



**Empire State  
Development**



**Erie Canal Harbor  
Development  
Corporation**

# **“Canalside Gateway Building Construction Management Services” Request for Proposals**

**Issued: June 15, 2022**

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

Designated Contacts for this Procurement:

Primary Contact:                      Ralph Volcy  
Secondary Contact:                    John Discolo

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

This RFP is posted on the Empire State Development website:  
<https://esd.ny.gov/doing-business-ny/requests-proposals>

**Submission Deadline: July 13, 2022 by 3:00 PM ET**

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## **I. INTRODUCTION**

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

## **II. OVERVIEW**

Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”), is seeking proposals from well-qualified Construction Management firms (“CM”) to enter into an agreement to provide pre-construction, construction, and post-construction management services as related to the Canalside Gateway Building located in the North Aud Block area of downtown Buffalo, New York. The CM shall represent ECHDC as an Owner’s representative in all aspects. The CM will work closely with the design consultant for the project to implement the design of the Gateway Building. Each party that submits a response (“Proposal”) to this Request for Proposal (“RFP”) is referred to herein as a “Respondent,” and the Respondent that is conditionally designated through this RFP process is referred to herein as the “Construction Manager.”

The Site is a primarily vacant parcel, formerly part of a superblock that once contained the War Memorial Auditorium, a former professional sports venue that was demolished in 2009. The overall Site is bounded on the north by Lower Terrace/Interstate 190; Pearl and Commercial Streets to the west; on the east by Main Street; and by the recreated Erie Canal to the south. The Canalside Gateway Building will be located in the southwest corner of the (See Appendix B). In December 2021, The Erie Canal Harbor Development Corporation board adopted a Modified General Project Plan (“MGPP”) which described the development plan for the North Aud Block Redevelopment Project (the “Project”) as being divided into a multiple building development based on the historic street grid, including a structured ramp that would be constructed both below and above grade. The Gateway Building follows the MGPP redevelopment plan.

The Canalside Gateway Building, with an approximate 3,000 square perimeter footprint, will be a four-story structure that includes a level along the canal towpath. The steel framed structure with masonry veneer will set on a combination of concrete foundations and piles. The towpath floor will provide an area for the Canalside operations team to maintain and store equipment for Canalside, as well as facility personnel offices. The first floor will provide meeting rooms and visitor information area. The second and third floor will provide office space. The building will also include public restrooms on the two lowest levels and ADA accessibility to the towpath from the first floor. At the time of this Request for Proposal, the consultant team has completed the Design Document phase.

The Architect/Engineer Team (“A/E”) completing the architectural/engineering design for the Project is led by:

TY Lin International  
77 Broadway Street, Suite 208  
Buffalo, New York 14203

Total Project Construction Cost  
ECHDC project budget for Construction is \$12,000,000.

Project Schedule  
ECHDC is expected to advertise for Construction in October 2022; break ground in Quarter 2 of 2023; and complete the Project by December 2024.

### **MWBE & SDVOB Subcontractor Interest**

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

## **III. SCOPE OF WORK**

ECHDC is seeking innovative CM proposals that are cost effective while producing a high quality outcome and ensure the construction contractors meet their commitments in terms of quality, price and schedule. The primary responsibility of the CM shall be to represent ECHDC throughout the pre- construction, construction, and post-construction processes; maintain responsibility for the day-to-day management of the construction process; and to deliver the Project on time, within budget, and of the highest quality. The successful CM will be responsible for all of the Tasks and sub-tasks outlined below as well as assume all responsibility and accountability standards as if the selected firm were a part of ECHDC. ECHDC is looking for a firm with extensive experience coordinating with the Architect/Engineer Team to identify value engineering solutions to save cost and schedule; and developing and implementing a work plan that ensures there are no deviations from cost, quality and completion dates; and ensures the most cost effective Project outcome.

### **Pre-Construction Phase**

Commencement & Duration: The Pre-Construction Phase shall commence sometime during the Construction Document Phase.

Meetings: The CM shall plan to meet with ECHDC and the A/E and other project stakeholders on a bi-weekly basis to review design progress, document constructability, and collaboratively plan the construction delivery. Additional meetings shall be scheduled

as need arises. The CM shall also coordinate onsite activities and project milestones with the Canalside Management Group.

