



**Empire State
Development**

Request for Proposals (“RFP”) For Insurance Brokerage Services

Issued: 7/12/22

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section 9 – Letter i).

Designated Contacts for this Procurement:

Primary Contact: John F. Discolo
Secondary Contact: Ralph Volcy

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

ESDINSURANCEBROKER@esd.ny.gov

This RFP is posted on the Empire State Development website:

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

Submission Deadline: August 19, 2022, by 5:30 PM ET

Late proposals will not be considered

Contents

1) INTRODUCTION	2
2) OVERVIEW	2
3) SCOPE OF WORK	7
4) SCHEDULE OF DATES	10
5) SELECTION CRITERIA	10
6) SUBMISSION OF PROPOSALS	11
A. Technical Proposal	12
B. Administrative Proposal	13
7) QUESTIONS	14
8) GENERAL PROVISIONS	15
9) CONTRACTUAL REQUIREMENTS	17
i. Conflicts of Interest	17
ii. State Finance Law Sections 139-j and 139-k forms	18
iii. Vendor Responsibility Questionnaire	19
iv. Iran Divestment Act	20
v. Executive Order 16	20
vi. Executive Order 177	20
vii. Non-Discrimination and Contractor & Supplier Diversity Requirements	21
viii. Encouraging the Use of NYS Businesses in Contract Performance Form	27
ix. Certification under State Tax Law Section 5-a	27
x. Schedule A	27
xi. Project Sunlight	28
xii. Insurance Requirements	28
xiii. W-9 Form	28

1) INTRODUCTION

Empire State Development (“ESD” or the “Corporation”) is seeking proposals (“Proposals” or “Responses”) from qualified Insurance Broker/Risk Management firms (“Respondents”, “Vendors” or “Brokers”) to provide insurance broker and risk management services to both ESD and the Job Development Authority (“JDA”), as well as their subsidiaries and affiliates. The selected respondent (“Selected Respondent”) will be expected to assess ESD/JDA’s insurance needs, recommend the appropriate insurance coverage and deductibles, as well administer and maintain ESD/JDA’s insurance program at the most reasonable cost to the Corporation. Respondents must provide evidence of professional experience, qualifications, capability, and personnel to perform these services, with a demonstrated history and expertise in providing insurance placement and risk management services to clients similar in nature and mission to that of the Corporation. The proposed contract term will be for five (5) years beginning November 2022, and ending November 2027, subject to change, if needed.

This RFP contains instructions for submitting Proposals and related materials, a description of the responsibilities and tasks to be provided, qualification requirements for consideration, RFP response evaluation criteria, and other requirements necessary to do business with ESD.

2) OVERVIEW

Empire State Development Risk Profile

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 New York State through the efficient use of loans, grants, tax credits, real estate development, marketing, and other forms of assistance.

ESD is responsible for maintaining insurance coverage to ensure the protection of its Board members, employees, and assets, as well as those of its subsidiaries. ESD has insurance policies with several insurance carriers to maintain an insurance program with possible protection and pricing for all parties involved, with a current risk profile that includes the following:

- A. ESD is currently staffed with approximately three hundred twenty-six (326) full-time employees and leases and/or owns six (6) automobiles that are available for use by selected staff members
- B. ESD leases, owns, or requires insurance coverage for approximately two hundred (200) properties (See Appendix A Property List by County “Appendix A”)
- C. ESD’s Real & Personal property has an estimated value of \$102 million

The following is a summary of ESD’s current insurance program:

Line of Insurance	Insurance Policy Limits
Directors & Officers Liability / Employment Practices Liability (Excess Included)	\$3 million aggregate coverage/shared limits
Commercial General Liability	\$1 million per occurrence/\$2 million general aggregate
Workers' Compensation	Workers' Compensation NYS Statutory Limits Employers Liability Limits: \$1,000,000 Bodily Injury each Accident \$1,000,000 Bodily Injury by Disease – Policy Limit \$1,000,000 Bodily Injury by Disease – Each Employee
Excess & Umbrella Liability	\$25 million general aggregate
Real & Personal Property	\$102.5 million total coverage
Automobile Liability	\$1 million aggregate coverage/ \$1 million per occurrence
Employee Crime & Dishonesty	\$5 million aggregate coverage
Crime Excess-Fraudulently Induced Transfers	\$500,000 excess
Cyber	\$5 million aggregate
AD&D	\$1 million aggregate
Fine Arts	7.8 million total coverage

