



**Empire State
Development**

REQUEST FOR PROPOSALS



FOR THE LONG-TERM LEASE OF PROPERTY AT BELMONT PARK

Elmont, New York

RFP RELEASE DATE:	July 31, 2017
SITE VISIT DATE:	August 17, 2017
DEADLINE TO SUBMIT QUESTIONS:	August 24, 2017 @ 5:00 PM ET
DEADLINE TO SUBMIT PROPOSALS:	September 28, 2017 @ 2:00 PM ET

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

BelmontParkRFP@esd.ny.gov

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 (generally referred to herein as “Respondents”) are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: <http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>)

Designated Contacts for this Procurement:

Primary Contact: John F. Discolo
Secondary Contact: Michael Avolio
Additional Contact: Ralph Volcy

All contacts/inquiries shall be made by email to the following address: BelmontParkRFP@esd.ny.gov

This RFP will be posted on the Empire State Development website.

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I. INTRODUCTION

New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) on behalf of the New York State Franchise Oversight Board (the “FOB”) hereby invites interested parties to respond to this solicitation to develop property within Belmont Park located in Elmont, NY, within the Town of Hempstead, NY (the “Project”). The purpose of the Project is to strengthen Belmont as a premier destination for entertainment, sports, recreation, retail and hospitality on Long Island.

The Project site is comprised of two parcels, Site A and Site B, totaling approximately 36 acres (each “Site” or collectively the “Sites”). The Sites are located entirely within Nassau County. Site A contains a total of approximately 8 acres. It is adjacent to the western end of the Belmont Park clubhouse and is bordered to the west by the Belmont Park spur of the Long Island Railroad, with five tracks and four platforms.

Site B contains a total of approximately 28 acres. The properties surrounding the eastern side of Site B are single-family residences, and generally street-front retail, gasoline service stations and automobile repair shops along Hempstead Turnpike.

Respondents must include a development proposal for Site A and Site B. In addition, Respondents may also propose an alternative development that includes the Sites and land adjacent to Site A, north of Hempstead Turnpike, totaling up to 15 acres, inclusive of Site A (“Alternative”).



Map of the Sites

The Sites or the Alternative will be offered through a long-term lease granted by the FOB to a Qualifying Organization (as defined on page 11, below).

Development of each Site must be complementary to horse racing and pari-mutuel wagering. Respondents are encouraged to include proposals for the development of entertainment, sports, recreation, hospitality, and retail uses. Proposals for residential development, video lottery terminals, table games, pari-mutuel and simulcast wagering, or horse racing will not be considered.

Each party that submits a response (“Proposal”) to this RFP is referred to herein as a “Respondent.” Each Respondent who is conditionally designated through this RFP process is referred to herein as a “Designated Developer” or “Designated Developers”.

II. SCHEDULE OF DATES

The following are significant dates under the RFP Process:

Event	Date
RFP Release Date	July 31, 2017
Site Visit	August 17, 2017
Question Submittal Deadline	August 24, 2017 @ 5:00 PM ET
Question Response Deadline	September 6, 2017
Proposal Due Date	September 28, 2017 @ 2:00 PM ET

ESD will post information regarding the RFP on the RFP website:

<http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

Respondents are encouraged to check back for updates. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this solicitation by sending an email to BelmontParkRFP@esd.ny.gov.

III. SITE DESCRIPTION

About Belmont Park

Belmont Park is a major thoroughbred horseracing facility that first opened in 1905 but was completely redeveloped in 1964-1968. The Grandstand is one of the largest in thoroughbred racing, with seating for 33,000 and a total capacity of over 100,000. The premier racing event is the annual Belmont Stakes, which has recently attracted attendance between 60,000 and 100,000.



Races are currently run at Belmont from the end of April through mid-July (the “Spring Meet”), and again from early September through October (the “Fall Meet”). From mid-July through August and from November through April (a period of seven-and-a-half months in total), there are no races at the track. Race dates and schedules at Belmont Park are subject to change in the future. In addition to the races, training occurs year-round at Belmont.

Surrounding Area

Belmont Park is located within Elmont, an unincorporated hamlet located in Nassau County in the Town of Hempstead. The hamlet is approximately 3.4 square miles and has approximately 30,000 residents. The Town of Hempstead encompasses twenty-two incorporated villages, spanning 191.3 square miles with a population of approximately 760,000. Belmont Park is also bordered on the north by the incorporated village of Floral Park.

