



Empire State
Development

REQUEST FOR PROPOSALS

TO PURCHASE AND REDEVELOP THE FORMER BUTLER CORRECTIONAL FACILITY



IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this procurement. Respondents are prohibited from contact related to this procurement with any New York State employee other than the designated contacts (“Designated Contacts”) listed below.

Designated Contacts for the procurement:

Primary Contact: John Discolo

Secondary Contact: Ralph Volcy

All contacts/inquiries shall be made by email to the following address: ButlerCF18@esd.ny.gov

PROPOSAL DUE DATE AND TIME:

On or before 2:00 PM EST on August 9, 2018



I. INTRODUCTION	4
II. RFP TIMELINE	4
III. SITE CONTEXT AND DESCRIPTION	5
Site Summary	5
Surrounding Area and Land Uses	6
Zoning.....	6
Transportation, Access and Parking.....	6
Site Infrastructure	6
Environmental Conditions.....	6
Ownership and Taxes	7
Economic Development Incentives.....	7
Additional Information.....	7
IV. REQUIRED PROPOSAL CONTENTS.....	8
V. SELECTION CRITERIA	14
VI. DEVELOPER DUE DILIGENCE	15
VII. DISPOSITION PROCESS.....	15
VIII. PROPOSAL SUBMISSION INSTRUCTIONS	16
A. Proposal Submission.....	16
B. RFP Inquiries	17
C. Site Tour.....	17
IX. STATEMENT OF LIMITATIONS	17
X. PROCUREMENT FORMS AND REQUIREMENTS	19
A. State Finance Law Sections 139-j and 139-k forms	19
B. Vendor Responsibility Questionnaire	20
C. Iran Divestment Act	21
D. Non-Discrimination and Contractor & Supplier Diversity Requirements.....	21
E. Encouraging the Use of NYS Businesses in Contract Performance Form	28
F. Certification under State Tax Law Section 5-a.....	28
G. Schedule A	29
H. Project Sunlight.....	29
I. Insurance Requirements.....	29
J. W-9 Form	29



XI. APPENDIX30



I. INTRODUCTION

New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”), is seeking proposals from responsive and responsible parties for the purchase and redevelopment of the former Butler Correctional Facility, located at 14001 Westbury Cutoff Road, Red Creek, New York (the “Project”). The total available developable land is approximately 196 acres (the “Site”).

ESD invites qualified parties to submit proposals for the reuse and redevelopment of the Site. ESD is interested in all offers that will spur economic development and job creation. The Site was formerly used as the Butler Correctional Facility, a minimum and medium security prison that was vacated in July 2014 as part of New York Governor Andrew M. Cuomo’s initiative for the Department of Correctional Services and Community Supervision (“DOCCS”) to decommission a number of facilities in order to reduce costs and consolidate inmates in response to a shrinking prison population.

Each party that submits a response (“Proposal”) to this Request For Proposals (“RFP”) is referred to herein as a “Respondent.” A Respondent who is conditionally designated through this RFP process is referred to herein as a “Designated Developer.” Respondents may submit Proposals for all or a portion of the Site as further described below, and ESD may select multiple Designated Developers.

II. RFP TIMELINE

The following table lists significant dates under the RFP process:

<u>Event</u>	<u>Timeline</u>
1. RFP Release Date	June 12, 2018
2. Site Tour	June 26, 2018
3. Deadline for Submission of Questions	July 2, 2018 by 2:00 PM EST
4. Deadline for ESD to Respond to Questions	July 13, 2018
5. Submission of Proposals	August 9, 2018 by 2:00 PM EST
6. Interviews (if necessary)	TBD
7. Anticipated Contract Date	TBD



III. SITE CONTEXT AND DESCRIPTION

Site Summary

The Site is located at 14001 Westbury Cutoff Road, and its 196-acre campus spans the Towns of Wolcott and Butler within Wayne County. The Site comprises two adjacent correctional facility complexes that are easily distinguished and separable—one complex served most recently as a minimum-security facility, the second as a medium-security facility. A paved road circumnavigates the buildings of both complexes. Included in Appendix A are the available plot plans, surveys and a description of each building.

