



**Empire State  
Development**

# **THE NYS MWBE CERTIFICATION ASSISTANCE PROGRAM REQUEST FOR PROPOSALS**

**Issued:** November 29, 2018

**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. Respondents are prohibited from contact related to this procurement with any New York State employee, other than the designated contacts listed below (Refer to: <http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>).

Designated Contacts for this Procurement:

Primary Contact:	Ralph Volcy
Secondary Contact:	John Discolo
Additional Contact:	Raymond Emanuel

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

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

**Submission Deadline: December 27, 2018 by 12:00 PM ET**

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## **I. INVITATION TO SUBMIT PROPOSALS**

The New York State Urban Development Corporation (UDC) doing business as Empire State Development, in cooperation with the New York State Department of Economic Development (DED) through its Division of Minority and Women's Business Development (DMWBD) Office (UDC and DED being hereinafter collectively referred to as ESD) is seeking proposals from for-profit and not-for-profit entities to award grant funding in support of the NYS MWBE Certification Assistance Program (Certification Program). The Certification Program is a six-month program, with the possibility of a six-month extension, to provide technical assistance to Minority- and Women-owned Business Enterprises (MWBEs) looking for support in completing a NYS MWBE Certification applications. ESD will award a grant to respondents pursuant to the procedures set forth below.

## **II. INTRODUCTION**

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

Through the DMWBD, ESD seeks to promote (1) equality of economic opportunities for MWBEs, (2) eliminate barriers to their participation in NYS contracts, and (3) provide resources that increase access to information and opportunities for New York State certified minority and women-owned businesses throughout the State.

DMWBD's key objectives are:

- To assist state agencies that are engaged in contracting activities to award state contracts to MWBEs in keeping with the Governor's stated MWBE utilization goals;
- To review applications by businesses seeking certification as an MWBE and to maintain a directory of certified MWBEs; and,
- To promote the business development of MWBEs through education and outreach to MWBEs, prime contractors, and contracting agencies.

## **III. OVERVIEW**

The NYS MWBE Certification Assistance Program is a six-month program, with the possibility of a six-month extension at DMWBD's discretion, which will award funds to entities providing technical assistance to MWBEs in completing or updating a NYS MWBE Certification application. Awardees will be tasked with assisting in the completion of MWBE Certification applications, as well as analysis of the supporting documents to be submitted.

The eligibility criteria for MWBE certification are set forth in section 314 of [Article 15-A of the NYS Executive Law](#) and part 144 of title 5 of the [Codes, Rules and Regulations of the State of New York](#).

## MWBE & SDVOB Subcontractor Interest

New York State certified 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 [MWBCERTASSISTRFP@esd.ny.gov](mailto:MWBCERTASSISTRFP@esd.ny.gov). Nothing prohibits an MWBE or SDVOB Vendor from being a prime contractor and responding.

## IV. DEFINITIONS

The following definitions are provided for clarification of terminology utilized within this RFP.

- **Applicant/ MWBE Applicant** – The business enterprise applying for NYS MWBE Certification as a bona fide MWBE.
- **Awardee** – The firm/vendor selected by ESD to be responsible for administering the NYS MWBE Certification Assistance Program in their region.
- **Certification Recommendation** – Recommended decision for certification or denial of a submitted application. Analysis and certification recommendations completed and submitted by the awardees to DMWBD do not replace the analysis to be completed by DMWBD certification analysts.
- **Division of Minority and Women's Business Development (DMWBD)** – A Division under Empire State Development, responsible for administering State of New York's MWBE program.
- **Minority and Women-owned Business Enterprise (MWBE)** – A business enterprise which has been certified by the Division of Minority and Women's Business Development as meeting all eligibility requirements set forth by NYS Executive Law 15-A. For more information on the NYS MWBE certification process go to: <https://esd.ny.gov/doing-business-ny/mwbe>
- **Red Flags** – Flags that would indicate that a firm has elements that may prevent it from meeting MWBE Certification eligibility requirements. An extensive review may be necessary. DMWBD will provide awardees with information on red flags.
- **Rejected MWBE Application**– An application is rejected if an applicant is non-compliant to request(s) from DMWBD in the time allotted. If an application is rejected, the applicant cannot reapply for 90 days from the date of rejection.
- **Respondent** – The firm/vendor responding to this RFP. This firm is applying to be considered as a possible administrator the NYS MWBE Certification Assistance Program in their region.
- **Returned MWBE Application**– An application is returned to the applicant if the applicant does not meet the certification criteria for MWBE certification. This includes if (1) too many required documents are missing in the submitted application; (2) the applicant does not meet the requirement of having at least one (1) year in business; (3) ethnicity of the applicant is not one that Article 15-A recognizes; (4) applicants are not US citizens or permanent resident aliens; and/or, (5) ownership is not at least 51% held by minority and/or women members. Applicants may resubmit an application once the deficiencies have been corrected.

