

# 2020 MWBE Personal Net Worth Study and Workforce Diversity Methodology Request for Proposals

Issued: May 14, 2020  
Submission Deadline: June 25, 2020 by 3 PM ET

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

Designated Contacts for this Procurement:

Primary Contact: John Discolo  
Secondary Contact: Ralph Volcy

All contacts/inquiries shall be made by email to the following address:  
[2020MWBESTUDIES@esd.ny.gov](mailto:2020MWBESTUDIES@esd.ny.gov)

This RFP is posted on the Empire State Development website:  
<https://esd.ny.gov/doing-business-ny/requests-proposals>

## Contents

I.	INTRODUCTION.....	2
II.	OVERVIEW.....	2
III.	SCOPE OF WORK.....	3
IV.	SCHEDULE OF DATES.....	5
V.	SELECTION CRITERIA.....	6
VI.	SUBMISSION OF PROPOSALS.....	7
i.	Technical Proposal.....	7
ii.	Administrative Proposal.....	10
VII.	QUESTIONS.....	11
VIII.	GENERAL PROVISIONS.....	11
IX.	CONTRACTUAL REQUIREMENTS.....	15
i.	Conflicts of Interest.....	15
ii.	State Finance Law Sections 139-j and 139-k forms.....	16
iii.	Vendor Responsibility Questionnaire.....	17
iv.	Iran Divestment Act.....	18
v.	Executive Order 177.....	18
vi.	Non-Discrimination and Contractor & Supplier Diversity Requirements.....	18
vii.	Encouraging the Use of NYS Businesses in Contract Performance Form.....	24
viii.	Certification under State Tax Law Section 5-a.....	24
ix.	Schedule A.....	25
x.	Project Sunlight.....	25
xi.	Insurance Requirements.....	25
xii.	W-9 Form.....	25
X.	Appendix.....	26

## I. INTRODUCTION

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

## II. OVERVIEW

### **Purpose**

The New York State Urban Development Corporation d/b/a Empire State Development (ESD), on behalf of the State of New York (“NYS” or “State”), is issuing this Request for Proposal (“RFP”) to seek the services of a qualified firm to design and provide the Division of Minority and Women’s Business Development (DMWBD) with the statistical analysis, methodology, data, and recommendations to support the DMWBD’s determination of the Personal Net Worth (PNW) Certification Cap on an industry-by-industry basis and to establish recommended Workforce Development Goals for construction projects on a region by region basis.

### **Background**

On July 15, 2019, New York State Governor Andrew M. Cuomo signed into law the expanded reauthorization of Article 15- A of the Executive Law. The reauthorization of Article 15-A extends and expands the Minority and Women-Owned Business Enterprise (MWBE) program to ensure the ongoing and meaningful participation of New York State MWBEs in the economic growth of the State. The new provisions also increased the MWBE personal net worth certification threshold requirement to \$15 million and provide the DMWBD’s Executive Director with the authority to establish additional PNW requirements for MWBE certification on an industry-by-industry basis, as well as creating a Workforce Diversity Program with regional aspirational goals for the employment of minority group members and women on State construction projects.

The selected Bidder must provide DMWBD with the criteria, methodology, and recommendations to support the determination of whether and at what levels the PNW cap should be increased above the current \$15 million level on an industry by industry basis, specifying which industries should be increased and by how much, as well as providing criteria, methodology, and recommendations for determining regional aspirational workforce diversity goals on State construction contracts.

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

New York State certified 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 2020MWBESTUDIES@esd.ny.gov. Nothing prohibits an M/WBE Vendor or SDVOB Vendor from proposing as a prime contractor.

### III. SCOPE OF WORK

ESD is seeking a qualified Bidder to conduct a statewide analysis and evaluation with defined deliverables regarding the following:

#### **Personal Net Worth Study**

The successful Bidder shall assist in establishing, on an industry by industry basis, whether the \$15 million PNW certification requirement for State certification as an MWBE should be increased, and if so, a recommended extent of such an increase.

The successful Bidder will conduct a quantitative analysis based on industry standards for PNW adjusting it in terms of PNW for minorities and women, as defined by Article 15-A, within New York State.