The minimum-security complex, located in the southern portion of the Site, opened in 1989 and is 50 acres. Approximately 22 acres are enclosed by a four-foot chain link fence; the remaining 28 acres are outside this perimeter. This complex is 81,000 square feet.

The medium-security complex, located in the northern portion of the Site, opened in 1990 and is 101 acres. Approximately 23 acres are enclosed by fencing topped with coiled razor ribbon; the remaining 78 acres are outside this perimeter. This complex is 112,000 square feet.

Both complexes include barracks-style housing units, gymnasiums, recreation and athletic fields, dining halls and industrial style kitchens, administrative and visitors' buildings, parking lots, and storage and maintenance facilities.

Respondents can either submit proposals for either: Option A) the minimum-security complex, Option B) the medium-security complex or Option C) both. The adjacent 45-acre parcel can be included in A, B or C, however proposals for a standalone development on the 45-acre parcel will not be considered. Depending on the configuration, an easement through the minimum-security complex or 45-acre parcel may be needed to access the medium-security complex.

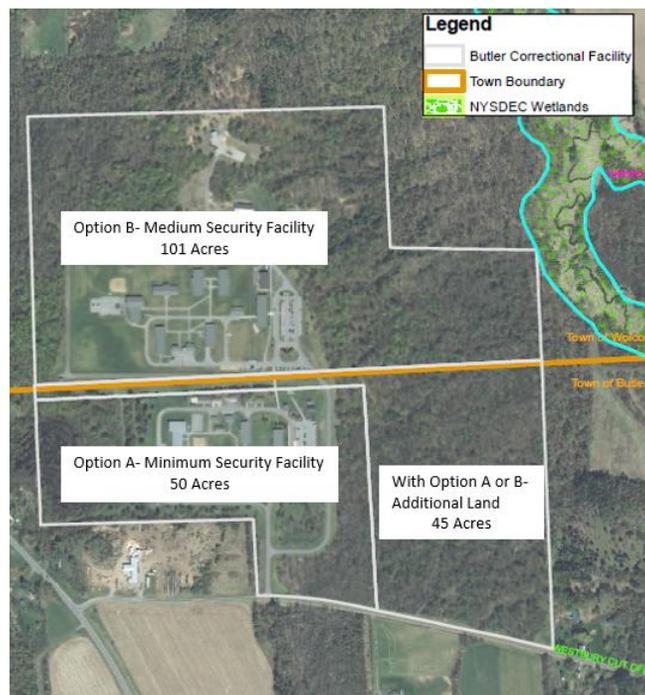


Figure 1: Parcel Offerings



Surrounding Area and Land Uses

The Site is approximately 40 miles northwest of Syracuse and 50 miles east of Rochester in the Towns of Butler and Wolcott. The Towns sit on the northern end of New York's Finger Lakes Region and 10 miles south of Lake Ontario. The minimum-security complex is in the Town of Butler, and the medium-security complex is in the Town of Wolcott.

The Finger Lakes Region is within a day's travel distance of ten of the largest cities in North America, including American and Canadian markets, and is home to the City of Rochester. The pristine Finger Lakes and more than 100 wineries are popular tourist destinations. Additionally, the Finger Lakes Region is home to a wealth of academic and research institutions, an extensive transportation network, numerous industrial parks, advanced research and development facilities, a highly educated and productive workforce, and advanced health care systems.

Land uses around the Site are primarily residential and agricultural with ancillary agricultural uses along the main roads such as propane distribution businesses and agricultural supply stores. Opposite the Site along NYS Route 370 is the Wayne County Water Authority, a utility use. The nearest commercial retail uses are in the town centers of Red Creek and Wolcott, which are three miles and five miles away, respectively.

Zoning

As previously noted, the Site is located within the Towns of Wolcott and Butler. Neither Town currently has zoning regulations for the Site. Development on the Site will need to go through a State or local land use approval process.

Transportation, Access and Parking

There are two major roads adjacent to the Site: NYS Route 370 and Old Route 104, both of which have additional capacity for automobiles and trucks. New York State Thruway I-90 connects the Site to all major east-west destinations. The Site parking lot has spaces for roughly 160 cars.