Planning & Scheduling: the CM shall assist with planning the Project in the Pre-Construction Phase. The CM shall develop the preliminary Project schedule and logistic plans, refine, revised, and maintain as the design is finalized. The CM shall be responsible for preparing and maintaining the Master Project Schedule, logistical planning, and any phasing plans, which will define the parameters for performing the work without disruption to the operation of Canalside's high programming season. The Master Project Schedule shall identify and coordinate milestones and activities for, but not limited to;

- Project Planning, design, procurement, pre-construction, construction, post-construction/close-out.
- ECHDC specific milestones (i.e. Board meetings/approvals)
- Ordering and delivering of long lead items
- Permit filings where applicable and other governmental agency approvals

Constructability Review: The CM shall be required to perform a focused review of the proposed bid documents prior to the conclusion of the Construction Document phase, and provide written comments and recommendations to ECHDC concerning constructability of the documents. The Contract Documents (drawings and specifications), in conjunction with a Site evaluation, shall be review for clarity, consistency, and completeness. Such review shall be for the sole benefit of ECHDC, and any benefit derived by the A/E shall be merely incidental. The Constructability Review is a priority task for ECHDC.

Permitting: The CM shall confer with the A/E and be responsible for the identification of the permitting requirements for the Project. The CM shall incorporate the permit filing milestones in the Master Project Schedule and monitor the progress of the required filings and approvals. This shall include, but not limit to, general construction permit with Buffalo Sewer Authority approval, water tap permit, and identification of utility contacts and request documents.

Construction Cost Estimate: The CM shall complete and reconcile a construction cost estimate at Contract Documents 75% and 100% broken down by Trade and CSI Code. The cost breakdown structure of the cost estimate shall be tied to the Master Project Schedule. Each estimate shall be based on quantity take-off, local trade and materials indexes, and current prevailing wages. The CM shall reconcile each estimate with the independent estimate prepared by the A/E. In the event the reconciled estimates exceed the budget, the CM shall discuss with the A/E and prepare joint recommendations for bringing the Project within budget through value engineering solutions. With ECHDC's approval, the CM shall revise the reconciled estimates to reflect the effect of implementing the joint recommendations. Such revisions shall be at no additional cost to ECHDC.

Value Engineering Services: The CM shall establish, conduct, and administer value engineering session when the Construction Documents are 75% complete. The value

engineering session shall include documented reviews and recommendations on the following, but not limited to: product alternatives; product placement; feasibility; resident stakeholders; and maintenance and product life cycle costs.

Contract Documents: The CM shall collaborate with the A/E and ECHDC to create the standard Division 1 (front end) of the Contract Documents to meet the needs of the Project, ECHDC's requirements, and ECHDC's parent corporation's (Empire State Development) legal and contractual requirements. The front end shall include, but not limited to, Supplementary Conditions, site logistics, coordination, Safety Plan requirements, milestone schedules, and narratives. This effort is to delineate for the potential Construction Contract bidders, the parameters for performing the work without disruption to Canalside's operations, maintenance, and programming season.

Procurement Services: The CM shall discuss with ECHDC regarding procurement strategy and make recommendations for the packaging Contract Documents for multiple-prime awards and timing of bidding. The CM shall develop and assemble the Bid Scoping Document, including all Bid Forms, Front End Documents, General Conditions/Supplementary Conditions; ECHDC's approved Construction Contract, and other documents or forms necessary to complete the Bid Documents. The CM shall supply and bind all necessary copies of the Bid Documents to ECHDC for posting to the New York State Contract Reporter. The CM shall attend the ECHDC pre-bid walkthrough meetings with prospective bidders; coordination of Requests for Information (RFI); preparing and distributing addendums; tabulating and analyzing bids and informing ECHDC of any discrepancies with the values/amounts submitted in the bids; investigating bidders; and in negotiating, providing recommendations, and awarding contracts of the construction of the Project. The CM shall coordinate the review and analysis of bids with the A/E team to then provide a final recommendation to ECHDC for award.