The purpose of the PNW cap is to serve as a certification requirement within the program. The successful Bidder will need to take this into consideration along with any relevant PNW elements or requirements as noted in Article 15-A, associated regulations, and the 2016 Disparity Study. This analysis should be prioritized to those business industries that are reflective of the current industry codes utilized for NYS MWBE certification.

For purpose of this objective, the successful Bidder shall provide the following:

- a. A methodology with repeatable and legally defensible processes and procedures that DMWBD can utilize or rely upon to determine which industries should have a PNW cap greater than the current \$15 million threshold for the purpose of NYS MWBE certification. Such methodology must be consistent with Article 15-A and all applicable regulations, as well as the 2016 Disparity Study, and any other applicable law.
- b. An analysis and data that is compiled using statistically sound, repeatable, and legally defensible methodology that will clearly identify industries with an increased PNW cap, over the base of \$15 million, and provide recommendations and explanations as to the specific dollar value increase that is needed for such identified industries for the purpose of NYS MWBE certification.
- c. An analytical framework and guidance on how to apply the developed methodology, processes, and procedures for additional industries not currently identified under the current industry codes for certification.

#### **Workforce Diversity Goals Methodology**

ESD is seeking an analytical methodology with related data and recommendations to assist in establishing regional aspirational workforce diversity goals for the employment of minorities and women, as defined under Article 15-A, on State contracting within the construction and construction related industries. State contracts shall be as defined under Article 15-A.

For purpose of this objective, utilizing the 2016 Disparity Study and publicly available data, the successful Bidder shall provide the following:

- a. A repeatable, verifiable, analytically sound, and legally defensible criteria, methodology, processes, and procedures that will identify NYS regional disparities by trade for the employment of minorities and women on construction and construction related State contracts. Additionally, the mean and median employment disparity in these trades on a Statewide basis shall be provided to DMWBD.

- b. A legally defensible quantitative analysis, methodology, data and recommendation for regional aspirational workforce goals per construction trade on qualifying State contracts for minorities and women. These goals must be designed to reduce and eliminate the identified disparity over time. The analysis must also provide the specific analytical steps and mechanism that will be utilized by NYS Agencies and Authorities to set individual goals in the construction trades on a contract by contract basis. Additionally, the analysis should identify when a particular construction trade does not have a disparity and does not need a goal applied.

In the analysis, the successful Bidder shall, without limitation, take into consideration the following documentation and information:

- a. Article 15-A and the related regulations;
- b. Data from the 2016 Disparity Study; and
- c. Publicly available and reliable data related to workforce participation on New York State Contracts from the Federal government or New York State Agencies.

### **Data Sources and Expectations**

In order to accomplish the objectives of the RFP as listed above, the successful Bidder will be provided with the following data from DMWBD:

- a. All current industry code lists under which MWBEs are certified;
- b. Current PNW data on certified firms from the New York State Contract System;
- c. Any relevant data from the New York State Contract System that may assist with the workforce diversity aspirational goals;
- d. 2016 Disparity Study report;
- e. Article 15-A and applicable regulations;
- f. A list of firms denied based on PNW;
- g. List of the current exclusions (waivers) for the PNW certification requirement; and
- h. Demographic data from New York State Department of Labor related to PNW and workforce diversity aspirational goals.

Any surveys or third-party outreach to New York State Agencies and Authorities, or to any other third parties, by the successful Bidder, shall be conducted only at the written approval of DMWBD and in collaboration with DMWBD.