Site Infrastructure

All buildings on both complexes have individual mechanical rooms and boilers. The complexes share some utility infrastructure including potable water, electric, sewer and storm water. The Site is connected to municipal water and wastewater services provided by the Wayne County Water and Sewer Authority (WCWSA) through a water main that loops around the campus. The Designated Developer(s) will need to enter into an agreement with WCWSA to be a user of the wastewater facility. The Site has an underground sanitary sewage system that is accessed through manholes. Electrical service is provided by New York State Electric and Gas (NYSEG). Each complex includes a diesel-powered emergency generator with capacity to cover the majority of the buildings.

Environmental Conditions

The Designated Developer(s) will be responsible for conducting all due diligence investigations and remediation, including but not limited to environmental site assessments, including sampling and testing of the soil, sediments and ground water (if any). No representation or warranty is made nor shall be given by ESD, DOCCS, the State or any other entity as to any environmental condition at or under the Site, which



is offered “AS IS” and “WHERE IS”. The term “environmental condition” as used herein includes but is not limited to any hazardous and/or toxic substance as defined in any State or Federal law, rule or regulation; solid waste; petroleum and/or petroleum by-products; endangered species of fauna or flora; archeological feature or artifact; or any other matter or site condition which may affect the development of the Site. A copy of a Phase 1 Environmental Site Assessment (“ESA”) for the property is included in Appendix B.

Ownership and Taxes

The Site is currently owned by the People of the State of New York acting through the Office of General Services and is operated by DOCCS, and is thus currently exempt from property taxes. After disposition of the Site to the Designated Developer(s), property taxes would be assessed by the municipalities and payable by the Designated Developer(s), absent any other basis for the Site to be exempt from real property taxes. Under a purchase and private re-use of the Site, property taxes would be assessed by Wayne County, the Towns of Butler and Wolcott, and the North-Rose Wolcott School District.

Economic Development Incentives

The State has made available Economic Transformation Program (“ETP”) grants of up to \$5.5 million to fund projects on the Site and projects within 15 miles of the Site. Preference in the award of ETP grants will be given to projects that create or retain jobs, prevent, reduce or eliminate unemployment or underemployment, and/or increase business activity. Proposals should not rely on ETP grant as a source of funding. Please note that applications for ETP grants and any resulting awards are separate and apart from this RFP. For more information and program guidelines visit:

<https://esd.ny.gov/2014-economic-transformation-program>

As the State’s chief economic development agency, ESD is also responsible for the oversight and implementation of a variety of other economic development incentive programs. Receipt of ETP funds will not preclude a Respondent from pursuing other ESD or State programs (e.g., Excelsior Jobs Program). A list of such programs includes, but is not limited to, those on the following web page: <http://www.esd.ny.gov/BusinessPrograms.html>.

Additional Information

Other documents that Respondents may wish to review for additional area context on local needs and priorities can be found as follows:

- **Finger Lakes Regional Economic Development Council.** The Finger Lakes Regional Economic Development Council’s five-year strategic plan includes a comprehensive vision for economic development in the region, which encompasses Wayne County and the Towns of Wolcott and Butler: <https://regionalcouncils.ny.gov/finger-lakes>
- **Wayne County Industrial Development Agency:** The Wayne County Industrial Development Agency provides information about the region’s key industries, resources and incentives: <http://www.wedcny.org/>



Transaction Structure

The Designated Developer(s) must acquire fee title to the Site (by quitclaim deed), subject to a restrictive declaration requiring development of the Site in conformance with a General Project Plan (GPP). It is intended that the Site will be conveyed to the Designated Developer(s) at closing, and that the Designated Developer(s) will hold title during development of the Site; however ESD will consider Proposals that contemplate a lease through construction.