Project Labor Agreement: The CM shall perform a Project Labor Agreement (PLA) feasibility study, to determine whether it is in ECHDC's best interest to negotiate a PLA, and if so, determined; negotiate a PLA, in conjunction with ECHDC and counsel, with the construction trade unions. In the event the PLA is executed with the construction trade unions, the CM shall incorporate the PLA in the Contract Documents, and shall administer the PLA during the construction phase of the Project.

Quality Assurance: The CM shall create, document/publish, submit for review and approval to ECHDC, implement, and maintain throughout the Project's lifecycle (from Design to Closeout) a quality assurance and control program through a Quality Management Plan, and shall include the following at a minimum;

- Requirements for a project execution/management plan.
- All stages of the Project lifecycle.
- A system for submittal reviews for design and general conditions conformance. The CM shall receive the Construction Contractors' (CC) submittals such as shop drawings, product data, and promptly review for completeness and responsiveness,

log, and then distribute to A/E for review and approval; all within 48 hours of receipt from the CC. The CM shall return submittals to the CCs within 24 hours of receipt from the A/E, and shall update the submittal log accordingly. All submittals are to be processed through the designated project management system/software.

- A system to collect and compile as-built drawings, operations and maintenance manuals, spare parts and excess materials provided by the CCs and other close out documents.
- A system to document and review foreseeable risks with documentation to ECHDC providing an analysis on the schedule, budget, quality, and personnel (program team and community) during the Pre-Construction and Construction Phases.
- A change order procedure. The procedure shall include a system to address scope creep and additional impact analyses. The CM shall perform all necessary cost and time negotiations with the CCs on behalf of ECHDC and document the same.
- A system to maintain an incomplete items list of deficiencies, tasks, and deliverables from the Contract Documents that logs, at a minimum, the observation/recording date, reporting date, and completion date throughout the Construction Phase.
- Requirements for onsite inspections, special inspections, etc. The requirements shall include, but not limited to, frequency, system for recording, and reporting.
- A system for documenting lessons learned throughout the Project and shall be turned over to ECHDC as the end of the Project in the summary report.

Quality Control & Testing: If Testing is required during the Pre-Construction Phase, the CM shall review the A/E's proposed testing plan and associated costs, and provide ECHDC recommendations. The CM shall review the conditions with the A/E during the testing and the CM shall assist and advise ECHDC and the A/E with solutions to any issues discovered.

### **Construction Phase**

Commencement & Duration: The Construction Phase shall commence with the award of the construction contracts for the Project and end upon completion of all contractually required physical work, including punch-list item.

General Construction Administration: The CM shall administer the Project, the construction contracts, and the PLA, if applicable, on ECHDC's behalf. Administration of the Project shall include scheduling of the work and coordination of the Construction Contractors (CCs), ECHDC's project staff, Canalside Management Group, and any other entities/persons on site, so that the work may be accomplished in a timely and efficient manner, and with minimum inconvenience/disruption to the operation of Canalside. The CM shall maintain competent full-time staff at the Project site to administer the Project and at all times while work is being performed by the CCs. The CM shall provide its staff with all necessary equipment to administer the Project, including but not limited to, computers/laptops, printers, digital cameras, personal projection equipment, office furnishings, etc.

Site Conditions: As portions of the site/work become accessible, the CM shall promptly and diligently investigate existing conditions through both as-built drawings and site visits, and then report to ECHDC and the A/E, any conditions that differ minimally and substantially from the information in the Contract Documents. The CM shall also provide these possible conditions in a separate report to ECHDC and the A/E and the opportunity to mitigate cost and risk. If necessary, the CM shall collaborate with ECHDC and the A/E to develop the appropriate modifications to the Contract Documents.

