

## **ADDENDUM II – Revised RFP – Adjusted Chapter Numbering**

# **Erie Canal Bicentennial Commemoration Visitor Experience Assisted Programming Request for Proposals**

**Issued: June 30, 2023**

**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 IX – ii).

**Designated Contacts for this Procurement:**

**Primary Contact:** Ralph Volcy  
**Secondary Contact:** John Discolo  
**Additional Contacts:** Chastity O'Shei (*Pre-Proposal Meeting and Interviews only*)

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

[BicentennialCommemoration2023RFP@esd.ny.gov](mailto:BicentennialCommemoration2023RFP@esd.ny.gov)

Respondents must upload their proposals prior to the deadline to the designated Dropbox:

<https://www.dropbox.com/request/OAE8TVStLUFZ28NIG7pN>

This RFP is posted on the Empire State Development website:

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

**Submission Deadline: August 24, 2023 by 2:00 PM EST**

Late Proposals will not be accepted

## Table of Contents

I. INTRODUCTION .....	3
A. Invitation to Submit Proposals .....	3
II. OVERVIEW .....	3
A. Background .....	3
B. Canalside Property .....	4
C. Visitor Experience Plan.....	6
D. Visitor Experience Brief.....	6
E. Bicentennial Commemoration.....	7
III. SCOPE OF SERVICES.....	8
A. General Programming .....	8
B. Appeal to a Wide Audience .....	9
a. DEAI Considerations .....	9
C. Buffalo’s Erie Canal.....	9
a. Interpretive Themes.....	9
b. Connecting the Past with the Present.....	10
c. Historical Events .....	10
d. Contemporary Approach.....	11
e. Types of Programming.....	11
f. Partnerships .....	12
g. Available Funds.....	12
h. Programming Needs.....	12
i. Development Phase .....	12
IV. SCHEDULE OF DATES .....	13
V. SELECTION CRITERIA .....	13
VI. SELECTION PROCESS & REQUIREMENTS .....	13
A. Skills Required .....	13
B. Selection Process .....	14
A. Technical Proposal .....	14
B. Administrative Proposal.....	15
VII. QUESTIONS .....	16
VIII. GENERAL PROVISIONS.....	17

IX. CONTRACTUAL REQUIREMENTS.....	19
i. Conflicts of Interest.....	19
ii. State Finance Law Sections 139-j and 139-k forms.....	20
iii. Vendor Responsibility Questionnaire .....	21
iv. Iran Divestment Act .....	21
v. Executive Order 16.....	22
vi. Executive Order 177.....	22
vii. Non-Discrimination and Contractor & Supplier Diversity Requirements .....	22
viii. Encouraging the Use of NYS Businesses in Contract Performance Form .....	29
ix. Certification under State Tax Law Section 5-a .....	29
x. Schedule A .....	29
xi. Project Sunlight .....	29
xii. Insurance Requirements .....	30
xiii. W-9 Form .....	30

**APPENDICES**

Appendix A	Schedule A
Appendix B	Diversity Practices Questionnaire
Appendix C	Buffalo Waterfront Licensed Premises Description and Map
Appendix D	Erie Canal 2025 Canalside Visitor Experience Plan
Appendix E	EC2025 Bicentennial Commemoration Visitor Experience Brief
Appendix F	Erie Canal Western Terminus
Appendix G	Indigenous People in WNY
Appendix H	RFP Proposal Checklist
Appendix I	IT Security Standard Brief
Appendix J	Canalside Map

## **I. INTRODUCTION**

The mission of the Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), is to revitalize Western New York’s waterfront and restore economic growth to Buffalo based on the region’s legacy of pride, urban significance and natural beauty.

### **A. Invitation to Submit Proposals**

The ECHDC seeks proposals for a wide variety of specialty programming specific to Buffalo's Erie Canal history to coincide with the 2025 Erie Canal Bicentennial Commemoration between Memorial Day and the end of September.

#### **MWBE & SDVOB Subcontractor Interest**

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to [BicentennialCommemoration2023RFP@esd.ny.gov](mailto:BicentennialCommemoration2023RFP@esd.ny.gov).

Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

## **II. OVERVIEW**

### **A. Background**

For more than a decade, the ECHDC has spearheaded projects along Buffalo’s waterfront to help the City and Western New York realize a vision of renewed prosperity. The work ECHDC is doing at Canalside and the Outer Harbor- including newly developed waterfront access, new buildings, public spaces, events and activities where there once were none - are helping to drive the area’s resurgence.

Canalside sits on the historic western terminus of the Erie Canal. In its heyday Buffalo, known as America’s “Gateway to the West”, was one of the world’s greatest business centers, teeming with canal and rail traffic passing from the Atlantic seaboard across the Great Lakes. For much of the 19th century, it was truly an industrious port that bustled with people and goods from all over the world.

The Canalside History Advisory Group (“CHAG”) was formed several years ago to help guide ECHDC on projects and programming in order to ensure the historical relevance of Canalside continues to be woven into the fabric of the site. The group is made up of approximately 15 volunteer members and is chaired by Mike Vogel, an ECHDC Board Member.

The bicentennial of the opening of the Erie Canal will occur in 2025 and, while celebrations will occur across New York State, the ECHDC, along with assistance from CHAG, has been tasked with planning a Bicentennial Commemoration at Buffalo's Canalside (the "Project"). Prior to this solicitation, the ECHDC, along with assistance from CHAG developed a vision, mission, and identified key audiences and interpretive themes for the Canalside 2025 bicentennial commemoration, and the ECHDC hired BMC Consulting to assist with managing the overall process.

The experiences contemplated by this RFP will be the signature attractions of a summerlong



commemoration of the Erie Canal in Buffalo.

## B. Canalside Property

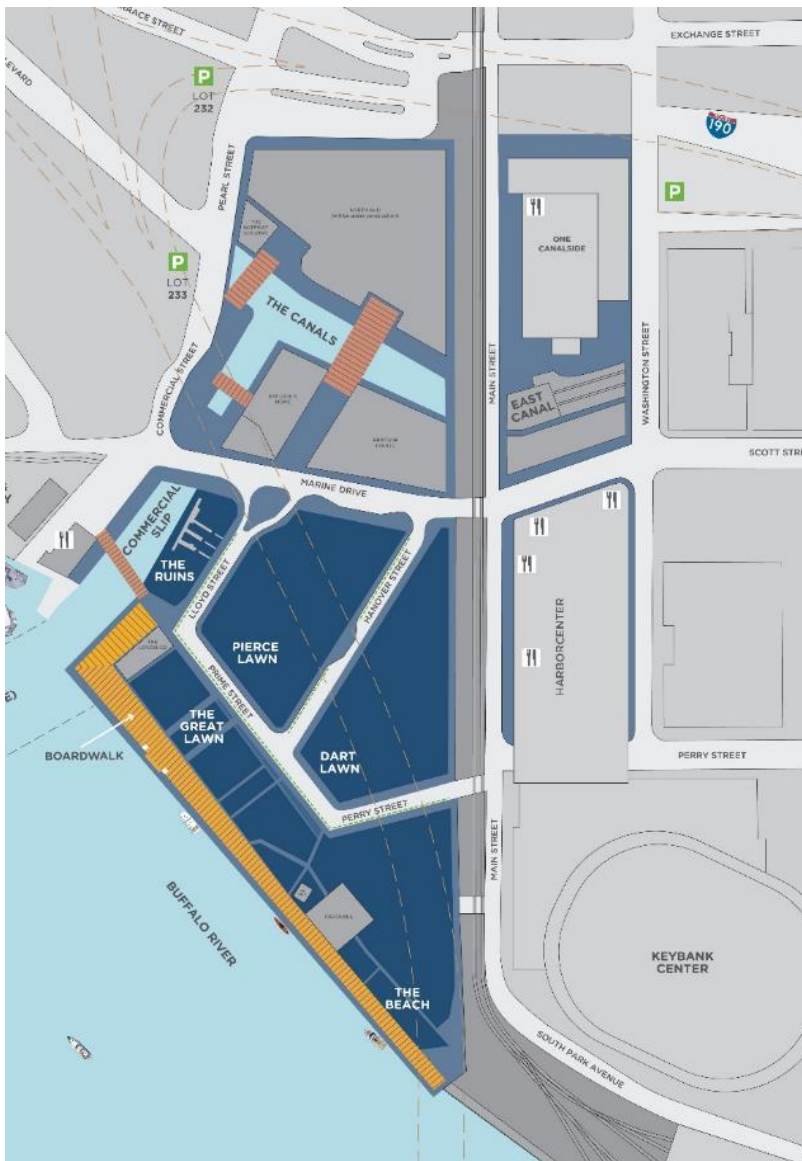
Canalside is a 20-acre section of downtown Buffalo bounded on the north by Upper Terrace and Exchange Streets and Perry Boulevard; on the east by Washington Street and Seymour H. Knox III Plaza; on the south by Perry Street and the Buffalo River; and on the west by Erie Street, Marine Drive, and Pearl and Commercial Streets. Canalside's public space ownership is a mix of State and City, while several spaces have been or are currently under private development. The entire area is within the Downtown Pedestrian Transit Mall Special District managed by Buffalo Place, Inc.