## V. SCOPE OF WORK

Awardees are required to provide technical assistance through the entire process of completing and/or updating a NYS MWBE certification application to firms identified by DMWBD. Awardees must contact, assist, and establish sufficient communications necessary to complete a thorough review of applications submitted by firms identified by DMWBD within a specific region in submitting and/or updating a certification application. Awardees are not required to complete additional outreach to firms not included in the lists provided by DMWBD.

As part of their response, interested participants must provide DMWBD with a methodology for assisting MWBE applicants. The methodology submitted must detail the respondent's plans to complete:

1. Outreach to firms identified by DMWBD;
2. One-on-one technical assistance to be provided to firms contacted;
3. Procedures for analysis, including document requests from the awardee to applicant;
4. A critical analysis of each applicant and an assessment of the applicant's eligibility to the NYS MWBE Program;
5. Data collection and management steps;
6. Assistance with follow up document requests by NYS MWBE certification analysts; and,
7. Weekly Progress Reports and Monthly Progress and Financial Reports.

Respondents must also identify procedures to keep the confidentiality of documents submitted by applicants as part of their methodology.

Awardees must establish a technical assistance program that includes:

- Assisting vendors to create and/or update accounts on the New York State Contract System (NYSCS);
- Hosting one-on-one sessions, consultations, and/or group meetings to complete MWBE certification applications with applicants, as necessary;
- Reviewing the supporting documents to be submitted with each application for MWBE certification to confirm that all mandatory and required documents are included pursuant to Article 15-A of the Executive Law, that included documents are complete, and that the documents included are the most current available;
- Completing a critical analysis of each application to be submitted, uploading additional documents awardees requested for the analysis, intimately understanding each application and notifying DMWBD of any concerns and red flags within each application;
- Confirming, to the best of the awardees' ability, that each applicant meets the eligibility criteria for MWBE certification, and notifying DMWBD of any applications reviewed that do not appear to meet the eligibility criteria for MWBE certification; and,
- Collecting, scanning, and uploading supporting documents online. Documents mailed to DMWBD will not be accepted.
- Presenting a communications strategy for assisting vendors through each stage of the certification process including a timeline

Awardees must update and submit all MWBE applications for any firm identified by DMWBD that agrees to utilize the awardee's services. Awardees must advise applicants if the applicant does not meet the minimum [NYS MWBE certification eligibility requirements](#).

Awardees are expected to submit a minimum of seventy-five (75) completed applications over six (6) months. In the event of a six-month program extension at DMWBD's discretion, awardees are expected to assist a minimum of seventy-five (75) additional firms submit MWBE applications. Awardees granted the full twelve (12) months of funding will be expected to submit a minimum of one-hundred fifty (150) completed MWBE applications.

Awardees shall provide the services described herein for a term of six (6) months. DMWBD reserves the right, at its sole discretion, to extend any agreement with any awardee for an additional term of no more than six (6) months or to terminate any agreement after a term of six (6) months. DMWBD shall determine whether to extend any engagement with an awardee based upon factors including, but not limited to: (1) an awardee's compliance with the reporting requirements identified herein; (2) success submitting at least the minimum required number of complete applications; and, (3) the number of applications the awardee correctly analyzed and submitted. Selected awardees will receive training from DMWBD on the analysis of MWBE certification applications. Awardees will also receive analysis templates that must be utilized in reviewing applications to be submitted.

