



**Empire State
Development**

Request for Proposals

BROADWAY MARKET

Buffalo, NY

Business Planning & Concept Design Services

Issued: August 5, 2019

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

Designated Contacts for this Procurement:

Primary Contact: Ralph Volcy
Secondary Contact: Amanda Mays

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

BroadwayMarket2019@esd.ny.gov

This RFP is posted on the Empire State Development website:

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

Pre-Proposal Meeting: Wednesday, August 21, 2019

Submission Deadline: Friday, September 13, 2019 by 5:00 p.m. EDT

Late Proposals May Not Be Accepted

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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.

As part of the 2017 State budget, the Governor and the State Legislature funded a second round of Buffalo Billion funding, totaling \$500 million. Working in partnership with Mayor Byron W. Brown and City of Buffalo staff, state officials have targeted a portion of this funding for strategic investments along Buffalo’s four East Side commercial corridors. As part of this strategy, \$65M in state funding is dedicated to the revitalization of Buffalo’s East Side through transformational capital investments in nine investment areas along four East Side Commercial Corridors (Michigan Avenue, Jefferson Avenue, Fillmore Avenue, and Bailey Avenue).

Through the establishment of goals, an analysis of economic and land use data, a look at past investments, and in-depth stakeholder engagement, Empire State Development and partners, with the assistance of University at Buffalo Regional Institute, developed a portfolio of catalytic projects aimed at improving economic conditions on Buffalo’s East Side. Governor Cuomo announced this portfolio of projects in March 2019. Among the identified catalytic projects for the Fillmore Avenue corridor is the **revitalization of the Broadway Market (the “Market”)**.

ESD has dedicated \$4 million in capital funds to ensure the Market is a sustainable and vibrant shopping hub and regional destination year-round. As one of the oldest and largest City-owned public markets in the United States, it is a focal point for Broadway-Fillmore Neighborhood residents as well as a seasonal holiday destination. In addition to the Market’s historic importance, the site is also a food shopping destination for residents seeking a diverse selection of affordable ingredients, prepared foods and neighborhood services. Open year-round and six days a week, the Market is now seeking to convert faithful community patrons and the annual, holiday influx of shoppers into an expanding customer base capable of putting the 90,000-square-foot site on sustainable footing from which it can serve as a stimulus to neighborhood development.

II. OVERVIEW

Background:

The Market has been the subject of several studies over the past two decades:

- In 1999, Project for Public Spaces, Inc./Public Market Collaborative (“PPS/PMC”) published the *Broadway Market Strategic Business Development Plan*. While the Market has implemented some of this plan’s recommendations – such as establishing a fundraising arm (Friends of the Broadway Market) and offering on-site production of food products through the funding of an incubator kitchen and staff – other changes suggested by PPS/PMC have not been realized.
- *The Community Food Development Strategy (2007)*—developed by the Broadway-Fillmore Neighborhood Food Alliance—took a neighborhood-wide approach to identifying potential roles for key institutions to adopt as a means of capitalizing on the increasing popularity of locally-grown food and farmers’ markets.
- In 2010, students under the direction of Alex Bitterman, PhD from the Rochester Institute of Technology (RIT) created *Broadway Market: Identity Systems Proposal*. This proposal provides some direction for the Market in terms of interior and exterior cosmetic changes such as uniform branding and signage design.
- Urban Marketing Collaborative issued the *Buffalo Broadway Market Evaluation Strategies and Recommendations Report* in February 2015. The report provides an Action Plan with short, medium and long-term goals as well as comparisons to peer public markets in other cities. While the Market has followed through on some of the short-term changes recommended in the Report such as hiring a full-time Market Manager, other recommendations on Financial Pro Forma and Management, Physical Layout, Vendor Mix and Display and Marketing have yet to be put into effect.
- In May 2018, Young + Wright Architectural compiled and issued *Broadway Market: Building Conditions Survey Report*. The Report identified immediate and long-term repair and replacement needs to be addressed to ensure uninterrupted operation of the facility. A safety code assessment, building conditions survey and 10-year cost of replacement budget are included in the Report though future spatial concerns due to changes in operation or facility goals were not considered.
- The City of Buffalo Division of Real Estate has contracted with CBRE for a market valuation due for completion by July 2019.

