



**Empire State
Development**

REQUEST FOR PROPOSALS FOR PRE-QUALIFIED REAL ESTATE DEVELOPMENT AND PLANNING RELATED CONSULTANTS

Issued: May 13, 2021

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. Respondents are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX: Contractual Requirements).

Designated Contacts for this Procurement:

Primary Contact: Ralph Volcy
Secondary Contact: John Discolo

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

REprequalRFP@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/pre-qualified-real-estate-and-planning-firms-rfp>

Submission Deadline: June 16, 2021 by 2:00 PM ET

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I. INTRODUCTION

The New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) is the chief economic development agency of the State of New York (the “State”). The mission of ESD is to promote a vigorous and growing state economy; encourage business investment and job creation; and support diverse, prosperous local economies across the State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance. Additional information about ESD may be found on ESD’s website at www.esd.ny.gov.

II. OVERVIEW

The purpose of this Request for Proposals (“RFP”) is to pre-qualify individual firms that offer services related to real estate development and planning (collectively, “Respondents”) as eligible to represent ESD, its subsidiaries and/or affiliates, from time to time, within ESD’s maximum rate policy, in connection with economic development projects and related activities across New York State involving various public and private sector parties. Successful Respondents will be eligible for specific assignments that may arise from time to time during the next four (4) years, beginning on or about August 2021.

This solicitation seeks to replace, not supplement, any and all pre-qualified real estate development and planning consultant lists which will expire in the third quarter of 2021; accordingly, firms on any existing real estate development and planning consultant list must, if they wish to continue to be pre-qualified, respond to this RFP. Please note that existing retainer agreements will not be affected by the expiration of the pre-qualified list; however, any firm, including those currently providing services to ESD pursuant to a retainer agreement, must respond to this RFP if they wish to be pre-qualified to provide real estate development and planning consultant services to ESD under a future contract.

In the event that the principal partners and employees identified as being responsible for ESD’s matters or other key members of a pre-qualified firm’s team in a particular area of expertise, leave the prequalified firm, the pre-qualification will “follow” these key firm member(s). Similarly, if a pre-qualified firm combines with another firm and such principal partners and other employees remain with the newly combined firm, the newly combined firm will be considered to be pre-qualified in that area of expertise.

MWBE & SDVOB Subcontractor Interest

This RFP will not result in a direct contract, as it is for the development of a pre-qualified list for potential future engagements. However, 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 future procurements resulting from the pre-qualified list. 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 REprequalRFP@esd.ny.gov. Nothing prohibits a MWBE or SDVOB Vendor from proposing as a prime contractor, and ESD strongly encourages that MWBE and SDVOBs to respond

to this RFP to be considered in the development of the pre-qualified list.

III. REQUESTED SERVICES

ESD is seeking proposals from real estate development and planning firms that have demonstrated expertise in one or more of the following areas (“Practice Areas”):

- 1) Real Estate and Planning Advisory Services- Including, but not limited to, firms that can perform:
 - Land Use and Zoning Analysis
 - Commercial Real Estate Advisory Services
 - Real Estate Market Research
 - Real Estate Financial Analysis
 - Technical Advice and Due Diligence
 - Site Selection
 - Real Estate Brokerage and Marketing

- 2) Financial and Economic Analysis- Including, but not limited to, firms that can perform:
 - Economic Feasibility Analysis
 - Economic Impact Analysis
 - Cost/Benefit Analysis
 - Regulatory Analysis and Review
 - Due Diligence Analysis

- 3) Architecture and Design- Including, but not limited to, firms that can perform:
 - Master Planning/Project Programming Design
 - Design Development Phase Services
 - Safety and Security Analysis
 - Renderings and Graphic Presentations
 - Construction Documentation
 - Landscape Architecture

- 4) Construction and Engineering- Including, but not limited to, firms that can perform:
 - Site Planning
 - Safety and Risk Management
 - Quality Assurance
 - Construction Inspection
 - HVAC, Electrical, Plumbing and Fire/Life Safety Engineering
 - Energy and Sustainability Services

- 5) Phase I Environmental Site Assessments- In accordance with the United State Environmental Protection Agency (USEPA) Standard and Practices and the Guidelines established by the American Society for Testing and Materials.
- 6) Environmental Review- Including, but not limited to, firms that can perform:
 - Environment Impact Studies
 - Permitting and Environmental Documentation
 - Environmental Quality Analysis
 - State and Federal Permit Applications
- 7) Infrastructure Advisory Services- Including, but not limited to, firms that can perform:
 - Feasibility Studies
 - Risk Identification and Assessment
 - Implementation Assistance
 - Evaluation and Monitoring Services
 - Regulatory/Policy Advisory Services
 - Bid Evaluation and Procurement Assistance
- 8) Transportation Planning- Including, but not limited to, firms that can perform:
 - Land Use/Transport Planning
 - Transportation Policy Development
 - Traffic Impact Studies
 - Travel Demand Forecasting
- 9) Historic Preservation and Adaptive Reuse- Including, but not limited to, firms that can perform:
 - Condition Assessments
 - Historic Structure Report Services
 - Construction Oversight Services
 - Excavation and Underpinning of Historic Structures
 - Seismic Evaluations and Upgrades
- 10) Surveyors- Including, but not limited to, firms that can perform:
 - Land Partitioning
 - Site Surveys
 - Flood Elevation Certificates
 - Architectural/Topographical Surveys

