

REQUEST FOR QUALIFICATIONS

OWNER'S REPRESENTATIVES FOR REAL ESTATE DEVELOPMENT AND CONSTRUCTION

Issued: March 10, 2021

Submission Deadline: April 27, 2021 by 2:00 PM EST

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: <https://ogs.ny.gov/acpl>)

Designated Contacts for this Procurement:

Primary Contact: John Discolo

Secondary Contact: Stacey Teran

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

OwnersRepServices@esd.ny.gov

This RFQ is posted on the Empire State Development website:

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



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I. INTRODUCTION

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

ESD’s Real Estate Development and Planning Department (REDP) oversees the planning and implementation of real estate-driven economic development projects and initiatives throughout the state, including major infrastructure projects. Recent projects include the development of underutilized parking lots at Long Island’s Belmont Park, including a new home for the New York Islanders; a comprehensive plan for the redevelopment of the Penn Station area; affordable housing developments in Brooklyn; and multiple transformative mixed-use projects on Harlem’s 125th Street, focused on arts, culture and affordable housing. ESD partners with subsidiaries and other State agencies to reposition surplus State properties through public-private partnerships, typically through Requests for Proposals to sell or lease properties for economic development.

II. OVERVIEW

The purpose of this Request for Qualifications (“RFQ”) is to solicit submissions of qualifications from individuals and/or firms (collectively, “Firms”) who wish to be included on ESD’s “Pre-qualified List of Owner’s Representative Firms for Real Estate Development and Construction” (“Pre-Qual List”).

Firms with demonstrable experience in providing development and construction owner’s representative services on real estate projects throughout New York State will be considered for inclusion on this list of pre-qualified owner’s representatives.

Upon adoption of the list by ESD’s Director’s, ESD and its subsidiaries may select, from time to time as the need arises, one or more Firms from the pre-qualified list to provide owner’s representative services. *When an ESD development project requires an Owner’s Rep, firm(s) on the Pre-Qual List may receive communication from ESD staff with a scope of work and requesting proposals, including a work description and estimate from the firm(s). ESD will evaluate responses and engage a firm at its discretion.* It is expected that the list will remain in effect for 3 – 4 years after adoption. **Inclusion of a Firm on the pre-qualified list does not represent or guarantee that it will receive any contract for owner’s representative services during the effectiveness of the list.**

Real Estate development and construction Owner’s Representative services required by the ESD Real Estate department may include, but is not limited to:

- Project planning
- Scheduling
- Budgeting
- Construction contract bidding
- Project cost reporting systems design and implementation
 - Monthly requisitions approval
 - Forensic review of project expenditures
- Construction monitoring
- Project close-out

Firms need not offer all of the services listed above to be considered for inclusion on the list. Firms

with unique experience or specialization in a narrower scope of services are invited to apply.

Submission for consideration, will constitute a Firm's agreement to enter into a contract on the terms and conditions set forth in Schedule A to ESD's Standard Short Form Contract, available at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf, should the Firm be selected to provide services to ESD. Each party that submits a response ("Proposal") to this RFQ is referred to herein as a "Respondent."

ESD Strongly encourages State Certified Minority-Owned Business Enterprises and Women-Owned Business Enterprises (as well as Firms that are not yet certified but have applied for certification) to submit responses to this RFQ. New York State certified Minority- and Women-Owned Businesses (MWBES) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their Firm's contact information be included on a list of MWBE and SDVOB Firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD's website for reference by the bidding community. A Firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to OwnersRepServices@esd.ny.gov. Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

III. RFQ TIMELINE

The following are significant dates in this RFQ process:

Issuance of RFQ:	March 10, 2021
Deadline for RFQ Questions:	March 22, 2021 by 5:00 PM EST
Deadline for ESD to Respond to Questions:	April 5, 2021
Submission of Proposals Due Date (date and time):	April 27, 2021 by 2:00 PM EST
Interviews (if necessary):	May 10-17, 2021
Announcement of Pre-Qualified List:	TBD

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

IV. REQUIRED PROPOSAL CONTENTS

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

In evaluating the capabilities of the Respondents, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent and

demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFQ. ESD reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

Each complete Proposal must contain the following elements:

A. COVER PAGE

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

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

B. RESPONDENT INFORMATION

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

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

ESD may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFQ, and the responsiveness of the 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 most effective and efficient.

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

C. FEE PROPOSAL

Respondents must submit a completed Fee Proposal as provided in Appendix A. Please mark the Fee Proposal section, "Tab 2". **An electronic excel document of this form must also be submitted with the Proposal. Respondents need to include whether these fees are fixed or have annual increases depending on the staff title.**

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

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

ESD will negotiate maximum rates for any selected participants.

D. PROCUREMENT FORMS AND REQUIREMENTS

1. Procurement Forms:

Selected Respondents will enter into contractual agreements with ESD. Accordingly, Respondents should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Respondent's Proposal. Please mark the Procurement Forms and Requirements section, "Tab 3". Procurement forms and requirements include the following:

- [State Finance Law §§139-j and 139-k forms](#) (submit with Proposal)
- [Vendor Responsibility Questionnaire](#) (submit with Proposal or online and include copy of submitted form with Proposal)

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

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

2. Conflicts of Interest:

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

- i **Gifts and Offers of Employment:** Respondent has not and shall not during this Procurement and during the negotiation of any contract resulting from this Procurement, offer to any employee, member or director of ESD or CCDC, 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 or CCDC who is involved in this Procurement and/or resulting contract negotiation within at least 30 days from the time that the employee’s involvement in this matter closed.
- ii **Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of

ESD or CCDC in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

- iii **Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Joint 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.