Inspection Services: CM shall inspect, interpret, and certify as proper, correct, and in compliance with the applicable Contract Documents, all work performed by the Construction Contractor; all equipment and materials furnished and installed on the Project throughout the entire construction process. The CM shall inspect for, but not limited to, quality of materials, good workmanship; adherence to Specifications, codes, standards, and Contract Documents; verification of additional work; and approval of payment requests. CM shall complete shop inspections for critical equipment as necessary. The CM will be responsible to provide the following, but not limited to:

- Perform daily site inspection to determine if facilities are complete and being construction in compliance with the Contract Documents, approved contract Change Orders, and any other permit requirements.
- Performing field inspection and other quality control activities including necessary materials testing.
- Monitoring of corrective actions taken by the Contractor needed to fix work that is not in compliance with Contract Documents.
- Reviewing and approving Contractor's survey layouts, lines, grade, elevation, etc. of all work.
- Keep daily log, fill out incident/accident reports, and take pictures of the construction progress. A daily Inspection Report identifying work done by the Contractor and pay items worked on shall be completed by the next business day for review and filing.
- Reviewing Contractor's compliance with all regulatory permits (including NPDES, SWPPP, etc.) and mitigation measures.
- Reviewing Contractor's compliance with workplace safety and health standards and notification to ECHDC of any instances of noncompliance.
- CM shall be responsible for providing all inspection services during construction close-out. As well as within One Year of Notice of Completion, perform a site inspection; check all warranty items; and provide completed punch list to ECHDC.
- CM shall inspect and determine the suitability of materials on site and those delivered to the site to be incorporated in the construction of the Project.

Quality Control & Testing: The CM shall create, document/publish and implement the a quality control program which shall be included in the Project's Quality Management Plan, per Pre-Construction Tasks, consisting at the minimum inspection services per above paragraph, testing, controlled inspections, special inspections, and the CM's routine



observation of the work by the Construction Contractors (CCs) with respect to the conformance to the Contract Documents. The CM shall ensure that the Division 1 front end specifications align with the plan and that they require to proper testing and inspections. The CM shall be required to contract, coordinate and manage the proper testing and inspections. The CM shall work diligently to guard ECHDC from defects and deficiencies in the work and shall coordinate the testing and inspections by third parties with the CCs' work. The CM shall promptly notify ECHDC, the A/E, and the CCs, if applicable, of any and all defective, deficient, and/or non-conforming work, provide recommendations for correction/resolution. The CM shall track all defective and non-conforming work through correction until final acceptance by ECHDC.

Scheduling: The CM shall, with the cooperation of Construction Contractors, prepare and monitor the Master Project Schedule. The Master Project Schedule shall be broken down in sufficient detail to be useful for monitoring progress, delay analysis, and administration the CC's contract provisions. The Master Project Schedule shall include all ECHDC's and CC's activities. The CM shall include all necessary operational milestones provided by the Canalside Management Group. All CC's scheduled shall be imported into the Master Project Schedule on a monthly basis. The CM shall prepare and distribute the following reports biweekly;

- Two week look-ahead schedules from the Master Project Schedule and include the same details from the CCs.
- List of tasks completed since the last report.
- Schedule updates as necessary to reflect changes and indicate the impact of the changes to the critical path and completion milestones.
- Changes in total and free float time.
- Evaluation of claims for Project delay.

The CM shall discuss with the CCs and prepare recovery schedules, as needed. The CM shall evaluate the CC's requests for extensions of the contract time, and advise ECHDC confidentially on the significance and merits of such requests. The CM shall evaluate potential impact for any CC requests and/or actions to the Master Project Schedule.

Cash Flow Forecast: With the cooperation of the Construction Contractors, the CM shall prepare and distribute a cash flow forecast for the entire Project based on the Master Project Schedule and Project Cost. The CM shall revise the forecast, whenever that is a significant change in the schedule of Project Cost that would warrant a revision to the cash flow forecast.

Monitoring Progress: The CM shall monitor the progress of the Construction Contractors work and prepare daily written reports documenting the weather, type and location of work performed, each sub-contractor's labor and equipment on site, and all other pertinent details relevant to the progress of work. The CM shall prepare and distribute the written reports with photographic documentation of the work in progress. Photographs are required when unforeseen conditions, disputed work, or deficiencies in the work are

encountered. The CM must pro-actively monitor the progress of the work to ensure that the CCs' workforce is sufficient and the work is being diligently executed. When progress is impeded by the actions/inactions of the A/E or others, the CM must bring such matters promptly to ECHDC's attention for a resolution. The CM must ensure the Project progress conforms to the Master Project Schedule.

