

**Request for Proposals**

**Buffalo Bills Stadium Project**

**AGENCY REPRESENTATIVE/CONSTRUCTION OVERSIGHT SERVICES**

**Buffalo, New York**

Solicitation Issue Date: May 20, 2022

Proposal Due Date: June 24, 2022 @ 2PM

Issued by:

**The New York State Urban Development Corporation  
d/b/a Empire State Development**

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Buffalo, NY 14203

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## **I. INVITATION TO SUBMIT PROPOSALS**

The New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) is seeking proposals from a well-qualified Construction Management/Construction Monitoring firm (the “Consultant” or “Firm”) to provide owners representative, project management and construction oversight services as related to the construction of a new stadium to house the Buffalo Bills NFL franchise (the “Project”). The construction work is being completed by the Buffalo Bills but due to the significant public investment into the new stadium and because the new facility will be owned by ESD through its subsidiary the Erie County Stadium Corporation (“ECSC”), the services of a qualified construction management/monitoring firm is required to assist ESD with oversight and monitoring of the design, construction and commissioning of the facility. The selected Firm will be required to provide the services requested in this request for proposals beginning immediately and continuing through construction of the stadium expected to be complete as early as the 2026 NFL season.

## **II. PROJECT BACKGROUND**

In May of 2013, ESD through its subsidiary, the ECSC, the County of Erie (“County”) and the Buffalo Bills, LLC (the “Bills”) entered a ten-year lease of the current Highmark Stadium. Highmark Stadium (which opened in 1973, replacing the WPA-era War Memorial Stadium on the East Side of Buffalo) is home to the Buffalo Bills NFL team and located in Orchard Park, a suburb of Buffalo. The current stadium and related complex is owned by the County, leased to the ECSC and subleased to the Bills through July of 2023. In anticipation of the current lease expiring, the State, the County and Bills have agreed that Highmark Stadium has reached the end of its useful life and that in order to maintain the Bills franchise in Buffalo, a new stadium needs to be constructed. As such, the parties have entered a Memorandum of Understanding (“MOU”) outlining the terms regarding the construction and operation of a new stadium in Orchard Park.

Per the terms of the MOU, the new stadium will be constructed across Abbott Road from the current Highmark Stadium by the Bills at a cost of approximately \$1.4 billion. The new stadium and adjoining complex will be owned by the ECSC and leased to the Bills for a term of 30 years. The State, through the ECSC, will contribute \$600 million towards the cost of construction with the County contributing \$250 million and the Bills paying the remainder. As the stadium will be owned by the State through ECSC and due to the significant public contribution being provided to construct the new facility, ESD/ECSC is seeking to retain a firm with significant construction management/oversight experience to monitor the design and construction of the new facility to ensure the public investment is properly expended and is consistent with the project program statement. ESD/ECSC will not be holding any design or construction contracts for the new facility. Rather, the Bills will be responsible to complete the project and be responsible for all costs should the total project budget exceed \$1.4 billion.

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

ESD is seeking innovative proposals that are cost effective while producing a high quality outcome and ensure the Project is designed to meet current NFL standards, that the Project is consistent with the project program statement and constructed in terms of quality, price and schedule to ensure that State's investment is properly spent. The primary responsibility of the Consultant shall be to represent ESD throughout the pre-construction, construction, and post-construction processes; attend Project meetings; verify the design and construction of the Project is in accordance with the program and standards agreed to by the State, County and Bills; advise ESD/ECSC of progress and issues concerning the Project; monitor compliance with Minority and Women Business Enterprise ("MWBE") goals in accordance with NYS Executive Law Section 15-a and Service-Disable Veteran-Owned Business ("SDVOB") goals in accordance with NYS Executive Law Section 17-B; and monitor all aspects of the public expenditures. The successful Consultant will be responsible for all of the tasks outlined below as well other related tasks as assigned by ESD/ECSC staff.