ESD's primary subsidiaries include:

- A. New York Convention Center Development Corporation ("CCDC") – CCDC's purpose is to plan, design, construct, and develop the Jacob K. Javits Convention Center ("Javits") on the west side of Manhattan. Since opening in 1986, Javits has been New York City's primary venue for large conventions, exhibitions, and major trade shows. Javits contributes to both the City and State economy, while stimulating direct and indirect employment, economic activity, and tax

revenues. Javits is nearing final completion of a \$1.5 billion expansion project creating more than one million square feet of additional useable convention space. This new state-of-the-art facility will enable Javits to attract the world's best and largest conferences, events, trade shows, and conventions. CCDC, the Javits development corporation, has delivered possession and control of the expansion to the Javits operating corporation, New York Convention Center Operating Corporation ("CCOC"). Pursuant to the Lease between CCDC (which remains owner/Landlord) and CCOC (which is operator/Tenant), CCOC is responsible for maintaining requisite operating insurance for Javits. All insurance for the Javits expansion project is in place and, at this time, CCDC is not expecting to purchase additional insurance for the expansion. CCDC may need insurance in the future for other Javits capital improvement projects.

- B. Erie Canal Harbor Development Corporation ("ECHDC") –ECHDC supports and promotes the creation of infrastructure and public activities at Canalside, and the Outer Harbor, located in Buffalo, New York. These locations attract critical mass, private investment, and enjoyment of the waterfront by local residents and tourists in Western New York. All insurance for this subsidiary is covered by ESD's corporate insurance program.
- C. Harlem Community Development Corporation ("HCDC") – HCDC formulates policies, partnerships, and revitalization initiatives to promote economic growth in Harlem. HCDC's primary focus is on commercial development, planning and development, residential development, and the Weatherization Assistance Program. There is a separate insurance program placed by the developer for the revitalization and redevelopment of the Victoria Theater. All other HCDC programs are covered by ESD's corporate insurance program.
- D. Lower Manhattan Development Corporation ("LMDC") – LMDC's mission is to revitalize lower Manhattan. It works in cooperation with its public and private sector partners to coordinate long-term planning for the World Trade Center site and surrounding communities, while pursuing initiatives to improve the quality of life in lower Manhattan during the revitalization effort. All insurance for this subsidiary is covered by ESD's corporate insurance program.
- E. Moynihan Station Development Corporation ("MSDC") – MSDC is responsible for redeveloping the James Farley Postal Service facility ("Farley Building"), into a modern transportation hub. The Moynihan renovation is a \$1.6 billion project that has dramatically modernized, upgraded, and redesigned America's busiest transit hub into a world-class facility. ESD maintains general liability insurance coverage as owner of the Farley Building and maintains professional and environmental liability insurance policies for the renovation project. The developer has a separate insurance program for the redevelopment of the Farley Building. All insurance for the Moynihan Train Hall project is in place and, at this time, we do not expect to purchase additional insurance for the project.
- F. USA Niagara Development Corporation ("USAN") – USAN is primarily responsible for overseeing economic development initiatives by leveraging investment and renewal of the tourism industry in Niagara Falls. All insurance for this subsidiary is covered by ESD's corporate insurance program.

- G. Eerie County Stadium Corporation (“ECSC”)- ECSC has entered into an MOU with the Buffalo Bills to construct at the new stadium at a cost of approximately \$1.4 billion. The new stadium and adjoining complex will be owned by the ECSC and leased to the Bills for a term of 30 years. The State, through ECSC, will contribute \$600 million towards the cost of construction with the County contributing \$250 million and the Bills paying the remainder. Ownership of the stadium complex by ECSC is not expected until completion of construction in 2026.
- H. Atlantic Yards Community Development Corporation (“AYCDC”)- AYCDC is charged with reviewing and making recommendations to the ESD Board of Directors on the Atlantic Yards Project, a 22-acre, \$4.9 billion project, that consists of the 18,000-seat Barclays Arena; the development of a reconfigured and improved LIRR train yard and subway facility upgrades; the development of 16 buildings for residential and commercial uses; and the creation of eight acres of publicly accessible open space. The Developer has a separate insurance policy for the Project; there are specific insurance requirements in each development lease, including requirements for commercial general liability, excess liability, builder’s risk, and environmental insurance.