As noted below in **Section VII: Disposition Process**, in order to implement the Project and dispose of the Site, ESD, with the cooperation of the Designated Developer(s), must comply with legal and regulatory requirements including but not limited to: (i) the State Environmental Quality Review Act and its implementing regulations (“SEQRA”); (ii) the State Historic Preservation Act, to the extent applicable; (iii) Public Authorities Law; (iv) State Finance Law; (v) the New York State Urban Development Corporation Act (the “UDC Act”); and (vi) any actions required to remediate any adverse tax treatment of tax exempt bonds used to finance the original acquisition and improvement of the Site. Such compliance must be completed before disposition of the Site to the Designated Developer(s) for the Project. ESD may also consult with or otherwise involve other State entities as necessary, including OGS and DOCCS, to review the RFP and select the Designated Developer(s). Please note that the Designated Developer(s) must enter into agreements with ESD that will require the Designated Developer(s) to pay, from the date of conditional designation:

- ESD’s ongoing out-of-pocket costs and expenses incurred in connection with the Project and Site disposition to the Designated Developer(s), including costs and expenses of consultants and legal counsel; and
- ESD’s administrative fee at closing equal to the cost of direct and actual staff time on the Project from the time of designation until closing, capped at fifty thousand dollars (\$50,000).

Respondent’s financial offer for the Site should assume that the Site, including any and all improvements, infrastructure and equipment at the Site, will be conveyed “AS IS” and “WHERE IS” without any representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Designated Developer’s purpose.

IV. REQUIRED PROPOSAL CONTENTS

The following must be submitted with all Proposals in response to this RFP. ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or nonresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals, and to proceed (or not proceed) with the development of the Site without completing this RFP process. ESD also reserves the right waive any informalities or irregularities in procedure or proposals submitted.

In evaluating the capabilities of the Respondents, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent and demonstrate the Respondent’s capability to satisfy the



requirements and objectives set forth in this RFP. ESD reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

In addition to the forms required in **Section X: Procurement Forms and Requirements**, each complete Proposal must contain the following elements:

A. Respondent Description

Each Respondent must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal.

Each Proposal must also include a description of the Respondent team including:

- The intended form and structure of the team. Any proposed partnership or joint venture must be clearly explained. A chart or diagram of the partnership structure must also be included.
- Name, address, phone number and email of each member of the Respondent team. Respondents must also provide their Federal Employer Identification Number (EIN) and identify a primary contact person.
- Current operating budget and previous three years of audited financials. If available, copies of the interim financial statement for each quarter since the last fiscal year for which audited statements are provided. In addition, any details that describe the financial strength of the Respondent should be provided including but not limited to:
 - details of any material events that may affect the entity's financial standing since the last annual or interim financial statements provided;
 - details of any credit rating; and
 - details of any bankruptcy, insolvency, company creditor arrangement or other insolvency litigation in the last three fiscal years.
- A copy of the most recent credit report for key members of the Respondent team.
- Summaries of comparable projects completed by members of the Respondent team. For each project, the following information is requested:
 - Name of Respondent
 - Project Name
 - Completion Date
 - Project Description
 - Location
 - Current Status of Project



- Total Development Cost
 - Reference Name, Email Address, Telephone
 - Relevance to RFP
-
- Documentation addressing whether any participating member of the Respondent team has been involved in any litigation or legal dispute against the State or any agency, department, authority or subdivision of the State, or any litigation or legal dispute regarding a real estate venture during the past five years.
 - Description of any prior State RFPs for which Respondent was selected but which have not resulted in a successfully developed project.
 - Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project.
 - All required procurement forms identified in **Section X: Procurement Forms and Requirements** of this RFP.

Please note the following entities and individuals are precluded from responding to this RFP and from participating as part of any Respondent team, unless otherwise authorized by ESD:

- Any consultant firm that has provided professional services to ESD in connection with this Site
- Any entity that is a parent, affiliate, or subsidiary of any of the foregoing entities, or that is under common ownership, control or management with any of the foregoing entities
- Any employee or former employee of any of the foregoing entities who was involved with the Project while serving as an employee of such entity

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

B. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and timing of phasing, if any. The description should address:

- Proposed offer as described on page 5
- Proposed development program and use
- Type, height, bulk and size (gross and net square footages) of each component of the development program



- A list of potential tenants and any letters of interest and/or intent from potential tenants
- Estimated total Project cost
- Number of direct and indirect permanent and construction jobs estimated to be created by the Project

C. Site Plan and Architectural Design

Each Respondent must include:

- A summary of the proposed building program for the Project with gross and net square footages for each use
- At a minimum, a set of concept sketches of the proposed Project and a set of schematic renderings of the proposed Project showing the principle elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage
- A diagram showing any proposed vehicular circulation within the Site
- Estimated number of parking spaces
- A description of the proposed exterior materials and other relevant specifications
- A description of sustainable features that will be incorporated into the Project during construction and operation

D. Development Timeframe

Respondents must submit a development timeline (including phasing, if applicable), identifying the estimated length of time to reach key milestones, including: commencing and completing design; finalizing financing; commencing and completing construction; tenant lease-up; and operational stabilization for each component of the development program. Any contingencies that may affect this timeline should be identified.

