

REQUEST FOR PROPOSALS

Business Planning & Concept Design Services for the “City Market” in Niagara Falls, NY

Issued:

February 28, 2023

Pre-Proposal Webinar:

March 14, 2023

Proposals Due:

April 27, 2023 at 3PM EST

Primary Contact:

Paul Ray, Senior Project Manager

Secondary Contact:

Robert Sozanski, Senior Project
Manager

Respondents must request a dedicated Dropbox for submitting a digital version of their proposal **and** any inquires to NFCityMarket@esd.ny.gov by: **March 23, 2023.**



**Empire State
Development**

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I. INTRODUCTION

Niagara Falls sits just miles away from a bounty of locally grown food, however, connection to the region’s rich farming culture is lacking. Facilitating access to local farm products for both residents of the city and visitors has been a challenge, especially as the city’s historic market (the Niagara Falls “City Market”) has struggled to retain vendors and consumers. Although the demand for authentic, unique local experiences for the millions of tourists to Niagara Falls has increased over the past decade, agritourism has not been a large part of the visitor experience.

In an effort to promote new economic activity in the heart of Niagara Falls, the City of Niagara Falls and Empire State Development (ESD), staffed through its Niagara Falls subsidiary USA Niagara Development Corporation, have made it a priority to breathe new life into the City Market. Envisioned to be a central hub for the County’s agritourism industry, the Market will undergo its most significant renovation in decades to restore it as a civic gathering place for city residents and visitors.

ESD is seeking a qualified firm and/or a team of qualified firms (a “Consultant”) that can work with a diverse stakeholder group to create a business plan for future operations of the Market and a concept site plan to begin a design process aimed at overhauling the physical space. The consultant team should be adept at public policy, research, analysis, business planning, marketing, urban design and site planning, with a keen understanding of the issues and opportunities facing public markets.

II. NIAGARA FALLS CITY MARKET

The [Niagara Falls City Market](#) was established in 1893 by city government ordinance. Originally located in the City's North End neighborhood, the City Market moved to its more centrally located and current site on Pine Avenue in 1913. Initially, the market catered mostly to the wholesale trade, but as the city's population ballooned in the post-war era, retail business grew as well. By the 1950s, a host of other businesses had sprung up, including banks, paint and hardware stores, drug stores, dry goods stores, variety stores, shoe stores, grocery stores and a host of eating establishments. At its height, the City Market could cater to 15,000 patrons a day, selling poultry, eggs, butter, cheese and every fruit and vegetable that local farms had to offer.

After years of decline that coincided with the City's population loss, the City Market underwent a series of renovations that prioritized automobile traffic over the pedestrian experience. The iconic market structure fronting on Pine Avenue was demolished and replaced by an awning at the center of the site. The businesses located on the perimeter of the market took priority over the market as the years went by, and the City Market evolved into a series of strip malls. In 1999, the City of Niagara Falls entered a long-term lease with a local company to operate the market. Without a robust management structure, the City Market became less competitive with other farmers markets in the region, and vendors left in droves. At its nadir, the City Market had less than five regular farm vendors and operated on a limited schedule. With this decline, the City of Niagara Falls not only lost access to fresh, locally grown food, it also lost an important piece of its identity and civic life.