The following projects are either currently underway or are expected to begin during the proposed term of services:

- A. Pennsylvania Station Area Civic and Land Use Improvement Project-ESD is undertaking a comprehensive redevelopment initiative to create a cohesive, transit-oriented district around Penn Station and add much-needed mixed-use development and civic improvements. Specifically, the Project would result in the development of ten new buildings on eight development sites and support the reconstruction of the existing station along with the station expansion and the Gateway Project initiatives. The project will transform Penn Station into a commuter-first world-class transit hub and revitalize the surrounding neighborhood to both reflect the community's needs and focus on public transit and public realm improvements.
- B. High Line Moynihan Connector Project- This proposed project, estimated at \$50 million and expected to be completed by Spring 2023, would give pedestrians safe, unobstructed access to the Far West Side of Manhattan via two bridges that would connect to the Tenth Avenue terminus of the High Line. A public-private partnership comprising ESD, the Port Authority of New York and New Jersey, Brookfield Properties Group, and Friends of the High Line is undertaking the project. ESD will own the High Line structure once construction is completed.
- C. World Trade Center Site 5-The World Trade Center Memorial and Cultural Program Land Use Improvement and Civic Project Plan was originally adopted by the LMDC in 2004 to provide for memorial and cultural uses as well as commercial redevelopment of the World Trade Center after the attacks of September 11, 2001. In 2019, LMDC and the Port Authority entered into another MOU to jointly issue an RFP for Site 5 that would allow for as-of-right commercial development or mixed-use development, including a requirement for an affordable housing

component, which would require a modification to the Project Plan. On February 11, 2021, after a competitive RFP process, a mixed-use Project and Development Team was conditionally designated by the LMDC Directors. If the transaction is approved, ESD would own Site 5 and serve as landlord for the Site 5 long-term lease.

Job Development Authority Risk Profile

JDA is a public benefit corporation, charged with spurring job growth and capital investment in New York State by using the authority granted to it and by leveraging State-guaranteed bonds to support low-interest loans to manufacturers and other targeted industries throughout New York State.

JDA is responsible for maintaining insurance coverage to ensure the protection of its Board members and assets, as well as those of its affiliates. JDA does not employ any staff. JDA leases, owns, or requires insurance coverage for approximately ten (10) properties (See Appendix A)

Affiliates of JDA include:

- A. Brooklyn Arena Local Development Corporation
- B. Canal Side Local Development Corporation
- C. Empire State Local Development Corporation
- D. New York Liberty Development Corporation
- E. New York Transportation Development Corporation

The insurance requirements for JDA are limited to the following, as additional JDA insurance is included under ESD’s policies:

Line of Insurance	Insurance Policy Limits
Directors & Officers Liability / Employment Practices Liability (Excess Included)	\$3 million aggregate coverage

MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (“MWBEs”) and Service-Disabled Veteran Owned Businesses (“SDVOBs”) may request that their Vendor’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 Vendor requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to ESDINSURANCEBROKER@esd.ny.gov. Nothing prohibits an MWBE Vendor from proposing as a prime contractor.

3) SCOPE OF WORK

This section details the Scope of Work (“Scope”) that the Selected Respondent will provide ESD under the contract awarded from this RFP. Under this Scope, JDA and its affiliates will be included in ESD’s overall Risk Profile. The Selected Respondent’s responsibilities and tasks shall include, but are not limited to, the following:

