similar engagement comparable to those services detailed in Section 4, but no more than three.

Please indicate, for each engagement completed:

- a. Name of client organization
- b. Type of client (e.g. government entity (local, State, Federal), private company etc.)
- c. Project description and services provided
- d. Project duration including start/end dates
- e. Number of Bidder staff (FTEs) involved in the engagement
- f. Any other information regarding the project that would assist ESD and DMWBD in determining the success experienced by the client. This may include previous similar engagements. If you wish to include previous engagements as examples of your experience, please include a link to the website and not a hard copy in your proposal.
- g. Firm References - The Bidder is asked to supply ESD and DMWBD with the names and contact information for two individuals (one primary and one alternate contact person) that ESD or DMWBD may contact as a reference for each engagement described above.
- h. A minimum of five (5) years' experience from the due date of proposals in the development of internet software applications. All proposals must state the number of years of such experience.

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

### ***C. Staff Experience and Qualifications***

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

1. A project management and staffing plan that describes the unique capabilities of the individuals assigned. Include a narrative description of the specific function/role that each staff member would perform and their specific qualifications for their proposed role in this engagement. Lead staff should be identified. Successful Bidders should submit resumes for all members of the proposed team, including any subcontract personnel who may work on the engagement.
2. State all relevant information regarding the number, qualifications and experience of the staff to be specifically assigned to this engagement. Indicate how the staff competency level over the term of the contract will be assured.



3. Successful Bidders should submit staff references' contact information for at least three (3) references from recent engagements, preferably with governmental entities, who can comment on the experience of the lead staff proposed for this engagement. Names, titles, addresses, email addresses and telephone numbers of organizations and individuals who may be contacted for reference must be included.

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

#### ***D. Project Plan / Approach***

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

Proposals must include a work plan detailing the proposed research designs, indicating the techniques and methodologies planned to meet the objectives of the RFP's scope of services, as well as tasks, activities, QA/QC assurance, milestones, and other information describing how the Bidder will complete and meet the goals of the projects. A successful Bidder must demonstrate clear understanding of the required functionalities. A successful Bidder shall meet the prescribed deliverables in accordance with the work plan included in its proposal.

The work plan should discuss any significant hurdles or challenges that Bidder anticipate will impede the success of the project. For each challenge identified, Bidders should discuss how they would mitigate those risks.

The work plan should also include a timeline for the task to be completed in order to ensure the Schedule of Deliverables is met.

#### ***E. Estimated Cost***

All Bidders must complete and submit with their proposal a budget, which shall include the cost of performing the tasks outlined herein. The budget shall be separate from their technical proposal.

The proposal must include a description of each of the following:

1. Staff Fees including the title of each individual assigned to the project;
2. hourly rate per individual assigned to the project; and
3. estimated number of hours for each individual assigned to the project.
4. Expenses: (a) Administrative Expenses including costs related to such items as photocopying, telecommunications, travel, data analysis, data storage, interviewing, etc. Note: travel expenses will be reimbursed at the current rates for New York State employees.; (b) any other expenses (i.e. subcontracted services) identified by type and dollar amount. Note: For subcontracted services itemized by subcontract name, job title, hours, hourly rate and total.

#### ***F. Diversity Practices***

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices. Up to 10 points will be awarded based upon the contents of the **Diversity Practices Questionnaire attached as Appendix B, submitted by each Respondent to the RFP**

## ii. Administrative Proposal

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

- i. State Finance Law §§139-j and 139-k forms, submit with proposal [http://intranet.empire.internal/Finance/SF\\_Law139\\_JK.pdf](http://intranet.empire.internal/Finance/SF_Law139_JK.pdf)
- ii. Vendor Responsibility Questionnaire, submit with proposal or submit online (and include copy of submitted form with proposal)
- iii. Iran Divestment Act Statement, submit with proposal
- iv. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
  - o OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
  - o OCSD-2 - Staffing Plan
  - o OCSD-4 - MWBE and SDVOB Utilization Plan
- v. Encouraging the Use of NYS Businesses in Contract Performance Form, submit with proposal
- vi. Certification under State Tax Law Section 5-a 220-CA or Affidavit, submit with proposal
- vii. W-9 Form, submit with proposal

## Submission of a Complete Two-Part Proposal

**The Technical Proposal and the Administrative Proposal Documentation must be submitted electronically via the designated email: [CloudsolutionRFP2021@esd.ny.gov](mailto:CloudsolutionRFP2021@esd.ny.gov) The email subject line should indicate: RFP 2021 Cloud Based Software Solution for NYS Certification and Business Development Proposal submitted by [Bidder's name]**

A complete package (Technical Proposal and Administrative Proposal) must be received by the deadline in the schedule of dates in this RFP. Proposals should be sent to the following dedicated email address: [CloudsolutionRFP2021@esd.ny.gov](mailto:CloudsolutionRFP2021@esd.ny.gov)

**Late proposals will not be considered for award.**

## IX. 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 the Schedule of Dates to:

[CloudsolutionRFP2021@esd.ny.gov](mailto:CloudsolutionRFP2021@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.

## **X. 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.
- x. to utilize any or all ideas submitted in the proposals received unless those ideas are patented or subject to other proprietary rights.

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.

### **Intellectual Property**

ESD reserves the right to include additional intellectual/personal property provisions in an Agreement with regard to the ownership (exclusive and/or nonexclusive) of any property or work product created, developed or purchased as a result of any Agreement resulting from this RFP. The presumption is that, unless otherwise stated and agreed to in writing, all intellectual property is owned by ESD, including all works made or performed for hire as well as software and modifications thereof along with all associated documentation, designed or developed for ESD.

## **XI. CONTRACTUAL REQUIREMENTS**

This section contains additional information about the forms that are required to be included in each Bidder's submission pursuant to Section VIII 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://intranet.empire.internal/Finance/SF\\_Law139\\_JK.pdf](http://intranet.empire.internal/Finance/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\\_Jan\\_2007.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan_2007.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, go directly to the Vend-Rep system online at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)

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](mailto: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](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).”

**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. No Response that fails to certify compliance with this requirement may be accepted as responsive.

**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). 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](mailto: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](mailto: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 10<sup>th</sup> 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>

Form OCSD-7: <https://esd.ny.gov/sites/default/files/OCSD-7-MWBE-Expedite-Request-Form.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](mailto: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 B).

## **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 percent** 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](mailto: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](mailto: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](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](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](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;

- 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.

**xii. W-9 Form**

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

**Appendix A: ESD IT Project Deliverables**

**Appendix B: Diversity Practices Questionnaire**

