



**Empire State  
Development**

# **New York State's Community Development Financial Institution (CDFI) Assistance Program Request for Proposals**

**IMPORTANT NOTICE:** A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: <http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>).

Designated Contacts for this Procurement:

Primary Contact: Ralph Volcy

Secondary Contact: Rachael Dubin

All contacts/inquiries shall be made by email to the following address: [CDFI-APRFP2018@esd.ny.gov](mailto:CDFI-APRFP2018@esd.ny.gov).

**PROPOSAL DUE DATE AND TIME:  
On or before 3:00 PM EST on Thursday, October 11, 2018  
Late proposals cannot be accepted**

## **TABLE OF CONTENTS**

- I. INTRODUCTION**
  - A. PROGRAM SUMMARY
  - B. REQUEST FOR PROPOSALS SCHEDULE
  
- II. PROGRAM GUIDELINES**
  - A. PROJECTS
  - B. ELIGIBILITY REQUIREMENTS
  - C. PARTNERSHIPS
  - D. GRANT AMOUNT
  - E. FUNDING SOURCE
  - F. PROJECT TIMELINE
  - G. ADDITIONAL CONDITIONS
  
- III. QUESTIONS**
  
- IV. SCOPE OF WORK**
  - A. TECHNICAL ASSISTANCE
  - B. LOAN CAPITAL
  - C. LOAN LOSS RESERVES
  - D. INSTITUTIONAL CAPACITY
  - E. ADMINISTRATIVE SUPPORT
  
- V. SELECTION CRITERIA**
  
- VI. DEFINITIONS**
  
- VII. SUBMISSIONS REQUIRMENTS**
  - A. PROCUREMENT FORMS AND REQUIREMENTS

## I. INTRODUCTION

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

### A. Program Summary

Up to \$1,795,000 in grant support is available to certified Community Development Financial Institutions that make loans to small businesses. The purpose of ESD's Community Development Financial Institution (CDFI) Assistance Program (the "Program") is to strengthen and expand the capacity, products, and services of certified CDFIs' lending programs for small businesses and/or minority and women business enterprises (collectively "M/WBEs") (see page 11 through 12 of this RFP for definitions) throughout New York State. Since the program's inception in 1997, more than \$26.5 million has been awarded to more than 50 CDFIs across the state.

### B. Request for Proposals Schedule

Release of Request for Proposals	August 29, 2018
Deadline for Submission of Questions	September 14, 2018
Deadline for ESD to Respond to Questions	September 20, 2018
Submission of Proposals (date and time)	October 11, 2018, 3:00 PM ET
Bid Opening Date	October, 12 2018
Announcement of Selections	November 30, 2018
Anticipated Contract Start Date	January 2019

## II. PROGRAM GUIDELINES

- A. Projects - ESD seeks proposals from certified CDFIs that will have the following effects in the communities in which they are located:
1. Increase business ownership and business expansion among small businesses, with special emphasis on minority group members and women and those that operate in distressed and highly distressed communities;
  2. Help entrepreneurs, with special emphasis on minority and women-owned startups, make the transition into small-growth companies;
  3. Increase access to financing by small businesses, with special emphasis on minority and women-owned firms;
  4. Facilitate the creation/retention of private sector jobs.