### **SUBJECT MATTER EXPERTISE**

Respondents must have previous experience completing NYS MWBE applications submitted through the NYSCS. Additional requirements for respondents of this RFP are found in Section VII.

### **TECHNICAL ASSISTANCE PROGRAM**

1. Outreach from the awardee will consist of contacting the firms identified by DMWBD to offer applicants an opportunity to partake in the NYS MWBE Certification Assistance Program. The awardees will also serve as the main point of contact between DMWBD and the applicant, and provide their contact email as the primary email on the NYSCS when submitting an application.
2. As part of the creation of this technical assistance program, awardees must provide MWBE applicants with one-on-one assistance in completing MWBE certification applications. This includes the collection and upload of the required and mandatory documents listed in the NYS MWBE application, in order to submit a fully completed MWBE application.
3. Once all documents have been collected, awardees must analyze each application, in depth, using the analysis template provided by DMWBD, and recommend a decision on possible certification to DMWBD. DMWBD will provide the certification analysis template after program awardees have been selected. Awardees may request additional documents from the applicant throughout their analysis if the mandatory and required documents are not enough to determine the applicant's eligibility for MWBE certification. All additional documents requested

by the awardee must also be uploaded into the NYSCS application. The awardee will provide DMWBD with a certification recommendation and any red flags found in the MWBE applications. The awardee cannot/will not inform the MWBE applicant of recommendations and/or red flags identified.

4. The selected awardees must complete a critical analysis of all applications to be submitted, and assess each applicant's eligibility, to determine if these applications will successfully pass MWBE certification analysis by DMWBD. DMWBD will provide awardees with trainings on the analysis of MWBE applications, to supplement their knowledge and understanding of the eligibility requirements. Analysis completed by the awardees will not replace the analysis to be completed by DMWBD certification analysts.
5. Awardees must put in place strategies for data collection and management. This includes procedures for collection of required and mandatory documents listed in the MWBE application, as well as procedures for collection of additional documents through an awardees' document request to the applicant. Procedures must also include how the documents will be managed to be kept safely and of a confidential nature.
6. Once an application is assigned to a DMWBD certification analyst for an analytical review and final determination, DMWBD may complete up to two (2) document requests through the NYSCS, if necessary. Awardees will only receive credit for assisting applicants that submit complete MWBE applications, with no mandatory or required documents missing. In the event that additional documents are required of the MWBE applicant, the request will be sent directly to the awardee, who must then inform and work with the MWBE applicant to submit the additional documents. The awardee does not need to analyze documents requested by DMWBD, and this support will not count toward the minimum requirement of applications to be submitted to DMWBD. If over two (2) document requests are required by DMWBD, then the MWBE application will be rejected, and the awardee will solely be informed. The awardee must then inform the MWBE applicant of the DMWBD decision.
7. As part of the Weekly Progress Report, awardees must provide DMWBD with individualized memoranda for each application submitted (template to be provided by DMWBD), summarizing each application submitted, the analysis completed, any document requests, red flags and certification recommendations. The memoranda must include the completed analysis template used for each application. This Weekly Progress Report must be submitted directly to the designated DMWBD Project Manager. Awardees must also submit Monthly Progress and Financial Reports, updating DMWBD of the status of the program. Each awardee must provide ESD with Weekly Progress Reports and Monthly Progress and Financial Reports in order to receive grant payments. See Section VII for additional reporting requirements and information.

Once the DMWBD analyst has all the information necessary, a final determination will be made. After informing the applicant, the awardee must update the contact information of the applicant on the NYSCS to reflect the applicant's information, regardless of the outcome of the final decision, before closing out of the file.