Recent upgrades include the City of Buffalo’s completion of a \$475,498 commercial incubator kitchen, a \$393,690 cement floor resurfacing project, and the introduction of free vendor and public wi-fi on-site. A \$540,000 Buffalo Police Department Substation is under construction at the Market and an estimated \$1 million has been committed by the City for renovations to the Market’s historic Art Moderne exterior. While the Market’s status as a City-owned facility has driven substantial municipal investment in the site, it also necessitates the kind of close coordination with City departments and Council members not always required of privately-owned facilities.

Objectives:

ESD is seeking to retain a professional consultant firm or team of consulting firms (the “Consultant”) to provide the following services:

Business Planning

Business planning efforts should build on and update previous planning efforts with a focus on which goals to prioritize and a vision for immediate steps that can be taken to implement changes. The resulting deliverable should establish a unified plan for the investment of East Side Corridor Economic Development capital funds and ongoing operations of the Market. The Plan should provide a clear framework for tenant-management relations, explore new approaches to the Market’s branding and outreach, consider financial implications and provide a prioritized action plan for implementation.

Marketing and Communications

A new market study and communications plan will identify the tools and strategies best suited to the Market’s core customers as well as those that can be used to expand the overall customer base. Beyond confirming the existing picture of the demographic makeup of the Market’s clientele, a marketing and communications plan should seek to build on recent successes with social media and ascertain the best path to growing the Market’s brand on other platforms in service of targeting promotional materials to retain and build the customer base.

Community Outreach

Consultant(s) will work with the local steering committee to engage residents from the surrounding Broadway-Fillmore Neighborhood and gather input that will inform the final deliverables and strengthen ongoing relations with the neighborhood and its other assets, including the Central Terminal. Consultant(s) are encouraged to identify creative techniques to engage the public that will simultaneously identify potential opportunities for community collaboration that build excitement for the next phase of the Market’s renovation.

Architectural Design

Development of preliminary designs for capital improvements should be aimed at creating a more attractive, customer-friendly and manageable space. Both interior and exterior improvements may be considered. New exterior improvements such as (but not limited to) landscaping, signage, artwork and streetscape elements should help foster a sense of the Market has a premier cultural destination. New interior improvements such as (but not limited to) updates to finishes, enhancements to create a more welcoming and open space that feels less confining and utilitarian for customers, rationalized vendor layout and clearer wayfinding should build new excitement, spur increased visitation and provide efficient operation of the Market. Interior design considerations

will also include equipment needs such as electrical, plumbing and lighting to ensure changes to vendor configurations are supported by the necessary infrastructure. Any alterations to the building will have to accord with the facility's status as part of the recently established Broadway-Fillmore Historic District and recognize the role of the City's Department of Public Works.

MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm's contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to BroadwayMarket2019@esd.ny.gov. Nothing prohibits an MWBE and/or SDVOB Vendor from proposing as a prime contractor.

III. SCOPE OF WORK

ESD is seeking a Consultant and/or team to provide necessary services including, but not limited to, the scope of work described generally in the following sections.

Update the Strategic Business Development Plan

The selected respondent will update the existing Strategic Business Development Plan by providing recommendations for addressing current operations and the prioritization of management issues related to the following:

- Excess building space
- Tracking of tenant rents and costs
- Back office administration
- Financial management
- Hours of operation and regulating regular tenant use of their stalls
- Lease and product line agreements
- Vendor mix and recruitment
- Short- and long-term capital needs
- Communications, outreach and branding
- Equipment and new technology

Deliverables

Strategic Business Development Plan Update Document including operating proforma and action plan for implementation, including short-term actions based on anticipated future funding streams.