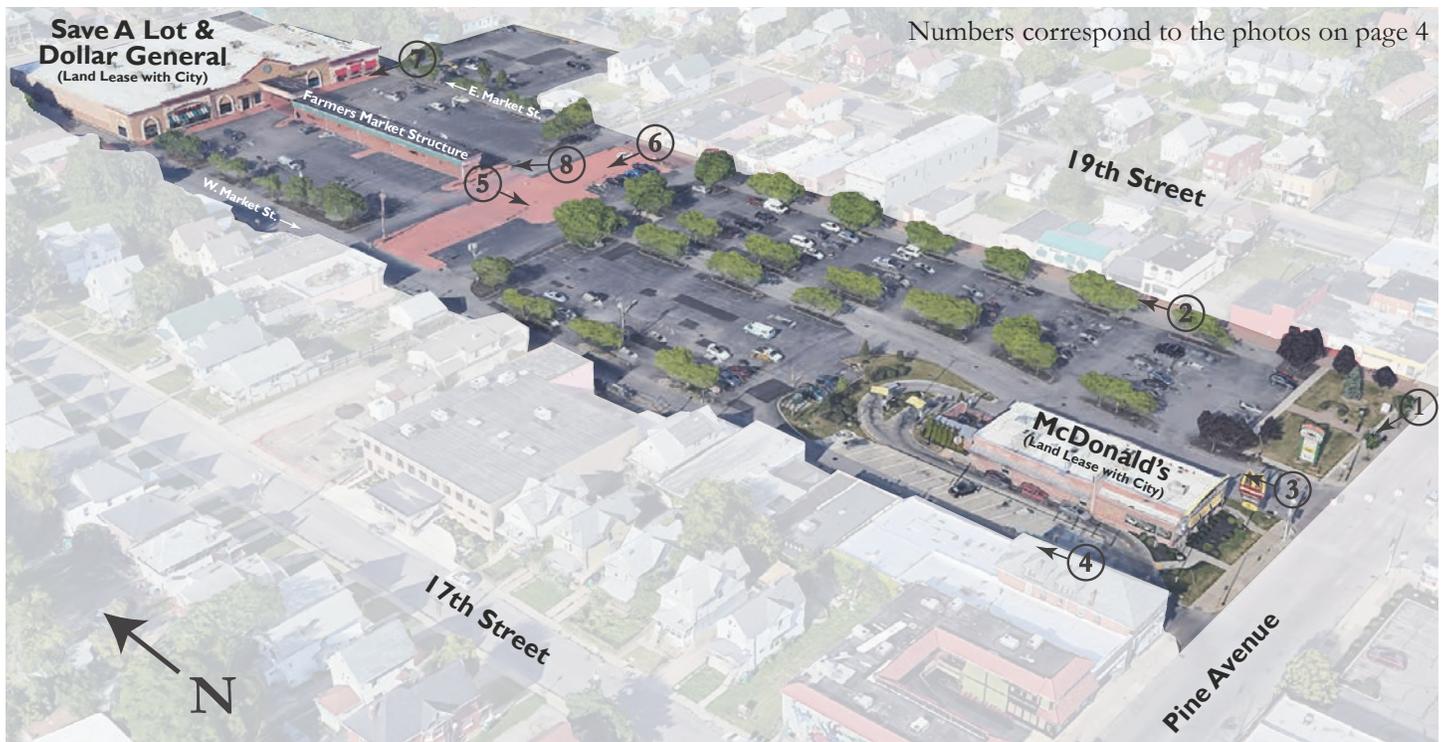
In the last eighteen months though, the City of Niagara Falls has made the City Market a centerpiece of its community and economic development strategy. The City bought out the lease of the private operator and brought in Field and Fork Network,

a local not-for-profit organization to manage the market. Field and Fork Network has implemented a number of changes to revitalize the market, hiring a part-time market director and adding facilities to support Supplemental Nutrition Assistance Program (SNAP), Women, Infants, Children (WIC) Program and the Double Up Food Bucks Program. In turn, ESD, the City and local philanthropic leaders made the City Market and the broader opportunities of Niagara food and agritourism guiding components of the Niagara Falls component of a three-city "Regional Revitalization Partnership," [announced by the Governor in June 2022](#).

By investing in the infrastructure of the market, the City of Niagara Falls and ESD hope to continue this momentum and return the City Market to a nexus of agriculture and community for residents of Niagara Falls and visitors from around the globe.



The City Market's Location in the City of Niagara Falls



Numbers correspond to the photos on page 4

City Market Project Area (All City-Owned Land)

Present Day Photos of The Market

Numbers correspond to the image on bottom of page 4

1



Front of the Market Along Pine Avenue (looking northwest)

2



Businesses Along East Market (looking north)

3



Central Driveway into the Market (looking north)

4



View Down West Market (looking north)

5



Concrete Driveway and Plaza In Front of the Farmers Market (looking south)

6



Concrete Plaza In Front of the Farmers Market (looking west)

7



Commercial Building at the Back of the Market (looking northwest)

8



Farmers Market Structure (looking northwest)

Present Day Activity at the Farmers Market



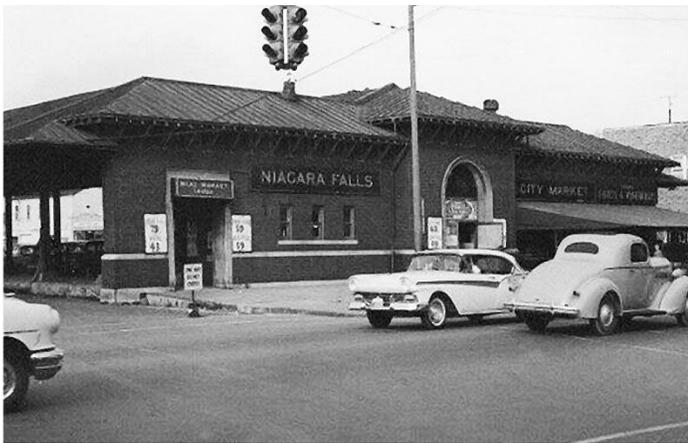
Historical Photos of the Market



Activity At The Market In Its Early Days (Ca. 1912)



Activity In Later Years After Market Structures Were Built (Looking south)