In June, 2008, the hamlet of Elmont issued a vision plan for the community entitled “Elmont Community Vision Plan” (the “Vision Plan”). It states that the primary goal for the stretch of Hempstead Turnpike adjacent to Belmont Park is “to create a significant gateway to Elmont” and that development in this area should foster “uses that would create a destination and promote all-year activities.” See Appendix B for the Vision Plan.

Description of Site

Location and Transportation

Site A, currently used for surface parking, is bordered on the south by Hempstead Turnpike, a four- to six-lane local road that is a major commercial corridor, and is also adjacent to the Cross Island Parkway, a six-lane limited access highway that extends north from the intersection of the Southern State and Belt Parkways near Valley Stream to its intersection with the Whitestone Expressway near College Point, Queens. (See site map attached in Appendix A) In the vicinity of Site the Cross Island Parkway runs along the Nassau-Queens border. This important artery provides access to the Belt, Southern State, and Grand Central Parkways, the Long Island Expressway (I-495) and the Bronx-Whitestone and Throgs Neck Bridges, and is restricted to non-commercial vehicles only. There are three exits to access the Sites from the Cross Island Parkway from the south, and two exits from the north.

Site A is also directly adjacent to the Belmont Park station of the Long Island Rail Road (“LIRR”), located on a spur of the Hempstead Branch. LIRR service is available from Wednesdays through Sundays during the Spring and Fall Meets, with between two and four trains operating per day. There is currently no LIRR service to the Sites at other times of year. Some of these trains run direct from Penn Station in Manhattan; others require a transfer at Jamaica. The trip from Manhattan takes approximately 35 minutes during rush hours. Two other LIRR stations, Queens Village and Bellerose, are within 0.5 and 1 mile of the Sites, respectively, and feature direct service to Jamaica and Atlantic Terminal in Brooklyn. The Metropolitan Transportation Authority (“MTA”) has expressed interest in working with ESD to explore future public transportation access in coordination with possible redevelopment at Belmont.

In 2015 a \$5 million project to refurbish the LIRR platform was performed to accommodate increased crowd capacity during the Belmont Stakes. This project included a new, larger platform, a new escalator, and roof, stairwell, and painting enhancements. The station is accessed via a pedestrian bridge.

Site B, currently used for surface parking is located south of Hempstead Turnpike. There is a tunnel that connects Site B to Belmont Park which may be used by Respondents. Passive or active recreational use is required on the southern portion of Site B. Recreational uses may include a park, sports fields and/or indoor recreation facility. Any on-going maintenance or management associated with the recreational facility shall be the responsibility of the Selected Developer.

A landscaped buffer between any development on Site B and the single-family housing to the east and south is required. Maintenance of the landscaped buffer will be the sole responsibility of the Selected Developer.

Respondents may also propose an Alternative, which includes the Sites and land adjacent to Site A, north of Hempstead Turnpike. Additional land adjacent to Site A included in Respondents’ proposals shall total no more than seven (7) acres for a total of fifteen (15) acres including Site A. Respondents who wish to submit an Alternative development proposal must also submit a Proposal for the Sites. It should be noted that any transaction on lands outside of Site A would require cooperation with The New York Racing Association, Inc. (“NYRA”) which has a lease agreement on the property that expires in 2033.

Zoning and Allowable Land Use

Currently, the Sites are zoned to allow residential uses. Respondents should anticipate that the Designated Developer will seek a zoning override, based on the desired uses outlined in this RFP.

Accordingly, Proposals must include a list of specific zoning overrides necessary to effectuate the proposed Project.

Ownership

The Sites are currently owned by the State of New York acting by and through the FOB, and is leased through a long-term ground lease to NYRA (the “Ground Lease”) which will expire on September 12, 2033. In accordance with the Ground Lease, the State has the ability to sever Sites A and B from the Ground Lease.

The use of the Sites is also governed by the New York Racing, Pari-Mutuel Wagering and Breeding Law, and by a Franchise Agreement dated as of September 12, 2008, among NYRA, the FOB, and the State of New York. The Ground Lease and accompanying Deed Indenture with NYRA place limitations on the use and development of the Sites even after termination of the Ground Lease (See Appendix C for a copy of the Ground Lease and Franchise Agreement).