- B. Eligibility Requirements - To be eligible to receive grant proceeds from ESD, all applicants must:
1. Provide proof that the organization is certified by the United States Department of the Treasury as a CDFI on the date of grant approval by ESD's Chief Executive Officer, and on the dates of all disbursements of ESD funds. Program awards will be contingent upon current Federal certification and/or recertification status.
  2. Obtain New York State Prequalification and related registration standards through the Grants Reform System. This will ensure eligibility to participate in this future RFPs and receive potential program awards (see instructions in section XII (C));
  3. Primarily focus its activities on M/WBE and/or small business lending, as described in section IV of this RFP.
  4. Be legally able to receive and use the proceeds as herein stated;
  5. Meet any other requirements herein stated for the specific purpose of the grant; and
  6. Be current with reporting requirements for any other ESD assistance, including any previous CDFI Program funding.
- C. Partnerships - Applicants may submit proposals independently, but ESD encourages applicants to pursue partnerships and submit joint proposals.
1. Joint Proposals
    - a. Applicants and co-applicants must both be certified CDFIs;
    - b. ESD will consider applicants whose program capacity will complement each other, building off of historical strengths. Partners should demonstrate the ability to provide one-one-one technical assistance that supports the need of the M/WBEs and small businesses that seek access to capital. For example, one CDFI might focus on underwriting services and collections, while the co-applicant might focus on neighborhood business deal sourcing, TA and loan packaging.
    - c. Applicants need not use grant funds in the same way and should divide the grant in accordance with the role of each partner. For instance, one applicant may request grant support for Technical Assistance, while the co-applicant requests funds for Institutional Capacity.
  2. Independent Proposals
    - a. Organizations must demonstrate the ability to provide CDFI services in an impactful way independently.
    - b. ESD will consider individual proposals if there is significant capacity or limited availability of partnerships in service areas.
    - c. Applicant must demonstrate strong lending capacity and the ability to provide independent technical assistance services, such as one-on-one assistance, peer lending groups and strong training components.

D. Grant Amount

For individual applicants, grant awards will generally not exceed \$100,000. Higher award levels will generally be made to organizations that apply jointly ESD reserves the right to award grants in amounts greater than \$100,000 depending upon the number and quality of proposals received and other considerations set forth in this RFP. The project period will generally be no longer than twelve (12) months.

E. Funding Source

The Program is funded from the 2018-2019 New York State CDFI Budget Appropriation of \$1.795 million

F. Project Timeline

Project period will be January 1, 2019 through December 31, 2019.

G. Additional Conditions

1. Project final payment requests from the previous CDFI Assistance Program round must be submitted on or before the start date of the new project.
2. ESD will establish reporting requirements to account for the utilization of grant proceeds by the CDFI. The grant is to be used only for the purposes stated in the organization's proposal or otherwise approved, in writing, by ESD.
3. All activities generated by funding from ESD, or toward which ESD grant proceeds are used, shall be conducted according to the standard business practices of the recipient organization and any agreements with ESD.

### III. QUESTIONS

- A. All questions, comments, requests for clarification or any other communication regarding this Request for Proposals must be submitted in writing no later than September 14, 2018, by email to: [CDFI-APRFP2018@esd.ny.gov](mailto:CDFI-APRFP2018@esd.ny.gov).

Answers will be posted no later than September 20, 2018 via ESD's website: <http://esd.ny.gov/CorporateInformation/Rfps.html>

- B. In addition, any changes, additions or deletions to this Request for Proposals will also be posted on ESD's website and the Contract Reporter, along with the electronic version of this Request for Proposals. Respondents should note that any necessary clarification must be sought by the deadline for questions set forth in the "Schedule of Dates" section in this Request for Proposals.
- C. Respondents are urged to check ESD's website frequently for notices of any clarification of or changes, additions, or deletions to this Request for Proposals.
- D. **OTHER THAN THE CONTACT WEB ADDRESS IDENTIFIED ABOVE, PROSPECTIVE RESPONDENTS SHALL NOT APPROACH ESD'S EMPLOYEES DURING THE RESTRICTED PERIOD OF THIS**

**REQUEST FOR PROPOSALS PROCESS ABOUT ANY MATTERS RELATED TO THIS REQUEST FOR PROPOSALS OR ANY QUALIFICATIONS SUBMITTED PURSUANT THERETO.**

**IV. SCOPE OF WORK**

The Program will make grants available to CDFIs for four general purposes:

**A. The Provision of Technical Assistance**

Funds may be used to provide Technical Assistance (“TA”) to M/WBEs and/or small businesses that currently have outstanding loans from the organization or that may borrow funds from the organization within one year of the date of application for ESD funds. This TA should be geared toward ensuring the success of business borrowers and the repayment of their loans. In addition, funds may be used to provide TA to existing borrowers or potential borrowers to obtain State M/WBE Certification. Funds may also be used to provide technical assistance to enroll M/WBEs and/or small businesses in business-focused Individual Development Account (IDA) programs that have previously received funding through the Program.