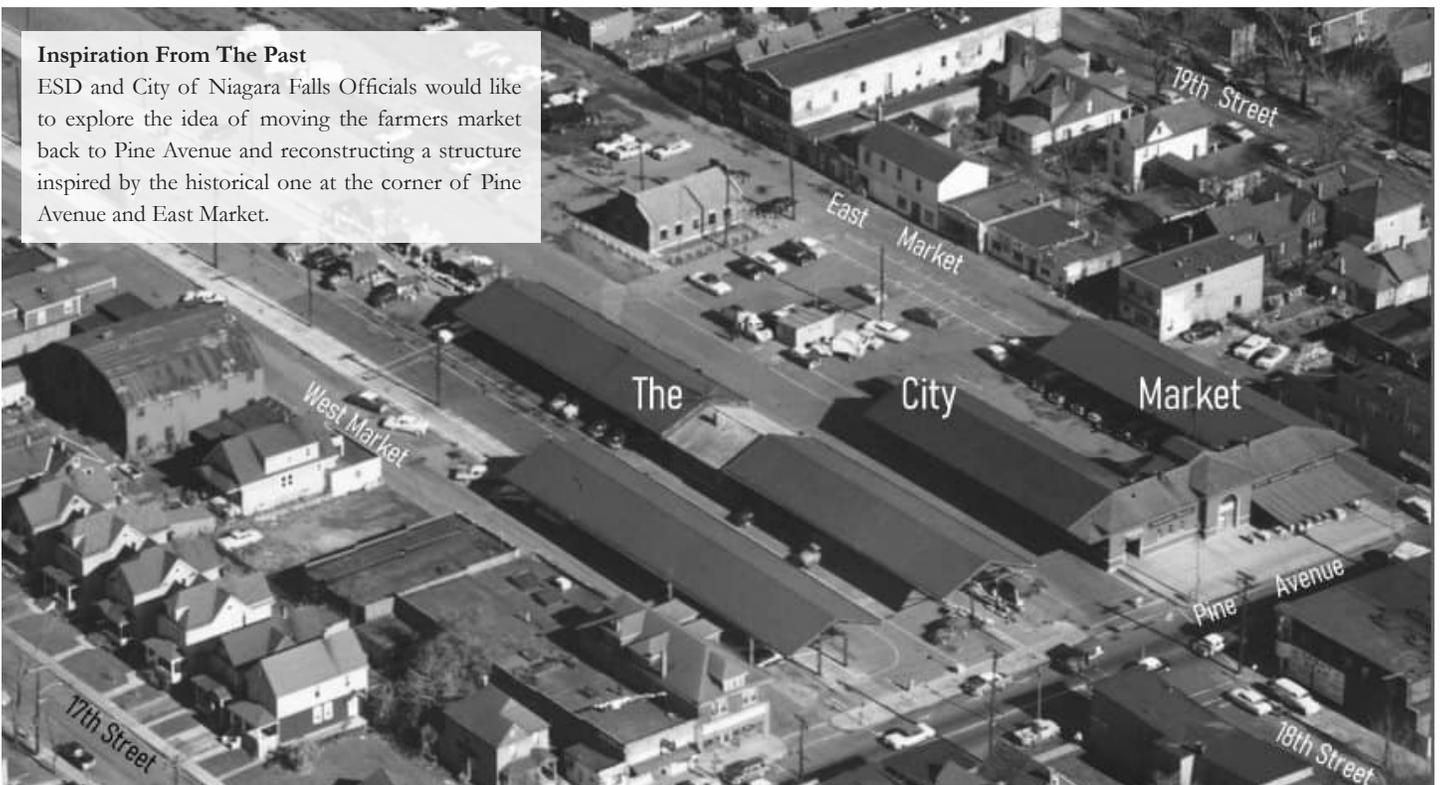
A View Of The Old Market Facade On Pine Avenue