Opened to the public in 2008, Canalside is an emerging urban neighborhood which features several fully restored facets of the original Erie Canal Harbor including sections of the Canal, the Commercial Slip, Central Wharf boardwalk, and several historic streets and bridges. A year-round attraction that hosts over one million visitors annually, Canalside boasts hundreds of events, festivals, family activities, attractions, historical and cultural programming, art, food, and tours that capitalize on and showcase the diverse assets and resources of Western New York.



Canalside provides various year-round offerings and experiences throughout its public spaces while offering attractions (seasonal boat tours, outdoor roller rink, ice skating rink, carousel, children’s museum, and naval park) surrounded by residences, restaurants, and hotels in mixed-use commercial developments including One Canalside, LECOM Harborcenter, and Heritage Point. Canalside is also adjacent to the KeyBank Center, home to the Buffalo Sabres (NHL) and Buffalo Bandits (NLL).

Parking in the Canalside area is located within parking garages, with a few small surface lots and a number of on-street parking options also available. It can also be accessed via the light rail rapid transit system or by watercraft with nearly 1,000 linear feet of transient docking space.



This Canalside Site Map is found in **Appendix J**.

## C. Visitor Experience Plan

The ECHDC, along with the CHAG and BMC Consulting, developed a Visitor Experience Plan, for the Erie Canal Bicentennial Commemoration at Canalside. This Plan includes the:

Vision:

We are Buffalo's bustling "city square," reconnecting the community to the Erie Canal's 200-year-old history at its Western Terminus, sparking unending inquiry and discovery into our cultural heritage.

Purpose:

To commemorate Erie Canal's Bicentennial at Canalside in a fun, festive, and participative way to create once-in-a-lifetime memories for the community.

Key Audiences:

- Diverse, multi-generational families (parents, children, grandparents-all ages and abilities) from Western and Central NY, Southern Ontario, Greater Toronto Metropolitan Area, Northwestern Pennsylvania, and North Eastern Ohio (excursion around Buffalo)
- Individuals aged 18-40 years (Gen Y:25-40, and Gen Z: 18-24) from WNY and Ontario
- Cultural travelers and Canal enthusiasts (ex. U.S., Germany, England, Holland, etc.)
- School groups (primary and secondary)

The ECHDC aims to share this remarkable story with visitors in a social-recreational context by creating fun, festive, participative, and engaging experiences to help them connect to Buffalo's 200-year-old Erie Canal history and create once-in-a-lifetime memories.

Most audiences will likely be familiar with the general history of the Erie Canal and aware that its Western Terminus is in Buffalo. Still, most visitors will not be intimate with Buffalo's storied relationship with it. Consequently, to share the story, the ECHDC envisions providing visitors of all ages, abilities, and backgrounds with multiple pathways and a wide range of experiences to reconnect with a familiar story, engage with new content, and meet visitors where they are in a personal sense.

The entire Visitor Experience Plan is found in **Appendix D**.