Preference will be given to proposals that emphasize the provision of one-on-one consultation with borrowers on such business development topics as financial record keeping and financial statement preparation, tax issues, marketing, the use of technology, etc. TA may be provided by qualified staff or outside business development consultants.

For grant proceeds to be used toward technical assistance:

1. The applicant must take specific actions to ensure the participation of M/WBEs and/or small businesses in the TA program, as well as those that are located in distressed and highly distressed areas;
2. The assistance must be directly relevant to the beneficiaries’ businesses;

**B. Loan Capital (for term loans and/or lines of credit)**

Grant proceeds may be used for loan capital so long as:

1. The approved loan is for a business purpose;
2. Awards of loan capital are dependent upon leveraging other funds for loan capital
3. In limited instances, ESD may consider allowing grant proceeds to be used for refinancing a previously made loan.

**C. Loan Loss Reserves**

Grant proceeds may be used for Loan Loss Reserves only in the event that:

1. The funds are used to leverage new loans or lines of credit for business purposes;
2. The applicant specifies the aggregate principal amount of new lending that will be leveraged by the loan loss reserve or line of credit reserve funds being requested (i.e., the number of new loans or lines of credit leveraged by the loan loss reserve requested, the total amount of new loans or lines of credit, and the percentage of principal to be leveraged represented by the requested reserve funds); and

3. The applicant describes the rationale used to determine the loan loss reserve ratio proposed above, and specifically explains how the proposed loan loss reserve ratio relates to:
  - a. The applicant's historic and anticipated volume of lending to M/WBEs and/or small businesses;
  - b. The applicant's historic rates of loan or line of credit losses and loan loss or line of credit reserve; and
  - c. The reserve requirements specified by the applicant's regulators or relevant funding sources (if loan loss ratio is different, please explain).

D. Institutional Capacity

Funds may be used to increase the institutional capacity of the CDFI and strengthen its provision of products and services to M/WBEs and/or small businesses. Funds may be used to support activities that enhance management capacity and organizational development so that the CDFI can improve its performance, offer enhanced products and services, and/or encourage greater client participation in current programs. Preferred activities include assessing the present and future needs of the organization's target market, evaluating the economic impact of past activities, and establishing systems for evaluating and reporting the impact of future activities. Funds may also be used to reimburse for travel incurred for training and industry conferences that are primarily about small business lending, as well as to travel to meet with small business clients when Travel Policy requirements are met. In addition, funds may be used for specific purposes including, but not limited to, the hiring of consultants, implementation of a market survey or marketing campaign and the purchase of computer software. Note, funds may not be used to purchase computer hardware.

E. Administrative support

Up to 10% of the grant proceeds may be used for administration of the CDFI's technical assistance and small business lending programs, including the costs of administering ESD grants, and other overhead and indirect costs (i.e., a portion of the rent or utilities, marketing materials, supplies or salaries) associated with the provision of technical and financial assistance.

**V. SELECTION CRITERIA**

- A. ESD will balance individual application scores with priorities for geographic distribution across NYS. The evaluation criteria will include the following, in order of importance:
  1. Track record of small business lending, including the ability to demonstrate strong underwriting capacity, deal-sourcing capacity, and a low default ratio, in NYS, especially in underserved communities and to underserved populations that have difficulty accessing traditional credit markets.
  2. If applying for funding from multiple programs, the proposal is complete and describes a feasible and cohesive strategy for using the programs to increase the organization's activity and effectiveness in serving its target population.