The services provided by the selected Respondent will be based on direction given by ESD/ECSC which will include assisting ESD with the following tasks:

#### Project Design:

- Manage, review and evaluate design documents for overall compliance with program and project agreements.
- Monitor the issuance and review shop drawings, product data and other submittals to ensure quality and compliance with Project requirements.
- Monitor value engineering of alternative materials, methods and systems and analyze and recommend the relative feasibility of construction methods, availability of materials and labor, installation and construction and factors related to construction costs and suitability.

#### Construction Phase:

- Attend on-site construction meetings as needed.
- Review of project budget and monthly payment applications. Receive, review, certify, and approve for processing by ESD/ECSC, all schedules of values, invoices, and requests for payment prepared by the construction contractors. Ensure that all necessary backup documentation is included in payment applications being paid with State funds, including but not limited to; certified payrolls, certification of material compliance, subcontractors' and supplies' waivers of liens, M/WBE utilization report, and current insurance certificates with the proper listing of additionally insured.
- Field verification of level of completeness.
- Inspect, interpret, and certify as proper, correct, and in compliance with the applicable Contract Documents (including the project program statement), all work performed by the construction contractor; all equipment and materials furnished and installed on the Project throughout the

entire construction process. Inspect for, but not limited to, quality of materials, good workmanship; adherence to specifications, codes, standards, and contract documents; verification of additional work; and approval of payment requests.

- Cost estimating & project cost control reporting when applicable.
- Change order, claims, & risk management review and tracking.
- MWBE and SDVOB compliance, review of good faith efforts, field audits of MWBE/SDVOB contractors, follow up on MWBE/SDVOB outreach and solicitation, and reporting.
- Review bidding of subcontracts and/or vendors to ensure compliance with established protocols including bid leveling, descoping, and MWBE/SDVOB subcontracting goals
- Management of owner third party contracts associated with project if required (inspections, estimating services, expeditors, etc.)
- Monitoring quality assurance and control planning and implementation.
- Ensure proper record keeping on project.
- Ensure all relevant permits and licenses are in place for subcontractor, general contractor and owner throughout the course of the project.
- If required, perform a Project Labor Agreement (PLA) feasibility study, to determine whether it is in the Project's best interest to negotiate a PLA, and if so, determined; assist with negotiation of a PLA, in conjunction with ESD/ECSC, the County and Bills with the construction trade unions.
- Monitor and report on compliance with PLA requirements.

#### Commissioning and Final Acceptance:

- Monitor the commissioning of equipment and systems.
- Verify that all systems are operating within the intent of the contract documents, and that all components of the systems comply with the approved contract drawings and product data submittals.
- Review, approve, and log all operation and maintenance manuals prior to forwarding to ESD/ECSC.
- Provide a detailed closure report with a summary of all contracts, permits, issues, lessons learned, and highlights from the Project.

#### For all Project Phases:

- The Firm shall be responsible for preparing monthly written progress reports to ESD/ECSC, no later than the 10<sup>th</sup> day of the following month. The monthly reports shall include the following information:
  - a. Executive Summary – high level summary of the current Project progress and changes from the previous month's report. The summary must indicate whether the Project is on or off schedule and budget, and any recovery steps that may be necessary.
  - b. Progress Narrative – supported by photographs and the current master schedule to show progress.
  - c. Issues Report – a summary report of all critical and important issues facing the Project.

- d. Construction Contractors' Payment Summary – include a discussion of variances between amounts paid to date and the cash flow forecast.
- e. Manpower Summary
- f. Foreseeable Risk that may impact schedule, contract values and Project budget.
- g. Permit Log – detailing the permit date, issuing agencies, agency contact information, inspections pertaining to the permit and status of inspection date, and permit expiration date.
- h. Closeout Status – punch list, operation and maintenance manuals, trainings, warranties, as-builts, etc.
- i. Attachments – attach pertinent photographs, logs, reports, etc.
- j. MWBE compliance – summary of current MWBE and SDVOB usage and compliance with established goals, provide notification to ESD/ECSC of issues and summary of field audits.