## *PROCEDURES FOR THE PROTECTION OF CONFIDENTIAL INFORMATION*

Awardees will be required to assist applicants in collecting and transmitting highly confidential data and information which may include, but is not limited to, banking records, tax records, customer lists, and social security numbers. These documents and information will need to be scanned and directly uploaded to the NYSCS and may not be retained after a certification file has been closed out by the awardee. All data provided by applicants to awardees must be kept strictly confidential and be used only for the purposes described herein. All respondents must have procedures implemented to protect the confidential information of applicants. This includes, but is not limited to:

- Not utilizing public document sharing websites;
- Limiting access to confidential records only to those employees who need access for the performance of their job duties;
- Not storing records with confidential information on computers or other electronic devices that are not secured against unauthorized access;
- Not displaying confidential information on documents, computer screens, PDAs, etc., that can be seen by the general public;
- Not sending confidential information over the Internet or via Email unless encrypted, password-protected, or otherwise secured;
- Determining specific chains of command and procedures that confidential information will travel through;
- Keeping all confidential information in a secure location, such as a secure computer folder and/or locked cabinet; and,
- The destruction/deletion of documents after an application has been submitted and the file has been closed out.

The awardee shall document and provide a security/record management plan describing in detail their procedures for data security, record management, transportation, and destruction to ensure the strict confidentiality of all documents and data provided by applicants. This deliverable is to be submitted after their selection, and include specific details on their risk identification management, quality assurance, and communication approach strategies. Awardees must also agree to sign and return confidentiality agreements with ESD. Additional steps to keep confidentiality will be determined during contract signing.

The awardee shall have an affirmative duty to preserve the confidentiality and safekeeping of all documents and “Confidential Information”. In particular, except to the extent that the use or disclosure of any Confidential Information is required to carry out the awardee’s assigned duties for the Department, the following is prohibited:

- (1) Misappropriation; use for the purpose of competing with ESD, either directly or indirectly; disclosing to any third party, either directly or indirectly; or aiding anyone else in disclosing to any third party, either directly or indirectly; all or any part of any Confidential Information; or,



- (2) Use, disclose, divulge or communicate directly or indirectly to any third party: (a) the names, addresses and other contact data regarding any NYS MWBE applicants; or (b) the details of any contracts, business transactions, negotiation, or confidential information of any NYS MWBE applicants.

NYS Cyber Security Policies and Guidelines must be adhered to at all times. They can be referenced here: <http://its.ny.gov/tables/technologypolicyindex> as applicable to the project. The NYS Encryption Standard referenced at: <https://its.ny.gov/document/encryption-standard> provides guidelines for protecting data in transit and at rest.

Awardees must agree that all confidential information will be maintained and kept strictly confidential throughout the term of the Contract and after engagement with ESD ends.

If there is any mishandling or unauthorized disclosure of confidential information received by awardees, termination, civil action and/or any other remedies available to ESD by law will be taken.

## **VI. PROGRAM FUNDING**

ESD intends to award up to three (3) grants during this cycle, but reserves the right, in the exercise of its sole discretion, not to award any grant based upon responses received to this RFP or for any other reason.

The selected respondents will, subject to approval by ESD and execution by awardees of a grant disbursement agreement in such form as ESD shall require, receive a grant of up to \$75,000 for the entirety of the twelve (12) month MWBE Certification Assistance Program, contingent upon the availability of funds, approval from the Division of Budget, and approval from DMWBD to continue the program after the first six (6) months. No more than half of the awarded amount, \$37,500, will be paid during the first six (6) months of the program.

Payments will be made monthly on a reimbursement basis, after submission of invoices with the monthly mandatory reports, as described in Section VII. Invoices must reflect the categories used in the budget submitted as part of the RFP response. Respondents must provide ESD with their rates per hour and/or application for each staff member to be working on this program, submitted at the time of response to this RFP. Awardees of this grant may not charge any fees for their services to firms which they are assisting to complete a NYS MWBE certification application. A budget must be provided by respondents, which delineates what reimbursements ESD should expect to be made (*See Appendix A*).

The grant is to be used only for the purposes stated in the organization's application or otherwise approved, in writing, by ESD.