Construction Contractors' Payments: The CM shall receive, review, certify, and approve for processing by ECHDC, all schedules of values, invoices, and requests for payment prepared by the Construction Contractors. The CM shall ensure that all necessary backup documentation is included in the Payment Application, including but not limited to; certified payrolls, certification of material compliance, subcontractors' and supplies' waivers of liens, M/WBE utilization report, and current insurance certificates with the proper listing of additionally insured. The CM shall correlate the CCs' payment requests with the progress of the work, and take into account any deficiencies in the work for which the payment is being requested, in preparing a payment recommendation. The CM shall provide an earned and planned value report with their recommendation. The CM's recommendation for payment shall constitute as a representation to ECHDC, to the best of the CM's knowledge and belief, the work has progressed to the point indicated, and the quality of the work is in accordance with the Contract Documents. The CM shall track payments to CCs, document construction expenditures, and assist ECHDC in preparing documentation required to obtain funding agency approval and funding.

Meetings: The CM shall schedule, conduct, and document regular weekly meetings with Construction Contractors, the A/E, ECHDC, and others where necessary, to plan and coordinate the work, discuss the progress, and solve problems related to the Project. In addition, attend meetings with ECHDC and/or A/E on a regular basis. The CM shall be responsible for preparing and timely distributing meeting minutes and agendas.

Reporting: The CM shall be responsible for preparing monthly written progress reports and deliver bound copies to ECHDC, no later than the 10th day of the following month. The monthly reports must include the following information, at a minimum;

- Executive Summary – high level summary of the current Project progress and changes from the previous month's report. The Summary must indicate whether the Project is on or off schedule and budget, and any recovery steps that may be necessary.
- Progress Narrative – supported by photographs and the current Master Project Schedule to show progress.
- Issues Report – a summary report of all critical and important issues that require ECHDC's attention.
- Change Orders – log of the status of change orders (estimated, potential, proposed, pending, processed)
- Construction Contractors' Payment Summary – include a discussion of variances between amounts paid to date and the cash flow forecast.

- CM Budget Report – include the total contracted amount, projection of labor usage through completion of the Project in terms of CM personnel. The reports shall show the current earned value and planned value for each billable employee, and how they related to percentage of construction complete.
- Incomplete Items and Deficiency Log – log of non-conforming or deficient work that details the date reported, ball in court, due date, status and description.
- Manpower Summary
- Foreseeable Risk that may impact schedule, contract values and Project Budget.
- Permit Log – detailing the permit date, issuing agencies, agency contact information, inspections pertaining to the permit and status of inspection date, and permit expiration date.
- Closeout Status – punch list, operation and maintenance manuals, trainings, warranties, as-builts, etc.
- Attachments – attach pertinent photographs, logs, reports, etc.
- Lesson Learned

Safety: The CM shall require the Construction Contractors’ to submit their site specific health and safety plan and review the plan for completeness based on the requirements outlined in the Contract Documents. The CM shall serve as a central role in dissemination of safety related information between the CCs and ECHDC. The CM shall not have control over or be responsible for the means, methods, techniques, sequences or procedures for safety precautions and programs in connection with the CC’s work, as this is the CCs’ responsibility. The CM shall have the requirement and right to implement an immediate stop work order or correction condition action to the CCs on behalf of ECHDC in the event of an unsafe working condition. The CM shall notify ECHDC immediately after event has been mitigated. The CM shall not be responsible for the CCs’ failure to carry out the work in accordance with the approved CCs’ health and safety plan, and/or applicable safety rules and regulations. The CM shall promote safety and try diligently to guard against the creation of an unsafe work environment by any CC.

Changes: The CM shall review all supplementary reports prepared by the A/E prior to their issuance, prepare cost estimates, review Construction Contractors’ proposal for acceptable quantities, quality, unit prices, and mark ups and submit formal written recommendations, including a memoranda to ECHDC, clearly delineating the scope of, and reason for the changed work. The CM shall evaluate the CC’s proposed adjustment to the construction contract price and time, and assist ECHDC in negotiating change orders. Where changes are or may be the result of the A/E’s error or omission, the CM shall inform ECHDC of such, and shall track all such changes separately on ECHDC’s behalf. The CM shall keep a log that documents requests for information, supplementary reports, unforeseen conditions, scope creep, which lead to new proposals and/or change orders.