A. ESD Risk Profile Analysis/ Maintenance Services

1. Immediately upon contract execution, Selected Respondent will assign a primary account representative (“Primary Account Representative”) to perform in-depth analysis of ESD’s current insurance programs, gathering all requisite exposure data and loss data from ESD and its subsidiaries for use in the development of coverage specifications, and use this information to make recommendations regarding areas of concern, and present alternative solutions to address such concerns. This initial risk profile review (“Risk Profile Review”) will be provided to ESD approximately sixty (60) days from contract execution date. Subsequent Risk Profile Reviews will be provided annually, one hundred twenty (120) days prior to ESD’s April 1 policy expiration date, for every year covered under this contract. The report shall include:
 - i) Review of the prior policy year:
 - a. Summary of schedule of policies in force
 - b. Summary of coverage provisions
 - c. Summary of premiums
 - d. Summary of specific insurance liability limits
 - e. Deductibles and self-insured retention review (“SIR”)
 - f. Summary of Insurance claims
 - g. Summary of Broker support services rendered during the prior policy year
 - h. In the event commissions are paid on any policy, selected respondent will report actual commissions earned on all business placed by the Broker on behalf of ESD
 - ii) Recommendations
 - a. Recommendations for elimination of any gaps and/or overlaps in overall ESD’s insurance coverage
 - b. Recommendations to reduce ESD’s risk exposure
 - c. Recommendations for possible adjustments to insurance coverage for the next policy year
 - d. Recommendations for additional broker services not included in this RFP for the next policy year, if applicable
 - iii) Forecast
 - a. Forecast of insurance premiums and service costs for the upcoming fiscal year
 - b. Forecast of insurance industry and how changes may affect upcoming fiscal year
2. Throughout the life of the contract, ensure that ESD and its contractors maintain appropriate levels of insurance and notify ESD of any new developments in the insurance industry that may impact its insurance coverage. As ESD operations change, identify new

issues, exposures, and potential gaps in coverage, keeping ESD informed of significant insurance matters that will impact ESD's risk exposure and insurance program

3. Coordinate insurance coverage between ESD and its subsidiaries, thereby mitigating duplicative insurance coverage
4. Provide annual assistance with the update of ESD's property schedule, including property inspections/surveys, researching details about said properties if requested by insurance carriers, and making recommendations to lower premiums
5. Throughout the life of the contract, monitor financial information of ESD's current insurers and immediately notify ESD if any carrier on ESD's program has been downgraded by A. M. Best or is on a negative watch. Present a strategy to replace the affected carrier in a report for review by ESD within fifteen (15) calendar days of notification to ESD

B. Insurance Renewal Services

1. Provide annually a schedule for ESD's insurance program renewal, including timelines and assignments at least one hundred twenty (120) days prior to ESD's April 1 policy expiration. This schedule must include the Risk Profile Review, as specified in Section A.1
2. Work with ESD to organize, develop, and present ESD's operations/company risk profile and insurance coverage requirements to insurance underwriters
3. After review and approval by both Selected Respondent and ESD, submit coverage specifications to insurance carriers for consideration, utilizing all marketing facilities, and canvass all of the markets in-depth for competitive proposals
4. Evaluate insurance underwriter bids and present ESD with a package of insurance policy terms, conditions, and premiums that best reflect ESD's goals and objectives, including: (1) a narrative describing competitive bidding, (2) a matrix comparing insurance policy proposals, and (3) recommendations regarding insurance carriers, coverage limits, premiums, terms, conditions, and risk exposure
5. Obtain coverage net of commissions, where possible
6. Renewal quotes must be provided at least sixty (60) days prior to the April 1 insurance policy renewal
7. Negotiate insurance policy terms prior to binding coverage, keeping ESD fully informed of the marketing process. No insurance coverage, terms, or conditions may be bound without ESD's prior written authorization
8. Review proposed insurance policies and endorsements for accuracy and conformity to specifications and negotiated coverage
9. Deliver all insurance policies to ESD within thirty (30) days after the insurance coverage is bound on April 1; this should include a complete summary of ESD's insurance program, including insurance policy limits, terms, premiums, deductibles, insurance carrier, and any other relevant information for each insurance policy

C. ESD Third-Party Agreements/Contractual Risk Services

1. Review/recommend changes to standard insurance specifications for all of ESD's procurement documents
2. Advise on ESD's insurance requirements for its major construction projects to ensure that adequate insurance coverage is provided by ESD and the contracting party; this will include negotiation with contractors, developers, tenants, vendors, and their insurance brokers to

ensure proper protection for ESD is in place via risk transfer, indemnification, and additional insured status (among other steps)