In addition, it is expected that the Consultant will inspect the Project site, monitor progress of the Project, attend Project related meetings, and/or perform other ad-hoc services relating to the Project as may be directed by ESD/ECSC.

The Project site is located in Orchard Park, New York and as such, while it is not expected that the Firm will need to provide full-time on-site services during the entire project duration, the selected Consultant will be expected to have staff available for on-site inspections and to attend Project related meetings. For potential respondents to this request for proposals who do not have a physical presence in Western New York, respondents are encouraged to partner with local firms to limit travel expenditures and to ensure that staff will be available as needed for on-site meetings and inspections as may be required during construction of the Project.

ESD/ECSC may request additional services throughout the term of the contract. The Firm shall promptly respond to additional requests for services, provide a detailed scope of services, with personnel, equipment, costs, and duration as requested by ESD/ECSC to complete the services.

#### **IV. SELECTION PROCESS**

##### **A Skills Required**

The successful respondent will provide design review and construction oversight services on behalf of ESD/ECSC for the Buffalo Bills Stadium Project. ESD/ECSC is looking for a partner who has the knowledge and experience to accomplish the Scope of Services outlined in Section III.

The Firm working on the Project shall have expertise and extensive experience in construction management/monitoring on complex construction projects and preferably stadium or similar type projects. The Firm's role and experience shall encompass the following, but not limited to;

- Providing the as directed services required to complete the Project.
- Support ESD/ECSC for the duration of implementation of the Project.

- Provide technical expertise to assist in the development, review, and approval of Design and Construction Drawings and Specifications from the Design Team.
- Provide technical expertise, consisting of architectural and engineering disciplines; management; materials review; and construction inspection services to monitor the construction of the Project.

In evaluating proposals submitted pursuant to this RFP, ESD/ECSC places high value on the following factors, not necessarily in order of importance:

- Approach in methodology with respect to the Scope of Services that demonstrates maximum comprehension of and ability to provide such services;
- Commitment of principles to lead the team and devote time to the Project;
- Experience of staff being assigned to the Project in general, and in particular, providing construction management services to municipalities, economic development agencies, and other governmental agencies;
- Quality of work product demonstrated in past projects that are similar in scope;
- Ability to complete projects in accordance with schedules and maintain budget;
- Conformity with or exceeding applicable ESD/ECSC policies noted herein, including specific policies relating to non-discrimination of affirmative action subcontracting goals;
- Manhours and cost of services;
- Diversity Practices

**B Selection Process**

Selection of the firm considered to be the "best value" shall be made in accordance with the following evaluation criteria and weights (100 total points) as follows:

1. Experience/qualifications of the company (or companies) and staff to undertake the specific requirements of the Scope of Services outlined in Section III including experience with large construction projects including stadium or similar projects. – 20 points;
2. Approach in methodology with respect to the Scope of Services, and specifically on technical aspects of the services – 15 points;
3. Experience of staff dedicated to the project; specifically with extensive experience in constructability; experience assisting in making design decisions based on extensive knowledge of Architectural and Engineering design and systems; and experience providing construction management services to municipalities, economic development agencies, and other governmental agencies – 20 points;

4. Appropriateness of manpower and cost of services in addressing the entire Scope of Services outlined in Section III – 30 points;
5. Quality of work product demonstrated by completed projects, including high profile projects and efforts representing outstanding principles of design quality – 10 points;
6. Diversity Practices – ESD and ECSC have determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of their proposal, as described in Exhibit B herein, a completed Diversity Practices Questionnaire – 5 points

It is expected that a maximum of three (3) applicants will be selected, or 'short-listed' for interviews. **Interviews will be held at the ESD Office in Buffalo, New York or remotely through a virtual conference platform.** Selection for interviews will be based on an independent evaluation of the submitted proposals using the above factors. ESD/ECSC reserves the right to forego the interview phase as determined in its sole judgment.