Partial Occupancy and Beneficial Use: The CM shall assist ECHDC in determining the requirements and dates of partial occupancy or beneficial use, substantial completion, and final acceptances; and shall assist in obtaining any necessary temporary occupancy

certificates, final occupancy certificates, or certificates of approval from the permitting agency. The CM shall review any lists prepared by the A/E of incomplete or unsatisfactory work, and prepare schedules for completing and correcting the work and monitor the completion/correction.

Construction Contractors' Claims & Disputed Work: The CM shall promptly review Construction Contractors' claims for additional compensation and/or extensions of time, whether these claims are received during or after construction. Where the work is disputed, the CM shall promptly defer the matter(s) under dispute to the A/E for interpretation. The CM shall discuss with the A/E, and advise ECHDC on the significance and merits of each claim, and/or recommended resolution for each dispute. At ECHDC's request, the CM shall schedule and attend dispute resolution meetings related to each claim/dispute, whether or not such meetings are scheduled during the Construction or Post-Construction Phase. With ECHDC's concurrence, prepare written response to CCs' claims, incorporating the A/E's determination, where applicable.

Field Office: The CM shall provide, maintain, and subsequently remove its own temporary offices during the construction phase. All CM's office equipment and supplies, including, but not limited to, telephones, computer with high-speed internet access, printers, copiers, scanners, etc. shall be provided, maintained and subsequently removed by the CM, and the associated costs shall be included in the cost for the Field Office.

## **Post Construction Phase**

Commencement & Duration: The Post-Construction Phase shall commence upon completion of the Construction Phase and continue through Final Project Closeout.

Construction Contract Closeout: The CM shall be responsible for the maintenance of all construction records and information for the lifetime of the project. The CM shall provide copies of all forms, logs, reports, and filing procedures that are proposed during the lifetime of the Project. The CM shall prepare all necessary paperwork to finalize all contractor payments, obtain all required permits, and/or Certificates of Occupancy, and submit all project documentation to ECHDC.

As-Built Drawings: The CM shall compile Project record documents collected during the construction phase and supplement with any information collected following occupancy. The CM shall review the as-built drawings provided by the CCs and verify the as-built drawings, to the best of the CM's knowledge, based on the CM's observations during the progress of the Project, and documented during the actual construction of the Project. The CM shall transmit the verified as-built drawings to the A/E for the preparation of record drawings.

System Start Up: After all of the systems are up and running, the CM shall verify that all systems are operating within the intent of the Contract Documents, and that all components of the systems comply with the approved Contract Drawings and product data submittals.

Operation and Maintenance Manuals: The CM shall review, approve, and log all Operation and Maintenance Manuals prior to forwarding to ECHDC.

Training: The CM shall schedule and record/document the training of ECHDC and Canalside Management Group personnel with respect to the operation and maintenance of the building component and systems.

Final Project Report: The CM shall provide a detailed closure report with a summary of all contracts, permits, issues, lessons learned, and highlights from the Project.

#### **Additional Services**

ECHDC may request additional services throughout the term of the CM Contract. The CM shall promptly respond to additional requests for services, provide a detailed scope of services, with personnel, equipment, costs, and duration as requested by ECHDC to complete the services.