Each Site will be offered to the Designated Developer through a long-term lease granted by the FOB. Respondents should specify the term of lease and other terms of the Ground Lease and lease necessary to permit financing of the proposed Project on each Site.

Building Code

Any development on each Site will be subject to the New York State Uniform Fire Prevention and Building Code.

Future Belmont Park Redevelopment

NYRA plans to upgrade Belmont Park, with work expected to commence in mid-2018 and lasting for approximately two years. Although no work is planned on each Site, the Designated Developer(s) will be expected to coordinate construction activities with NYRA.

Environmental Conditions

The Designated Developer, at its sole cost and expense, is responsible for conducting all due diligence investigations such as environmental site assessments, including sampling and testing of the soil, sediments and ground water (if any). No representation or warranty is made or shall be given by ESD, FOB, NYRA, the State of New York or any other entity as to any environmental condition at, or under the Sites, all of which are offered as is, where is (see also Section VIII below). The term “environmental condition” as used herein includes but is not limited to any hazardous and/or toxic substance as defined in any State or federal law, rule or regulation, solid waste, petroleum and/or petroleum by-products, endangered species of fauna or flora, archeological feature or artifact or any other matter or site condition which may affect the development of each Site.

Utilities

The Sites are served by National Grid (<https://www.nationalgridus.com/>) for gas service, PSE&G Long Island (<https://www.psegliny.com/>) for electric service, and the Western Nassau Water Authority (<http://www.wawnc.org/cm/>) for water service.

IV. DEVELOPMENT OBJECTIVES

Proposals should strive to address the following development objectives (the “Development Objectives”):

- Enhance Belmont Park to become one of Long Island’s premier destinations for entertainment, sports, hospitality and retail, with uses that are complementary to the existing Belmont Park racetrack
- Maximize economic benefit to the State while minimizing the State’s economic and environmental risk;
- Provide a source of quality jobs for area and New York State residents;
- Benefit the neighborhoods and communities adjacent to and surrounding Belmont Park;
- Maximize incorporation of green building and sustainable design practices; and
- Feature meaningful participation of Minority- and Women-Owned Business Enterprises, and Service-Disabled Veteran-Owned Businesses.¹

V. TRANSACTION STRUCTURE

Every Proposal must provide a proposed term sheet that details the lease terms that Respondent deems necessary and desirable for the long-term lease of each Site. The Sites may also be subject to a declaration regarding conformance to a General Project Plan (“GPP”) for development of the Sites, as applicable. Under a long-term lease, it is intended that the Designated Developer(s) will begin its lease of each Site at closing and will hold it during the development and operation of each Site.

The following types of rental payments will be considered and are encouraged, discussed below. Alternative rental payments will be considered as well.

- An initial deposit paid upon Project closing.
- A base rental payment schedule, with annual escalations, or alternatively a single up-front pre-payment of all rent due under the lease.
- A share of and/or compensation for future increases to each Site’s accumulated property value and/or future rental revenues.
- A participation in the net proceeds of the transfer or refinancing of the Project.

The term of a long-term lease shall be appropriate to permit the acquisition of sufficient financing and investment capital to support the types of uses contemplated by this RFP. Respondents are required to include specifics regarding the terms, conditions and the initial duration of the lease term and any renewal periods. The long-term lease offer is expected to be for both land and improvements and triple net with no ongoing obligations by the State.

During the term of the lease, the Designated Developer shall have the right to encumber its interest in the estate by mortgage for the sole purpose of securing financing for construction of the improvements and/or for long-term financing or refinancing of any such improvements. The Designated Developer

¹ For more information on MBE, WBE and SDVOB requirements, please visit **Section XII: PROCUREMENT FORMS AND REQUIREMENTS**.

shall have no right to encumber the fee simple absolute title of the State or to its remainder or residual interest in the improvements.

The State of New York's fee ownership and any rental stream resulting from a contract from this RFP shall not be subordinated. Prior to closing, it is anticipated that the ESD, FOB and the Designated Developer will agree to appropriate restrictions that will preserve the proposed use for a given period of time.

The FOB shall have the absolute right to approve or disapprove any assignment or transfer of any long-term lease and intend to participate in any proceeds from any such assignment or transfer.