## D. Visitor Experience Brief

The Erie Canal Bicentennial Commemoration concept utilizes the Longshed (building at the intersection of the Buffalo River and the Commercial Strip), Ruins (remaining historic brick masonry along the Commercial Strip) , and Main Canal (recreated canals that match an early 20<sup>th</sup> century survey of the Erie Canal west of Main Street) to help visitors "step back in time"

and to connect Buffalo's Erie Canal historical past with the present and future. Utilizing Canalside in this way will ensure that the three areas below are activated:

1. Longshed (orientation center, exhibit space)

The concept for the Longshed is to use the 2,900 GSF gathering hall as the *starting point* for visitors' Bicentennial Commemoration journey at Canalside. The visitor experiences envisioned for the Longshed will communicate and share how Canalside transformed from the traditional territory of the Haudenosaunee to a rural village at the Erie Canal's 1825 opening to a thriving transshipment port at the end of the nineteenth century.

2. Ruins/Main Canal (human history interpretation)

The Ruins and Main Canal will be used as extensions to the visitor experiences in the Longshed and provide unique and distinctive opportunities to share the hidden and human histories of Buffalo's Erie Canal heritage. The interpretive experiences in the Longshed will continue in the Ruins and extend into the Main Canal, allowing visitors to follow a pathway through the site. The Main Canal replicates portions of the Erie Canal, Main & Hamburg Canal, and Commercial Slip. These areas could be utilized to stage Erie Canal Bicentennial Commemoration programming and story-telling elements.

The entire Visitor Experience Brief is found in **Appendix E**.

The ECHDC has hired the visitor experience design firm, Local Projects, to create visitor experiences related to Buffalo's Erie Canal history in the Longshed, Ruins, and Main Canals for the Bicentennial Commemoration. **Any Programming developed under this contract must coordinate and complement the visitor experiences currently under development by Local Projects.**

## **E. Bicentennial Commemoration**

The Erie Canal Bicentennial Commemoration at Canalside will occur mainly during the summer of 2025.

Canalside began commemoration festivities in mid-May. The experiences described in Section II.D of the RFP opened to the public starting on Thursday, May 22<sup>st</sup> and closing on Sunday, September 28<sup>th</sup>. Summerlong outdoor activities and site programming will begin on Memorial Day Weekend and end on Labor Day Weekend.

Canalside has been selected as the site of the 2025 World Canals Conference, to be held at the site from September 21<sup>st</sup> – 25<sup>th</sup>.

The Seneca Chief, built in the Longshed by the Buffalo Maritime Center will be on view and for visitation in the Commercial Slip for public education purposes for the Summerlong



outdoor activities. The boat departs from Canalside in a large sendoff event on September 24, 2025 to retrace the historic “Wedding of the Waters” across-state voyage and arrives in New York City on the Canal’s 200<sup>th</sup> anniversary on Sunday, October 26, 2025. The Buffalo Maritime Center with multiple partners is leading the planning and implementation of the voyage, to include events and programming in Erie Canal communities across New York State to mark this extraordinary moment in time in Buffalo, New York State and national history.

### **III. SCOPE OF SERVICES**

The Buffalo Waterfront aspires to be a world-class, waterfront destination, and holds incredibly high standards for the quality and management of hospitality services, site programming, amenities and the overall brand. The Consultant will be responsible for all tasks and sub-tasks described in this Section of the RFP. ECHDC reserves the right to amend this contract as necessary to complete the Project.

The purpose of the Erie Canal Bicentennial Commemoration Assisted Programming will be to develop, implement and manage performances and activities that will activate Canalside’s key areas: the Boardwalk and the Great, Pierce, and Dart Lawns. Other potential programming activation sites around Canalside may include the Ruins and Towpaths around the Main Canal, and is dependent on the visitor experiences under development by Local Projects. See **Appendix C**, EC2025 Canalside Site and Amenities Map.

The selected consultant or team will be expected to coordinate with the ECHDC, CHAG, and other key Canalside anchor partners, including The Buffalo History Museum. The selected consultant is expected to utilize the Visitor Experience Plan, and Brief discussed above as their baseline documents.

Programming, defined as any one-time or regularly-scheduled activity or event, performance, concert, festival or social gathering, will be limited to those areas shown. Applicants are encouraged to allow access to all public spaces, unless these areas must be used for programming.

Access to public space and rights-of-way, including the Boardwalk and all cobblestone streets, is subject to review by ECHDC.