Final selection will be based on the above factors, as well as the interview performance. The final selection will be a "best value" selection. ESD/ECSC 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 an offerer's proposal and/or to determine an offerer's compliance with the requirements for the solicitation.
- Make revisions to the scope of work after contract award to ensure that the project goals are met.
- To amend, modify, or withdraw this RFP;
- To revise any requirements of this RFP;
- To accept or reject any or all Proposals;
- To extend the deadline for submission of Proposals;
- To waive or modify minor irregularities in Proposals received;
- To eliminate qualification requirements unmet by all Respondents;
- To disqualify proposals that fail to meet the qualification requirements;



- To require clarification, supplemental statements or information from any Respondent, for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- To negotiate with any or all Respondents, within the proposal requirements, to best serve the interests of ESD/ECSC;
- To amend the scope after release of this RFP, with due notice given to all those solicited to modify their proposals to reflect the changed scope;
- To cancel, or reissue in whole or in part, this RFP, if ESD/ECSC determines in its sole discretion that it is its best interest to do so;
- To award contract(s) for any or all parts of a proposal;
- To elect to award contract(s) to one or more responsive and responsible.

**C Proposal Requirements**

Respondents or teams are required to submit one (1) signed original, three (3) hard copies, and two (2) electronic copies on USD memory stick of the proposal. The proposal shall be limited to no more than 25, double-sided pages. Required forms (Exhibit C) do NOT count against the page limit.

The following is a list of the required information that must be provided by the proposer. Proposers are to organize their response in the same order in which it is requested using numbered tabs that correspond with each numbered section below.

**1. Description of Firm**

- a. Professional Capabilities
- b. Staffing
- c. Project Mix/Client Mix
- d. Litigation (Last five years)
- e. Changes/trends in above over last five years

**2. Project Team**

- a. Resumes of partners, principles, associates and other staff proposed to provide services outlined in the Scope of Services
- b. List of a contact information of subconsultants required to perform work

- c. Description or outline of the Project Team Organization, including Project role/function chart
- d. Total relevant human resource availability throughout agreement, particularly for on-site activities
- e. Ability to have staff including subconsultants work at the Project site. List all staff expected to be on-site and amount of time expected to be on site per month.

**3. Qualifications and Expertise**

- a. Description of the firms experience providing similar services including recent relevant projects, with a focus on comparable projects, for public and private sectors.
- b. Proposers shall demonstrate specific technical experience and competence in each of the following areas:
  - i. Construction Monitoring of high-quality mixed use projects, delivered on schedule and on budget
  - ii. Coordination with multiple users and a large multi-disciplinary team of engineering and specialty consultants
  - iii. Experience with Project Labor Agreements

**4. Project Management Methodology**

- a. Overall project management approach and methodology as they relate to the Scope of Services outline in Section III above.
- b. Project tracking and performance monitoring procedures
- c. Project progress reporting procedures

**5. Technical Approach**

Describe your approach to the Scope of Services that clearly demonstrates your understanding and your ability to manage and complete the Project in a timely and cost-efficient manner. The proposal must include a detailed statement of your approach and ability to provide the required Scope of Services, including your proposal for manhours expected to be devoted to each phase of the Project and manhours expected to be spent on-site.

**6. References**

- a. List representative experiences for the past three years.

- b. List the references to which you provided services of a similar nature. Indicate scope of work, total compensation paid, and the term of contract.
- c. List any previous work experience for ESD or its subsidiaries as either a prime or sub-consultant.

Provide your information in the following format:

- Project name and description
- Your firm's scope of work or role on Project
- Client name, address and telephone number
- Client contact (Full Name and Title)

#### **7. Cost Proposal**

- a. Provide a total cost proposal for the Scope of Services. For cost proposal submissions, respondents should assume a construction start date of June 1, 2023 and a three year construction timeframe with Project close-out December 31, 2026. Respondents should also assume a contract start date for this solicitation of August 1, 2022.
- b. Hourly Billing Rates— provide the hourly billable rates for all positions expected to provide services— submit in tabular format. Billing Rate tables may be updated once per year but any increases in proposed hourly rates MUST be including with your proposal. Hourly rates shall be provided for all proposed subcontractors/ subconsultants. Payment will be made to the selected Firm on a time and material basis.
- c. Typical cost/person and an estimate of total costs expected to be billed monthly assuming a contract start date of August 1, 2022 and end date of December 31, 2026.
- d. If hourly rates DO NOT include travel/lodging costs, include a separate amount not to exceed for such costs.
- e. A total for any other expected costs to be reimbursed. Include a separate allowance for the PLA study referenced in Section III above.

