

# REQUEST FOR PROPOSALS



**Empire State  
Development**

## **DOWNTOWN NIAGARA FALLS DEVELOPMENT STRATEGY**

Niagara Falls, New York

**ISSUED: November 26, 2019**

Designated Contacts for this Procurement:

Primary Contact: Paul Ray

Secondary Contact: Robert Sozanski

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



**PROPOSAL DUE DATE AND TIME:**

**January 13, 2020 by 2:00 PM EST**

## I. INTRODUCTION

The New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) is seeking responses (“Proposals”) to this Request for Proposals (“RFP”) from qualified firms or teams of firms (“Respondents” or “Respondent Teams”) to conduct a market analysis and create an overall development strategy for Downtown Niagara Falls to support its continued economic growth, as well as specific development recommendations for approximately 25 properties recently purchased by USA Niagara Development Corporation (“USAN”), a subsidiary of ESD. A successful outcome will consider the entire downtown area and potential synergies with the adjacent Niagara Falls State Park (the “Park”). The resulting development strategy will guide USAN/ESD as they seek to attract new investment to Niagara Falls, facilitate infill development and a more vibrant downtown neighborhood, enhance economic opportunities for local businesses and residents, further improve visitor and resident experiences, and foster additional and better connectivity with and through the Park, the Upper Niagara River and the Niagara Gorge.

While the City of Niagara Falls (the “City”) is modestly sized with approximately 50,000 residents, it is centrally located in a two-county (Niagara and Erie) Metropolitan Statistical Area (MSA) with a population of about 1.1 million and is a short 25-minute commute from the City of Buffalo (population ~256,000). Furthermore, at its location directly on the US-Canada border, the City serves as a gateway to Ontario’s “Golden Horseshoe” region (population 9 million), which is anchored by the rapidly expanding Toronto market. Economic analyses of bi-national spending, land use and investment patterns over the last decade document a number of cross-border relationships that indicate this growing Canadian market extends across the border to encompass Buffalo and Niagara Falls.

Figure 1. Niagara Falls proximity to the expanding Ontario, Canada market



Historically, the City’s economy focused on industry that took advantage of inexpensive hydropower produced by the falls. Industrial plants still dot the shoreline of the Upper Niagara River, some of which are still in operation, others that are shuttered. During the 1970s and 1980s, Niagara Falls experienced the same deindustrialization that affected most of the nation. In an effort to reverse the fortunes of their city, civic leaders embarked on a series of ill-advised urban renewal projects beginning in the 1970s, demolishing entire blocks of downtown to create “superblocks” intended for large-scale “attractions,” including a shopping mall and an indoor tropical arboretum. By the early 2000s, the few projects that had been realized had closed or become financially untenable, prompting a major policy reconsideration for the future of Niagara Falls.

The world-renowned Niagara Falls State Park attracts approximately nine million visitors annually, and its direct adjacency to downtown Niagara Falls creates a one-of-a-kind tourist destination that combines a natural wonder, outdoor recreation opportunities and urban amenities. Increasingly, City and State officials have looked for ways to capitalize on the unique relationship between the Park and the City to bolster the City's tourism-based economy and spark the rebuilding of urban fabric that was lost during urban renewal. To aid in this endeavor, New York State created USAN in 2001.

USAN's mission is to support and promote economic development initiatives in Niagara Falls by leveraging private investment and encouraging growth and renewal of the tourism industry in the City. To date, USAN has invested over \$120 million in downtown Niagara Falls, leveraging a total of \$383 million in public and private spending. This includes the development of local economic anchors like the Conference and Event Center Niagara Falls and the Niagara Falls Culinary Institute, as well as transformational public infrastructure projects like the removal of the Robert Moses Parkway.

In March 2019, USAN acquired over 30 properties through a strategic land acquisition program as part of the second phase of Governor Andrew M. Cuomo's "Buffalo Billion" Economic Development Initiative. The program is intended to assemble long-dormant properties near the Park and redevelop them strategically to remove blight, increase density, and expand the types of uses in the area, re-establishing a year-round, sustainable downtown. Acquisition of these key parcels will allow USAN to significantly reshape downtown Niagara Falls, but a thoughtful approach is needed to maximize the impact of future investments and ensure a cohesive vision for long-term success.