Old Street-Facing Produce Stand At The Corner Of Pine Avenue And East Market

Inspiration From The Past

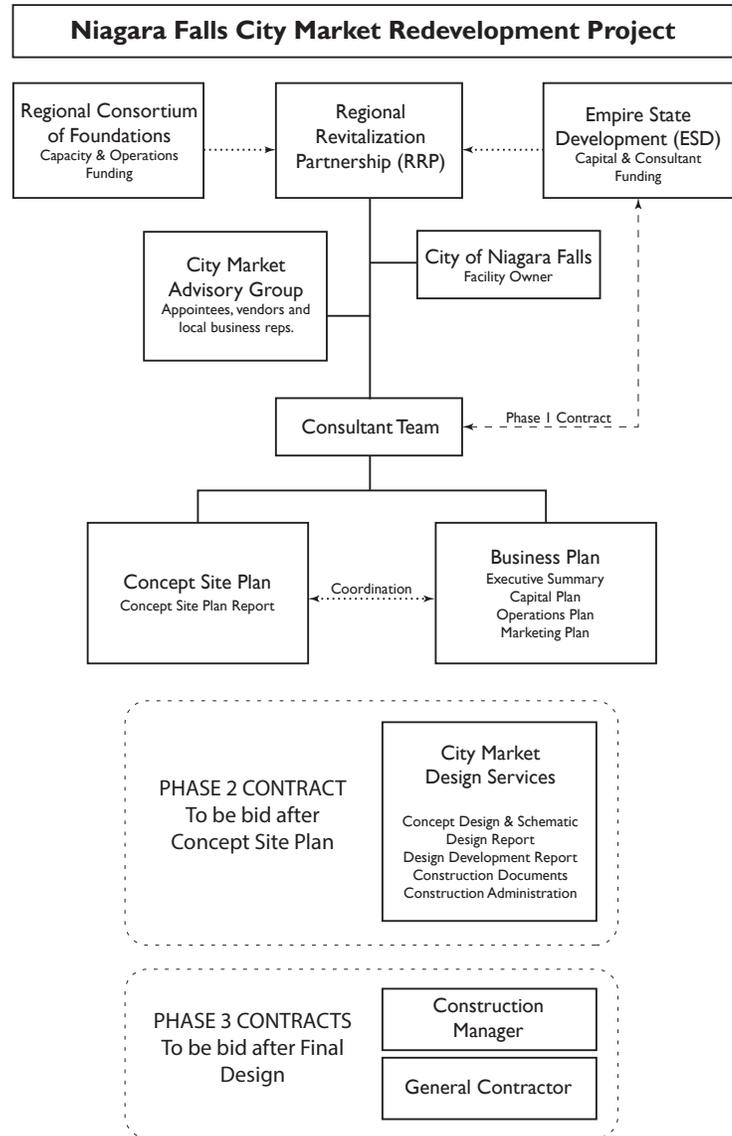
ESD and City of Niagara Falls Officials would like to explore the idea of moving the farmers market back to Pine Avenue and reconstructing a structure inspired by the historical one at the corner of Pine Avenue and East Market.



Aerial View Of Historic Market Structures

III. MANAGEMENT STRUCTURE & DELIVERABLES

The Consultant will be responsible for coordinating work across several disciplines culminating in two distinct but interrelated, deliverables: (1) a Business Plan for the City Market and (2) a Concept Site Plan outlining potential capital investments associated with the revitalization/redevelopment of the City Market. While ESD will hold/administer the Consultant’s contract and lead day-to-day project management for this effort, the Consultant will need to coordinate with an overall “Project Team” (including representatives from the City of Niagara Falls and philanthropic partners) and collect input from several other stakeholder/entities as outlined in the organizational chart to the right. A brief description of each entity is provided below.



Regional Revitalization Partnership

The [Regional Revitalization Partnership \(RRP\)](#) is a comprehensive, community-driven economic development strategy developed over 2021 and 2022. This strategy was made possible by the investment, leadership, and support of the Ralph C. Wilson, Jr. Foundation and in collaboration with the Office of Governor Kathy Hochul, Empire State Development, and partners in the cities of Buffalo, Niagara Falls, and Rochester. The RRP takes a public-private approach that will maximize impact and leverage additional investment for Buffalo’s East Side and the urban cores of Rochester and Niagara Falls. RRP funding for the planning and design work outlined in this RFP will flow through Empire State Development’s Western New York Regional Office.

Concurrent with the anticipated goals at City Market, there is a broader objective of the RRP strategy involving a county-/region-wide effort to foster better linkages between various agricultural producers; large food processors, users, and potential entrepreneurs; and educational/cultural/tourism institutions to best leverage agritourism as economic driver in Niagara Falls. This could involve strategic planning efforts or consultant studies that would occur on a similar tract with the work outlined in this RFP.

Planned capital and organizational improvements at the City Market could serve as an important component of this broader effort. Prospective Consultants, in shaping their approaches, should consider the potential role of the City Market in this broader context, and where applicable, work in coordination with partners/consultants on such other efforts, and/or be able to share information that could contribute to these concurrent goals.

City of Niagara Falls

As the owner of the City Market and the urban center of Niagara County, the City of Niagara Falls will be an important stakeholder in the project. City of Niagara Falls Officials will be involved in all aspects of work.

City Market Advisory Group

This group will be formed in the early stages of the project—with support of the Consultant—to provide specific feedback on the redevelopment of the City Market. The group will include representatives from small businesses and residents from the community surrounding the City Market.

IV. GOALS OF THE PROJECT

The following draft goals should be used to guide the development of proposals. These goals will likely evolve throughout the project.

Improvements to the setting, operations and management of the Niagara Falls City Market will:

- Modernize the design of the Market and make it more visible from Pine Avenue
- Support long-term sustainability of the Market
- Re-establish the Market as a neighborhood anchor
- Increase attendance, especially by regional residents and tourists
- Induce new spin-off economic activity along Pine Avenue
- Increase access to fresh, wholesome food for all residents and visitors
- Creating better connections between the Market and Niagara County's agricultural industry
- Build new authentic food and agritourism experiences in Niagara Falls and Niagara County, that yield economic and quality-of-life benefits for residents, visitors and farmers
- Suggest and foster projects and programs that provide new food-based entrepreneurship opportunities, commercialization support, and workforce development.