E. Purchase Price

The purchase price must be expressed in a fixed, non-contingent dollar amount. The purchase price will be paid in full at closing. Transfer of title will be by quitclaim deed (without any representations or warranties) at closing.

F. Financial Information

Respondents must complete and submit the following:

1. Pro forma cash flows in live-linked Excel format for the development and operation of the Project, including details of any as-of-right or discretionary real estate or other tax exemptions, and energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should extend out to at least 30 years of operations and include all necessary capital investments over time, and reserves and debt service payments associated with the financings.



2. Construction/renovation sources and uses of funds, including details of equity and financing sources and a break-out of all soft and hard costs and development and financing fees. Indicate escalation rates to account for any increases in construction/renovation costs in the budget or contingences.
3. Permanent sources and uses of funds, including details of equity and financing sources and all development feeds and financing fees to be paid.

G. Demolition Plan

Respondents must provide an overview of the estimated schedule, budget and funding sources for demolition, if any, of existing structures on the Site.

H. Community Amenities and Outreach Plan

Respondents must list community amenities that will be included in the Project, as well as a detailed plan for community outreach and engagement.

I. Procurement Forms and Requirements

Schedule A attached to this RFP (see Appendix C) states standard requirements that must be included in every contract entered into with ESD. The Designated Developer(s) must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, Respondents 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 Respondent's Proposal.

- i. State Finance Law §§139-j and 139-k forms (submit with Proposal)
http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf
- ii. [Vendor Responsibility Questionnaire](#) (submit with Proposal or online and include copy of submitted form with Proposal)
- iii. Iran Divestment Act Statement (submit with Proposal)
<http://www.ogs.ny.gov/about/regs/ida.asp>
- iv. Non-Discrimination and Contractor & Supplier Diversity Requirements (submit with Proposal)
 - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - o [OCSD-2 - Staffing Plan](#)
 - o [OCSD-4 – MWBE and SDVOB Utilization Plan](#)
- v. [Encouraging the Use of NYS Businesses in Contract Performance Form](#) (submit with Proposal)
- vi. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#) (submit with Proposal)



- vii. [W-9 Form](#) (submit with Proposal)

Additional information about these items, and ESD's procurement requirements, can be found in **Section X: Procurement Forms and Requirements**.



V. SELECTION CRITERIA

ESD shall establish a review committee to evaluate Proposals. When evaluating Proposals, the following selection criteria, with the accompanying weightings, will be considered and used to calculate an overall Proposal score.

Proposals may be reviewed by ESD and other State officials. The sale of the Site is subject to approval of the ESD Directors, the Commissioner of the Office of General Services (“OGS”), the Public Authorities Control Board (“PACB”), the Comptroller of the State of New York, and the New York State Attorney General.

Criteria		Weighting
Development Concept and Program	<ul style="list-style-type: none">Proposed development concept’s quality, design and program of usesDirect economic benefits of the Project	30%
Respondent Qualifications	<ul style="list-style-type: none">Experience, financial capabilities and qualifications of the ownership entity in developing and financing projects of similar size and/or nature	30%
Financial Offer	<ul style="list-style-type: none">Competitiveness of the proposed financial terms and financial benefits to New York State, as well as the financial feasibility of the Project	20%
Project Design and Timing	<ul style="list-style-type: none">Proposed Project development and construction planInnovative technical solutions to enhance design, construction and/or operations/managementIncorporation of sustainable building practices	10%
Community Benefit	<ul style="list-style-type: none">Direct benefits to be realized by the community including, but not limited to, job creation and economic impacts	5%
Diversity Practices	<ul style="list-style-type: none">ESD will score each application for Diversity practices using. Up to 5% will be awarded based upon the contents of the Diversity Practices Questionnaire (Appendix E), submitted by each Respondent to the RFP.	5%

ESD reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of Respondents’ Proposals and to ensure a full and complete understanding



of each Proposal. ESD shall undertake to pursue uniformity in the questions it asks Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. ESD reserves the option to hold oral interviews as part of the selection process; Respondents who are invited for an interview will receive additional instructions upon their invitation.