#### **A. General Programming**

Proposals will be considered based upon the applicant’s ability to demonstrate the following criteria:

- Uniqueness, “wow” factor, and/or “big idea”
- Appeal to a wide audience demographic
- Ability to draw large and/or repeat audiences
- Feasibility/Cost of proposal
- History and Experience of the Organization with similar endeavors

## **B. Appeal to a Wide Audience**

Programming developed for the Erie Canal Bicentennial Commemoration must be developed, created, and appeal to the key audiences outlined in the Visitor Experience Plan detailed on pages 7-8 of the Visitor Experience Plan, included as Appendix D in this RFP, and also identified on page 6-7 of this RFP.

To appeal to such a broad and diverse audience means ensuring that Erie Canal Bicentennial Commemoration programming engages all ages and abilities, not just Erie Canal experts, enthusiasts, and devotees. Also, assume that programming will be utilized as an educational tool for school groups and to entertain and inform touring, community, civic groups, summer camps, conferences, etc.

### **a. DEAI Considerations**

Today, Diversity, Equity, Accessibility, and Inclusion (DEAI) issues are front and center for cultural institutions and heritage organizations. Being sensitive to DEAI-related issues is essential to ensuring a quality-driven visitor experience for the Erie Canal Bicentennial Commemoration.

Consequently, programming developed for the Erie Canal Bicentennial Commemoration must adhere to current DEAI best practices.

## **C. Buffalo's Erie Canal**

ECHDC has made a commitment to enhance Canalside with a cultural enrichment plan that is focused on telling the story of Buffalo's Erie Canal heritage. As the place where Buffalo began, where much of its wealth was created, and many of its people came through, Canalside offers an opportunity to showcase the Buffalo for residents and visitors alike.

### **a. Interpretive Themes**

Programming must integrate with the interpretive themes developed for the Erie Canal Bicentennial Commemoration, detailed on pages 8-9 of the Visitor Experience Plan, included as Appendix D in this RFP.

The four key interpretive themes for Erie Canal Bicentennial Commemoration include:

1. The Erie Canal & Buffalo Harbor
2. Buffalo as the East/West Gateway
3. Human & Hidden Histories of the Canal District
4. Canalside Today and Tomorrow

## **b. Connecting the Past with the Present**

A foundational piece of Buffalo's Erie Canal heritage and reoccurring element in the interpretive themes for the Bicentennial Commemoration are the stories of immigrants. Consequently, the ECHDC recommends that programming reflect and commemorate the City of Buffalo's diverse ethnic population.

As Marvin Rapp mentions in Mike Vogel's seminal canal book, *America's Crossroads: Buffalo's Canal Street/Dante Place, The Making of a City*, "Too few realize that more immigrants passed through these streets during the height of the canal era (1830-1865) than passed through Ellis Island."

Many people who traveled the Erie Canal settled in Buffalo and made it their new home. Ethnic neighborhoods sprouted up all over the city. They thrived as distinct communities, helping to shape the long-term cultural fabric of Buffalo, whose impact and legacy are present today. Today, Buffalo remains an ethnically diverse city with new immigrants and refugees arriving almost daily, who, like their predecessors, are creating new lives and neighborhoods for themselves in their new city.

Before the development of the Western Terminus, Commercial Slip, and Erie Canal, the lands comprising Canalside were the traditional ancestral lands of Haudenosaunee, the Iroquois Confederacy of Six Nations. The Haudenosaunee were systematically disposed of their traditional territories before Buffalo and the Erie Canal were developed.

Consequently, the Bicentennial Commemoration Assisted Programming must seek to commemorate and reflect the complete human history of Buffalo's Erie Canal, from past to present and future, including commemorating the Haudenosaunee and their traditional homelands, immigrants who helped build the Erie Canal and settled in Buffalo, to new immigrants and refugees who now make Buffalo home.

## **c. Historical Events**

Today, cultural institutions and heritage organizations have curators with PhDs who spend years researching, writing scripts, and going through rigorous training before introducing first-person or character-driven interpretation to visitors. The reason is to ensure historical experiences are shared authentically, truthfully, honestly, and thoughtfully with visitors.