Proposals should address Respondents' qualifications and approach to the tasks detailed in the following sections of this RFP. Additional tasks and work elements may be added or deleted during the RFP process and contract negotiations.

## **II. OBJECTIVES**

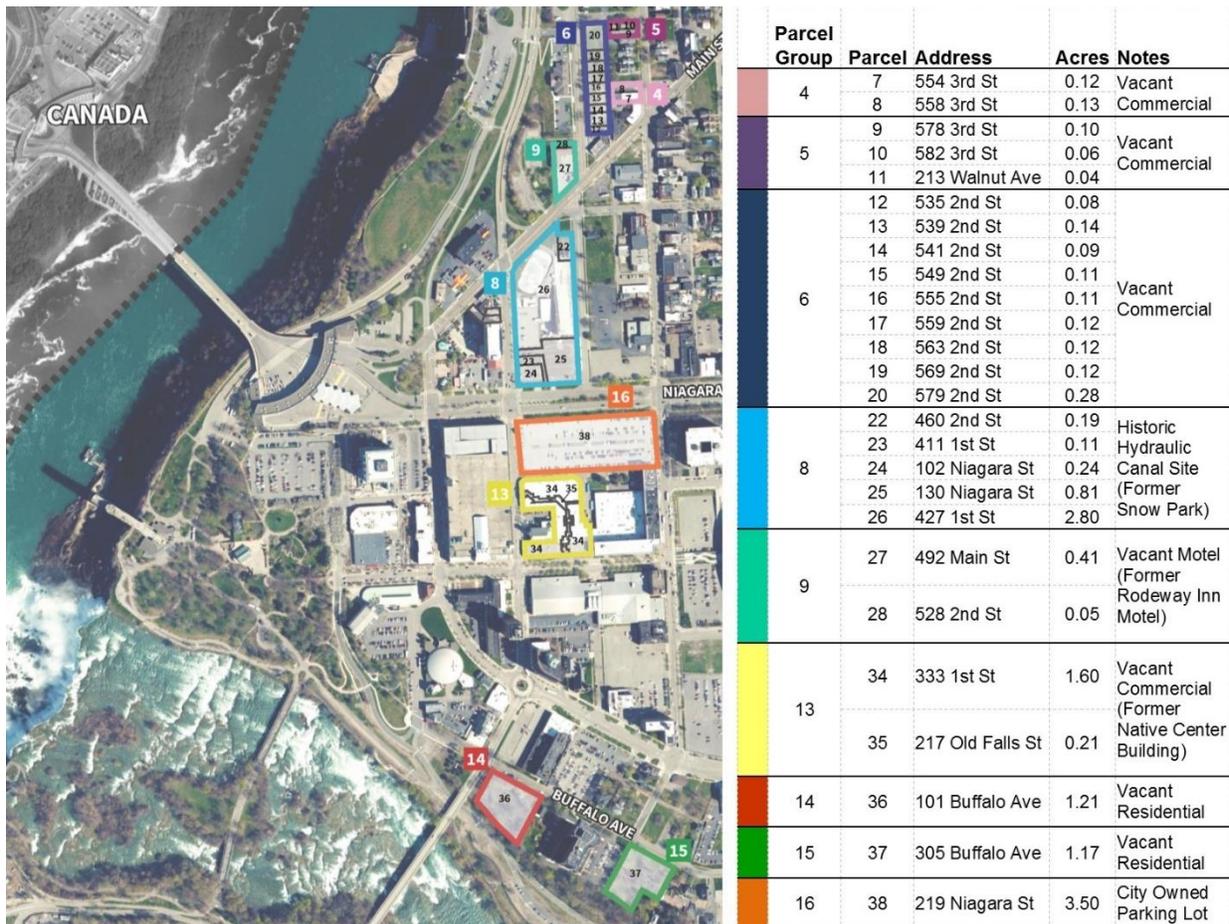
The development strategy should address the broader context of downtown and proximate destinations, including the Park, yet specifically focus on 25 of USAN's recently-acquired properties, as well as additional City-owned parking lots (see Figure 2). The goal is to provide USAN/ESD with the analysis and framework to successfully dispose of their properties in a thoughtful and strategic manner that prioritizes feasibility, market demand and connection to other recent or future developments, including those being contemplated by the City and/or State Park. Respondents should consider the following set of guiding principles that USAN has established for future developments.

