



**Empire State
Development**

**REQUEST FOR PROPOSALS
FOR COMPLIANCE MONITORING SERVICES
COLUMBIA UNIVERSITY EDUCATIONAL MIXED-USE DEVELOPMENT
LAND USE IMPROVEMENT AND CIVIC PROJECT**

Issued: February 22, 2021

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 – Letter i).

Designated Contacts for this Procurement:

Primary Contact:	Ralph Volcy
Secondary Contact:	John Discolo
Additional Contacts:	Destiny Burns

All contacts/inquiries shall be made by email to the following address:

CM-ComplianceMonitor@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

**Submission Deadline: March 19, 2021 by 3:00 PM ET
Late Proposals May Not Be Accepted**

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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 the State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance. ESD has broad statutory powers, including the power to acquire real property by eminent domain; invest in property at below-market interest rates; issue tax-exempt bonds; offer tax benefits to developers; and override compliance, where appropriate, with local codes and laws. Additional information about ESD may be found on ESD’s website at www.esd.ny.gov.

ESD issues this Request for Proposals (“RFP”) seeking to select a consultant to provide compliance monitoring services in connection with the Columbia University Educational Mixed-Use Development Land Use Improvement and Civic Project (the “Project”). Interested firms or individuals (each a “Respondent”) are required to follow the guidelines and instructions contained in this RFP.

II. OVERVIEW

ESD’s Directors approved a Modified General Project Plan for the Project in 2008 (the “GPP”). The GPP anticipates that Columbia University (“Columbia”) will construct new state-of-the-art educational facilities and open spaces on a 17-acre site in the Manhattanville section of West Harlem in the City of New York, and will take other actions that will benefit the surrounding community. ESD’s role in the Project is, among other things, to assist Columbia with Project site assemblage and to impose certain development parameters on the Project in addition to those imposed by zoning. ESD is providing no financing for the Project.

The Project is being constructed in stages over a period of approximately 25 years, and is estimated to create approximately 14,000 construction jobs and 6,000 new university jobs. Major components of the Project include: development and construction of approximately 4.8 million above-grade square footage in up to 16 new and one renovated building for primarily academic research and university housing uses; an additional approximately 2 million square feet of multi-level, below-grade new construction that would connect many of the new buildings and provide shared support and other facilities; and creation of new open spaces accessible to the general public.

The Project site is located approximately ten blocks north of Columbia’s existing Morningside Heights campus. The Project extends over all or part of seven city blocks and is bounded by and includes West 125th Street on the south, West 133rd Street on the north, Broadway on the east and Twelfth Avenue on the west. An area bounded by and including Broadway, West 133rd and West 134th Streets on the south and north is also part of the Project. A map

depicting the Project site appears at Exhibit A to the Declaration of Covenants and Restrictions (“Restrictive Declaration”), which is attached as Appendix 2.

Consistent with the GPP, Columbia signed the Restrictive Declaration on December 14, 2011. Under the terms of the Restrictive Declaration Columbia is obligated to, among other things: (a) construct and complete the Project in stages within certain construction milestones; (b) design and construct the Project in an environmentally sustainable manner; (c) relocate occupants of approximately 135 dwelling units on the Project site to alternate housing; (d) provide specific community benefits including but not limited to new educational opportunities, public access to facilities, transportation improvements, and job training; and (e) seek diversity contracting and hiring goals during construction and operation of the Project. These obligations of Columbia, detailed in Sections 2.07, 2.10, 5.03, 5.05, 5.06 and 5.07 (other than obligations under Section 5.07(e)) of the Restrictive Declaration are collectively referred to in this RFP as the “GPP Obligations”.

Construction is proceeding in accordance with milestones set forth in Section 2.10 of the Restrictive Declaration. Construction is complete on the Project’s first three buildings: the “Mind Brain Behavior” science center at 129th and Broadway; the “Lenfest Center for the Arts” (to contain rehearsal, performance, and exhibition space); and the “University Forum Building” (to contain auditorium and meeting rooms). The fourth and fifth structures are Columbia’s Business School’s two new facilities, the “Ronald O. Perelman Center for Business Innovation” and the “Henry R. Kravis Building”. Construction of both business school buildings and 40,000 square feet of public open space between them known as “The Square” is well underway.