## VII. INFORMATION FOR RFP RESPONDENTS

### RESPONDENT ELIGIBILITY

Both for-profit and not-for-profit organizations are eligible to apply to participate in the Certification Assistance Program. RFP respondents may not be joint-ventures of multiple organizations. In addition, the applicant organization must be located in an area accessible to minority group members, women, and other target populations.

Successful applicants must meet the following minimum requirements to be considered for the MWBE Certification Assistance Program:

1. Possess experience in operating and successfully implementing technical assistance program(s) for small businesses and MWBEs;
2. Demonstrate that they possess knowledge and a clear understanding of the NYS MWBE program, program requirements, and NYS Executive Law Article 15-A;
3. Experience in completing NYS MWBE applications with third party firms, which requirement may not be satisfied solely by completing applications for certification of the respondent firm, or any firm in which any owner or employee of the respondent firms is an owner, as an MWBE;
4. Demonstrate internal capacity, experience, and resources to complete one-on-one assistance, data collection and protection, and outreach to possible eligible businesses; and,
5. Experience in data collection, data entry, and data analysis, preferably on a large scale.

Interviews for shortlisted awardees will be scheduled from January 25, 2019 through February 4, 2019 and are mandatory. Failure to participate in an interview if invited will disqualify your application.

### PROGRAM REPORTING REQUIREMENTS

Awardees must prepare and submit Weekly Progress Reports and Monthly Progress and Financial Reports:

Report Type	Report Information
Weekly Progress Report	<ul style="list-style-type: none"><li>• Summary of each application submitted in the previous week;</li><li>• Summary of all firms assisted, even if no applications were submitted (template to be provided by DMWBD);</li><li>• Memorandum to DMWBD for each application submitted in the respective week;</li><li>• The memorandum must include documented analysis of each application, template to be provided by DMWBD;</li><li>• Memorandum must highlight and summarize the application and any critical information, including red flags found for any firm/application, even if no application was submitted;</li><li>• The memorandum must include a certification recommendation for the MWBE application submitted; and,</li><li>• Additional information as determined by DMWBD and the selected awardees.</li></ul>
Monthly	<ul style="list-style-type: none"><li>• Program narrative and progress of deliverables;</li></ul>

Progress and Financial Report	<ul style="list-style-type: none"> <li>• Detailed work plan for the upcoming month, identifying outreach and application submission goals;</li> <li>• Detailed summary of outreach activities in the previous month. Areas where goals stated in the previous report were missed or exceeded must also be identified;</li> <li>• The number of applications submitted, including application type (new MWBE certification or recertification);</li> <li>• Must include all invoices and proof of payments for the previous month; and,</li> <li>• Any additional information as determined by DMWBD and the selected awardees.</li> </ul>
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- *Program Narrative-* A program narrative is required as part of the Monthly Progress and Financial Reports, which does not include attachments and other required back-up documentation. The narrative (not a list of activities or itinerary) should discuss and highlight the activities initiated or performed. Furthermore, it should clearly state what impact these activities had on the overall operations of the program and/or impacts on cohort members.

The quality of services provided to clients is a major concern of ESD, and is therefore tracked closely through on-site visits, interviews with clients, client satisfaction surveys, review and verification of reports, data submitted in the program year, and such other actions as ESD determines are appropriate.

### PROGRAM METRICS

Throughout program delivery, and after program completion, DMWBD expects the minimum program metrics below to be met, with the expectation that these targets can be exceeded.

Category	Metric
Number of total certification applications submitted	≥100 applications
Percentage of applications returned	5%
Percentage of applications rejected	5%
Percentage of application red flags correctly identified	80%
Percentage of fully completed/updated applications	90%

## VIII. 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	November 29, 2018
Deadline for Submission of Questions	December 10, 2018
Deadline for ESD to Respond to Questions	December 17, 2018
Submission of Proposals	December 27, 2018 at 12:00 PM
Interviews (Mandatory for Shortlisted Awardees)	January 25, 2019 through February 4, 2019
Announcement of Successful Awardees	February 18, 2019
Anticipated Contract Start Date (Tentative)	April 1, 2019

Please note that ESD reserves the right to change any of the dates stated in this RFP.