Developments should:

- Build confidence in downtown and/or induce additional private sector development;
- Complement existing uses and fill a need/gap in the market or diversify the economy;
- Have local stakeholder buy-in;
- Contribute to the City's tax base and other potential future funding streams;
- Support the implementation of the City's Comprehensive Plan including better integration of the City and Park; and

- Adhere to USAN design standards and the City's zoning code.

Figure 2. USAN Properties to be Included in the Development Strategy



### III. REQUIRED EXPERTISE

Respondents must have expertise and experience in the following practice areas:

- Urban Planning
- Urban Design and Architecture
- Economic Development
- Real Estate Finance
- Market Research
- Resilience

Specific skills required for this engagement include:

- **Architectural Design:** Experience developing conceptual plans, preparing area-wide 3D models, and preparing renderings.
- **Market Research:** Experience conducting applied information management, data collection from government and other public sources, and market and economic research and market/industry sector analysis; carrying out international

benchmarking; identifying capital/financing opportunities and sources; and conducting pro-forma real estate analysis.

- **Development Financing:** Experience working on public-private real estate, including familiarity with property State tax structures.
- **Policy analysis:** Experience analyzing zoning, land use, environmental and other regulations and requirements, including specific expertise in New York State Urban Development Corporation statutory requirements and process.
- **Report writing:** Experience writing comprehensive, detailed reports that clearly articulate an overarching narrative while providing the detail necessary for future implementation, as well as synthesizing and presenting data from multiple sources.
- **Sub-contracting:** Experience managing sub-contractors in planning efforts or, as relevant, operating as a sub-contractor to a vendor managing multiple planning and subject-specific firms.
- **Process management:** Experience coordinating complex projects involving multiple disciplines and managing and scheduling work to meet short deadlines.

#### **IV. SCOPE OF WORK**

The selected Respondent (“Consultant”) will work closely with USAN, ESD and partner stakeholders on the following tasks:

##### **Task 1: Review of Existing Plans, Market Analysis and Stakeholder Input**

Consultant will review and become familiar with prior and ongoing planning efforts and architectural work for downtown Niagara Falls and the surrounding area, including recent and planned improvements to the Park and properties owned by the New York Power Authority (“NYPA”) and including reports on stakeholder input. Consultant will also review USAN’s 2011 market study (see Appendix A). In reviewing past and current work, consideration should be given to the location of the subject area in proximity to the Park, the Riverway, Niagara River Gorge, Seneca Niagara Casino, and adjacent mixed-use neighborhoods.

***Deliverable:** There is no formal deliverable for this task, but the Consultant should be able to speak to the local planning framework and consider all relevant recommendations and guidelines in their work on other tasks.*

##### **Task 2: Base Map**

Consultant will prepare a series of base maps with editable layers (Adobe Illustrator) at various scales (parcel level, street level, downtown, regional, etc.) that can be used in future communications and planning efforts. Base maps should include, at a minimum, an aerial imagery layer, transportation layers, parcel layers and a natural features layer. Consultant will work with USAN/ESD staff to determine any additional layers.

***Deliverable:*** Set of PDF maps at each scale and editable Adobe Illustrator files.

### **Task 3: Market Analysis**

Consultant will (i) evaluate the subject area from a market perspective, detailing current market challenges and opportunities; (ii) provide industry projections and trends for potential uses of USAN properties, including but not limited to, market rate and affordable housing, restaurants, hospitality, beer and wine production, retail, conferences and conventions, weddings, recreation, and professional services (e.g., front office, back office, technology, etc.); (iii) provide targeted analysis of potential new uses that are complementary with Niagara Falls State Park projects and programs; (iv) provide typical space needs and infrastructure requirements for relevant industries; (v) provide target metrics for proposed uses (i.e., number of beds, number of housing units, etc.); and (vi) make recommendations for targeting and attracting proposed new uses to USAN properties.

***Deliverables:*** A stand-alone report and presentation representatives of USAN/ESD, New York State Parks, NYPA and the City (collectively, the “Government Advisory Group”) detailing market findings and recommendations.

### **Task 4: Concept Plans**

Consultant will develop conceptual site plans and renderings for each of the parcel groups listed below based on the market analysis outlined in Task 3 and input from local stakeholders provided in Task 1, as well as feedback from the Government Advisory Group based on the Market Analysis presentation (see Task 3 deliverable). These site plans and renderings are intended to be inspirational for developers that may respond to future RFPs for the parcels.