The consultant retained by ESD to provide compliance monitoring services will be designated the “GPP Monitor” and will evaluate evidence of compliance provided by Columbia and make recommendations to ESD for improving delivery of the compliance obligations. Columbia is required to fund the GPP Monitor for a minimum period of 25 years. ESD seeks to engage a consultant to serve as GPP Monitor for a period of one year, with ESD retaining the option to renew the engagement.

In addition to the GPP Obligations set forth above, Columbia has certain environmental obligations set forth in the Final Environmental Impact Statement (“FEIS”) prepared for the Project and in the Restrictive Declaration. Columbia’s compliance with such environmental obligations is outside the scope of this RFP, and is being monitored by a separate consultant (the “FEIS Monitor”) retained by Columbia for the benefit of the City of New York. ESD’s selected GPP Monitor may not serve as the FEIS Monitor.

MWBE & SDVOB Subcontracting

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 CM-ComplianceMonitor@esd.ny.gov. Nothing prohibits an MWBE or SDVOB Vendor from proposing as a prime contractor.

III. SCOPE OF WORK

A. Summary

The GPP Monitor will generally serve as ESD's "eyes and ears" in monitoring Columbia's compliance with the GPP Obligations, which fall into two broad but diverse categories: construction obligations; and community benefit obligations. The GPP Monitor will be appointed by and for the benefit of ESD, serve as a consultant to ESD, and report to ESD. Columbia will provide: periodic Implementation Plans pursuant to Section 5.03 of the Restrictive Declaration to establish that Columbia is implementing and complying with the GPP Obligations during the reporting period; and such other documentation to show Columbia's compliance with the GPP Obligations (collectively, "Evidence of Compliance").

ESD recognizes that the GPP Monitor's responsibilities include broad ranges of tasks detailed below that require diverse skills. Therefore, ESD encourages and will accept proposals from consultants who elect to partner or otherwise combine their respective skill sets and present a unified response that demonstrates an efficient and effective plan for performing the totality of the GPP Monitor's obligations. ESD also may encourage such combinations between qualified consultants who respond to this RFP.

B. Detailed Scope of Services

Task 1. Review Reports and Verify Evidence of Compliance.

The GPP Monitor will review Columbia's Evidence of Compliance and independently verify, as necessary, that Columbia is adhering to the applicable GPP Obligations. The specific services required of the GPP Monitor for this task include:

- a. Review Evidence of Compliance, and assist ESD in determining whether same is complete and sufficient with respect to each of the applicable GPP Obligations.
- b. If ESD determines that the Evidence of Compliance is incomplete or insufficient, assist ESD in providing notice to Columbia specifying the areas of noncompliance and affording Columbia the opportunity to resubmit compliance documentation or to cure any noncompliance, and assist ESD in determining whether any resubmitted documentation is complete and sufficient with respect to the applicable GPP Obligations.
- c. At ESD's direction, and upon reasonable written notice to Columbia and to the extent reasonably necessary in good faith to verify Columbia's compliance with the GPP Obligations: (i) access any facilities or buildings owned or controlled by Columbia on or

proximate to the Project Site, accompanied by a representative of Columbia, and (ii) review reports, books and records maintained by Columbia relating to the GPP Obligations.

- d. Meet with, and as requested report in writing to, ESD periodically in order to ascertain whether Columbia is complying with the GPP Obligations.

Task 2. Periodic Revisions to Reports. ESD or Columbia may from time-to-time request that the Evidence of Compliance be amended or adjusted in order to better or more accurately reflect compliance with the GPP Obligations or to reflect modifications to the GPP Obligations or methods of compliance mutually agreed to by Columbia and ESD. The GPP Monitor will be expected to consult with Columbia and ESD on such proposed amendments/adjustments and to advise ESD on their appropriateness in view of the goals of the GPP Obligations. The specific services required of the GPP Monitor for this task include:

- a. Consult with and respond to ESD with respect to written requests from Columbia concerning revisions to the Evidence of Compliance.
- b. Make recommendations to ESD on an as-needed basis for improvements and refinements to the Evidence of Compliance to improve clarity, respond to changed circumstances, or minimize undue administrative burdens.
- c. Advise ESD with respect to requests made by Columbia under Section 5.08 of the Restrictive Declaration.