## IX. SELECTION CRITERIA

ESD will evaluate proposals based on the following criteria, not necessarily in order of importance:

- The applicant's completeness of the proposal;
- The applicant's understanding of program goals and objectives as outlined in the request for proposals;
- The applicant's proposed methodology;
- The applicant's experience in operating and successfully implementing technical assistance program(s) for small businesses and MWBEs;
- The applicant's knowledge and clear understanding of the NYS MWBE program, program requirements, and NYS Executive Law Article 15-A;
- The applicant's experience in completing NYS MWBE applications;
- The applicant's internal capacity, experience, and resources to complete one-on-one assistance, data collection and protection, and outreach;
- The applicant's experience in data collection, data entry, and data analysis, preferably on a large scale;
- The applicant's proposed program budget;
- The applicant's operating budget and institutional capacity for using grant funds effectively; and,
- The applicant's documented commitment to Non-Discrimination Contractor & Supplier Diversity as noted in this RFP.

The proposal will be scored in the following manner:

Firm Experience and Qualifications	25 Percent (25%)
Staff Experience and Qualifications	35 Percent (35%)
Project Plan and Approach/ Methodology	20 Percent (20%)
Cost Proposal and Budget/ Use of Funds	15 Percent (15%)
Diversity Practices	5 Percent (5%)

## **X. SUBMISSION OF PROPOSALS**

Every respondent to this RFP ("Respondent") 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 Respondent 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 Respondent. No information is required beyond what is specifically requested. ESD requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below:

- A. Table of Contents
- B. Firm Experience and Qualifications
- C. Staff Experience and Qualifications
- D. Project Plan and Approach
- E. Cost Proposal and Budget
- F. Diversity Practices

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

#### A. Table of Contents

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

#### B. Firm Experience and Qualifications

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

- Description of business and services offered to the public;
- Detailed information on past experiences operating and successfully implementing technical assistance programs;
- Description of firm experience with the NYS MWBE program and NYS Executive Law Article 15-A;
- Previous experience in completing NYS MWBE applications;
- Detailed information on similar projects of this scope and budget size;
- Demonstrated examples of successfully assisting minority and women-owned businesses build capacity and expand;
- Detailed information on previous experience administering one-on-one assistance, if applicable;
- Detailing experience with data collection, data entry, and data analysis;
- The operating budget and institutional capacity for use of grant funds; and,
- References from projects with this scope for the Respondent and any partner/subcontracting organization(s), if applicable.

Information provided by references may be used by ESD for proposal evaluation purposes. ESD 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 Respondent to the client during the engagement. ESD reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what ESD deems to be the most effective and efficient manner.

#### C. Staff Experience and Qualifications

In this section of the Technical Proposal, Respondents should demonstrate that the staff proposed to administer this program has the knowledge and ability to perform the services described in this RFP. Biographies of the work team should be included in this section.

Information provided by references may be used for proposal evaluation purposes. ESD 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 Respondent to the client during the engagement.

#### D. Project Plan/Approach

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

- The proposed program methodology; and,
- The expected outcomes of the program.

Respondents must also submit a detailed plan identifying what subcontracting opportunities, if any, would be available and explaining how the MWBE subcontracting goals established will be met (*See Section XIII. iv. for additional information on the MWBE subcontracting goals*).

#### E. Cost Proposal and Budget

In this section of the Technical Proposal, Respondents should provide a detailed cost proposal and program budget for use of grant funds (*See Appendix A*). Applicants must include rates of staff involved with administering this program, as well as detailed information and cost of other expected expenses for program administration.

#### F. Diversity Practices

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity Practices using the attached Diversity Practices Scoring Matrix (*See Appendix B*). Up to five percent (5%) will be awarded based upon the contents of the Diversity Practices Questionnaire (*See Appendix C*), submitted by each Respondent to the RFP.

## ii. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with ESD. The successful Respondent must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, Respondents should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Respondent's proposal.