Up to two (2) concepts will be provided for each of the following parcel groups:

- Group 6: 535 2<sup>nd</sup> St, 539 2<sup>nd</sup> St, 514 2<sup>nd</sup> St, 549 2<sup>nd</sup> St, 555 2<sup>nd</sup> St, 559 2<sup>nd</sup> St, 563 2<sup>nd</sup> St, 569 2<sup>nd</sup> St, and 579 2<sup>nd</sup> ST
- Group 8: 460 2nd St, 411 1st St, 102 Niagara St, 130 Niagara St, and 427 1st St
- Group 9: 492 Main St and 528 2nd St
- Group 13: 333 1st St and 217 Old Falls St
- Group 14: 101 Buffalo Ave
- Group 15: 305 Buffalo Ave

***Deliverables:*** Package of documents for each parcel group including site plans and renderings, description of each design concept, summary of design rationale including relevant market analysis; presentation to the Government Advisory Group.

### **Task 5: Strategies for Implementation**

Consultant will make specific recommendations for how best to approach future development of the USAN properties, including: (i) clustering of properties; (ii) timing and phasing of RFPs to develop each or multiple clusters; (iii) approach to procurement and marketing; (iv) need for public incentives, if any; and (v) general parameters for RFPs,

including criteria by which to judge responses. Consultant will also offer recommendations for how best to ensure seamless connections between downtown, the Park and other proximate destinations, and concrete synergies that can be created among the various properties owned by USAN, New York State Parks and NYPA.

***Deliverable:*** Final report and presentation to the Government Advisory Group that draws on all the work detailed in above tasks.

## V. 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 26, 2019
<p>Pre-Proposal Informational Meeting</p> <p>USA Niagara Development Corp. 222 First Street, 7<sup>th</sup> Floor Niagara Falls, NY 14303</p> <p><b><u>OR</u></b></p> <p>Empire State Development 633 Third Avenue New York, NY 10017</p> <p><b><u>OR</u></b></p> <p>Webcast</p>	<p>December 9, 2019 11:00 a.m. EST</p> <p>Potential respondents who would like to attend the Pre-Proposal Meeting should RSVP to <a href="mailto:NiagaraFallsStrategy@esd.ny.gov">NiagaraFallsStrategy@esd.ny.gov</a> by 5pm on Dec 6. Please provide your name, company name, phone number, email address and indicate whether you will be attending the meeting in New York City, Niagara Falls or via webcast.</p> <p>Invites for the webcast will be sent out prior to the meeting.</p>
Deadline for Submission of Questions	December 13, 2019
Deadline for USAN/ESD to Respond to Questions	December 23, 2019
Submission of Proposals (date at 2:00pm)	January 13, 2019
Evaluation of Proposals, interviews (as needed) selection and contracting	January/February 2020
Anticipated Contract Start Date	March 2020

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

## VI. SELECTION CRITERIA

USAN/ESD anticipates that either a single Respondent or a collaborating Respondent Team will be selected based upon USAN/ESD's determination. When evaluating Proposals, the following weighted selection criteria will be considered:

- 1. Experience (30 points):** Proposals will be evaluated based on the expertise of Respondent team members and demonstrated successful experience in complex master planning activities with objectives and operating conditions similar to those described in this RFP.
- 2. Technical Approach (30 points):** Proposals will be evaluated on the quality and completeness of the proposed approach to accomplishing the tasks and deliverables as described in the Scope of Work of this RFP.
- 3. Cost Proposal (20 points):** Proposals will be evaluated on the degree to which the cost structure of the services to be provided are deemed relevant to and inclusive of the tasks outlined in the Scope of Work, reasonable in relation to industry standards, and competitive with the cost structures of other Respondents.
- 4. Project Schedule (15 points):** Expeditionousness of the proposed time schedule/timetables to complete the scope of services. Demonstration of Respondent's techniques and wherewithal to successfully complete the project in the shortest, but most reasonable timeframe.
- 5. Diversity Practices (5 points):** ESD will award up to 5% to Respondents based on the contents of their Diversity Practices Questionnaire (see Appendix B). When responding to the Diversity Practices Questionnaire, Respondents should provide examples of committed levels of Minority- and Women-Owned Business Enterprises ("MWBE") participation in previous projects of similar size and scope.