Some examples of these organizations include Plimoth Patuxet Plantation, Colonial Williamsburg, Jamestown Settlement, Cherokee Heritage Center, National Underground Railroad Freedom Center, Tenement Museum, and the Niagara Falls Underground Railroad Heritage Center.

These cultural and heritage institutions are experts in living history, the standard-bearers for best practices regarding first-person and character-driven interpretation. They have

spent years cultivating and investing in their programs to ensure the visitor experiences are accurately communicated.

For these reasons, the ECHDC encourages Erie Canal Bicentennial Commemoration programming focus on *historical events* related to Buffalo's Erie Canal heritage rather than character-driven or first-person interpretation.

For example, Erie Canal Bicentennial Commemoration programming could potentially focus on historical events such as, but not limited to, the following:

- The development of Buffalo and the Erie Canal and its impact on the Haudenosaunee (created in collaboration with the Seneca Nation)
- Buffalo's struggle to be the Western Terminus (Black Rock, Buffalo, and the development of the Buffalo Harbor)
- The 1825 opening of the Erie Canal in Buffalo (parade, celebrations, speeches, Seneca Chief sendoff, evening dinner)
- Wedding of the Waters (in NYC or Buffalo Harbor)
- The impact of the Erie Canal on Enslaved Peoples and the Underground Railroad (in collaboration with other cultural centers, such as the African American Heritage Corridor and the Niagara Falls Underground Railroad Heritage Center)
- Buffalo as a thriving transshipment port
- Human and hidden histories of the Canal District
- Buffalo's Immigrant communities (past and present)

#### **d. Contemporary Approach**

The ECHDC also encourages programming for the Erie Canal Bicentennial Commemoration be developed in a contemporary manner to bring the past into the present and future, utilizing the commemorations' key interpretive themes and appealing to all ages and abilities.

#### **e. Types of Programming**

The ECHDC encourages a wide variety programming for the Erie Canal Bicentennial Commemoration.

Programming examples include, but are not limited to, the following:

- Playlets/one-act play
- Dance (troupe, company)
- Music (bands, solo artists, etc.)
- Docent-led tours
- Demonstrations/interactive activities incorporating maritime crafts
- Walking history tours
- Movies
- Storytime (children-oriented)
- Book readings
- Hands-on activities
- Murder mystery

- Scavenger hunt
- Virtual events

Again, these examples are just a tiny sampling of the potential types of programming for the Commemoration. When developing possible programming, ensure it meets the criteria itemized in detail above.

#### **f. Partnerships**

Partnerships with existing WNY organizations involved in refugee/immigrant communities, history, heritage, theatre, maritime activities, music, and family activities are encouraged to be part of Programming ideation, concept development, and implementation.

#### **g. Available Funds**

The ECHDC will provide a maximum of \$250,000 for implementing all of the selected General Programming proposals combined.

#### **h. Programming Needs**

Please provide your necessary programming needs/requirements, including, but not limited to, staging, lighting, audio and video equipment, greenrooms, etc. Most programming needs will be provided by the ECHDC.

#### **i. Development Phase**

- Brainstorming/Ideation
- Thematic Development
- Preliminary Budget & Schedule
- Sourcing Supplied Research and Text
- Scriptwriting
- Detailed Budget & Schedule
- Site Visits/Mtgs

#### **j. Presentation & Approval Phase**

- Presentation
- Feedback
- Scriptwriting
- Editing (if needed)
- Program Approval

#### **k. Performance Phase**

- Project Management & Adhering to Performance Schedule

#### IV. 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	June 30, 2023
Pre-Proposal Meeting (if applicable)	July 13, 2023 @ 10:00 AM EST
Deadline for Submission of Questions	July 27, 2023 by 2:00 PM EST
Deadline for ESD to Respond to Questions	Aug 8, 2023
Submission of Proposals (date and time)	August 24, 2023 by 2:00 PM EST
Interviews	Week of Oct 2nd, 2023
Announcement of Successful Bidder	November 2023 (ECHDC Board Meeting)
Anticipated Contract Start Date	Jan 1, 2024

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

#### V. SELECTION CRITERIA

##### Diversity Practices (10 pts)

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

Every respondent to this RFP ("Bidder") should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The 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.