Allowances: The CM shall evaluate the need for and proposed value for the typical reimbursable expenses:

- Third-party testing and controlled inspection services
- Site Investigation, utility location and mark-out services
- Special consultant services
- Shipping and/or courier services
- Temporary Field Offices
- Printing, reproduction, and reporting documents

#### **IV. SCHEDULE OF DATES**

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	June 15, 2022
Pre-Submission Meeting at Site	June 22, 2022
Deadline for Submission of Questions	June 29, 2022 by 8:00 PM EST
Deadline for ESD to Respond to Questions	July 6, 2022
Submission of Proposals (date and time)	July 13, 2022 by 3:00 PM EST
Interviews (if necessary)	July 27, 2022
Announcement of Successful Bidder	August 8, 2022
Anticipated Contract Start Date	August 9, 2022

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

## V. SELECTION CRITERIA

In reviewing and evaluating proposals and preparing recommendations for the ECHDC Board of Directors, ECHDC staff will consider such criteria (all criteria considered by ECHDC being referred to collectively as the "Selection Criteria") that, in ECHDC's sole and absolute discretion, are in the best interests of ECHDC and the State. The criteria listed below are of significant concern:

- 1) Experience/qualifications of the company (or companies) and staff to undertake the specific requirements of the Scope of Services outlined in Section III. (15 points)
- 2) Approach in methodology with respect to the Scope of Services, and specifically on technical aspects of the services. (15 points)
- 3) Experience of staff dedicated to the project in the Preconstruction Phase and Construction Phase; specifically with extensive experience in constructability reviews that produce great documents (ie progress reports, PCO logs), little to no Change Orders, and maintain high quality design; experience assisting in making design decisions based on extensive knowledge of Architectural and Engineering design and systems; and experience providing construction management services to municipalities, economic development agencies, and other governmental agencies. (20 points)
- 4) Appropriateness of manpower and cost of services in addressing the entire scope of Services outlined in Section III. (15 points)
- 5) Quality of work product demonstrated by completed projects, including high profile projects and efforts outstanding principles of design quality. (10 points)
- 6) Ability of the team to complete project in accordance with schedules and maintain budgets. (10 points)
- 7) Firms will be evaluated on their Diversity Practices, as evaluated on the attached Diversity Practices Questionnaire. (10 points)
- 8) Extent that the proposed Project Team, and/or individual members or member firms on the Team, meet the requirements of the NYS Comptroller's Office and ESD policies on procuring Responsible Vendors, specifically in the following four major categories: (5 points)
  - Financial and Organizational Capacity to Undertake the Project: Factors to be considered include, but are not limited to, assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, or existence of appropriate accounting and auditing procedures for control of property and funds.
  - Legal Authority to do Business in New York State: Demonstrated by a foreign corporation's registration with the New York State Department of State under the Business Corporation Law or Not-for-profit Corporation Law (Note that both foreign and domestic businesses and not-for-profit corporations, limited partnerships, limited liability partnerships, and limited liability companies must all file documentation with the Department of State for such authority) and absence of any findings removing/preventing such authority.

- Integrity: Factors to be considered include, but are not limited to, criminal indictments or convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by federal, state or local governments, or prior determinations of integrity-related non-responsibility.
- Previous Contract or Project Performance: Factors to be considered may include reports of less than satisfactory performance, early contract/project termination for cause, contract/project abandonment, court determinations of breach of contract, etc.

### **Construction Manager Interviews**

Following ranking of proposals, a number of construction management teams (to be determined by the Selection Committee) may be asked to present their proposals to the Selection Committee.

## **VI. SUBMISSION OF PROPOSALS**

Every respondent to this RFP (“Bidder”) should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

### **i. Technical Proposal**

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below:

- A. Table of Contents
- B. Firm Experience and Qualifications
- C. Staff Experience and Qualifications
- D. Project Plan and Approach
- E. Estimated Cost {if applicable}
- F. Diversity Practices

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

- A. Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

- B. Firm Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate relevant experience by providing the following:

- Description of Firm
  - Professional Capabilities
  - Staffing
  - Project Mix/ Client Mix
  - Litigation (Last five years)
  - Changes/trends in above over last five years.
- Project Team
  - Resumes of partners, principles, associates and other staff proposed to provide services outlined in the Scope of Work.
  - List of contact information of subconsultants required to perform work.
  - Description or outline of the Project Team Organization, including Project role/function chart.
  - Total relevant human resource availability throughout agreement, particularly for the Project Manager and key personnel.
  - Ability to have staff work at ECHDC facilities if required.