Prior to making an award, ESD reserves the right to remove Respondents from competitive consideration at one or more points throughout the RFP process based on these criteria. Some or all Respondents may be asked to modify their Proposals during the RFP process if ESD determines that such modifications will result in an improved result. ESD reserves the right to make such requests to all Respondents or to a subset of all Respondents.

ESD also reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of their Proposals and to ensure a full and complete understanding of each Proposal. ESD shall undertake to pursue uniformity in the questions it asks Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing.

## VII. SUBMISSION OF PROPOSALS

Respondents should submit a two-part Proposal comprising a Technical Proposal and an Administrative Proposal, as defined below. Proposals must clearly and concisely provide all information requested. Emphasis should be on conformance with the RFP instructions and requirements, as well as completeness and clarity. Respondents are 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 Respondents. No information is required beyond what is specifically requested. All Technical Proposals should be organized with dividers identified to match the specific information requested below:

- A. Table of Contents
- B. Respondent Experience and Qualifications
- C. Project Plan and Approach
- D. Estimated Cost
- E. Project Schedule
- F. Diversity Practices

Technical Proposals should demonstrate Respondents' qualifications, competence, and capacity to undertake the engagement described herein, in a manner that 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 Technical Proposal by section and page number.

#### B. Respondent Experience and Qualifications

Respondents should demonstrate their ability to successfully undertake the Scope of Work, presenting their skill sets and experience in administering similar projects and any critical "distinguishers" that recommend them over others. Specifically, they should include information on:

##### 1. Proposed Team:

- a. Organizational chart identifying members of the Respondent Team and their respective roles. If any, note prior working relationships team members.
- b. Individual resumes for key team members that will be engaged in the project (no more than one page in length for each member), including role on the team, registrations and licenses, professional and educational background, experience relevant to this project, and contact information.

2. Relevant Past Projects: no more than ten, one-page summaries (additional materials will not be considered) of current and/or past projects undertaken by Respondent and/or members of the Respondent Team that are most similar and relevant to the Scope of Work outlined in this RFP. Summaries should include:
  - a. location, size, uses, approximate contract value, and dates of engagement
  - b. graphic material/photographs illustrating efforts
3. Current Workload: current projects and their status (including percentage complete) for all major task leaders on Respondent Team

ESD may seek 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 Respondent to the client during the engagement.

C. Project Plan and Approach

Respondents should demonstrate their competence and capacity to undertake the services described in this RFP by providing a specific description of how they will approach and fulfill each of the five Tasks in the Scope of Work. Respondents should also discuss their overall understanding of the project, its key objectives, and any overarching issues associated with realizing these objectives.

D. Project Cost

The Proposal must include a detailed project cost estimate including:

1. A detailed spreadsheet(s) of labor costs for all services, delineated by Task as outlined in the Scope of Work, including estimated hours, hourly rate and cost of each Respondent Team member whose resume is provided or whose job category may be required.
2. A list of anticipated reimbursable expenses and the rate charged for each without markup. Please indicate a detailed list of maps, site plans, renderings, or other work product to be furnished during each Task that are not included in basic services covered by the proposed fee schedule and the cost for each.

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

E. Project Schedule

Proposals must include a task-by-task schedule that specifies the time (in days or weeks) that will be required for each task and deliverable. Include a linear timetable, with significant milestones, that outlines sequencing and any overlap of individual tasks. The schedule should begin coincident with contract execution or letter to

proceed, whichever is earlier. The schedule also should indicate the time allocated for team reviews/meetings and approvals. The timeline should be presented in weeks, starting in month one.

In addition, Respondents should describe their process to maintain strict budgetary and schedule controls.

#### F. Diversity Practices

ESD will score each Proposal using the attached Diversity Practices Questionnaire (see Appendix B). Up to 5 points will be awarded based upon the contents of the questionnaire.

#### ii. **Administrative Proposal**

Appendix C 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 Proposal.