#### **D Other Certifications & Requirements**

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

## **NEW YORK STATE LAW**

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

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

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

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

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

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

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

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

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

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

- b. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- c. ESD may disqualify a respondent as being non-responsive under the following circumstances:
  - i. If a respondent fails to submit an MWBE Utilization Plan;
  - ii. If a respondent fails to submit a written remedy to a notice of deficiency;
  - iii. If a respondent fails to submit a request for waiver; or
  - iv. If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must

be made no later than prior to the submission of a request for final payment on the Contract.

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

**Equal Employment Opportunity Requirements**

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

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

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

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

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

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

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

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

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

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

Form OCSD-3:

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

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

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

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

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

### **Diversity Practices**

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

## **2. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses**

### **NEW YORK STATE LAW**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ESD recognizes

the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

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

### **Contract Goals**

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

### **SDVOB Utilization Plan**

- a. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- b. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.



- c. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- d. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- e. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - i. If a Bidder fails to submit an SDVOB Utilization Plan;
  - ii. If a Bidder fails to submit a written remedy to a notice of deficiency;
  - iii. If a Bidder fails to submit a request for waiver; or
  - iv. 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:

- a. Copies of solicitations to SDVOBs and any responses thereto.
- b. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- c. 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.
- d. 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.
- e. Other information deemed relevant to the waiver request.

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

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

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

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

### **3. 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 responses a properly completed Form ST-220-CA, a copy of which is accessible at the Required Forms for Vendors link at the ESD web site at <https://esd.ny.gov/sites/default/files/ST220CA.pdf> or an affidavit certifying that STL 5-a does not apply to the proposed vendor at: [https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.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.

### **4. State Finance Law Sections 139-j and 139-k**

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, ECSC 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 (x) 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 below; (y) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding of 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/RFQs"); and (z) 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 of and Agreement pursuant to State Finance Law as part of their submittal.**

The Procurement Requirements also require ESD and ECSC staff to obtain and report certain information when contacted by prospective 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 prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective 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.

**For the purpose of compliance with State Finance Law Sections 139-j, contact with Stephen Gawlik, Senior Counsel is considered permissible. Contact information for Mr. Gawlik is provided in Section VIII.**

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](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](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.

## 5. Insurance Coverage

Please note that **upon selection** for this Project, the Firm will be required to demonstrate/provide the following insurance coverage. The Firm shall maintain or cause to be maintained Insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required depending on the nature of the services to be performed under this Agreement or a sub-contract agreement.

### a. Workers' Compensation Insurance:

- i. Workers' Compensation - Statutory Limits; Employer's Liability
- ii. Employer Liability Limits:

- a. \$1,000,000 Bodily Injury each Accident
- b. \$1,000,000 Bodily Injury by Disease – Policy Limit
- c. \$1,000,000 Bodily Injury by Disease – Each Employee

- iii. Coverage shall include US Longshore and Harbor Workers' Compensation Act Insurance.