- i. For major contracts, and those involving hazardous operations, maintain duplicate contract file and closely monitor contractor compliance with the insurance requirements of each contract by reviewing certificates, endorsements, and other policies. Provide ESD with periodic printouts and list of contracts being monitored on a monthly basis
3. Provide input during the drafting stage for Memorandums of Understanding (“MOUs”), Development Agreements and other contracts with third parties to identify potentially serious hazards and ensure proper coverage is in place for all phases of each project; Actively participate on all contract negotiations involving insurance, indemnity, or other pure risk assumptions or provisions prior to the execution of any ESD contracts.
4. Review and advise on appropriate insurance terms and requirements for all ESD contracts to ensure proper insurance coverage is in place during and after the contract term
5. Provide insurance certificates to third parties in accordance with standards, procedures, and specifications to be provided by ESD
6. Provide additional risk management and insurance consultation services and special projects, as requested

D. Claims Services

1. Provide an experienced, dedicated insurance claim expert to assist ESD with reviewing and managing its insurance claims
2. Notify insurance carriers of all potential and actual insurance claims against ESD and its affiliates
3. Address emergency mitigation procedures for property related claims
4. Monitor insurance claims to ensure that the carrier handles all claims properly and in a timely manner
5. Review claims for their validity, monitor potential fraudulent claims, and provide notice of excess carriers on the program
6. Advocate for ESD on any disputed or problem insurance claims
7. Meet quarterly with ESD and respective carriers to review all open insurance claims and settlement

E. Administrative Services

1. Primary Account Representative will be available at any time upon reasonable notice on any and all insurance-related matters
2. Provide ESD detailed, accurate invoices with rating adjustments, dividends, and other factors impacting the policy premiums, fees/commissions, and other policy expenses
3. Assist with preparation and presentation of ESD Board materials as needed
4. Provide presentations to ESD’s Board and others on issues relating to the renewal, coverage, and market updates of the insurance programs, when directed by ESD
5. Prepare insurance data for audits , when directed by ESD
6. Assist ESD with creating and maintaining corporate risk management policies and procedures/loss prevention plan

7. In the event that broker representatives are reassigned, ESD will be notified and newly assigned staff will participate in an introductory meeting with ESD within thirty (30) days
8. Provide training to ESD staff on risk management, as requested

4. SCHEDULE OF DATES

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

Release of RFP	7/12/22
Deadline for Submission of Questions	7/22/22 at 5:30 PM EST
Deadline for ESD to Respond to Questions	7/29/22 at 5:30 PM EST
Pre-bid meeting (if applicable)	Week of 8/1/22-8/5/22
Submission of Proposals (date and time)	8/19/22 at 5:30 PM EST
Interviews (if necessary)	September 2022
Announcement of Successful Bidder	October 2022
Anticipated Contract Start Date	November 2022

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

5. SELECTION CRITERIA

The selection process will begin with the review and evaluation of each written RFP Response. The purpose of this evaluation is to: (1) examine the Responses for compliance with this RFP, and (2) identify the Vendors that have the ability to meet the scope of services required by ESD at competitive rates. Respondents that meet all the mandatory qualifications as outlined within this RFP will be evaluated and scored by ESD staff based upon the following selection criteria:

- A. Servicing Capabilities (30%)
 1. Each Respondent will be evaluated on its qualifications pursuant to this RFP and demonstration of its ability to provide the insurance broker services included in this RFP
- B. Relevant experience of personnel assigned to account (20%)
 1. Each Respondent will be evaluated on to its organizational support and experience of staff assigned to servicing the ESD Insurance Program
- C. Clientele with comparable business experience/operations (20%)
 1. Each Respondent will be evaluated on specific examples of insurance services provided to government clients and/or large-scale real estate developments clients with operations comparable to ESD
- D. Fee Structure (25%)
 1. Each Respondent will be evaluated on its broker, claims and administrative services fee structure, as well as any other relevant fees
- E. Diversity Practices (5%)

1. ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using the attached Diversity Practices Scoring Matrix Appendix B ("Appendix B"). Up to 5 points will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix B, submitted by each Respondent to the RFP.