Task 3. Project Administration. The specific services required of the GPP Monitor for this task include:

- a. At least 60 days prior to the end of each one-year term, submit an itemized budget for the following one-year term that assumes that Columbia will reasonably cooperate with the GPP Monitor and will at all times be in compliance with the GPP Obligations.
- b. Participate in meetings with ESD staff (at least quarterly).
- c. Attend meetings, as directed by ESD, with Columbia, Columbia's consultants, Columbia's contractors, the FEIS Monitor, and/or the City of New York, as necessary to independently verify compliance; provided that meetings with Columbia's consultants or contractors be attended by a representative of Columbia.
- d. Participate in at least one annual meeting with ESD and Columbia to review compliance issues and frequency of reports.
- e. Advise and assist ESD in connection with the preparation of any correspondence, notices, and other documents related to Columbia's compliance with the GPP Obligations. Upon direction from ESD, make inquiries to the FEIS Monitor on behalf of ESD. The GPP Monitor will not have the responsibility or the authority to enforce the Restrictive Declaration or to send notices of default.

Task 4. Miscellaneous. The miscellaneous services required of the GPP Monitor include:

Assist ESD in various administrative functions in connection with the Project, including, but not limited to, scheduling meetings, document management, assistance in complying with Freedom of

Information Law requests, tracking compliance timelines, and providing supplemental written memoranda regarding compliance issues at ESD’s request.

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	February 22, 2021
Deadline for Submission of Questions	March 8, 2021 By 3:00 PM
Deadline for ESD to Answer Questions	March 12, 2021
Submission of Proposals (date and time)	March 19, 2021 By 3:00 PM
Interviews (if necessary)	TBD
Announcement of Successful Bidder	TBD
Anticipated Contract Start Date	TBD

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

V. SELECTION CRITERIA

A. Evaluation Criteria

1. Methodology (20%).
 - a. Approach described in the RFP response demonstrates a full comprehension of the anticipated Scope of Services and the ability to consistently provide such Services to ESD at a high-performance level.
 - b. Quality and thoroughness of the written proposal.
2. Relevant Experience (20%).
 - a. Experience with successful, large-scale mixed-use planning and development projects, particularly in urban centers.
 - b. Experience with similar initiatives and public agencies.
 - c. Experience in conducting compliance monitoring or similar services.
 - d. Number, complexity, and nature of projects handled by Respondent.
 - e. Respondent shall have not less than 3 years of experience in having performed similar services for which it is engaged as a consultant.
 - f. Experience with similar or other relevant projects, services and/or activities in the vicinity of the Project or in the community surrounding the Project. Familiarity with Project and surrounding community.
3. Staff (20%).
 - a. Proposed staff ability and record of achievement.

- b. Availability of staff of Respondent to take on services, particularly the consistent availability of senior principals. Respondent is to plan and allot the time necessary to complete all services in a timely and efficient manner.
 - c. Previous successful collaborations between Respondent team members with public agencies and community stakeholders with respect to large urban redevelopment projects.
4. Fee (20%).
Proposed fee structure and hourly rates.
5. Presentation and Collaboration Skills (10%).
- a. Effective presentation and communication skills (both oral and written).
 - b. Excellent record of relations, communication and collaborations with past clients.
 - c. Ability to interact with ESD and all stakeholders in a collaborative and supportive manner consistent with the objectives of this RFP.
6. Diversity Practices (5%)
ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using the attached Diversity Practices Scoring Matrix Appendix 3. Up to 5 points will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix 3, submitted by each Respondent to the RFP.
7. Compliance (5%).
Conformity with or exceeding applicable ESD policies as noted herein.