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

### C. Staff Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP.

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

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited



to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

#### D. Project Plan / Approach

In this section of the Technical Proposal, Bidders should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

- Project Management Methodology
  - Overall project management approach and methodology as they relate to the Scope of Services outline in Section III above.
  - Schedule, quality, and cost control procedures
  - Project tracking and performance monitoring procedures
  - Project progress reporting procedures
- Describe your approach to the Scope of Services that clearly demonstrates your understanding and your ability to manage and complete multiple projects in a timely and cost-efficient manner. The proposal must include a detailed statement of your approach and ability to provide the required Scope of Services and Work Product including, but not limited to a schedule for completing all aspects of the services.

#### E. References

- List representative experiences for the past three years.
- List the references to which you provided services of a similar nature. Indicate scope of work, total compensation paid, and the term of contract.
- List any previous work experience for the ECHDC as either a prime or sub-consultant.
- Provide your information in the following format:
  - Project name and description
  - Your firm's scope of work or role on Project
  - Client name, address and telephone number
  - Client contact (Full Name and Title)

#### F. Estimated Cost

- Hourly Billing Rates— provide the hourly billable rates for all positions, including, but not limited to, the Principal in Charge, Project Manager, Project Engineer, and Contract Administrator – submit in tabular format.
- A fully loaded resource schedule broken down by task and classification – submit rates in a tabular format.
- Typical cost/person—hours per TASK

#### G. Diversity Practices

##### ii. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Bidders should complete and submit the items listed below, in the order in which they

are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

- i. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- ii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iii. Iran Divestment Act Statement, submit with proposal
- iv. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
  - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
  - o [OCSD-2 - Staffing Plan](#)
  - 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 IX of this RFP ("Procurement Forms and Requirements").

### **Submission of a Complete Two-Part Proposal**

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hardcopies) will not be accepted. When submitting each proposal, Bidders must comply with the following:

1. The Technical Proposal and all related appendices must be submitted electronically before the submission deadline via the designated email [CanalsideCMRFP@esd.ny.gov](mailto:CanalsideCMRFP@esd.ny.gov).
2. The Administrative Proposal and all related forms must be submitted electronically before the submission deadline via the designated email [CanalsideCMRFP@esd.ny.gov](mailto:CanalsideCMRFP@esd.ny.gov).

**Late proposals will not be considered for award.**

## **VII. QUESTIONS**

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section IV (Schedule of Dates) to [CanalsideCMRFP@esd.ny.gov](mailto:CanalsideCMRFP@esd.ny.gov). Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

## **VIII. GENERAL PROVISIONS**

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

- i. amend, modify or withdraw this RFP;
- ii. revise any requirement of this RFP;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any Bidder;
- vii. communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. extend the term of any agreement on terms consistent with this RFP.

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

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

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

### **Required Approvals**

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract

shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

### **Performance**

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

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

### **Additional Services Requested**

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

### **Contractor Staff**

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

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

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

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

## **IX. CONTRACTUAL REQUIREMENTS**

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

### **i. Conflicts of Interest**

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

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of

impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

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

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

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

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

[https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

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

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

[http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf). All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

### **iii. Vendor Responsibility Questionnaire**

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

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

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

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

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

**iv. Iran Divestment Act**

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

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

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

**v. Executive Order 16**

In accordance with New York State Executive Order 16 ("EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

"By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16."

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO16-certification.pdf> and must be signed and included in all Proposals.

**vi. Executive Order 177**

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

**vii. Non-Discrimination and Contractor & Supplier Diversity Requirements  
CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-  
CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT  
OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**



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

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

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

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

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

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

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at [OCSD@esd.ny.gov](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 [\*\*SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES\*\*](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not

apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

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

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

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

Form OCSD-3:

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

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

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

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

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

### **Diversity Practices**

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of 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 D).

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

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

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

### **Contract Goals**

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

### **SDVOB Utilization Plan**

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

bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

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

### **viii. Encouraging the Use of NYS Businesses in Contract Performance Form**

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

### **ix. Certification under State Tax Law Section 5-a**

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

### **x. Schedule A**

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

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

contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

**xi. Project Sunlight**

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

**xii. Insurance Requirements**

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

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Must show evidence of Worker’s Compensation & Employer’s Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

**xiii. W-9 Form**

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.