- i. State Finance Law §§139-j and 139-k forms, submit with proposal [http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf)
- 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](#)

- [OCSD-3 – Workforce Utilization Report](#)
- [OCSD-4 - 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
- viii. Not-For-Profit Organizations, registration and pre-qualification

Additional information about these items, and ESD's procurement requirements, can be found in Section XIII of this RFP ("Contractual 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, electronic transmission) will not be accepted. When submitting each proposal, Respondents must comply with the following:

- i. The Technical Proposal and the Administrative Proposal must be submitted in separately sealed packages (which may be submitted within one complete package for mailing);
- ii. "Original" documents must have an original signature and be clearly marked "Original";
- iii. Clearly mark the outside packaging for each set of sealed proposals (Technical and Administrative);
- iv. Clearly mark the original and each copy as **"RFP – The NYS MWBE Certification Assistance Program" submitted by [Respondent's name]**
- v. Each Respondent must submit:
  - Five (5) hardcopies and one (1) text-searchable electronic copy on CD or flash drive of the *Technical Proposal*.
  - One (1) original and one (1) electronic copy on CD or flash drive of the *Administrative Proposal*.

A complete package (Technical Proposal and Administrative Proposal) must be received by the deadline in the schedule of dates in this RFP. Proposals should be sent to the following address:

Empire State Development  
633 Third Avenue 35th Floor  
New York, New York 10017-8167  
Attention: Mr. Ralph Volcy  
RFP - The NYS MWBE Certification Assistance Program  
**Late proposals will not be considered for award.**

## **XI. 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 VIII (Schedule of Dates) to [MWBCERTASSISTRFP@esd.ny.gov](mailto:MWBCERTASSISTRFP@esd.ny.gov). Questions will not be accepted orally, and any question received after the deadline will not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP in the date scheduled per Section VIII.

## **XII. 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:

- 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 Respondent;
- vii. communicate with any Respondent 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 in 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 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 are subject to the Open Meetings Law.

### **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 ESD 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 ESD according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. ESD 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 ESD, 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 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 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.

### **XIII. CONTRACTUAL REQUIREMENTS**

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

#### **i. 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 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/RFOs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

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

[http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, 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:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.pdf](http://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.

## **ii. Vendor Responsibility Questionnaire**

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

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

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

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

## **iii. 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: <http://www.ogs.ny.gov/about/regs/ida.asp>

#### **iv. 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 thirty percent (30%) for MWBE participation, fifteen (15%) percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and fifteen (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 grant (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

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

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

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

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

Additionally, a respondent will be required to submit the following documents, information, and answer the below-captioned questions 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. In addition, as part of the applicant's documented commitment to Non-Discrimination Contractor & Supplier Diversity, answers to the following questions should be included as part of your proposal:

1. Please identify any subcontracting opportunities that are/may be available.
2. How will it be achieved?
3. Please indicate areas where no MWBEs can participate.

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

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

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

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

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

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

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that

minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

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

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_1MWBEEEOPolicyStatement.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf)

Form OCSD-2: [http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_2StaffingPlan.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf)

Form OCSD-3:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_WorkforceUtilizationReport.xlsx](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_WorkforceUtilizationReport.xlsx)

Form OCSD-4: [http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_4MWBEUtilizationPlan.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4MWBEUtilizationPlan.pdf)

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

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

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

## **Diversity Practices**

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of 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 (*See Appendix C*).

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

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

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

## **Contract Goals**

- A. ESD hereby establishes an overall goal of three percent (3%) 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 <http://ogs.ny.gov/Core/SDVOBA.asp> . 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 by email at [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

## **SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on OCSD-4 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the SDVOB to perform to meet

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

- C. ESD will review the submitted SDVOB Utilization Plan and advise the Respondent /Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Respondent /Contractor agrees that it shall respond to the notice of deficiency, within seven (7) 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 (5) 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 Respondent's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Respondent fails to submit an SDVOB Utilization Plan;
  - (b) If a Respondent fails to submit a written remedy to a notice of deficiency;
  - (c) If a Respondent fails to submit a request for waiver; or
  - (d) If ESD determines that the Respondent has failed to document good faith efforts.
- F. If awarded a Contract, 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, Respondent /Contractor shall speak to the Designated Contacts at ESD for guidance.
- B. 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 OCSD-5, accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan



and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Respondent's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within (20) twenty days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to ESD.