B. Selection Process

ESD reserves the right to act as the sole judge of the content of the proposals submitted, to negotiate an agreement with any or no Respondent, or to waive any informalities or irregularities. Issuance of this RFP and receipt and evaluation of responses do not obligate ESD to undertake any action. ESD will evaluate proposals and may interview one or more Respondents. Key personnel and staff assigned to the engagement must be present at any interview. ESD reserves the right to interview some, none, or all Respondents, as it deems appropriate. ESD's request for an interview shall not constitute acceptance of a proposal. ESD reserves the right to request "best and final offers" or to conduct other additional competitive proceedings with respect to this RFP. ESD staff will recommend contract award to ESD Directors at a regularly scheduled Directors' meeting.

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. Cover Letter
- C. Firm Experience and Qualifications
- D. Staff Experience and Qualifications
- E. Statement of Methodology/Management Approach
- F. Statement Concerning Conflicts of Interest
- G. Fee Proposal
- H. Diversity Practices (Appendix 3)

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. Cover Letter

A cover letter on the Respondent's letterhead that is signed by an individual with authority to contractually bind the Respondent and that includes the following:

1. The full legal name, address and type of legal entity, and jurisdiction in which the entity is formed (if applicable), telephone number and e-mail address of the representative who is authorized to discuss and/or negotiate the proposal.
2. Federal Employee Identification Number.
3. Text explaining ownership (corporate and/or individual) of proposing entity and all subsidiaries or parent company, if applicable.
4. A statement that Respondent is ready, willing and able to engage in the services set forth in the proposal upon execution of contract.
5. A statement that Respondent accepts the Conflicts of Interest terms set forth in Section VI.i.F of this RFP.
6. Identification of any exceptions or conditions to the ESD Standard Form Contract attached to this RFP as Appendix 1.

7. Indicate if Respondent is, or will partner or otherwise combine with, an MBE/WBE (Minority Business Enterprise or Women's Business Enterprise) as certified by New York State for any portion of the services requested.

C. Firm Experience and Qualifications

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

1. A history of Respondent's experience providing compliance monitoring services or similar services within the previous five (5) years, with emphasis on successful large scale, mixed-use real estate development projects and construction scheduling. Indicate whether Respondent has experience with the critical path method (CPM) in the scheduling and management of large-scale construction projects. Such history should also detail any experience providing these services to economic development organizations, municipalities, other governmental entities, private developers, and not-for-profit and civic organizations.
2. Examples of up to three (3) projects that Respondent has completed in the area of compliance monitoring or similar services involving major construction projects. For each project, include discussion about the specific role performed by Respondent and the key individual(s), any problem(s) encountered, how the problem(s) were dealt with, the outcome of the project, and to the best of Respondent's knowledge, what transpired with the project once Respondent's role in the project ended. Include the client, the name of a client contact person who is able to provide a reference, a description of the nature of the work, the size and complexity of the project, construction cost, and the amount and the agreed fee arrangements.
3. Description of any relevant services or activities performed in the vicinity of the Project or in the community surrounding the Project.

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.

D. 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 and include the following:

1. Name(s), title(s) and resumes of personnel who will be responsible for the performance of the requested services, clearly indicating their relevant experience

and specific areas of expertise. Each resume shall be limited to two (2) pages, shall include education, professional credentials and employment history. Also, include the resumes of any MBE/WBE partner or subconsultant that will be involved in the provision of services required under this RFP, along with a description of how each such partner or subconsultant will work in connection with Respondent to fulfill the Scope of Services, distinguishing the roles, responsibilities and commitment of each team member.

2. An analysis or table of the hours and percentage of time to be spent by each person assigned to the Project.

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.

E. 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:

1. A written narrative description of Respondent's understanding of, methodology and approach to, and any comment on, the Scope of Services described herein, and of Respondent's demonstrated ability to perform these services within the designated timeframe. Respondent should elaborate, as appropriate, on the tasks listed in the Scope of Services, including work by MBE/WBE/SDVOB partners or subconsultants, if any.
2. A detailed description of the proposed management approach to be taken for the performance of the required services. Factors addressed in Respondent's management approach shall include, but are not limited to: Respondent's proposed approach for managing communications and information gathering with Columbia; Respondent's proposed organizational structure to be responsive to ESD's needs; Respondent's proposed approach and schedule for keeping ESD timely apprised of Project status; and Respondent's proposed approach to ensuring the quality of the work product to be produced, as well as the practices and procedures Respondent follows to control the costs of the services and stay within budget.