No assignment or transfer of the lease shall be permitted prior to three years after the issuance of a temporary certificate of occupancy. Any assignment or transfer after three years would require the express consent of FOB. Any long-term lease shall provide throughout the term that the Project shall be managed by a qualified person, firm or corporation. Such transfer or assignment would be subject to the same standards and requirements as the Selected Developer. Any long-term lease or other transfer document must include provisions with respect to any property at Belmont Park other than the Sites still controlled by NYRA (the "Retained Property") that the FOB and ESD shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project, and the Designated Developer agrees to defend, indemnify and hold harmless ESD, NYRA and the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability other than that caused by the gross negligence or the willful misconduct of the Indemnitees. The Designated Developer shall assume maintenance, security and all other related owner obligations on the Site, including insurance that names ESD and the State as additional insureds on a primary and non-participatory basis, with full waiver of subrogation.

As noted in this RFP, in order to implement the Project, the FOB and ESD, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements such as: (i) the State Environmental Quality Review Act and its implementing regulations ("SEQRA"); (ii) the State Historic Preservation Act; (iii) the State's Coastal Zone Management Policies; (iv) Public Authorities Law; (v) State Finance Law; and (vi) Racing, Pari-Mutuel Wagering and Breeding Law; (vii) the New York State Urban Development Corporation Act (the "UDC Act"). Such compliance must be completed before the lease of the Site to the Designated Developer for the Project. Please also note that the Designated Developer must enter into agreements with ESD and FOB that will require the Designated Developer to pay, commencing from the date of its conditional designation:

1. ESD and FOB's out-of-pocket costs and expenses incurred in connection with the Project and the subleasing to the Designated Developer of the Site, including, without limitation, costs and expenses of appraisers, construction and real estate professional services, consultants and outside legal counsel.
2. Commitment to pay to ESD an administrative fee equal to the 6.5% of the net present value of all lease payments throughout the entire term, paid upfront at lease execution.

Other Considerations

Each Respondent will also provide as part of its submission a signed letter agreement (the "Cost Letter") in the form provided in Appendix D, pursuant to which the Respondent undertakes to pay ESD its reasonable out-of-pocket costs and expenses, including without limitation those for consultants and legal counsel, incurred by ESD and FOB in the event that the Respondent is designated for a short list or

otherwise designated to enter into negotiations with FOB and ESD. The signed Cost Letter shall be accompanied by the Respondent's check in the amount of \$1,000,000. These funds will be deposited into an ESD imprest account for such Respondent. ESD would draw on the imprest account in order to pay such costs related to the Respondent's proposal. The Cost Letter provides that the Respondent will fully replenish the imprest account in the amount of \$300,000 each time the balance of the account is reduced to below \$250,000. The unused Cost Letter payment amount will be returned to each Respondent that is not designated for a short list or designated to enter into negotiations with ESD and FOB when it is determined that the Respondent is no longer under consideration.

VI. REQUIRED PROPOSAL CONTENTS

Each Respondent is required to submit a Proposal compliant with all required terms detailed below. Respondents must submit a complete Proposal in response to this RFP using the format and forms provided.

ESD reserves the right, in their sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. ESD also reserves the right, in their sole discretion, to reject any and all Proposals for any reason or for no reason, and to proceed (or not proceed) with the development of the Site (either by itself or in conjunction with one or more third-party(ies)) without completing this RFP process.

In evaluating the capabilities of the Respondent, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP. ESD further reserve the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

A. Respondent Description and Qualifications

Each Respondent must demonstrate sufficient financial resources and professional experience/ability to develop the Site. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which is described in Section XII: Procurement Forms and Requirements.

Please note that in order to be considered a "Qualifying Organization," Respondents must meet the following criteria:

- Type of Organization: Firms or joint ventures of firms with a demonstrated record of expertise in one or more of the following:
 - Developing and operating real estate
 - Developing mixed-use projects that incorporate commercial and/or entertainment space
 - Equity investors with a substantial development and investment experience in real estate projects
- Project Experience
 - At least three (3) development projects in the last ten years; and/or
 - At least two (2) projects in the last seven years for which Respondent acted as a developer and/or principal operator of buildings incorporating commercial, retail, or entertainment space.

ESD reserves the right to determine if a Respondent satisfies these requirements based on the experience of the Respondent's constituent members. Entities that do not meet the above eligibility criteria (e.g. construction contractors, facility managers and operators, providers of design, engineering, surveying, and specialty construction or maintenance services; and/or lenders or other capital providers, legal or financial advisors, or other providers of professional services) have an opportunity to participate in a submission as part of a team that includes a Qualifying Organization.