### **Deliverables General Requirements**

All deliverables shall be subject to the following requirements:

- a) The successful Bidder will be required to prepare and submit draft and final documents, identified by DMWBD, as both a physical copy and in an encrypted electronic format compatible with Microsoft software with complete tabular findings. ESD and DMWBD shall have access upon request to all data, information, and analyses generated during the projects. The successful Bidder shall make such requested data, information and analyses available to ESD and DMWBD promptly and in the requested format, following a request by ESD or DMWBD.
- b) All reports shall be: (a) written in clear and concise language using consistent terms; (b) organized in a logical manner; (c) fully illustrated with relevant examples; and (d) consistent with widely accepted, analytically sound, and legally defensible methodology and reasoning.
- c) The successful Bidder shall provide to ESD and DMWBD all notes, work papers, records and documentation that identify, describe, detail, chronicle, and support its methods, analysis and

conclusions for each of the elements in the work. Should the selected Bidder develop a computerized database during the work, they shall provide the database to ESD and DMWBD. Programs and data entry materials developed in connection with the projects must be compatible with Microsoft compatible software.

- d) The final version of any deliverable must address any deficiencies or concerns raised by ESD and DMWBD regarding the draft deliverable.
- e) For any deliverable provided for these projects, the successful Bidder shall provide any information, data or documents establishing its legal defensibility if requested by ESD or DMWBD; and the successful Bidder shall agree to be available to provide information, assistance or consultation if the study is challenged in a legal proceeding in any court.
- f) At the end of the engagement, a complete copy of all the data, information and records that are relied upon or used by the Bidder for its study methodology, analysis, and conclusions, must be provided to DMWBD at no cost.
- g) The Bidder agrees to maintain, for a six-year period following the conclusion of the engagement, all data, information and records used, acquired or generated during the engagement using sound and legally defensible document and information retention policies. The Bidder further agrees that during the six-year period following the conclusion of this engagement, it will provide any documents, information, records, or Data to ESD or DMWBD upon their request and within 5 (five) business days of the Bidder receiving such a request.

**Progress Reports**

DMWBD requires twice monthly progress reports that describe tasks undertaken and the portion of each task that has been completed to date, as well as the tasks scheduled to be undertaken in the following weeks. These reports should also identify any issues encountered that might impact the work schedule or the successful completion of tasks, and the steps taken by the successful Bidder to resolve those issues. Any revisions to the work plan must be included in these progress reports.

**Findings**

All findings and recommendations, as described in Section 4 (Scope of Services), shall be provided in clear and concise language to DMWBD by the dates mentioned in Section 5.4 (schedule of deliverables). This shall include all necessary reasoning, analyses and data to support the methodologies and recommendations.

**Schedule of Deliverables**

PNW data analysis and report: Due no later than August 10, 2020

Workforce Diversity data analysis and report: Due no later than November 11, 2020

**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	May 14, 2020
Deadline for Submission of Questions	June 4, 2020
Deadline for ESD to Respond to Questions	June 11, 2020
Submission of Proposals (date and time)	June 25, 2020 at 3pm

Interviews (if necessary)	July 6 – July 17, 2020
Announcement of Successful Bidder	July 31, 2020
Anticipated Contract Start Date	August 10, 2020

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

## V. SELECTION CRITERIA

### Minimum Qualification Requirements:

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

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

The proposals will be scored in the following manner:

Firm Experience and Qualifications	25 Percent (25%)
Staff Experience and Qualifications	15 Percent (15%)
Project Plan and Approach/ Methodology	35 Percent (35%)
Cost Proposal and Budget/ Use of Funds	20 Percent (20%)
Diversity Practices Questionnaire	5 Percent (5%)

## **VI. SUBMISSION OF PROPOSALS**

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

### **i. Technical Proposal**

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

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

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

#### ***A. Table of Contents***

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

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

In this section of the Technical Proposal, Bidders should demonstrate relevant experience by providing the following:

1. A summary of the Bidder’s technical expertise that describes the unique capabilities of the Bidder. This narrative should highlight the Bidder’s ability to provide successful prior experience conducting similar analyses, or analogous studies and include a description of the direct prior experience of the Bidder with New York State and/or other comparable governmental entities relating to disparity and policy analysis.
2. Successful Bidders should detail at least one similar engagement comparable to those services detailed in Section 4, but no more than three. Please indicate, for each engagement completed:
  - a. Name of client organization
  - b. Type of client (e.g. government entity (local, State, Federal), private company etc.)
  - c. Project description and services provided
  - d. Project duration including start/end dates
  - e. Number of Bidder staff (FTEs) involved in the engagement