VI. DEVELOPER DUE DILIGENCE

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be disposed of “AS IS” and “WHERE IS” without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for Respondent’s purpose.

ESD will post information regarding the RFP at <http://esd.ny.gov/CorporateInformation/RFPs.html>; Respondents are encouraged to check for updates. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this RFP by sending an email to ButlerCF18@esd.ny.gov

Respondents must rely solely on their own independent research and investigations for all matters, including costs, title, survey, development, financing, construction, and remediation, and shall not rely on the information provided in connection with this RFP. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to Respondents or potential Respondents.

VII. DISPOSITION PROCESS

The following is a summary of the disposition process. After a review of the Proposals, ESD intends to conditionally designate one or more Respondents as the Designated Developer(s). The Designated Developer(s) and ESD will sign a non-binding term sheet regarding key aspects of the Project and disposition of the Site, and the Designated Developer(s) will enter into separate agreements with each of ESD and the State regarding payment by the Designated Developer(s) of costs and expenses. In implementing the Project, including the disposition process, ESD intends to:

- i. conduct a SEQRA-compliant environmental review of the Project, including any applicable archaeological and/or historic resource review requirements;
- ii. prepare, in accordance with the UDC Act and in consultation with the Designated Developer(s), a draft General Project Plan (GPP) for the Project that reflects the Designated Developer’s or Developers’ Proposal(s);
- iii. assist DOCCS and OGS, as necessary, in obtaining such consents and approvals;
- iv. present to ESD Directors the draft environmental review, the draft GPP, essential transaction contract terms, any required Public Authorities Law findings, and any other applicable statutory or regulatory requirements, for adoption prior to a public hearing;



- v. give prior notice of and conduct a public hearing in order to receive comments on the proposed GPP and essential contract terms (including the draft environmental review);
- vi. review such comments, and either affirm or modify the proposed GPP as a final GPP to be presented to ESD Directors to authorize the proposed transaction;
- vii. present the Project to the PACB for its approval;
- viii. prepare, in consultation with the Designated Developer(s), and record a restrictive declaration (the “Declaration”) regarding the Project’s conformance to the GPP; and
- ix. obtain title to the Site from OGS and deliver to the Designated Developer(s), at closing, a quitclaim deed without covenants for the Site that is subject to the Declaration.

This process may take 12 to 24 months from the commencement of the environmental review, depending upon the complexity of the Project.

ESD will establish an Imprest Account that shall be funded by the Designated Developer(s) and used by ESD and its designated agents to pay costs incurred in connection with the Project (including the costs and expenses of legal counsel). The Imprest Account shall be initially funded by the Designated Developer(s) at the time of conditional designation by ESD in the amount of \$100,000 and thereafter, in accordance with a Cost Agreement, the Designated Developer(s) shall, promptly after notice from ESD, fully replenish the Imprest Account in the amount of \$50,000 each time the balance of the Imprest Account is reduced to below \$25,000. Upon closing, any amount remaining in the Imprest Account and not required to pay outstanding costs will be returned to the Designated Developer(s).

VIII. PROPOSAL SUBMISSION INSTRUCTIONS

A. Proposal Submission

Five hard copies and one electronic copy (in the form of a USB flash drive) of the Proposal identified as “**Butler Correctional Facility RFP**” must be received by ESD by **August 9, 2018 at 2:00 PM EST** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: John F. Discolo
Re: Butler Correctional Facility RFP

It is the responsibility of each Respondent to ensure timely submission of its Proposal. Proposals received after the scheduled date and time cannot be accepted.

A Respondent accepts all provisions of this RFP by submitting a Proposal and is responsible for the accuracy of its submission.