Executive summary document (10-15 pages) tailored for a general audience

Marketing Plan

A marketing plan will help the City understand the demographics and socio-economic characteristics and trends within the Market's trade area and provide recommendations for future marketing and branding of the Market. A marketing plan might include the following:

- Short- and long-term actions for implementing marketing strategies
- Branding recommendations/concepts
- Customer surveys
- Analysis of current and projected market demand
- Analysis of food and beverage market trends and gaps (both regionally and nationally)
- Analysis of demographics including age, socioeconomic status, access to vehicles, and other potential indicators of product demand and preference

Deliverable

Stand-alone marketing plan document (with prioritized implementation plan for marketing strategies)

Community Outreach

With involvement of the Project Steering Committee, the Consultant will facilitate opportunities for public input on the next phase of renovations to the market and how the market can be better integrated into the fabric of the Broadway-Fillmore neighborhood. Special attention should be given to collecting data from members of the community without easy access to healthy foods and how the Market can improve the availability of such foods to vulnerable households. Possible means of gathering public input might include:

- Community surveys, public meetings and open houses, pop-ups and focus groups
- Involvement and collaboration with neighborhood groups and other key stakeholders

- Outreach to current vendors potentially through quarterly Market tenant meetings

Deliverable

Summary of community outreach process and findings (may be integrated into the strategic business plan update document)

Design Concepts

The selected Respondent will develop up to three (3) interior design concepts (with accompanying exterior design elements) aimed at creating a more attractive, customer-friendly and manageable space.

Exterior designs elements should consider the following:

- Development of consistent and contemporary site-identifying and signage to improve user experience upon approach and communicate a sense of the Market's character
- Installation of functional and attractive streetscape improvements
- Landscaping elements to create a unique sense of place

Interior design concepts should consider the following (in conjunction with business plan update process):

- Enhancement of the Market's entrance and vendor space to create a more welcoming and intuitive customer experience
- Concentration of activity and complimentary vendors and products to optimize usage of floor space and improve customer navigation
- Establishment of consistent vendor sign design guidelines
- Rationalization of vendor stall size variation and service guidelines addressing electrical and communications services, drainage and water services and ventilation as needed
- Installation of new equipment and technology

Deliverables

- a) Three (3) design concepts for interior of the Market (including floor plans and renderings)
- b) Design guidelines for vendor stalls and signage
- c) Construction cost estimates (order of magnitude)

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	August 5, 2019
Pre-Proposal Meeting/WebEx Conference/Site Tour	August 21, 2019
Deadline for Submission of Questions	August 30, 2019 by 5:00 p.m. EDT
ESD Responses to Questions	September 4, 2019
Deadline for Submission of Proposals	September 13, 2019 by 3:00 p.m. EDT
Interviews (if necessary)	Week of September 23, 2019
Recommendation of Consultant/Bidder to ESD Board of Directors	October 2019
Anticipated Contract Start Date	TBD

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

V. SELECTION PROCESS AND EVALUATION CRITERIA

Submitted proposals shall be evaluated based on "best value" to ESD (i.e., a combination of factors influencing value, rather than solely upon the proposed cost of services), and shall be scored on a 100-point scale in accordance with the following evaluation criteria:

- **Project Approach (30 Points).** Proposals shall be scored on the quality of the approach/methodology presented with respect to the scope of services, based upon the demonstrated understanding of the project needs/objectives and the team's ability to provide such services;
- **Consultant Experience (30 Points).** Consultant teams shall be scored on the quality and breadth of experience of the firm(s) in general, and in particular, the staff assigned to this effort. Scores shall be based on:
 - Extent that past consulting services provided to municipalities, economic development agencies, and/or other governmental agencies are comparable to this scope of services;
 - The quality of work product as demonstrated in project sheets submitted as samples of past projects; and
 - Ability of the prime Consultant to identify subconsultants with the necessary qualifications for a project of this significance and complexity.
- **Cost of Services (20 Points).** Each fee proposal shall be scored for reasonableness. Factors considered shall include:

- Extent that the level of effort (i.e. hours assigned) for key staff (PM and task leaders) is consistent with that proposed in approach/scope of work (i.e., extent that team proposed will actually do the work);
 - Extent that proposed overall level of effort (i.e., total hours) is sufficient to completely undertake the proposed work under each task; and
 - Extent that other non-salary costs in the fee proposal are attributable and reasonable.
- **Project Schedule (10 Points).** Consultant teams shall be scored on the expeditiousness of the proposed schedule/timetables to complete the scope of services and demonstration of the team’s techniques and wherewithal to successfully complete the project in the shortest, but most reasonable timeframe.
 - **Diversity Practices (10 pts).** ESD’s Office of Contractor and Supplier Diversity will score each application for Diversity practices. Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix A, submitted by each Respondent to the RFP

ESD, in its sole discretion based upon the number/quality of proposals submitted, reserves the right to create a “short-list” of prospective Consultant Teams to be interviewed. Selection for interviews will be based on an independent evaluation of the submitted proposals using the factors listed above.

Final selection will be based on the Proposal score (100 points) plus the interview score (100 points, if required), or a potential total of 200 total points.

ESD also reserves the right to:

- Seek clarification and revisions of proposals;
- Seek a final and best offer from those firms short-listed;
- Make an award under the RFP in whole or in part;
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring full and complete understanding of a proposal and/or to determine a respondent’s compliance with the requirements of the solicitation; and
- Revise the scope of work after contract award to ensure that the project goals/objectives are met.

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. Project Schedule
- G. 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. Summarize your organization’s or team’s ability to undertake the work being solicited for in this RFP.

2. Present the major themes of your proposed approach to the effort—how you will meet the challenge.
3. Present the main strengths of your skill sets and experience in administering a Buffalo Main Streets Initiative program, New York State Main Street program and/or related program.
4. Present key abilities of your proposed team and discuss any critical “distinguishers”— why your organization should be selected over others.

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.

1. Proposed Team. Respondents shall include firm profiles of the proposed Prime Consultant and any Sub-Consultants, as applicable.
2. Relevant Past Projects. Respondents shall provide no more than ten, one-page experience sheets (Note: additional materials will not be considered) summarizing the best examples of current and/or past projects undertaken by the firm and/or members of the team that are most similar and relevant to the process outlined in this RFP (see Section VII Experience and Expertise).
3. Information with respect to location, size, uses, approximate contract value, and dates of engagement.
4. Graphic material/photographs illustrating efforts.
5. Contact information (i.e., name, phone, and email) for applicable references for each representative contract.
6. Include an organizational chart identifying members of the Consultant team (Prime and Sub-Consultant firms) as well as their respective administrative, management and professional responsibilities. If any, note any prior working relationships among the Prime Consultant and Sub-Consultant firms.
7. Individual resumes should be submitted for key team members that will be engaged in the Project (no more than one [1] page in length for each staff member), stating

registrations and licenses; professional and educational background; and experience relevant to this Project.

8. Current Workload.

List current projects and their status (including percentage complete) for all major task leaders (e.g., PM, deputy PM, major technical specialty leaders) included on the Consultant team.

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:

1. Based upon information in this RFP and from individual research, set forth your team's overall understanding of the effort, the key objectives, challenges, and overarching issues associated with realizing these objectives.
2. Based upon your preliminary understanding of the Project context, present your Team's overall Project approach to the objectives outlined in this RFP.

E. Estimated Cost

The proposal must include a detailed staffing plan including:

1. A budget summary for all Consultant services delineated by research/analysis, outreach, design and implementation planning activities across all tasks outlined in the Scope of Services.
2. A detailed labor budget for all Consultant services delineated by task as outlined in the Scope of Services, including the estimated hours, hourly rate and cost of each staff member whose resume is provided or whose job category may be required.
3. A list of anticipated reimbursable expenses and the rate charged for each without markup. Please indicate under reimbursables, a detailed list of working models, presentation models, renderings, or other work product to be furnished during each state of services which is not included in basic services covered by the proposed fee schedule and the cost for each.