- f. Any other information regarding the project that would assist ESD and DMWBD in determining the success experienced by the client. This may include previous similar studies. If you wish to include previous studies as examples of your experience, please include a link to the study and not a hard copy in your proposal.
3. Firm References - The Bidder is asked to supply ESD and DMWBD with the names and contact information for two individuals (one primary and one alternate contact person) that ESD or DMWBD may contact as a reference for each engagement described above.
4. Litigation experience – the Bidder is asked to provide a summary of prior experience serving as testifying and non-testifying expert witnesses in cases involving any disparity studies or challenges to race and gender based affirmative action programs.

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

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

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

1. A project management and staffing plan that describes the unique capabilities of the individuals assigned. Include a narrative description of the specific function/role that each staff member would perform and their specific qualifications for their proposed role in this engagement. Lead staff should be identified. Successful Bidders should submit resumes for all members of the proposed team, including any subcontract personnel who may work on the engagement.
2. State all relevant information regarding the number, qualifications and experience of the staff to be specifically assigned to this engagement. Indicate how the staff competency level over the term of the contract will be assured.
3. Successful Bidders should submit staff references' contact information for at least three (3) references from recent engagements, preferably with governmental entities, who can comment on the experience of the lead staff proposed for this engagement. Names, titles, addresses, email addresses and telephone numbers of organizations and individuals who may be contacted for reference must be included.

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

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

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

Proposals must include a work plan detailing the proposed research designs, indicating the techniques and methodologies planned to meet the objectives of the RFP's scope of services, as well as tasks, activities, data-gathering, analyses, milestones, and other information describing how the Bidder will complete and meet the goals of the projects. A successful Bidder must demonstrate clear understanding of the research questions, the relevant data, and the analysis required for the submission of the reports. In addition, the work plan must identify any assumptions, qualitative or quantitative data, procedures, and models that will be gathered and analyzed to test any such assumptions. A successful Bidder shall meet the prescribed deliverables in accordance with the work plan included in its proposal.

Responsive proposals should discuss the Bidder's proposed methodology for gathering the required data and how it would ensure the statistical significance of the analysis for the purposes described in Section 4. Where ESD or DMWBD does not provide the Bidder with required information, the Bidder must research and gather such data, and must set forth the methods and sources by and from which the data is to be collected and must describe the means by which data integrity will be established. The work plan should also discuss any significant hurdles or challenges that Bidder anticipate will impede the success of the project, including any gaps in the data that the Bidder anticipates. For each challenge identified, Bidders should discuss how they would mitigate those risks.

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

A successful Bidder will identify the resources it plans to utilize to complete the studies, including subcontractors if any, external data, software packages, and other anticipated resources.

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

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

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

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

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

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices. Up to 5 points will be awarded based upon the contents of the Diversity Practices Questionnaire **Appendix A**, submitted by each Respondent to the RFP

## ii. Administrative Proposal

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

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

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 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, electronic transmission) will not be accepted. When submitting each proposal, Bidders must comply with the following:

1. The Technical Proposal and the Administrative Proposal must be submitted in separately sealed packages (which may be submitted within one complete package for mailing);
2. "Original" documents must have an original signature and be clearly marked "Original";
3. Clearly mark the outside packaging for each set of sealed proposals (Technical and Administrative);
4. Clearly mark the original and each copy as "**RFP – 2020 MWBE Personal Net Worth Study and Workforce Diversity Methodology Proposal submitted by [Bidder's name]**";
5. Each Bidder must submit:
  - o 5 hardcopies and one (1) text-searchable electronic copy on CD or flash drive of the *Technical Proposal*.
  - o One (1) original and one (1) electronic copy on CD or flash drive of the *Administrative Proposal*.

A complete package (Technical Proposal and Administrative Proposal) must be received by the deadline in the schedule of dates in this RFP. Proposals should be sent to the following address:

Empire State Development  
633 Third Avenue 35th Floor

New York, New York 10017-8167

**Attention: John F. Discolo**

**RFP: 2020 MWBE Personal Net Worth Study and Workforce Diversity Methodology**

**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 [2020MWBESTUDIES@esd.ny.gov](mailto:2020MWBESTUDIES@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.