Each proposal must include a description of the Respondent team including:

- The intended form and structure of the team. Any proposed partnership or joint venture must be clearly explained. A chart or diagram of the partnership structure must also be included. In addition, the following concerns should be addressed:
 - Experience in Commercial/Retail Opportunities: Respondents should describe their previous experience in acting as a principal developer and/or operator of large buildings incorporating commercial, retail or entertainment space leased to third parties.
 - Experience in Marketing: Respondents should describe their previous experience marketing commercial, retail or entertainment space.
 - Experience in Operations: Respondents should describe their experience participating in operating facilities. Include experience, if any, of introducing best practice concepts in facilities management and integrating these concepts with design and construction in order to provide an optimal long-term solution.
- Name, address, phone number and email of each member of the Respondent. Respondents must provide their Federal Employer Identification Number (EIN) and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials. If available, copies of the interim financial statement for each quarter since the last fiscal year for which audited statements are provided. In addition, any details that describe the financial strength of the Respondent should be provided including but not limited to:
 - Details of any material events that may affect the entity's financial standing since the last annual or interim financial statements provided;
 - Details of any credit rating; and
 - Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency litigation in the last three fiscal years;
- Summaries of comparable projects completed by members of the Respondent. For each project the following information is requested:
 - Name of Respondent
 - Project Name
 - Completion Date
 - Project Description

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- Location
 - Current Status of Project
 - Approximate Capital Value
 - Reference Name, Email Address, Telephone
 - Relevance to Solicitation
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute against the State or any agency, department, authority or subdivision of the State including, without limitation, ESD, MTA, LIRR and the Town of Hempstead, or any litigation or legal dispute regarding a real estate venture during the past five years.
 - Description of any prior RFPs for which Respondent has been selected, but which have not resulted in a successfully developed project.
 - Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project.
 - All required procurement forms identified in Section XII of this solicitation.

Please note the following entities and individuals are precluded from submitting a response to this RFP and from participating as part of any Qualifying Organization (as defined above) team, unless otherwise authorized by ESD and FOB:

- Any consultant firm that has been contracted by ESD and FOB to provide expert professional services in connection with the Project;
- Any entity that is a parent, affiliate, or subsidiary of any of the foregoing entities, or that is under common ownership, control or management with any of the foregoing entities; and
- Any employee or former employee of any of the foregoing entities who was involved with the Project while serving as an employee of such entity;

Notwithstanding the foregoing, if ESD determines in its sole discretion that there is no conflict, or that adequate safeguards are in place to prevent the conflict from occurring, or that all of the work provided by such firm, entity or, employee has been made publicly available by ESD, then ESD may provide written authorization that such firm, entity or employee may respond to the RFP or participate on a team.

B. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and any plans/timing of phasing of the development. The description should address at a minimum:

- The proposed use(s), including a description of how the Project will advance the Development Objectives set forth in this RFP, and, specifically, how the Project will contribute to and benefit horseracing at Belmont Park.

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- Type, bulk and size of each component of the development program for the Project (gross and net square footages).
 - A list of potential tenants and any letters of interest and/or intent from potential tenants. Describe any seasonal considerations of any potential tenants.
 - How this Project will contribute to the revitalization of the neighborhoods and communities adjacent to and surrounding Belmont Park.
 - The total cost of the Project.
 - Estimated number of permanent jobs and temporary construction jobs.

C. Site Plan and Architectural Design

Each Proposal must contain the following:

- A summary of the proposed building program with square footages for each use.
- At a minimum, a set of concept sketches on 8.5" x 11" paper, showing the proposed Project and a set of schematic renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building practices that will be incorporated into the Project during construction/renovation and operation of the improvements.

D. Parking Calculations

Respondents must provide an estimate of the number of parking spaces required by the Project and demonstrate how parking will be accommodated. Please note that any parking provided on the Site must be made available for use by Belmont Park, in connection with the running of the Belmont Stakes and the Breeder's Cup.

E. Zoning Calculations

Respondents must submit a preliminary zoning analysis showing all calculations, including proposed uses and required and proposed parking. Respondents should identify any zoning overrides necessary, and any required permits and authorizations to effectuate the Project.

F. Development

Respondents must submit a development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization for each component of the development program. Any contingencies that may affect this time line should be identified. Respondents who choose to submit a proposal for an Alternative must include a stand-alone proposal for the Sites.