### b. Commercial General Liability Insurance

#### i. Limits of Liability

- a. \$1,000,000 Each Occurrence
- b. \$2,000,000 General Aggregate
- c. \$2,000,000 Products/Completed Operations Aggregate
- d. \$ 5,000 Medical Expense Limit (any one person)

- e. \$ 50,000 Fire Damage Legal liability (any one fire)
- ii. Coverage shall be on an Occurrence form and apply to bodily injury and property damage.
  - a. These limits shall apply on a “per project” basis.
  - b. Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
  - c. Contractual Liability and Additional Insured Coverage shall not include any limitations for injuries to your own employees.
  - d. Products and Completed Operations Liability shall be maintained for three (3) years beyond completion and acceptance of the Project.
  - e. There shall be no XCU exclusion (Explosion, Collapse or Underground),
  - f. There shall be no “Labor Law” or other gravity related injuries exclusion.
  - g. Shall include coverage for Independent Contractors
  - h. Shall include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the Project
  - i. Delete contractual exclusion, or any other policy exclusions, for work done within 50 Feet of a Railroad, Light Rail, Subway or similar tracked conveyance or provide endorsement CG2417-Contractual Liability-Railroads
  - j. Additional Insured Endorsements: All commercial general liability policies shall include the ESD, ECSC, the State of New York, the County of Erie and Buffalo Bills, LLC as additional insureds pursuant to endorsements satisfactory to ESD and ECSC.
- c. Automobile Liability Insurance
  - i. \$1,000,000 Bodily Injury/Property Damage Combined Single Limit
  - ii. Commercial Automobile Liability Insurance to cover all vehicles including owned, non-owned and hired.
- d. Excess Liability
  - i. Limits of Liability: \$25,000,000
  - ii. Coverage should be at least as broad as and follow form of Employer’s Liability, General Liability, and Auto Liability. Policy to include a drop down provision over primary policies.

**6. Certificates of Insurance**

Certificates of insurance reasonably acceptable to the ESD/ECSC shall be filed with the ESD/ECSC within ten (10) days after award of the contract to the Selected Firm and prior to commencement of the Work. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be materially modified, cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to ESD/ECSC. The provisions of this Section shall apply to all policies of insurance required to be maintained by the Manager pursuant to the Contract Documents.

**Other Insurance** - Any type of insurance or any increase of limits of liability not described in this section which the Firm requires for their own protection or on account of any statute shall be their own responsibility and at their own expense.

As respects General Liability, the additional insured endorsements shall be on a form at least as broad as ISO Forms CG2010 07 04 & CG2037 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which ESD & ECSC or other parties, are required to be named as Additional Insureds. The additional insured coverage shall include completed operations coverage for the Additional Insureds for a period of not less than 36 months after completion of the project.

- a. The Firm shall, by specific endorsement to its primary commercial general liability policy, and automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and not concurrent with any other valid and collectible insurance available to the Additional Insureds.
- b. The Firm shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds and not concurrent with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis.
- c. The Firm shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements;
- d. The Firm shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include products liability and completed operations, with the provision that coverage shall extended for a period of at least 24 months after completion of the project;
- e. The Firm shall, by specific endorsement to its primary and umbrella/excess liability policies, provide that defense costs are not be considered as damages so as to erode the policy limits required under sections 1 – 5 above.
- f. All policies shall contain a waiver of subrogation in favor of ESD/ECSC and all others as required by contract.

- g. Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by ESD.
- h. The Contractor shall require all subcontractors to include Additional Insured endorsement CG 2038 04 13 and CG 20 37 07 04 with respect to General Liability.
- i. Certificates evidencing the foregoing insurance coverages must be furnished by Manager to, and be approved by ESD, before the proposal can be considered. Certificates, Notices of Cancellation, or changes, etc., are to be sent by Manager, directly to ESD at 633 Third Ave., Contracts Administration, 35<sup>th</sup> Floor, New York, NY 10017. Manager or Manager's agent and Manager's insurance carrier(s) must reconcile all policy requirements to the satisfaction of ESD. Manager shall provide certified copies of all policies required under this OR within 15 days after receipt of request by the Contactor for such information.

**No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.**

All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least A- VII by A.M. Best and Company, or meet such other requirements as are acceptable to the ESD/ECSC.

Should the Firm fail to provide or maintain any insurance required by this contract, the ESD/ECSC may, after providing written notice to the Manager, purchase insurance complying with the requirements of this Article and charge back such purchase to the Manager.