## **Intellectual Property/Personal Property Rights in Data, Computer Software & Other Intellectual Property**

### ***A. Rights in Data:***

All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including, without limitation, cards, tapes, discs, and other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials, prepared for or delivered to ESD in the course of performance of any contract resulting from this RFP ("Agreement"), (hereinafter referred to as "Data"), shall be deemed to be "work made for hire" (as defined in Section 101 of Title 17 of the United States Code), and shall be provided to and become the exclusive property of ESD. If it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Bidder hereby covenants and agrees to transfer all right, title and interest in any such Data to ESD, and cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

### ***B. Maintaining Data:***

The Bidder agrees to maintain all Data and any other documents, information and records relating to the studies that are the subject of this RFP for a period of six years after the conclusion of this engagement, at the Bidder's sole cost and expense and pursuant to reasonable and legally defensible document and information retention policies. The Bidder further agrees that during the six year period following the conclusion of this engagement, it will provide any documents, information, records, or Data to ESD or DMWBD upon their request and within 5 (five) business days of the Bidder receiving such a request. Any requests for additional documentation, beyond those records that are required to be provided at the end of the engagement (see Section III), ESD and DMWBD agree to pay the reasonable costs incurred by the Bidder for the copying and transmission of documents, information, records or data, as long as the Bidder provides notice of such costs to ESD and DMWBD prior to incurring them.

### ***C. Rights in COTS Computer Software:***

Any commercial off-the-shelf ("COTS") computer software and its related documentation and licenses which were purchased by the Bidder to perform data collection, data dissemination and marketing in satisfaction of an Agreement shall be transferred to ESD to the extent permissible by the original license. The transfer of such COTS software shall be accomplished at no additional cost to ESD.

***D. Rights to Bidder-Owned Pre-Existing Computer Software/Documentation:***

All computer software and related documentation, together with any versions of same or other intermediate components thereof, which may or may not be either confidential or proprietary, which was owned by the Bidder and existing at the time of the effective date of an Agreement and which, during the term of such Agreement is used by the Bidder in the conduct of the performance of the Agreement in such a fashion as to render such preexisting software to the state of being an integral and necessary operating component of the Bidder-Developed Computer Software developed under the Agreement (hereinafter referred to as "Bidder-Owned Pre-Existing Computer Software/Documentation"), shall be deemed to remain the property of the Bidder and all right, title and interest therein to the same shall continue to vest in the Bidder, with the express understanding that the Bidder hereby licenses ESD to use such Bidder-Owned Pre-Existing Computer Software/Documentation as provided for in subparagraph 3.4.5 herein below.

***E. Rights to Contractor-Developed Computer Software and Software Documentation:***

The Bidder will design, develop and install computer software, programming or code (referred to as "software" in this section) as may be required for ESD and/or DMWBD. ESD will have exclusive ownership of the software including all documentation, source and executable code. All computer software and related documentation, together with any versions of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed by the Bidder in the direct course of performance of an Agreement (hereinafter "Bidder-Developed Computer Software and Software Documentation"), shall be deemed to be the property of ESD and all right, title and interest therein to the same shall vest in ESD.

***F. For Software License Agreements***

For software license agreements regarding any and all pre-existing computer Software and Documentation including Software/Documentation developed by the Bidder or purchased from outside sources in the course of performance on an Agreement, the Bidder hereby grants to ESD a nonexclusive, royalty-free, irrevocable, license to ESD, for:

- a. All Software and Software Documentation (as herein above defined) developed or purchased in the course of performance of an Agreement; and
- b. Only that Contractor-Owned Pre-Existing Computer Software/Documentation (as herein above defined) which forms an integral and necessary operating component of the Bidder-Developed Computer Software created under an Agreement;
- c. This license shall include the right to reproduce for archival purposes only, and to use and make and permit others to use and make any modifications necessary to the Bidder-Developed Computer Software and Software Documentation, and the Bidder-Owned Pre-Existing Software/Documentation;
- d. The rights granted by this license do not include any rights to derivative works, modifications, revisions, and upgrades to the Bidder-Developed Computer Software and Software

Documentation which are developed by the Bidder after the term of an Agreement, or any extensions thereto, expires or is terminated.