As noted above, NYRA's upgrade of Belmont Park is currently expected to commence in mid-2018. The Respondents' development timeline and environmental review should take into account these construction activities.

G. Community Amenities and Outreach Plan

Respondents must list community amenities that will be included in the Project as well as a detailed plan for community outreach. Given the Sites are adjacent to an existing residential community, it is important to detail how the Project will be integrated into the surrounding fabric.

H. Base Rent and Term Sheet

Respondents are required to submit a proposed schedule of the base rent payment (“Base Rent”) to be paid by the Designated Developer. In addition, any alternative forms of payment as described in Section V should be identified. Respondents must also provide a high-level term sheet outlining all key deal terms. All terms including any rent abatements or tax incentives should be articulated in the term sheet. Respondents who choose to submit an Alternative proposal must include a stand-alone proposal for the Sites as well.

I. Taxes/PILOT

Respondents are required to submit an anticipated tax or PILOT schedule for the site based on projected real estate taxes applicable to expected use types, reflecting any expected incentives.

J. Financing Summary and Project Pro Forma Statements

Respondents must include a 20-year pro-forma statements that are provided in excel and “live-linked,” including:

1. Statement of assumptions on which all calculations were based;
2. Sources and uses of funds;
3. Construction budget ;
4. Detailed description of proposed equity investment and construction and permanent financing, including a detailed breakdown of all sources of equity;
5. Letters of interest and/or intent from lenders and, if applicable, equity investors.

In addition, Respondents should include a brief summary that explains at a high-level how the team would approach the financing of the Project, including reference to any expected incentives or tax credit programs. If a Proposal is made contingent on receiving financing or incentives, the Respondent should include proposed terms for such financing in their Proposal.

Respondents are encouraged to view related ESD programs at:

<http://esd.ny.gov/BusinessPrograms.html>.

VII. SELECTION CRITERIA

When evaluating submissions, the following evaluation criteria will be considered with the accompanying weights used to calculate an overall RFP submission score.

Criteria		Weighting
Development Experience and Financial Strength	<ul style="list-style-type: none"> • Respondent’s ability to meet Qualifying Organization requirements • Respondent’s capacity as demonstrated by the entities represented in the consortium, if relevant or development team is assembled • Respondent’s financial strength as indicated by the materials provided in the submission • Demonstrated understanding of the potential private capital sources available for a project of this type 	10%
Financial Offer	<ul style="list-style-type: none"> • Base Rent 	20%
Overall Project	<ul style="list-style-type: none"> • Extent to which proposed Project strengthens Belmont as a premier destination for entertainment, sports, recreation, retail and hospitality on Long Island 	30%
Project Design and Timing	<ul style="list-style-type: none"> • Proposed Project development and construction plan • Proposed retail and commercial development strategy • Innovative technical solutions to enhance design, construction and/or operations 	30%
Diversity Practices	<ul style="list-style-type: none"> • ESD’s Office of Contractor and Supplier Diversity will score each application for Diversity Practices using the attached Diversity Practices Scoring Matrix in Appendix E. Up to five percent (5%) will be awarded based upon the contents of the Diversity Practices Questionnaire in Appendix E, submitted by each Respondent to the RFP 	5%
Community Benefit	<ul style="list-style-type: none"> • Projected expenditures, construction costs, annual operating costs and other direct spending that will help spur economic activity, including job creation and any other programs or public benefits the Respondent may undertake or provide on behalf of the community. 	5%

ESD reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of their Proposals and to ensure a full and complete understanding of each Proposal. ESD shall pursue uniformity in the questions submitted to Respondents to the extent practicable, but may submit different or additional questions to different Respondents in the context of any individual interview or in writing. ESD shall convene a committee who shall be identified as additional Designated Contacts for the purpose of such interviews, and Respondents who are invited will receive additional instructions upon their invitation.

FOB further reserves the right to elect to lease the Sites or not. Determination of whether FOB accepts ESD's recommendation to lease the Sites will depend on the offers received and FOB's assessment of the best interests of the State.

VIII. DEVELOPER DUE DILIGENCE

A. "As Is, Where Is" Condition

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be long-term leased **"AS IS" and "WHERE IS"** without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent's purpose.

The Designated Developer shall be responsible, at its sole cost and expense, for remediating any contamination that is found on the Site in compliance with all applicable environmental laws, and shall indemnify ESD, the State of New York and NYRA against any liability associated with such remediation.