At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Firm shall immediately cease work on the Project. The Firm shall not resume work on the Project until authorized to do so by the ESD/ECSC. Any delay or time lost as a result of the Firm not having insurance required by this Article shall not give rise to a delay claim or any other claim against the ESD/ECSC or the Client.

Notwithstanding any other provision in this Article, the ESD/ECSC may require the Firm to provide, at the expense of the ESD/ECSC, any other form or limit of insurance necessary to secure the interests of the ESD/ECSC.

The Firm shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Firm. The requirement to



secure and maintain such insurance is solely for the benefit of the Firm. Failure of the Firm to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

Neither the procurement nor the maintenance of any type of insurance by the ESD/ECSC or the Firm shall in any way be construed or deemed to limit, discharge, waive or release the Firm from any of the obligations or risks accepted by the Firm or to be a limitation on the nature or extent of said obligations and risks of the Firm.

The Firm may, at the sole option of the ESD/ECSC, be declared void and of no effect if the Firm fails to comply with the provisions of this Article.

The Firm and its Trade Firms shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the ESD/ECSC and of the insurance companies issuing such policies.

An individual certificate (including hold harmless) must be provided to each of the following organizations: New York State Urban Development Corporation d/b/a as Empire State Development, the Erie County Stadium Corporation, the County of Erie and Buffalo Bills, LLC and the State of New York.

## **7. Vendor Responsibility**

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

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire

information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

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

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

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

#### **8. 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.

#### **9. 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>

**10. Certification Pursuant to Executive Order 16**

Pursuant to Executive Order No. 16, State Entities are prohibited from contracting or investment with businesses headquartered in Russia or with their principal place of business in Russia. In order for ESD to assess the business operations in Russia of a proposed vendor, the following form must be completed and submitted with your proposal:

<https://esd.ny.gov/sites/default/files/EO16-certification.pdf>

**11. Certification Pursuant to 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 following certification must be submitted with your proposal: [https://esd.ny.gov/sites/default/files/EO-177-](https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf)

[Certification.pdf](https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf)

**12. Encouraging use of New York State Businesses in Contract Performance**

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:

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

**13. Compliance with Standard Conditions**

ESD's standard conditions contained in Schedule A shall be made part of any agreement with ESD and the Firm. Schedule A can be found at:

[https://esd.ny.gov/sites/default/files/ScheduleA-Services\\_Materials-3818.pdf](https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf)

## **V. PRE-SUBMITTAL CONFERENCE**

ESD and ECSC staff will be made available at a non-mandatory, virtual pre-submittal conference to firms interested in submitting bids for the project **on June 9, 2022, 2pm Eastern Standard Time (EST)**. Please contact Stephen Gawlik, [stephen.gawlik@esd.ny.gov](mailto:stephen.gawlik@esd.ny.gov), if you plan to attend the pre-submittal conference by **June 3, 2022 2pm Eastern Standard Time (EST)**. A virtual meeting link will be provided to interested potential bidders upon registration.

## **VI. PROJECT SCHEDULE**

The major projected milestones on the consultant selection schedule are as follows:

- |                                 |                            |
|---------------------------------|----------------------------|
| 1. RFP Advertised:              | May 20, 2022               |
| 2. Pre-Proposal Conference:     | June 9, 2022 (2:00pm EST)  |
| 3. Questions Due:               | June 15, 2022              |
| 4. Answers to Questions Issued: | June 17, 2022              |
| 5. Proposals Due:               | June 24, 2022 (2:00pm EST) |

The Contract term is expected to begin August 2022 and estimated to be completed by December 2026.

## **VII. TIME & PLACE OF SUBMISSION**

Respondents will not receive compensation or reimbursement of any expenses associated with preparing and/or submitting the proposal.

Respondents are required to submit one (1) original, three (3) copies, and two (2) electronic copies on a flash drive of their submittal **prior to 2:00 P.M. EST on June 24, 2022**. Responses shall be firmly sealed in an envelope or box, and contain the Respondent's name and return address.

Please be advised that under no circumstances will ESD/ECSC obligate itself to consider a response which is received after the deadline or does not include the basic items described above.