V. EXPERTISE AND SKILLS

Proposals must demonstrate a well thought-out holistic approach to the scope of work and present a multi-disciplinary team of qualified professionals, including specialty subconsultant firms, provided that the team demonstrates efficient coordination and collaboration across all deliverables. Teams may be led by a Prime Consultant firm in any type of business, design, or planning specialty, provided that it has extensive experience with managing multi-disciplinary efforts and possesses training, skills, and experience in the areas describe below. For example, if led by a firm with experience in business management, the team must include appropriately licensed staff or a subconsultant that will focus on concept site planning work. Or if led by an urban planning or architecture/engineering firm, the team must include a dedicated business management subconsultant.

Strategic/Business Planning

Business planning efforts should focus on a vision for future leveraging the existing food and agriculture assets of Niagara Falls and Niagara County and actionable steps to achieve the vision. Special attention should be paid to the long-term management and operations of the Market. Deliverables should provide a clear framework for implementation including roles, schedules and cost estimates.

Marketing and Communications

The Consultant must identify the tools and strategies best suited to engage existing and potential new customers. Beyond confirming existing demographics, a marketing and communications plan should seek to utilize methods to grow the Market's brand and target promotional materials to retain and build the customer base.

Community Outreach

The Consultant will work with the local advisory committees to engage residents from the surrounding community and other stakeholders to gather input that will inform the final deliverables and strengthen ongoing relations. The Consultant is encouraged to identify creative techniques to engage the public that will simultaneously identify potential opportunities for community collaboration that build excitement for the initiative.

Site Planning, Architectural Design and Engineering

Development of preliminary designs for capital improvements should be aimed at creating a more attractive and customer-friendly City Market. Both programmable space and public space may be considered, along facilities to accommodate pedestrian, bicycle and vehicle flows. The team must possess training, skills, and experience in the following areas of expertise: Architecture, landscape architecture, and urban design, land surveying/mapping, civil/structural engineering, construction cost estimating, Historic/cultural resource investigations and associated State Historic Preservation Office (SHPO) consultation, environmental assessment documentation related to the New York State Environmental Quality Review Act (SEQRA) and environmental investigations/screening, as necessary.

VI. FUNDING

Project sponsors have allocated a total of \$19 Million for both the planning and construction components of the initiative. This funding will be spent in three phases (1) Business Planning and Concept Site Plan (the focus of this RFP), (2) Final Design and Construction Documents, and (3) Construction.

VII. SCOPE OF SERVICES

The Consultant and/or team to provide necessary services including, but not limited to, the scope of work described generally in the following sections. Respondents may propose additional tasks or refinements to tasks as needed to successfully complete the project, provided that it is demonstrated how these would still meet or exceed the overall objectives of this effort.

Task 1: Project Management

Task 1.1: Overall Project Coordination

The Consultant must appoint a day-to-day contact that will oversee all tasks listed below and attend regular meetings with state/local project team members and other project stakeholders. It is at the discretion of the consultant to name any sub-project or task-specific project managers.

Task 1.2: Advisory Group Coordination

The Consultant and/or team must work with task-specific advisory groups that will be formed by the project to guide the work of each task.

Task 2: Fund Raising Support

The Consultant must prepare and implement a fundraising plan aimed at securing supplemental funding for strategies or capital improvements recommended by the work outline in the tasks below. This may include grant writing and submission of applications on behalf of the City of Niagara Falls and/or ESD. Sources may include federal agencies, state agencies, county agencies or philanthropic organizations.

Task Deliverables: fundraising/development plan and any materials related to funding applications

Task 3: Stakeholder Engagement & Communications

The consultant must:

- Create and implement a stakeholder engagement plan that includes outreach to various groups throughout the project including organizations and individuals from the surrounding neighborhood, the City of Niagara Falls and the Western New York Region.
- Create content and manage logistics for stakeholder outreach including, but not limited to, in person meetings, webinars, surveys, social media posts and press releases.

- Make a strong effort to engage existing and potential customers and vendors, especially those from the City of Niagara Falls.
- Discussions—both one-on-one and focus groups—with farmers, farm related industries, and other Niagara County entities (such as the Farm Bureau, 4-H, Cornell Cooperative Extension, Field and Fork Network, Destination Niagara USA, Niagara Falls County Culinary Institute, Niagara University School of Hospitality & Tourism, etc.)
- Maintain a project website through the duration of the project that includes progress updates, relevant documents and a means of collecting input and inquiries.
- Draft press releases and other communications collateral.