3. The applicant's record in meeting the performance goals, timelines and reporting requirements established under previous CDFI Assistance Program awards from ESD, if any. ESD may choose not to consider proposals from organizations that are not in compliance with the contracting and reporting requirements of previous CDFI Assistance Program awards, or that have substantial funding available through previous awards.
4. Organizational capacity and stability
5. The applicant's operating budget and institutional capacity for using grant funds effectively.
6. Completeness of the proposal
7. Compliance of the proposal with the "Guidelines" section and other terms and conditions of this request for proposals

B. Additional Considerations

1. In cases where applicants propose activities similar to those funded by ESD via existing or pending CDFI Assistance Program agreements with the applicant ("Follow-on Activities"), ESD may choose not to approve additional funding for such activities. If ESD does agree to fund such Follow-on Activities, no new grant funds awarded pursuant to this RFP for such activities will be disbursed until the similar activities funded through existing agreements have been completed in accordance with the terms of such agreements. ESD alone will determine whether proposed activities qualify as Follow-on Activities.
2. By submitting its proposal, each applicant authorizes ESD to contact any and all other persons identified in its proposal or in any investigation conducted by or on behalf of ESD or the State, and obtain the release of pertinent financial and other information, as well as to obtain verification of the information provided by each applicant.
3. ESD will not be held liable for any costs incurred by any applicant for work performed in the preparation and production of a proposal, nor for any work performed prior to written authorization from ESD to proceed. All proposals submitted will become the property of ESD.
4. *ESD reserves the right to:*
  - a. reject any or all proposals received;
  - b. award grants in any amount;
  - c. require the submission of modifications or additions to proposals as a condition of further participation in the selection process; and
  - d. Amend this request for proposals.

## VI. DEFINITIONS

For the purposes of this RFP the following words or terms shall mean as follows:

A. Small Businesses

A small business shall be deemed to be one which is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred or less persons.

B. Minority Business Enterprise (“MBE”)

A business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) authorized to do business in the State of New York, is organized on a for-profit basis, and is independently owned and operated out of a fixed business location; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (vi) an enterprise that is a small business pursuant to subdivision twenty of this section.

C. Minority Group Member

A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

D. Women-owned Business Enterprise (“WBE”)

A business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and (iv) authorized to do business in the State of New York, is organized on a for-profit basis, and is independently owned and operated out of a fixed business location; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal

net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer

price index of the previous year; and (vi) an enterprise that is a small business pursuant to subdivision twenty of this section.

F. M/WBE Certification

The official determination by the New York State Division of Minority and Women's Business Development of a business enterprise as a bona fide minority and/or women-owned business enterprise.

For more information on M/WBE certification, please see our website at: [www.esd.ny.gov/mwbe.html](http://www.esd.ny.gov/mwbe.html) or call (1-800-782-8369) for more information.

G. Technical Assistance

Business technical assistance is provided to an entrepreneur to address ongoing or specific challenges or needs, such as the development of a business plan or the resolution of a production or marketing problem. When a business is in formation, monitoring will help define specific and/or ongoing needs early. This assistance often is on a one-to-one basis in a consulting format.

Technical assistance may also be provided to assist clients in obtaining State M\WBE Certification.

H. Institutional Capacity/ Capacity Strengthening

Institutional capacity building is defined as the provision of technical or material assistance designed to strengthen one or more elements of organizational effectiveness. The elements of organizational effectiveness include governance, management capacity, human resources, financial resources, service delivery, external relations and sustainability. Examples include the purchase of software, training of staff, conducting research studies for expansion or growth and marketing.

I. New York Prequalification

The Grants Gateway was established to improve the way grants are administered by the State of New York. Beginning July 31, 2013, all not-for-profit organizations receiving funds from New York State agencies and authorities must be prequalified in Grants Gateway prior to the execution of a contract or a contract amendment. For additional information, please refer to [GrantsReform@Budget.ny.gov](mailto:GrantsReform@Budget.ny.gov).

## VII. SUBMISSION REQUIREMENTS

### A. PROCUREMENT FORMS AND REQUIREMENTS

#### a. 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 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 respondents to this RFP 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. 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).