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

### **Monthly SDVOB Contractor Compliance Report**

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

ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

### **Breach of Contract and Damages**

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

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

### **vi. 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 ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also, in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive, and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all of the sub-consultants.

### **vii. 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\\_0.pdf](https://esd.ny.gov/sites/default/files/ScheduleA_Services_Materials_0.pdf)

Please note Respondents do not need to complete the entire Schedule A with the submission of their Proposal. However, Respondents 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 Respondents will need to accept these terms prior to contract execution.

### **viii. 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.

### **ix. Insurance Requirements**

The selected Respondent 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.

### **x. W-9 Form**

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

### **xi. Not-For-Profit Organizations**

A not-for-profit organization receiving a grant from ESD must be or become registered and up-to-date with its filing with the Office of Attorney General’s Charities Bureau, prequalified with New York State Grants Gateway, and in compliance with all other relevant statutory requirements

## New York State Grants Gateway

As part of Governor Cuomo’s initiative to better serve the people of the State of New York, a web-based grants management system, Grants Gateway, was launched in spring 2013 to improve the way grants are administered by the State of New York. Grants Gateway also offers not-for-profit organizations a portal to search for available and anticipated grant opportunities, download grant opportunities, and register to receive email notifications when specific types of grant opportunities are posted. All not-for-profit organizations receiving funds from ESD must be prequalified in Grants Gateway prior to ESD approval and the execution of a Grant Disbursement Agreement/Contract.

### Grants Gateway Prequalification Process

#### 1. Register with the Grants Gateway

- The Registration Form is available for download at [www.grantsreform.ny.gov](http://www.grantsreform.ny.gov). The Registration Form can be accessed by clicking the link at the top of the page in yellow labeled “Click HERE to access the Portal or browse for more information below”.
- Include your State Financial System (“SFS”) Vendor ID on the Form; if you are a new vendor and do not have a SFS Vendor ID, include a Substitute for W-9 with your signed, notarized registration (also available from the Grants Reform Web site).
- All registrations must include an Organization Chart in order to be processed.
- Mail the completed Registration Form, Organization Chart that shows the Head of your Organization, and Substitute W-9 (if new vendor) to:  
**NYS Grants Reform**  
**99 Washington Avenue**  
**Room 1530**  
**Albany, NY 12210-2814**
- When you receive your login information via email, log in and change your password. This password will allow access to the Grants Reform Web site.

#### 2. Associate your organization with a State agency (ESD) by clicking on Organization(s) and then selecting Organization Information; complete all required fields.

If you have questions about the Prequalification application, please contact ESD’s program representative, Greta Carter-Williams, at [greta.williams@esd.ny.gov](mailto:greta.williams@esd.ny.gov) or the Grants Reform Team by emailing [GrantsReform@Budget.ny.gov](mailto:GrantsReform@Budget.ny.gov) with “Prequalification” in the subject line.

### Attorney General’s Charities Bureau and State Comptroller’s VendRep System

Prior to ESD approval and execution of a Grant Disbursement Agreement/Contract, not-for-profit organizations must be registered and up-to-date with its filings with the New York State Office of the Attorney General’s Charities Bureau (“OAG”) and the New York State Office of the State Comptroller’s VendRep System (“OSC”). Information on registration is below:

**OSC**

E-mail: [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us)

Phone: Toll free: (866) 370-4672

Locally within the Albany NY area: (518) 408-4672k

[http://osc.state.ny.us/vendrep/info\\_vrsystem.htm](http://osc.state.ny.us/vendrep/info_vrsystem.htm)

**OAG**

E-mail: [charities.bureau@ag.ny.gov](mailto:charities.bureau@ag.ny.gov)

Phone: (212) 416-8401

<http://www.charitiesnys.com/home.jsp>