B. RFP Inquiries

ESD will accept written questions via email from prospective Respondents regarding the RFP. Respondents may submit questions to: ButlerCF18@esd.ny.gov

Written questions must include the requestor's name, e-mail address and the Respondent represented, and must be received by **July 2, 2018 at 2:00 PM EST**. Responses to all timely and appropriate questions will be posted on ESD's website on **July 13, 2018** at: <http://esd.ny.gov/CorporateInformation/RFPs.html>.

If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, notification should be sent immediately via e-mail requesting written clarification or modification to this RFP. Should ESD find it necessary, an addendum or modification to this RFP will be posted on the ESD web site: <http://esd.ny.gov/CorporateInformation/RFPs.html>.

Other than emails to the designated email account for the RFP at, ButlerCF18@esd.ny.gov no contact regarding this RFP with ESD Directors, staff or consultants, or any other governmental entity (except for a member of the State Legislature or State legislative staff), is allowed during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

C. Site Tour

ESD has scheduled a tour of the Site on **June 26, 2018**. Respondents are not required to attend, but must email ButlerCF18@esd.ny.gov **at least two days in advance** if they wish to participate. When emailing regarding tour participation, Respondents should provide the name, title, firm, telephone number and email address of all representatives who will attend. For security and logistics reasons, ESD asks that no more than five people per Respondent team attend the Site tour.

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

IX. STATEMENT OF LIMITATIONS

The RFP submissions from Respondents, and any relationship between the State and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP.

1. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts ESD's rights as set forth in the RFP, including this Statement of Limitations.



2. The issuance of this RFP and the submission of a Response by any firm or the acceptance of such Response by ESD does not obligate ESD in any manner whatsoever with regard to development of the Site. ESD shall only incur such obligations upon execution of a formal contract by ESD and any Designated Developer(s).
3. ESD reserves the right to: (i) amend, modify, or withdraw this RFP; (ii) revise any requirements of this RFP; (iii) require supplemental statements or information from any Respondent; (iv) accept or reject any or all Proposals; (v) extend the deadline for submission of Proposals; (vi) negotiate or hold discussions with any Respondent and correct deficient Proposals that do not completely conform to the instructions contained herein; and (vii) cancel, in whole or part, this RFP, for any reason or for no reason. ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.
4. All information submitted in response to this RFP, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of Respondent, or (3) critical infrastructure information. Respondents should identify portions of their Proposals and accompanying documents they believe fall under these exemptions by submitting their Proposals in both redacted and un-redacted form. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Along with the redacted version, Respondents may provide a detailed justification for the portions of their Proposal they believe fall into the exemptions discussed above. Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. The identified information will be reviewed and a determination will be made as to whether the information is exempt from disclosure under FOIL. The State's determination may be appealed pursuant to POL §89(5)(c). Please note that if Respondents do not submit a redacted version, their Proposals may be released in un-redacted form if requested under FOIL.
5. ESD reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP Proposals, including late responses, in its planning efforts. ESD reserves the right to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this RFP (collectively, the "Response Information") for any purpose. Each Respondent must grant an unconditional and perpetual license without charge to ESD to use any copyright or other legally protected rights in and to the Response Information. By submitting a Proposal, each Respondent waives any and all claims against ESD and the State relating to the retention or use of the Response Information.
6. This RFP shall not be construed in any manner to implement any of the actions contemplated



herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the RFP. ESD will not be responsible for any costs incurred by Respondents related to preparing and submitting a Proposal in response to this RFP, or attending oral presentations, or for any other associated costs.

7. To the best of ESD's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of Proposals.
8. Should ESD determine that negotiations with a selected Respondent will not result in an executable contract, ESD may begin negotiations with a different Respondent without again requesting Proposals.

X. PROCUREMENT FORMS AND REQUIREMENTS

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

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

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires: 1) 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 Contacts; 2) completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations; 3) the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD website under "RFPs/RFQs"); and 4) periodic updating of such forms during the term of any contract resulting from this RFP.

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

http://www.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 Respondents during the Restricted Period, make a determination of the responsibility of Respondents, and make all such information publicly available in accordance with applicable law.



If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries and related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

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 Respondents are solely responsible for full compliance with the Procurement Requirements. All members of a Respondent team, including consultants, must complete the forms required above.