Although proposed fees will be taken into account, ESD reserves the right to negotiate a lower or different fee structure with any Consultant that is selected.

F. Diversity Practices

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

G. Project Schedule

The proposal must include a task-by-task schedule that specifies the time (in days or weeks) that will be required for each task, work part, and all scope of services. Include a linear timetable, with significant milestones, which outlines the sequencing, overlapping, etc., of the individual tasks. The schedule should begin coincident with contract execution or a letter to proceed, whichever is earlier. The schedule also should indicate the time allocated for team reviews/meetings and approvals. The timeline should be presented in weeks, starting in month one.

In addition, describe the process(s) the prospective Consultant would employ to maintain strict budgetary and schedule controls on the Project.

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
- 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](#)

- [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 – BROADWAY MARKET Buffalo, NY - Business Planning & Concept Design Services Proposal submitted by [Bidder’s name]”**
5. Each Bidder must submit:
 - Six (6) hardcopies and one (1) text-searchable electronic copy on CD or flash drive of the *Technical Proposal*.
 - One (1) original and one (1) electronic copy on 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
95 Perry Street, Suite 500
Buffalo, New York 14203-3030
Attention: Amanda Mays

RFP: “BROADWAY MARKET Buffalo, NY - Business Planning & Concept Design Services”

Late proposals will not be considered for award.

VII. SITE VISIT/QUESTIONS

Before submitting a proposal, prospective Consultants are encouraged to examine documents noted in the RFP and made available on the Contract Reporter website.

A non-mandatory pre-proposal meeting will be held at **10:00 a.m. on Wednesday, August 21, 2019** at ESD offices at 95 Perry Street, 5th Floor, Buffalo, NY. At the meeting, ESD and City officials will be present to go over objectives of this effort and specific information for completing required forms/certifications listed in the RFP. Prospective Consultants will be permitted to ask questions at the meeting; these questions and the responses will be recorded in written form and later posted to the Contract Reporter website. To facilitate space planning for the meeting, please RSVP to Janet Murray at 716-846-8200, prior to close of business on Monday, August 19, 2019.

A tour of the Broadway Market will be convened immediately following the pre-proposal meeting at 999 Broadway, Buffalo, NY 14212. Please note that transportation will NOT be provided between ESD offices and the Market.

For those that cannot attend the pre-proposal meeting in person, a WebEx session will be established to participate in the meeting remotely. When they RSVP, prospective Consultants will be required to provide “sign-in sheet” information—company name, address/phone, and contact person email—and will be provided the web address and toll-free number/password the day of the meeting.

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 BroadwayMarket2019@esd.ny.gov. Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

VIII. GENERAL PROVISIONS

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

- i. amend, modify or withdraw this RFP;
- ii. revise any requirement of this RFP;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;

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

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

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

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

Required Approvals

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

Performance

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

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

Additional Services Requested

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

Contractor Staff

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

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

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

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

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

IX. CONTRACTUAL REQUIREMENTS

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

i. Conflicts of Interest

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

A. Gifts and Offers of Employment: Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not

make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed above; the completion by Bidders of the 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://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

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

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

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

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

iii. Vendor Responsibility Questionnaire

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

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

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

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

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

iv. Iran Divestment Act

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

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

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

v. Executive Order 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 (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 [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-Utilization-Plan.pdf>

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

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

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

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix 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% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

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

- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

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

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

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

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

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/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

viii. Certification under State Tax Law Section 5-a

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

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

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. Appendixes

- Appendix A – Diversity Practices Questionnaire
- Appendix B - Strategic Business Development Plan
- Appendix C - Evaluation Strategies and Recommendation
- Appendix D - Building Conditions Survey
- Appendix E - Market Study
- Appendix F - Identity Systems Proposal