It is expected that a maximum of three (3) applicants will be selected, or "short listed" for interviews. Interviews will be held at ESD's New York City Offices or remotely through a virtual conference platform. The purpose of the interview may be to review Respondents' ability to provide the required services, and how specific services will be furnished. Selection of interviews will be based upon an independent evaluation of the submitted proposals using the factors specified above. ESD reserves the right to forego the interview stage as determined in its sole judgement.

Final selection will be based upon the above factors, as well as the interview performance. The final selection will be a "best value" selection.

6. SUBMISSION OF PROPOSALS

All Proposals must be delivered electronically to ESDINSURANCEBROKER@esd.ny.gov on August 19, 2022 no later than 5:30 PM EST. Submissions of proposals in a manner other than as described in these instructions will not be accepted.

All questions, comments, requests for clarification or any other communication regarding this RFP must be submitted in writing *no later July 22, 2022 at 5:30 P.M. EST* by email to: ESDINSURANCEBROKER@esd.ny.gov. Answers will be posted no later than July 29, 2022 via ESD's website: <http://esd.ny.gov/CorporateInformation/RFPs.html>.

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. Respondents should note that any necessary clarification must be requested by the deadline for questions set forth in the "Schedule of Anticipated Dates" section in this RFP.

Respondents are encouraged to check ESD's website frequently for notices of any clarification of or changes, additions, or deletions to this RFP. It is the responsibility of the Respondent to periodically check the website for any new information or addenda to the RFP.

OTHER THAN THE CONTACT WEB ADDRESS IDENTIFIED ABOVE, PROSPECTIVE RESPONDENTS SHALL NOT APPROACH ESD EMPLOYEES DURING THE RESTRICTED RFP PERIOD PROCESS ABOUT ANY MATTERS RELATED TO THIS RFP OR ANY QUALIFICATIONS SUBMITTED PURSUANT THERETO.

It is the responsibility of each individual or firm to ensure timely submission of its Proposal. Proposals submitted after the scheduled submission deadline cannot be accepted. A respondent accepts all provisions of this RFP by submitting a proposal and is responsible for the accuracy of its submission.

By submitting a Proposal, each respondent authorizes ESD to contact any and all other persons identified in its Proposal or in any inquiry conducted by or on behalf of ESD, and to obtain the release of pertinent financial and other information, as well as to obtain verification of the information provided by each respondent.

ESD will not be held liable for any costs, including travel expenses, incurred by any respondent for work performed in the preparation and production of a submitted proposal, including any requests for additional information, interviews or negotiations, or any work performed prior to written authorization from ESD to proceed. All proposals submitted will become the property of ESD.

ESD shall act as the sole judge of the content of the proposals submitted, may negotiate an agreement with any or no respondent, or may waive any informalities or irregularities. Issuance of this RFP and receipt and evaluation of responses do not obligate ESD to undertake any action. ESD will evaluate proposals and may interview one or more respondents. Key personnel and staff assigned to the engagement must be present at any interview. ESD reserves the right to interview some, none, or all respondents as it deems appropriate. ESD's request for an interview shall not constitute acceptance of a proposal. ESD reserves the right to request "best and final offers" or to conduct other additional competitive proceedings with respect to this RFP. ESD staff will recommend contract award to ESD Directors at a regularly scheduled ESD Board meeting.

Every respondent to this RFP should submit a proposal which clearly and concisely provides a description of the proposer's ability to meet the RFP requirements. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity of its proposal response. The respondent is advised to thoroughly follow all the RFP instructions. Proposals that do not comply with these instructions or do not meet the full intent of all the RFP requirements may be subject to reduced scoring during the evaluation process or may be deemed non-responsive.

Information provided by references may be used by ESD for proposal evaluation purposes. ESD may request additional information from references regarding the responder's quality of service, ability to perform the required RFP services, and responsiveness to the client. ESD reserves the right to deploy, at its sole discretion, a variety of communication methods to contact references.