ESD will post information regarding the RFP on the RFP website:

<http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

Respondents are encouraged to check back for updates. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this solicitation by sending an email to BelmontParkRFP@esd.ny.gov.

Respondents must rely on their own research and investigations for all matters, including, costs, title, survey, development, financing, construction, and remediation.

IX. PROPOSAL SUBMISSION INSTRUCTIONS

A. Proposal Submission

Seven (7) hard copies and one (1) electronic copy (in the form of a flash drive) of the Proposal identified by **"Belmont Park RFP"** must be received by ESD by **September 28, 2017 at 2:00 PM** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Hector Morel, ESD Procurement Unit
Re: Belmont Park RFP

B. RFP Inquiries

ESD will accept written questions via email from prospective Respondents no later than **August 24, 2017 at 5:00 PM ET**. Please submit questions to: BelmontParkRFP@esd.ny.gov.

Written questions must include the requestor's name, e-mail address and the Respondent represented. Responses to all timely and appropriate questions will be posted on ESD's website by **September 6, 2017 at 5:00 PM ET** at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

No contact related to this solicitation other than emails to the designated email account for the solicitation, at BelmontParkRFP@esd.ny.gov will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any contact by a Proposer other than to the Designated Contacts may be grounds for disqualification.

C. Site Visit

An optional site visit is scheduled for **August 17, 2017**. Respondents are not required to attend and must email BelmontParkRFP@esd.ny.gov on or before **August 15, 2017** if they wish to participate. When responding, please provide the name of the firm, and the name, title, telephone number and email address of all representatives who are attending. ESD reserves the right to limit the number of visitors on such site visit and to require such procedures as necessary to ensure the safety and security of visitors. The tour is anticipated to last approximately one hour.

ESD reserves the right to modify this RFP schedule at their discretion. Notification of changes in connection with this RFP will be made available to all interested parties by e-mail and via ESD's website: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

X. LEASING PROCESS

The following is a summary description of the subleasing process, assuming a lease.

After a review of the Proposals, ESD intends to recommend to the FOB conditionally designate a Respondent as a Designated Developer. The lease and development of the Site will be subject to all applicable rules and regulations including, but not limited to, the State Environmental Quality Review Act (SEQRA); the Racing, Pari-Mutuel Wagering and Breeding Law and the Public Authorities Accountability Act. In addition, any development would be subject to approval by the FOB and approval by the ESD Directors.

It is anticipated that the development of the Site will be accomplished through an ESD "General Project Plan," in accordance with the New York State Urban Development Act. The Designated Developer will be responsible for all costs associated with complying with any such required reviews and procedures.

ESD will establish an imprest account that shall be funded by the Designated Developer and used by ESD and the FOB and their designated agents to pay such costs incurred (including the costs and expenses of legal counsel). The account shall be initially funded by the Designated Developer at the time of its conditional designation by the FOB in the amount of one million dollars (\$1,000,000) and thereafter the Designated Developer shall, promptly after notice from ESD, pay to ESD such funds necessary in order to replenish the account and maintain the funding in the account at one million dollars. After conclusion of the transaction, any amount remaining in the imprest account and not required to pay such costs will be returned to the Designated Developer.

XI. STATEMENT OF LIMITATIONS

This solicitation, submissions from Respondents to this solicitation, and any relationship between the ESD, FOB and Respondents arising from or connected or related to this solicitation, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this solicitation. In the event of an inconsistency in the terms of this Section XI and other terms in this solicitation, the terms of Section XI shall control.