Responses shall be delivered to:

**Stephen Gawlik**

**Empire State Development**

*Attn: Buffalo Bills Stadium: Construction Management/Monitoring RFP*

**95 Perry Street, Suite 500**

**Buffalo, New York 14203**

ESD reserves the right to reject a proposal if any document or item listed in this RFP is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a respondent without further consideration:

- Evidence of collusion among Respondents;
- Any attempt to improperly influence any member of the evaluation panel or Committees;
- Discovery that a Respondent purposely misled or knowingly provided false or inaccurate information in a submittal;
- A Respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Existence of any unresolved litigation or legal disputes

ESD reserves the right to reject any and all proposals and to waive any informalities or irregularities in procedure.

### **VIII. ADDITIONAL INFORMATION**

Any all questions or requests for additional information or documents will be accepted no later than **close of business on June 15, 2022**. Requests should be made to:

Stephen Gawlik, Senior Counsel – [stephen.gawlik@esd.ny.gov](mailto:stephen.gawlik@esd.ny.gov)

Questions shall be **submitted in written form** and answers will be posted in the New York State Contract Reporter Website [www.NYSCR.org](http://www.NYSCR.org) and on ESD's RFP website referenced below on or before **June 17, 2022**. Additional information may become available and, substantive questions and document requests may be made available at any point during this process. Please check ESD's website at <https://esd.ny.gov/doing-business-ny/requests-proposals> for any updates regarding this solicitation.

### **IX. GENERAL TERMS & CONDITIONS**

In addition to the terms and conditions stated elsewhere in this RFP, it is subject to the terms and conditions set forth in Exhibit A hereto. Also, ESD reserves the right to:

- Amend, modify or withdraw this RFP;
- Revise any requirement of this RFP;
- Require supplemental statements or information from any responsible party;
- Accept or reject any or all responses hereto;
- Extend the deadline for submission of responses hereto;
- Negotiate potential contract terms with any Bidder;
- Communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;

- 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
- 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.

**A 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.

**B Performance**

The Consultant's performance will be assessed by the Corporation according to the achievement of Firm’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.

Consultant warrants that its services shall be performed in accordance with applicable professional standards and that the Consultant 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.

**C 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 Consultant shall be notified in writing accordingly. Any claim by the Consultant for adjustment under this clause must be asserted within 30 days from the date of receipt by the Consultant 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 Consultant from proceeding with this contract as modified.

**D Consultant Staff**

Consultant 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 Consultant 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 Consultant 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 Consultant because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Consultant.

The Consultant agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Firm. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Consultant, 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 Consultant 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.

## **X. CONTRACTUAL REQUIREMENTS**

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

### **A 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.

- 1. 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.
- 2. 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.
- 3. 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.

### **B State Finance Law Sections 139-j and 139-k forms (See Section IV.D for additional information)**



**C Vendor Responsibility Questionnaire (See Section IV.D for additional information)**

**D Executive Order 177 (See Section IV.D for additional information)**

**E Non-Discrimination and Contractor & Supplier Diversity Requirements (See Section IV.D. for additional information)**

**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 Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

**G Schedule A**

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

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

- H **Iran Divestment Act (See Section IV.D for additional information)**
- I **Executive Order No. 16 (See Section IV.D for additional information)**
- J **Executive Order No. 177 (See Section IV.D for additional information)**
- K **Encouraging the Use of NYS Businesses in Contract (See Section IV.D for additional information)**
- L **Project Sunlight (See Section IV.D for additional information)**
- M **Insurance Requirements (See Section IV.D. for additional information)**
- N **W-9 Form**  
Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), to be submitted after contact award.

## **XI. ATTACHMENTS**

- Exhibit A – Schedule A
- Exhibit B – Diversity Practices Questionnaire
- Exhibit C – Required Forms

## **Exhibit A – Schedule A, General Terms & Conditions**

## **Exhibit B – Diversity Practices Questionnaire**

## Exhibit C – Required Forms