B. Vendor Responsibility Questionnaire

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out their 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, Respondents must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Designated Developer(s), if any, shall include clauses providing that the Designated Developer(s) remain “responsible” throughout the term of any 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 Respondents 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. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Respondents should include a copy of their Vend-Rep submission receipt or paper questionnaire in their Proposals.

To enroll in and use the Vend-Rep System, Respondents should consult 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.

Respondents 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 Vend-Rep website, Respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

C. Iran Divestment Act

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

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

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <http://www.ogs.ny.gov/about/regs/ida.asp>

D. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

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

- **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ESD hereby establishes an overall goal of **30%** for MWBE participation, **15%** for New York State-certified Minority-owned Business Enterprise ("MBE") participation and **15%** 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 RFP ("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, 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.

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 supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the Contract. 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 the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, 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 Proposal, 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 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 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, Respondent will be required to respond to the notice of deficiency within seven business days of receipt by submitting a written remedy in response to the notice of deficiency to OCSD at OCSD@esd.ny.gov. 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 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 Proposal.

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

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

The Designated Developer(s) 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 Designated Developer(s) 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 Proposal in response to this RFP, Respondent agrees with all of the terms and conditions in **[SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf)** located online at **<https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf>**. 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 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.

Respondent is required to submit a Minority- and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its Proposal.

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.



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

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

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

Diversity Practices

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

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

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



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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Respondents 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 Respondent or Respondent's Contractor(s) should reference the directory of New York State Certified SDVOBs 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), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their Proposal, found at: (<https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>).

- B. The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent 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 Respondent 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 Respondent or Respondent's Contractor(s) of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Respondent or Respondent's Contractor(s) 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 Respondent or Respondent's Contractor(s) and direct the Respondent or Respondent's Contractor(s) to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on Form OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of Proposal.
- E. ESD may disqualify a Respondent's Proposal as being non-responsive under the following circumstances:
- (a) If a Respondent fails to submit an SDVOB 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.
- F. If awarded a Contract, Respondent 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. Respondent 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, Respondent or Respondent's Contractor(s) shall speak to the Designated Contacts at ESD for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Respondent or Respondent's Contractor(s) 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 Respondent 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 Respondent'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. Respondent 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 (Form 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 the Designated Contacts.

- **Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Respondent or Respondent's Contractor(s) 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 Respondent's or Respondent's Contractors' solicitation was not selected;
- C. Dates of any pre-RFP, 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; and/or
- E. Other information deemed relevant to the waiver request.

- **Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Respondent or Respondent's 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 Respondent or Respondent's 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 Respondent/Contractor shall pay damages as set forth therein.

General inquiries or questions relating to the aforementioned policies, SDVOB participation, and the goals specified herein may be addressed to OCSD at OCSD@esd.ny.gov.

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

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

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

F. Certification under State Tax Law Section 5-a

Any Contract resulting from this RFP is 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 RFP 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 RFP will require periodic updating of the certifications contained in Form ST-220-CA. Proposals that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for award. Only the Respondent completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by Respondent and all sub-consultants.



G. Schedule A

Following final selection of a Respondent as a Designated Developer, ESD will prepare a Contract defining all Project terms and conditions and the Designated Developer's responsibilities in conformance with Schedule A. A sample Schedule A is attached as Appendix C.

Respondents should review the terms found in Schedule A, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Respondents will need to accept these terms prior to Contract execution.

H. Project Sunlight

This RFP 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, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

I. Insurance Requirements

Insurance Requirements are to be determined by ESD once the structure of the transaction with the Designated Developer(s) has been finalized.

J. W-9 Form

Each Respondent must submit a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) with their Proposal.

K. EO 177 Certification

In accordance with Executive Order No. 177 (issued on February 3, 2018, available here <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO177.pdf>) any entity that provides goods or services to ESD must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the New York State Human Rights Law. Accordingly, all bidders must submit an EO 177 certification form with their proposal. The form is attached to this RFP as Appendix D.



XI. APPENDIX

Below is a list of appendices attached to and made a part of this RFP:

Appendix A: Plot plan, survey and building inventory

Appendix B: Phase 1 ESA

Appendix C: Schedule A

Appendix D: EO 177 Certification

Appendix E: Diversity Practices Questionnaire