1. By responding to this solicitation, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this solicitation, the Respondent acknowledges and accepts the ESD's rights as set forth in the solicitation, including without limitation this Statement of Limitations.
2. The issuance of this solicitation and the submission of a response by any Respondent does not obligate ESD to qualify the Respondent in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract with ESD. ESD's approval of any agreement with one or more Designated Developers will be subject to all applicable legal requirements, including without limitation those relating to environmental and historic resource reviews and public authority approvals.
3. ESD reserves the right: (i) to amend, modify, or withdraw this solicitation; (ii) to revise any requirements of this solicitation; (iii) to require supplemental statements or information from any Respondent; (iv) to accept or reject any or all responses thereto; (v) to extend the deadline for submission of responses thereto; (vi) to negotiate or hold discussions with any Respondent and to correct deficient responses which do not completely conform to the instructions contained herein; and (vii) to cancel, in whole or part, this solicitation, for any reason or for no reason. ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.
4. All information submitted in response to this solicitation 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. A Respondent may wish to claim that certain information submitted in its response to this solicitation constitutes a Trade Secret or is otherwise exempt from disclosure under FOIL. Such claim must be made at the time of the response, and must be in writing supported by relevant and material arguments.
5. ESD reserve the right, in its sole discretion, without liability, to utilize any or all of the solicitation responses, including late responses, in their planning efforts. ESD reserve the right, in its sole discretion to retain and use all the materials and information, and the ideas, 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.
6. This solicitation shall not be construed in any manner as a commitment to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the solicitation. Neither ESD or FOB will be responsible for any costs incurred by Respondents related to preparing and submitting a response to this solicitation, attending oral presentations, or for any other associated costs.

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7. To the best of ESD’s knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of responses.

XII. PROCUREMENT FORMS AND REQUIREMENTS

Additional requirements for this RFP are described below. Relevant forms, where required to be submitted, must be executed and included in the submission in the same order as listed below:

- A. State Finance Law §§139-j and 139-k forms
- B. New York State Vendor Responsibility Questionnaire For-Profit Business Entity
- C. Iran Divestment Act Statement
- D. Non-Discrimination and Contractor & Supplier Diversity Requirements
- E. Encouraging the Use of NYS Businesses in Contract Performance Form
- F. Certification Under State Tax Law Section 5-a
- G. Project Sunlight (for review only—no separate form requirement)
- H. Insurance Requirements

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

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

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

http://www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

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

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

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

All potential Respondents are solely responsible for full compliance with the Procurement Requirements.

B. Vendor Responsibility

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

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

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

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company’s trade industry. Per the website, respondents are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).” For ESD RFPs concerning the purchase and redevelopment of real estate, it is most common for a Respondent to complete the form as a “Non-Construction” company. Unless the Respondent is primarily a Construction firm, the Respondent should thus fill out the Vendor Responsibility Questionnaire as a “Non-Construction” entity, either as a For-Profit or Not-For-Profit entity, depending on the Respondent organization type.

C. Iran Divestment Act

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

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

The list in question is maintained by the Office of General Services. No Response that fails to certify compliance with this requirement may be accepted as responsive.

D. Non-Discrimination and Contractor & Supplier Diversity Requirements

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

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

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

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval. ESD will review the submitted MWBE Utilization Plan and advise the Respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.
- B. If a notice of deficiency is issued, the Respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent and direct the Respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

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

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

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Respondent agrees with all of the terms and conditions according to the **Schedule B- Participation by Minority and Women-Owned Business Enterprises: Requirements and Procedures**. The Schedule B can be found at: (<https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf>). 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, Form # 4, to ESD with its bid or proposal.

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

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and 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:

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEOPolicyStatement.pdf

Form OCSD-2: http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf

Form OCSD-4: http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4MWBEUtilizationPlan.pdf

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

Diversity Practices

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

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: <http://ogs.ny.gov/Core/SDVOBA.asp> Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid (https://esd.ny.gov/sites/default/files/SDVOB_100_Utilization_Plan.pdf).

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- 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 SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
 - E. ESD may disqualify a 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 SDVOB 200, 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 (SDVOB 101) 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 made in writing to ESD.

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 SDVOB 101 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

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

ALL FORMS ARE AVAILABLE AT: <http://ogs.ny.gov/Core/SDVOBA.asp>

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

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

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

F. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA, or an affidavit that the Respondent is not required to be registered with the State Department of Taxation and Finance. A copy of the ST-220-CA form and affidavit is accessible at:**

https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

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.

G. 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 for real property (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

H. INSURANCE

Upon confirmation of complete scope of work, tailored insurance requirements will be provided to the Designated Developer. Attached is Appendix F is a sample of the minimum insurance requirements expected.

XIII. APPENDIX

Below is a list of appendices attached to and made a part of this solicitation. Appendices can be downloaded from <http://www.esd.ny.gov/CorporateInformation/RFPs.html>:

- A. Site Map
- B. Vision Plan
- C. Ground Lease and Franchise Agreement
- D. Cost Agreement Letter
- E. Diversity Practices Scoring Matrix
- F. Insurance Requirements