***G. Other Intellectual Property Rights:***

Except for those intellectual property rights otherwise addressed in sections 3.4.1. through 3.4.5. above, the Bidder agrees that all other patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, an Agreement rendered to ESD by the Bidder or any of its employees or subcontractors during the term of an Agreement (hereinafter "Items") shall be deemed to be a "work made for hire"(as herein above defined), and shall be provided to and become the exclusive property of ESD. If it is determined that any Items encompassed above do not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Bidder hereby covenants and agrees to transfer all right, title and interest in any such Items to ESD, and will cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest. Bidder hereby assigns all rights in such intellectual property to ESD, and will ensure that its employees and subcontractors shall, supply all assistance reasonably requested in securing for ESD's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, and will provide full information in regards to any such Item and execute all appropriate documentation prepared by ESD in applying or otherwise registering, in ESD's name, all rights to any such Items. ESD has the right to grant licenses to make, use, buy or sell any Items derived from the services performed under an Agreement. Provided however, upon mutual agreement of the Bidder and ESD, ESD may waive its property rights, in writing, to any and all patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, an Agreement.

***H. Additional rights***

ESD reserves the right to include additional or revised intellectual/personal property provisions in an Agreement in addition to or in place of those described herein, with regard to the ownership (exclusive and/or nonexclusive) of any property or work product created or purchased as a result of any Agreement resulting from this RFP. The presumption is that, unless otherwise stated and agreed to in writing, all intellectual property is owned by ESD, including reports, surveys and all other works made or performed for hire. Specifically exempt from the provisions of this paragraph are property, plant and equipment provided by the Bidder to ESD, for the purpose of carrying out the provisions of this RFP. Property, plant and equipment may be subject to intellectual/personal property regulation when agreed to in writing by the parties.

**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 Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the

ESDC web site under “RFPs/RFQs”); and periodic updating of such forms during the term of any contract resulting from this RFP.

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

[http://intranet.empire.internal/Finance/SF\\_Law139\\_JK.pdf](http://intranet.empire.internal/Finance/SF_Law139_JK.pdf)

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

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

[http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_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, go directly to the Vend-Rep system online at [www.osc.state.ny.us/vendrep](http://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](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. No Response that fails to certify compliance with this requirement may be accepted as responsive.

#### **v. Executive Order 177**

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

The required certification for can be found at:

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

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

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum

feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ESD hereby establishes an overall goal of **30 percent** for MWBE participation, **15 percent** for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and **15 percent** for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

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

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

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

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

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

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

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

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

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

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

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

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

### **Equal Employment Opportunity Requirements**

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

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

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

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

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

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

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

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

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

Form OCSD-3:

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

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

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

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

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

### **Diversity Practices**

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

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

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

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

### **Contract Goals**

- A. ESD hereby establishes an overall goal of **3 percent** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

### **SDVOB Utilization Plan**

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

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

### **Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

### **Required Good Faith Efforts**

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

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

### **Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

### **Breach of Contract and Damages**

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

#### **vii. Encouraging the Use of NYS Businesses in Contract Performance Form**

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

#### **viii. Certification under State Tax Law Section 5-a**

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the

Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

**ix. Schedule A**

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

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

**x. Project Sunlight**

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

**xi. Insurance Requirements**

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

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

**xii. W-9 Form**

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

**X. Appendix**



---

DIVERSITY PRACTICES QUESTIONNAIRE

I, \_\_\_\_\_ as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

---

<sup>1</sup> Do not include onsite project overhead.



4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises?

Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

---

<sup>2</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

Page 2



If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan





All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of  
Owner/Official

---

Printed Name of  
Signatory

---

Title

---

Name of Business

---

Address

---

City, State, Zip

---



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_, 202\_, before me, the undersigned, a Notary Public in and for the State

of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_

Notary Public