#### VI. SELECTION PROCESS & REQUIREMENTS

ECHDC reserves the right to make any and all decisions regarding the selection of proposals submitted, as well as the capacity to consider proposals received after the deadline.

##### A. Skills Required

The selected organizations and/or teams should be established and have demonstrated experience in:

- Specializing in area of proposal;
- Attracting audiences;
- Working with pertinent rules/regulations of Local and State agencies.



## B. Selection Process

A number of applicants will be selected, or “short-listed”, for interviews. Selection for interviews will be based on an independent evaluation of the submitted applications using the following factors:

- Responsiveness of the written proposal
- Successfully meet the “criteria” as described in Section III of this RFP
- Demonstrated experience in completing programming of a similar nature
- Ability to successfully complete programming of this type on schedule and within budget

Final selection of the chosen Applications will be based on the above factors as well as the interview performance.

## A. Technical Proposal

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

1. Table of Contents
2. Team Staff &/or Talent Experience and Qualifications
3. Project Plan and Approach
4. Estimated Cost
5. Diversity Practices

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

1. Table of Contents

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

2. Team, Staff &/or Talent Experience and Qualifications **(35 pts)**

In this section of the Technical Proposal, Bidders should demonstrate that the team, staff &/or talent proposed have the knowledge and ability to perform the services described in this RFP.

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding

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

### 3. Project Plan / Approach (35 pts)

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

- Team’s approach to developing programming that meets the criteria outlined in III. SCOPE OF SERVICES of this RFP.
- Team’s ability to meet the schedule as outlined in **Section II.E**.

### 4. Estimated Cost (20 pts)

In this section of the Technical Proposal, Bidders should provide an estimated cost for the all three Phases—Development, Presentation & Approval, and Performance Phases.

### 5. Diversity Practices (10 pts)

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).

## 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.

- <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal
- [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>, submit with proposal
- <https://esd.ny.gov/sites/default/files/EO16-certification.pdf>
- <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>

- vii. 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](#)
- viii. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- ix. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- x. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD’s procurement requirements, can be found in Section IX of this RFP (“Procurement Forms and Requirements”).

### **Submission of a Complete Two-Part Proposal**

Firms submitting proposals 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, emails) will not be accepted. When submitting proposals, Respondents must comply with the following:

The proposals must be uploaded to the Dropbox prior to the deadline as indicated in the Table of Events/Schedule of Dates. <https://www.dropbox.com/request/OAE8TVStLUFZ28NIG7pN>

**Proper format:** Please create a folder with: Respondent’s name – RFP Title – Date of Submission.

example: **HPC, Inc. – Bicentennial Visitors Assisted Program, RFP – 08.24.23**

Included in that main folder should be two sub-folders, one for the Administrative Proposal and the other for the Technical Proposal. The main folder should be uploaded to the Dropbox by choosing the following option: “Add Files → folders from computer”. All documents in the two sub-folders should be properly labeled.

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

## **VII. 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 IV (Schedule of Dates) to [BicentennialCommemoration2023RFP@esd.ny.gov](mailto:BicentennialCommemoration2023RFP@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.

## VIII. GENERAL PROVISIONS

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

- i. amend, modify or withdraw this RFP;
- ii. revise any requirement of this RFP;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any Bidder;
- vii. communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. extend the term of any agreement on terms consistent with this RFP.

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.

## **IX. 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](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](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](http://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](mailto:helpdesk@osc.state.ny.us).

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

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

### **iv. Iran Divestment Act**

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

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own

organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

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

**v. Executive Order 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, 15 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

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

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

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

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

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

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

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

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

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

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

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

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

### **Equal Employment Opportunity Requirements**

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

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

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a [MONTHLY/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](mailto:OCSD@esd.ny.gov).

## **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 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

### **SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file

the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

#### **Request for Waiver**

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.

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

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

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in 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](mailto:OCSD@esd.ny.gov).

**Breach of Contract and Damages**

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

The directory of New York State Certified SDVOBs can be viewed at:  
<https://online.ogs.ny.gov/SDVOB/search>.

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

**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](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also, in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

**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](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;
- 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.

**xiii. W-9 Form**

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