ESD strongly encourages firms that are certified by New York State as minority- and women-owned business enterprises (“MWBE”) or service-disabled veteran-owned businesses (“SDVOB”), as well as firms that are not yet certified, but have applied for certification, to submit responses

to this RFP.

Please note that inclusion on ESD's pre-qualified lists does not mean or imply that any firm will in fact be selected or engaged to provide such services to ESD, its subsidiaries or affiliates. Such selection and engagement will take place only when a need for such services arises. The purpose of the pre-qualified list is to procure firms available for engagement on short notice.



Figure 1. Map of New York State Regions

IV. SCHEDULE OF DATES

Release of RFP	Thursday, May 13, 2021
Deadline for Submission of Questions	Monday, May 24, 2021 at 5:00 PM
ESD to Respond to Questions	Tuesday June 1, 2021
Deadline for Submission of Proposals	Friday, June 16, 2021 at 2:00 PM
Interviews (if Necessary)	June/July 2021
Announcement of Pre-qualified Firms	August 2021

ESD reserves the right to modify this schedule at its discretion. Notification of changes in connection with this RFP will be made available to all interested parties via the New York State Contract Reporter and ESD’s website at <https://esd.ny.gov/pre-qualified-real-estate-and-planning-firms-rfp>.

V. SELECTION CRITERIA

Eligible firms must have a New York State office at the time of submission and will be subject to ESD contracting requirements including, among other things, standard rates for reimbursable expenses. Although proposed fees will be taken into account, ESD reserves the right to negotiate a lower or different fee structure with any firm(s) selected.

In evaluating proposals submitted pursuant to this request, ESD will consider the following factors at the associated weightings:

- 1) Relevant Experience in Practice Area (30%)
- 2) Qualifications and Experience of Staff in Practice Area (30%)
- 3) Anticipated Costs of Services in Practice Area (20%)
- 4) Overall Organization and Completeness of Proposal (10%)
- 5) Quantitative Factors (10%)

VI. SUBMISSION OF PROPOSALS

Every respondent to this RFP (“Bidder”) should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be 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.

1) Technical Proposal

The purpose of the Technical Proposal is to provide Respondents with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described

herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

- A. Cover Page
- B. Table of Contents
- C. Basic Information, Qualifications & Experience
- D. Quantitative Factors
- E. Fee Proposal

A. Cover Page

- 1) 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.
- 2) The name and contact information of the staff member to be contacted if additional information is required regarding the proposal.

B. Table of Contents

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

C. Basic Information, Qualifications & Experience

- 1) Clearly indicate which one or more of the Practice Areas listed above in Section III: Requested Services of this RFP the firm is interested in serving.
- 2) For each Practice Area identified, provide a description of the firm's relevant experience. Include a brief description of representative projects and specify the firm's role, including relevant dates and a description of the client for each.
- 3) Indicate whether services have been provided previously to ESD or any of its subsidiaries or affiliates, or any other New York State, local or federal entities. If so, list and describe any and all work performed including (a) the date(s) such work was performed, (b) the entity for which such work was performed, and (c) the area of expertise for the work performed.
- 4) Provide the names of the principal partners and other employees who would be responsible for ESD's matters, and a description of the relevant qualifications and experience of each in the Practices Areas identified.
- 5) Provide additional background information, such as number of staff in the firm, location of all offices, and organizational charts.
- 6) Identify and provide contact information for the person(s) in the firm who will be

ESD's primary point(s) of contact.

6) Provide at least three references with contact information.

D. Quantitative Factors

ESD will award up to 10 percent to respondents that are New York State certified MWBEs, as defined in section three hundred ten of the New York State Executive Law, or 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 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. 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>.

E. Fee Proposal

Respondents must submit a completed Fee Proposal as provided in Appendix A for each of the Practice Areas they wish to be considered. An electronic excel document of this form must also be submitted with the Proposal. On each Fee Proposal, Respondents should list each appropriate staff member's title expected to provide services 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. In listing the hourly rates for staff titles, Respondents should include all costs, excluding out-of-pocket reimbursable expenses related to travel but including overhead and profit. Rates should be the full billable rates that reflect each consultant's salary, fringe benefits, overhead, G&A and profit. This "fully-loaded labor rate" should be what ESD will be charged for each hour of work on the project. Reimbursable expenses will be reimbursed by ESD at standard governmental rates.