A. Technical Proposal

The respondent is required to provide the information listed below. The purpose of the 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. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below:

A. Table of Contents

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

B. Firm Experience and Qualifications

1. Demonstrate at least five (5) years of successful similar brokerage experience with government clients and/or large-scale real estate development clients, and provide at least three (3) references, with contact information
2. Demonstrate the ability to access insurance markets with sufficient market capability to participate in ESD's insurance program
3. Demonstrate the ability to identify risk, recommend appropriate insurance coverage and limits, and analyze losses to provide the most cost effective and comprehensive insurance program for clients similar to ESD
4. Demonstrate at least five (5) years of providing expert loss control and insurance claims support services for a portfolio of government clients and/or large-scale real estate developments clients
5. Provide information about the history and organization of your firm, including the number of employees and number of offices and locations
6. Provide a copy of your firm's audited financial statements for the most recent fiscal year

C. Staff Experience and Qualifications

1. Describe the staff that will be designated to ESD's insurance program and the services that they will provide. If you plan to use other firms as partners or subcontractors, please provide a profile of their staff and the services that they will provide
2. Name the principal contact and other key personnel that will be primarily responsible for servicing ESD's insurance program. Please include their addresses, email addresses, and telephone numbers

D. Project Plan and Approach

1. Provide an overview of your marketing strategy for ESD's insurance program
2. Please describe in detail how you would provide all the insurance brokerage services required by ESD
3. Provide a detailed technical plan for accomplishing the work with the responsibilities and task descriptions in Part 3 ("Scope of Work") as your reference point

- E. Estimated Cost:** Please provide a complete fee schedule for your brokerage, administration and claims services. All fees and commissions must be identified separately from the insurance policy premiums.

B. Administrative Proposal

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

are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

- A. <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal
- B. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- C. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- D. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>, submit with proposal
- E. <https://esd.ny.gov/sites/default/files/EO16-certification.pdf>
- F. <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>
- G. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - 1. [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - 2. [OCSD-2 - Staffing Plan](#)
 - 3. [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- H. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
 - I. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
 - J. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in Section 9 of this RFP ("Contractual Requirements").

Submission of a Complete Two-Part Proposal

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

1. The Technical Proposal and all related appendices must be submitted electronically before the submission deadline via the designated email ESDINSURANCEBROKER@esd.ny.gov.
2. The Administrative Proposal and all related forms must be submitted electronically before the submission deadline via the designated email ESDINSURANCEBROKER@esd.ny.gov.

Late proposals will not be considered for award.

7. QUESTIONS

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section 4 (Schedule of Dates) to

ESDINSURANCEBROKER@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.

8. GENERAL PROVISIONS

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

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

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

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

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

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one

million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

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

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

Additional Services Requested

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

Contractor Staff

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

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience,

knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

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

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

9. CONTRACTUAL REQUIREMENTS

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

i. Conflicts of Interest

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

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

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Bidders must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror'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 Bidders during the Restricted Period, make a determination of the responsibility of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation.

In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

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

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

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

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

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

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

In addition, please see link to EO-192: https://ogs.ny.gov/system/files/documents/2021/09/eo-192-vendor-integrity_0.pdf

iv. Iran Divestment Act

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

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

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <https://ogs.ny.gov/system/files/documents/2022/05/iran-divestment-act-list-of-entities-5-4-22.pdf>

v. Executive Order 16

In accordance with New York State Executive Order 16 ("EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

"By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16."

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO16-certification.pdf> and must be signed and included in all Proposals.

vi. Executive Order 177

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

The required certification for can be found at:

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

vii. Non-Discrimination and Contractor & Supplier Diversity Requirements
**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-
CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT
OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation. A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

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

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

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

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

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

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

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

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [**SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in

the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

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

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

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

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

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

Form OCSD-3:

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

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

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

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

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

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix B).

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

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

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

Contract Goals

- A. ESD hereby establishes an overall goal of 3% 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 regard 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.

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

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

ix. Certification under State Tax Law Section 5-a

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

x. Schedule A

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

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD

contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

xi. Project Sunlight

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

xii. Insurance Requirements

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

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million
- Professional Liability Insurance (Errors + Omissions)- \$5 million minimum
- Must show evidence of Worker’s Compensation & Employer’s Liability insurance:
 - i. \$1,000,000 Bodily Injury each Accident
 - ii. \$1,000,000 Bodily Injury by Disease – Policy Limit
 - iii. \$1,000,000 Bodily Injury by Disease – Each Employee
- Must show evidence of Disability insurance coverage at State statutory limits;

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

xiii. W-9 Form

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