Task Deliverables: Stakeholder Engagement Plan and supporting content for outreach campaign

Task 4: City Market Business Plan

The Business Plan should be comprised of a suite of several stand-alone documents focused on the items below along with an executive summary documents tailored for a general audience:

Task 4.1: Existing Conditions

As a first step, the Consultant must assess current operations, infrastructure and physical layout of the Market. This might include, but is not limited to, the following activities:

- Tenant surveys, interviews and/or focus groups
- Customer surveys, interviews and/or focus groups
- Local business surveys, interviews and/or focus groups
- Stakeholder interviews including the current operator, city, state and county officials.
- Architectural and engineering site/Building assessments
- Strengths, Weakness, Opportunities and Threats (SWOT) analysis

Task Deliverables: Existing Conditions Report (for internal use during planning, should be integrated into the executive summary)

Task 4.2: Vision for the Future

Using information gathered from the existing conditions analysis the Consultant must undertake a process to develop a future vision and guiding mission for the Market. This might include, but is not limited to, visioning sessions with the following groups:

- Community/public
- Local business
- Farmers
- Technical/expert advisory group (to be formed)
- State, county and municipal stakeholders

Task Deliverables: Vision Report (for internal use during planning, should be integrated into the executive summary)

Task 4.3: Capital Plan

The Consultant must provide programmatic recommendations for addressing current and future operations needs at the Market, including, but not limited to, the following:

- Recommended physical improvements/renovations
- Programmable space
- Short- and long-term capital needs
- Equipment and technology

These recommendations should logically set the basis for alternative concept plan formulation specified in Task 5.

Task Deliverables: Stand-alone Capital Plan document

Task 4.4: Operations Plan

The Consultant must provide recommendations for addressing current and future operations needs at the Market, including, but not limited to, the following:

- Future vision/mission of the Market
- Options for overall management structure for all or components of the Market (public, quasi-public, not-for-profit, etc.) and advantages/disadvantages of each structure.
- Tracking of tenant rents and costs
- Back-office administration
- Financial management
- 5-year operating pro-forma
- Hours of operation
- Staffing, contracting, management structure
- Lease and product line agreements
- Vendor mix and recruitment
- Security
- Maintenance

Task Deliverables: Stand-alone Operations Plan document

Task 4.6: Marketing Plan

The Consultant must prepare a marketing plan that will help develop a broad, shared understanding of the demographics and socio-economic characteristics and trends within the Market's trade area and provide recommendations for future marketing and branding of the Market. A marketing plan might include the following:

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

Task Deliverables: Stand-alone Marketing Plan document

Task 4.5: Collaborative Opportunities

The business plan should pay special attention to addressing opportunities that will forge better connections between the Market, Niagara County agribusinesses and food-related businesses with a focus on, but not limited to, the following topics:

- Shared Facilities, Resources and Equipment
- Food Entrepreneurship/Incubation
- Communications and Marketing
- Workforce Development
- Special Events

Task Deliverables: Recommendations should be integrated into capital, operations or marketing plan where applicable.

Task 4.7: Case Study & Best Practices

The Consultant must provide research that will inform project sponsors and the Market's operator about best practices in the public market space and success stories from other peer and aspirational markets.

Task Deliverables (to be integrated into capital, operations or marketing plan where applicable and attached as an appendix to the full suite of deliverables): Summary of Best practices; 1-2 page briefs for each case study

Task 5: City Market Concept Planning

Necessary planning, architectural and engineering services should include, but would not be limited to, the scope of work listed in the following tasks.

Task 5.1: Technical Project Coordination

The Consultant must:

- Coordinate with the Project Team, various utility companies and city, county, and state agencies as required to determine the project constraints, performance requirements/guidelines, and operational/ maintenance issues. This task also includes project management and scheduling updates throughout the duration of the project.
- Confer with public code officials and ensure compliance with local, regional, and state/federal laws.

Task 5.2: Existing Conditions Analysis

The Consultant must:

- Partner with a NYS licensed land surveyor for topographic survey to document the existing structures and underground utilities at both sites.
- Prepare a digital base map for the project in Adobe Illustrator format. The base map will depict record right- of-way, existing utilities, record easements, and the aerial topographic and record boundary information.

Task Deliverables: Survey information and digital base map

Task 5.3: Historical Interpretation & Archaeological Exploration (if applicable)

The Consultant must:

- Review existing plans and historical documents to ensure any historic interpretive design elements are accurate and relevant to the project site.
- Consult with the SHPO of NYSOPRHP to evaluate and avoid any potential impacts to resources on or eligible for inclusion on the State/National Registers of Historic Places.

Task 5.4: Concept Site Plan

The Consultant must:

- The Consultant must develop up to three (3) site plan concepts based on the findings of the Business Plan. Site plans must address, at a minimum, the following aspects:
 - Identification of existing and proposed utilities
 - Location of proposed new structures and uses
 - Location of public facilities
 - Location of support facilities (i.e. storage, offices)
 - Street ROWs and proposed streetscape elements
 - Location of vendor stalls
 - Vehicular circulation
 - Pedestrian circulation, safety and accessibility
 - Bicycle infrastructure and safety
- Provide estimates of probable costs (order of magnitude) for recommended capital improvements under each alternative, broken out by categories that would permit considerations for blending components of alternative schemes.
- Develop/apply evaluation criteria to rationally assess and weigh the relative advantages and disadvantages of each alternative.