V. SELECTION CRITERIA

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

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

Criteria		Weighting
Experience	<ul style="list-style-type: none"> • Relevant Firm experience and the qualifications and experience of the staff proposed to be assigned to the ESD engagement. 	50%
Proposal	<ul style="list-style-type: none"> • Overall organization, completeness, and quality of the proposal, including cohesiveness, clarity of response and demonstrated understanding of ESD and the relevant programs. 	20%
Anticipated Costs	<ul style="list-style-type: none"> • Anticipated cost of services and willingness to work together with ESD, and its subsidiaries and affiliates, in order to minimize costs. 	20%
Quantitative Factors	<ul style="list-style-type: none"> • ESD will award points to respondents that are certified Minority or Women-owned Business Enterprises (MWBES) as defined in section three hundred ten of the New York State Executive Law or Service-Disabled Veteran-owned Business Enterprises (“SDVOBs”) as defined in section three hundred sixty-nine-h of the New York State Executive Law. • In order to be awarded points pursuant to the 	10%

	<p>Quantitative Factor, the respondent must (1) identify itself as an MWBE or SDVOB and (2) be registered with the NYS Department of State as an entity authorized to conduct business in New York State.</p> <ul style="list-style-type: none"> • Respondents identifying themselves as MWBEs must be listed in the directory of New York State-certified MWBEs (“MWBE Directory”) as of the closing of the period for responses to this RFP. The MWBE Directory is available at: https://ny.newnycontracts.com/. Respondents identifying themselves as SDVOBs must be listed in the directory of New York State-certified SDVOBs (“SDVOB Directory”) as of the closing of the period for responses to this RFP. The SDVOB Directory is available https://online.ogs.ny.gov/SDVOB/search. 	
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ESD reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of Respondents’ Proposals and to ensure a full and complete understanding of each Proposal. ESD shall undertake to pursue uniformity in the questions it asks Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. ESD reserves the option to hold oral interviews as part of the selection process; Respondents who are invited for an interview will receive additional instructions upon their invitation.

VI. PROPOSAL SUBMISSION INSTRUCTIONS

A. PROPOSAL SUBMISSION

Three (3) hard copies, one (1) electronic copy (in the form of a flash drive) of the Proposal identified by “**Owner’s Representatives RFQ**” must be received by ESD by **April 27, 2021 at 2:00 PM EST** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017

Attn: John Discolo, ESD Procurement Unit Re: Owner’s Representatives RFQ

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

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

B. RFQ INQUIRIES

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

Written questions must include the requestor's name, e-mail address, and the prospective Respondent Team represented, and must be received by March 22, 2021 by 5:00 PM EST. Responses to all timely and appropriate questions will be posted on ESD's website on April 5, 2021, at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

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

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

VII. STATEMENT OF LIMITATIONS

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

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

justification for the portions of their Proposal they believe fall into the exemptions discussed above.

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

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

VIII. PROCUREMENT FORMS AND REQUIREMENTS

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

A. STATE FINANCE LAW SECTIONS 139-J AND 139-K FORMS

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

through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the Designated Contacts; 2) completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations; 3) the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD website under "RFQs/ RFQs"); and 4) periodic updating of such forms during the term of any contract resulting from this RFQ.

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

https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make a determination of the responsibility of Respondents, and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries and related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

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

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

B. VENDOR RESPONSIBILITY QUESTIONNAIRE

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

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

questionnaire in their Proposals.

To enroll in and use the Vend-Rep System, Respondents should consult the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at www.osc.state.ny.us/vendrep. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at (866) 370- 4672 or (518) 408-4672 or by email at helpdesk@osc.state.ny.us.

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

C. IRAN DIVESTMENT ACT

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

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

D. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY REQUIREMENTS

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

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

1) **Business Participation Opportunities for MWBEs**

ESD has an agency-wide overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15% for New York State-certified Women-owned Business Enterprise ("WBE") participation. For purposes of this solicitation, ESD will establish a goal based on the scope of work, project description identified in the RFQ response and the current availability of MBEs and WBEs. A contractor ("Contractor") on any contract resulting from this RFQ ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

Respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the Contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, Respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFQ, such finding constitutes a breach of contract and ESD may issue liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a Proposal, Respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that Respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at OCSD@esd.ny.gov.

Additionally, Respondents are required to submit an MWBE Utilization Plan with their Proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval. ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

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

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

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

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

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

2) **Equal Employment Opportunity Requirements**

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

Respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of Respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

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

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

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

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

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

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

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

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

3) Participation Opportunities for New York State-Certified Service-Disabled Veteran-Owned (SDVOB) Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“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 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- 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.

E. ENCOURAGING THE USE OF NYS BUSINESSES IN CONTRACT PERFORMANCE FORM

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

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

F. CERTIFICATION UNDER STATE TAX LAW SECTION 5-A

Any Contract resulting from this RFQ is subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Respondents to this RFQ must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) or an affidavit (https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance.

Also, in accordance with the requirements of STL 5-a, any Contract resulting from this RFQ will require periodic updating of the certifications contained in Form ST-220-CA. Proposals that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for award. Only the Respondent completes Form ST 220-CA, but Form ST 220-CA requires detailed information from sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by Respondent and all Respondent Team members and sub-consultants.

G. CONTRACTUAL AGREEMENTS

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

H. PROJECT SUNLIGHT

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

I. INSURANCE REQUIREMENTS

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

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

J. W-9 FORM

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

K. EO 177 CERTIFICATION

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

IX. GENERAL PROVISIONS

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

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

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



X. APPENDIX

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

Appendix A: Fee Proposal

Appendix B: Diversity Practice Questionnaire