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](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)) and execute accordingly pertaining to the company’s trade industry. Per the website, respondents are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

**b. New York State Prequalification System for Grants Contract Vendors**

As part of Governor Cuomo’s initiative to better serve the people of the State of New York, a web-based grants management system, Grants Gateway, was launched in spring 2013. The Grants Gateway was established to improve the way grants are administered by the State of New York. Beginning July 31, 2013, all not-for-profit organizations receiving funds from New York State agencies and authorities must be prequalified in Grants Gateway prior to the execution of a contract or a contract amendment.

Based on the above information, you are required to complete the steps outlined below to receive an executed contract or contract amendment. If you are not the appropriate contact for this communication, please forward to the person in your organization responsible for the management of grant funding. Send any questions to Greta Carter-Williams, ESD’s program representative, at [gcwilliams@esd.ny.gov](mailto:gcwilliams@esd.ny.gov) or email [GrantsReform@Budget.ny.gov](mailto:GrantsReform@Budget.ny.gov) with Prequalification in the subject line.

**Register with the Grants Gateway**

1. The Registration Form is available for download at [www.grantsreform.ny.gov](http://www.grantsreform.ny.gov). The Registration Form can be accessed by clicking the link at the top of the page in yellow labeled “Click HERE to access the Portal or browse for more information below”.
2. Include your State Financial System (“SFS”) Vendor ID on the Form; if you are a new vendor and do not have a SFS Vendor ID, include a Substitute for W-9 with your signed, notarized registration (also available from the Grants Reform Web site).
3. All registrations must include an Organization Chart in order to be processed.
4. Mail the completed Registration Form, Organization Chart that shows the Head of your Organization, and Substitute W-9 (if new vendor) to:  
Division of Budget - Grants Reform  
Agency Building 1 - 5th Floor  
Empire State Plaza, Albany, NY 12224
5. When you receive your login information via email, log in and change your password. This password will allow access to the Grants Reform Web site.
6. Associate your organization with a State agency (ESD) by clicking on Organization(s) and then selecting Organization Information; complete all required fields.
7. Complete the Document Vault by uploading requested documents and answering all questions.
8. Upon completion of the Document Vault, submit it for review and prequalification.
9. If you believe your organization has submitted its Prequalification application and has submitted any requested documents omitted from your registration,

Register with the Grants Gateway (continued)

please contact ESD's program representative or the Grants Reform Team by emailing [GrantsReform@Budget.ny.gov](mailto:GrantsReform@Budget.ny.gov) with Prequalification in the subject line.

**c. 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 5 NYCRR §§140-145, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority and Women-owned Business Enterprises ("MWBE") and the employment of minority group members and women in the performance of ESD contracts.

**BUSINESS PARTICIPATION OPPORTUNITIES FOR MWBEs**

For contracts resulting from this solicitation, ESD will establish a goal for MWBE participation based on the scope of work and project description identified in the RFP response. Such contracts will set forth additional requirements that will encourage business participation opportunities for MWBEs. 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 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, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation

goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

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

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

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

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

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

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

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

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

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the

Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

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

### **Equal Employment Opportunity Requirements**

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

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

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and 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-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](mailto:OCSD@esd.ny.gov).

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

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

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

### **Contract Goals**

- A. For purposes of this solicitation, ESD will establish a goal based on the scope of work and project description identified in the RFP response. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding

compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

#### **SDVOB Utilization Plan**

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

- (c) If a Bidder fails to submit a request for waiver; or
- (d) If ESD determines that the Bidder has failed to document good faith efforts.

- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

**Request for Waiver**

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

Waiver requests should be sent to OCSD.

**Required Good Faith Efforts**

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

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

**Monthly SDVOB Contractor Compliance Report**

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

**Breach of Contract and Damages**

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

General inquiries or questions relating to aforementioned policies, SDVOB participation and the goals specified herein may be addressed to OCSD at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).

**d. INSURANCE REQUIREMENTS**

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

1. Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
2. In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
3. Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
4. Must show evidence of Disability insurance coverage at State statutory limits;
5. Professional Liability (Errors & Omissions) Insurance of \$1 million.
6. Empire State Development must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of Empire State Development