Designs elements should consider the following (at a minimum):

- Creation of a highly visible new Market entrance
- Construction of new structures for users such as vendor space, public facilities and storage.
- New vendor spaces that create a more welcoming and intuitive customer experience
- Concentration of activity and complimentary vendors and products to optimize usage of space and improve customer navigation
- Installation of functional and attractive streetscape improvements
- Landscaping and public space elements to create a unique sense of place

Task Deliverables: Concept Design Report

VIII. REQUIRED PROPOSAL CONTENTS

Proposals should demonstrate an understanding of the requirements and present the following information presented in the order shown below, clearly divided by numbered sections. Proposals must include the following:

Cover Letter and/or Executive Summary

- A summary of the Respondent team, with a complete organizational chart of key team members.
- A summary of your organization's or team's ability to undertake the services being solicited for in this RFP.
- Key abilities of your proposed team and discuss any critical "distinguishers" describing why your organization should be selected over others.
- Proposed fee (including any anticipated reimbursable expenses) and total hours for all team members.

Scope/Approach

Respondents should provide (at a minimum):

- An overall description of their approach to meet the objectives of the Project
- Scope of service items, including any additional proposed tasks not outlined in Section VII
- Preliminary drawings and/or renderings that illustrate their approach to site planning
- Proposed stakeholder engagement methods
- Techniques to best meet the project schedule
- Any assumptions forming the basis of the cost estimate

Fee Proposal

Respondents must provide a proposed fee for all services delineated by the tasks identified in the scope/approach. The proposal must include a detailed staffing plan/spreadsheet broken down by task, including the anticipated hours by task times the fully-loaded hourly rates (i.e., including salary, fringe, and profit) of each member of the Respondent team that will be working on the project. Please note any assumptions forming the basis of the cost estimate

Fee proposals must also include a list of anticipated reimbursable expenses and the rate charged for each without markup.

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

Proposed Schedule

Respondents must submit a proposed schedule, indicating the time needed to complete each task and anticipated timing of project any important milestones.

Respondent Qualifications

Respondents must submit a description of the respondent team's qualifications, including a brief resume (no more than one page in length) for each key professional.

Respondent Experience

Respondents must submit project sheets showing relevant completed efforts by the team within the last ten (10) years, with a particular emphasis on similar projects including: an overall project description; an image(s) illustrating the project, the cost of the project; the time necessary to complete the project; and names, addresses and telephone numbers of project references who may be contacted during the period of proposal evaluation.

Required Forms and Certifications (attach as appendices)

All certifications, forms, affidavits, etc. required in section XIII of this RFP ("Contractual Requirements") must be completed by the lead consultant and attached as appendices to the proposal in the following order:

- NYS Licensing Certifications (if applicable)
- Conflict of Interest Attestation
- State Finance Law Sections 139-j and 139-k Form
- Vendor Responsibility Questionnaire Form (completed form or VendRep System receipt)
- Iran Divestment Act Affirmation (on company letterhead)
- Executive Order 177 Certification
- Executive Order 16 Form
- OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
- OCSD-2 - Staffing Plan (note: must also be completed by any subconsultants)
- OCSD-4 - MWBE and SDVOB Utilization Plan
- Diversity Practices Questionnaire
- Encouraging the Use of NYS Businesses Form
- ST-220-CA Form
- W9 Form

IX. SUBMISSION INSTRUCTIONS

Proposal Submission

A PDF copy of the proposal (with any appendices) must be uploaded to a dedicated Dropbox web link (that will be unique to each Respondent) prior to the deadline shown on the cover of this document. Respondents must request the dedicated Dropbox web link by sending an email to NFCityMarket@esd.ny.gov by March 23, 2023. At the discretion of ESD, requests for deadline extensions may be considered prior to the deadline and, if granted, announced on the NYS Contract Reporter Website.

Additionally, please send six (6) hard copies of the proposal to the address shown below. Proposal packages must be firmly sealed in an envelope and contain the Respondent's name and return address.

Send proposal hard copies to:

Paul Ray, Senior Project Manager
USA Niagara Development Corporation
222 First Street, 7th Floor
Niagara Falls, NY 14303

Pre-Proposal Webinar

A **non-mandatory** pre-proposal webinar for prospective respondents will be held on March 14, 2023 at 10 AM (EST). To participate in the webinar, please RSVP to NFCityMarket@esd.ny.gov prior to 4 PM (EST) on March 13, 2023.

Respondents will be required to provide "sign-in sheet" information—company name, address/phone, and contact person email. ESD representatives will be present at the meeting to provide an overview of the RFP and any necessary clarification for completing required forms.

RFP Inquiries

ESD will accept written questions via email from prospective Respondents no later than deadline shown on the cover of this document. All inquiries must be submitted via email to NFCityMarket@esd.ny.gov.