Respondents must indicate whether rates and fees are fixed or have annual increases depending on the staff title. If increases are expected, Respondents must provide escalation rates for each staff in Appendix A. ESD will negotiate maximum rates for any selected participants.

2) Administrative Proposal

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

- i. <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal
- ii. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- iii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iv. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>,
- v. submit with proposal
- vi. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - o [OCSD-2 - Staffing Plan](#)
 - o [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- vii. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- viii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- ix. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in Section IX: Contractual Requirements of this RFP.

3) Submission of a Complete Two-Part Proposal

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

1. The Technical Proposal and Appendix A must be submitted electronically before the submission deadline via the designated email REprequalRFP@esd.ny.gov.
2. The Administrative Proposal, Appendix B, and all related forms must be submitted electronically before the submission deadline via the designated email REprequalRFP@esd.ny.gov.

Late proposals will not be considered for award.

VII. QUESTIONS

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

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section IV: Schedule of Dates to REprequalRFP@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 at <https://esd.ny.gov/pre-qualified-real-estate-and-planning-firms-rfp>.

In addition, any changes, additions, or deletions to this RFP will also be posted on ESD’s website, along with the electronic version of this RFP. Firms should note that any necessary clarification must be sought by the deadline for questions set forth in Section IV: Schedule of Dates of this RFP. Firms are urged to check ESD’s website frequently for notices of any clarification of or changes, additions or deletions to the RFP.

VIII. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by 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 Respondent;
- vii. communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. extend the term of any agreement on terms consistent with this RFP.

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

All information submitted in response to this RFP is subject to the Freedom of Information Law, 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, all responses may be discussed at meetings of the ESD Directors, which are subject to the Open Meetings Law.

Required Approvals

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

Performance

Should a Respondent enter into a future contract with ESD based on its inclusion on a Pre-Qualified List resulting from this RFP, the firm's ("Contractor") performance will be assessed by ESD according to the achievement of the Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. ESD will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work 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 ESD, 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

ESD may, at any time, by written notice, make changes or additions to work or services within the general scope of a contract (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that ESD, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

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

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

Future agreements resulting from this RFP are 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, 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 an agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

IX. CONTRACTUAL REQUIREMENTS

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

1) 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.

2) 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 Respondents 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 Respondents 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.

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://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, 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. The designated contact account for this solicitation is referenced on the cover of this RFP.

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

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf All potential Respondents are solely responsible for full compliance with the

Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

3) Vendor Responsibility Questionnaire

All Respondents 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 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. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

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

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

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

4) 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 that each Respondent is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law."

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

5) Executive Order 177

In accordance with New York State Executive Order 177, all Respondents 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 can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

6) Non-Discrimination and Contractor and Supplier Diversity Requirements

Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

NEW YORK STATE LAW

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's contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an 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 (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 ESD’s Office of Contractor and Supplier Diversity (“OCSD”).

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 OCSD for review and approval.

OCSD will review the submitted MWBE Utilization Plan and advise the respondent of OCSD’s acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OCSD to be inadequate, OCSD 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 M/WBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Respondent agrees with all of the terms and conditions of Form OCSD-1, MWBE Participation/EEO Policy Statement. 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 Form OCSD-1, MWBE Participation/EEO Policy Statement, 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 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.

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

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf

Form OCSD-2

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf

Form OCSD-3

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

Form OCSD-4

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

Form OCSD-5

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

Form OCSD-6

<https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from the Office of Contractor & Supplier Diversity at OCSD@ESD.NY.GOV.

For purposes of providing meaningful participation by MWBEs on the Project and achieving the Project goals established herein, Respondent should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>

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, Respondents 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.

I. 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 Respondent/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.

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent 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 Respondent 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 Respondent/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Respondent/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 Respondent/Contractor and direct the Respondent/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. 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 Respondent's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Respondent fails to submit an SDVOB 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.
- 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.

III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Respondent/Contractor shall speak to the Designated Contacts at ESD for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Respondent/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 Respondent 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 Respondent'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 ESD.

IV. Required Good Faith Efforts

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

- A. Copies of solicitations to SDVOBs and any responses thereto.
- B. Explanation of the specific reasons each SDVOB that responded to Respondents/Contractors' solicitation was not selected.

- C. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- D. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- E. Other information deemed relevant to the waiver request.

V. 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.

VI. 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, Respondents/proposers 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 Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses

that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

IX. Schedule A

Should ESD determine to engage a successful Respondent, ESD will prepare a contract defining all project terms and conditions and the contractor's responsibilities in conformance with Schedule A, which can be found at: <http://www.esd.ny.gov/CorporateInformation/Data/ScheduleA.pdf>.

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

7) 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, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

8) Insurance Requirements

Respondents that are engaged in future contracts with ESD 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.

9) W-9 Form

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

X. Appendices

Appendix A: Fee Proposal template

Appendix B: Administrative Proposal Check List