F. Statement Concerning Conflicts of Interest

1. A statement describing whether the engagement with ESD would create any potential conflict of interest, or appearance of impropriety, relating to other clients/customers of Respondent or former officers and employees of ESD. Indicate what procedures will be followed to detect, notify ESD of, and resolve any conflicts.
2. A statement that Respondent has not provided services to Columbia within the past 5 years; that Respondent, if selected to serve as GPP Monitor, shall not serve as

FEIS Monitor nor provide services to Columbia during the time it is engaged with ESD, nor shall any MBE/WBE/SDVOB partner, or any subconsultant engaged by Respondent, seek such work or negotiate to perform any such work for Columbia during such period; that Respondent, if selected to serve as GPP Monitor, shall not work for Columbia in any capacity within two years after the engagement as GPP Monitor has ended and shall be permanently barred from performing services for Columbia concerning any matter for which it was directly involved as GPP Monitor.

3. PLEASE BE ADVISED: No current employee of Columbia may serve as the GPP Monitor (nor as a consultant to the GPP Monitor) nor can anyone serve as the GPP Monitor (or consultant) who was an employee of Columbia within three years of such persons leaving employment with Columbia. No person receiving a pension or any deferred compensation from Columbia shall be qualified to serve as GPP Monitor. The GPP Monitor shall not derive any income from performing services for Columbia or from any contractor or subcontractor engaged by Columbia on the Project.
4. Specify any past, pending or threatened litigation or administrative or state ethics board or similar body proceedings to which Respondent or any of Respondent's partners are a party and which would either materially impair Respondent's ability to perform the services enumerated herein, or, if decided in an adverse manner, materially adversely affect the financial condition of Respondent.
5. Any Respondent selected pursuant to this RFP will be required to advise ESD of any developments during the term of this engagement with respect to existing and/or any new civil or criminal legal investigations, pertinent litigation and/or regulatory action involving Respondent or its employees which could impact the Respondent's role or ability to fulfill its obligations.

G. Estimated Cost

Specify the total proposed annual fee; hourly rates for calendar years 2021 and 2022 for each person cited in the proposal; reimbursable expenses proposed to be charged; and any other fees or charges to ESD. Indicate whether Respondent is willing to accept any cap on the compensation Respondent will receive. State whether the fee proposed by Respondent is based upon reduced fees Respondent offers to municipalities, governmental entities, economic development or nonprofit organizations, and civic organizations. ESD will require Respondent to represent that proposed billing rates and fees are equivalent or less than those charged to any other clients for equivalent services. For purposes of the fee proposal, Respondent should assume that all of the reports furnished to ESD shall be in writing, however ESD may, at its discretion, request that any report be provided orally instead of in writing.

The GPP Monitor will be required to furnish ESD with a good faith budget of the costs to be incurred in the following 12 months by the GPP Monitor, for approval by ESD. ESD will not permit the GPP Monitor to exceed such proposed budget during the applicable 12-month period without ESD's prior written approval.

All expenses not identified in the proposal and agreed to in the Contract will be the GPP Monitor's sole responsibility and not billed to ESD. Office, transportation and food expenses will not be reimbursable expenses.

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, hard copies) will not be accepted. When submitting each proposal, Bidders must comply with the following:

1. The Technical Proposal and the Administrative Proposal must be submitted electronically via the designated email (CM-ComplianceMonitor@esd.ny.gov);
2. Depending on size, Technical and Administrative emails might have to be submitted on separate emails.
3. If submitted separately, both emails must be sent to the designated before the set deadline expires.
4. Certain documents must be signed or notarized, failure to do so might have a negative impact on your proposals.

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 CM-ComplianceMonitor@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 Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the 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 Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by 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. 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 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.

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) 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 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.

vi. 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.

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, 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 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a 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 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%20Utilization%20Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf%20>

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

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

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix 3).

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 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 regard 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.

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.

vii. 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>.

viii. 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), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this 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.

ix. 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.

x. 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.

xi. 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.

xii. W-9 Form

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