No contact related to this solicitation with ESD Board members, staff or consultants, other than emails to the designated email account for the solicitation will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

X. SELECTION CRITERIA

The proposals will be evaluated and scored/ranked using a "best value" selection process, which looks at a variety of evaluation factors that includes, but is not limited to the propose fee, the expertise of the team and approach to the work. Specifically, the Selection Committee will consider such criteria that, in ESD's sole and absolute discretion, are in the best interests of ESD. The criteria listed below are of significant concern:

Proposed Fee (20 Points)

Strength of the Prime Consultant (30 points)

- Experience of Respondent team staff being assigned to the project in general, and in particular, providing consulting services to municipalities, economic development agencies and/or other governmental agencies.
- Demonstrated ability of the prime consultant to manage multi-disciplinary teams.
- Quality of work product as demonstrated in submitted work samples of past relevant projects.
- Demonstrated ability to complete projects in an expeditious manner.

Strength of the Overall Team (20 points)

- Quality of work product as demonstrated in submitted work samples of past relevant projects.
- Degree to which the expertise of team members addresses the scope of services.

Feasibility of Approach (20 points)

- Approach in methodology with respect to the scope of services that demonstrates maximum comprehension of and ability to provide such services.

Diversity Practices (10 points)

Respondents to the RFP will be evaluated for Diversity Practices using a Diversity Practices Questionnaire. Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire submitted by each respondent to the RFP.

XI. GENERAL PROVISIONS

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

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

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

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 ESD 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 ESD, 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

ESD 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.

XII. RESERVED RIGHTS

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the ESD. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify ESD of any proposed changes in staff immediately. ESD has an absolute right and discretion to approve or disapprove any proposed changes in staff. ESD, 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 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 ESD. 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.

ESD reserves the right to short list proposals and to interview prospective teams prior to final scoring. ESD also reserves the right to seek final and best offers from bidders prior to making any contract award.

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

- Evidence of collusion among respondents;
- Any attempt to improperly influence any member of the evaluation panel;
- Discovery that a respondent purposely misled or knowingly provided false or inaccurate information in a proposal;
- A respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Information leading to a determination that a respondent would not be certified as a "Responsible Vendor" as defined by the State Comptroller; and
- Existence of any unresolved litigation or legal dispute between the respondents and ESD and/or the State of New York.

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

XIII. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Respondent's submission as well as information about ESD's procurement requirements.

I. Conflicts of Interest

Respondents must attest they have 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.

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

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires 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 below; the completion by Respondents 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 ESDweb site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents 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://cdn.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 Respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation.

In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. 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:

https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.PDF

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

3. 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 and its subsidiaries. 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 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 or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (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).”

4. Iran Divestment Act

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

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

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <https://ogs.ny.gov/iran-divestment-act-2012>

5. Executive Order 177

In accordance with New York State Executive Order 177, all Respondents 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.

6. 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.

7. 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 and its subsidiaries are 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.

7.1 Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an **overall combined goal of 30 percent for MWBE participation** (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation.

The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

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

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

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.

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

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

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

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

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

7.2 Equal Employment Opportunity Requirements

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

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

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

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

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

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading

to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

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

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

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

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-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-Contractor-Compliance-Payment-Report.pdf>

Form OCSD-7: <https://esd.ny.gov/sites/default/files/OCSD-7-MWBE-Expedite-Request-Form.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

7.3 Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire: <https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/JavitsConstructionManagement/Addendum%202.pdf>.

7.4 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

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

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

7.4.1 Contract Goals

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 Respondent/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>

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

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

7.4.2 SDVOB Utilization Plan

In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCS-4 with their bid.

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

ESD will review the submitted SDVOB Utilization Plan and advise the Respondent/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

If a notice of deficiency is issued, Respondent/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 Respondent/Contractor and direct the Respondent/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCS-5. 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's bid or proposal as being non-responsive under the following circumstances:

- If a Respondent fails to submit an SDVOB Utilization Plan;
- If a Respondent fails to submit a written remedy to a notice of deficiency;
- If a Respondent fails to submit a request for waiver; or
- If ESD determines that the Respondent has failed to document good faith efforts.

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.

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.

7.4.3 Request for Waiver

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

In accordance with 9 NYCRR § 252.2(m), a Respondent/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 SDVOB 200, accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Respondent's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

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.

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 ESD.

7.4.4 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:

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

7.4.5 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.

6.4.6 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.

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

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

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

9. 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 Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA (<https://esd.ny.gov/sites/default/files/ST220CA.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-TD 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.

I0. Schedule A

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

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

I1. 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, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

I2. Insurance Requirements

The contractor will be required to provide appropriate insurance coverage as determined by Empire State Development once the structure of the transaction with the contractor has been finalized

Empire State Development must be named as an additional insured on a primary and non-contributory basis on certain policies. All policies should include a waiver of subrogation in favor of Empire State Development .

I3. W-9 Form

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

I4. NYS Licensing Requirements (if applicable)

Respondents (and any proposed sub-consultants) required to certify documents must present evidence that they are licensed, as applicable, to practice engineering, architecture, landscape architecture, land surveying in the State of New York.