- i. [Conflicts of Interest Form](#) (submit with proposal). Respondent must attest it has read, understood and will comply with the following provisions. 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 §§139-j and 139-k forms](#) (submit with Proposal)
- iii. [Vendor Responsibility Questionnaire](#) (submit with Proposal or online and include copy of submitted form with Proposal)
- iv. Iran Divestment Act Statement (submit with Proposal)
- v. Non-Discrimination and Contractor & Supplier Diversity Requirements (submit with Proposal)
  - [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
  - [OCSD-2 - Staffing Plan](#)
  - [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- vi. [Encouraging the Use of NYS Businesses in Contract Performance Form](#) (submit with Proposal)
- vii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#) (submit with Proposal)
- viii. [W-9 Form](#) (submit with Proposal)
- ix. [Executive Order \(EO\) 177 Certification](#) (submit with proposal)

Additional information about these items and ESD's procurement requirements can be found in **Section X** of this ("Contractual Requirements").

By submitting Proposals, Respondents indicate 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. Respondents must comply with the following:

1. The Technical Proposal and the Administrative Proposal must be submitted in separately sealed packages, which may be submitted within one complete package for mailing.
2. Original documents must have an original signature and be clearly marked "Original."

3. The packaging for each set of sealed Proposals should be marked “Technical Proposals” and “Administrative Proposals.”
4. The original and each copy should be marked “RFP – Niagara Falls Development Strategy Proposal submitted by [Respondent’s name].”
5. Each Respondent must submit:
  - o Eight (8) hardcopies and one (1) text-searchable electronic copy on flash drive of the *Technical Proposal*
  - o One (1) original and one (1) electronic copy on flash drive of the *Administrative Proposal*

A complete Proposal (comprising the 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:

**Paul Ray**  
**USA Niagara Development Corporation**  
**222 1<sup>st</sup> Street, 7<sup>th</sup> Floor**  
**Niagara Falls, NY 14303**

Late Proposals will not be considered.

## **VIII. QUESTIONS**

Questions regarding this RFP should be emailed to [NiagaraFallsStrategy@esd.ny.gov](mailto:NiagaraFallsStrategy@esd.ny.gov) no later than **5:00 PM on December 13, 2019**. Responses to all timely and appropriate questions will be e-mailed simultaneously to all Respondents on an ongoing basis and no later than **December 23, 2019**.

## **IX. GENERAL PROVISIONS**

The issuance of this RFP and the submission of a Proposal by a Respondent or the acceptance of such a Proposal by ESD do not obligate USAN/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 Respondent;
- 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 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 Respondent 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 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 USAN/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 USAN or ESD Directors, which meetings are subject to the Open Meetings Law.

USAN/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 RFP (collectively, "Proposal Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against USAN/ESD relating to USAN/ESD's retention or use of the Proposal Information.

**i. 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. If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall USAN/ESD have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

**ii. Performance**

Consultant's performance will be assessed by USAN/ESD according to the achievement of Consultant's contractual obligations in a timely and professional manner, as set forth in the resulting contract. USAN/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.

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

**iii. Additional Services Requested**

USAN/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 Consultant shall be

notified in writing accordingly. Any claim by Consultant for adjustment under this clause must be asserted within 30 days from the date of receipt by Consultant of the notification of change; provided however, that USAN/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 Consultant from proceeding with this contract as modified.

#### **iv. Consultant Staff**

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

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

Consultant agrees not to subcontract any of its services, unless as indicated in its Proposal, without the prior written approval of USAN/ESD. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Consultant, or of its subcontractors, who shall perform the 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 Consultant 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.

## **X. CONTRACTUAL REQUIREMENTS**

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

### **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.

- D. 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.
  
- E. 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.
  
- F. 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.

**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 USAN/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 ESD website under "RFPs/RFQs"); 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 Proposal. 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 USAN/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 RFP. 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 RFP 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. All members of the Respondent Team must 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 USAN/ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between USAN/ESD and Respondent, if any, shall include clauses providing that the Respondent remain "responsible" throughout the term of the contract, that USAN/ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that USAN/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, USAN/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. Respondents should include a copy of your Vend-Rep submission receipt or paper questionnaire with their Proposals.

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 RFP must contain the following statement, signed by Respondent on company letterhead and affirmed as true under penalty of perjury:

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

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

### **iv. Non-Discrimination and Contractor & Supplier Diversity Requirements**

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

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

1. An MWBE Utilization Plan with their 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.

2. 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:

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

The Respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form # 4, to ESD with its Proposal.

If awarded a Contract, Respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a quarterly basis during the term of the Contract. Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

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

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

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

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

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

Form OCSD-3:

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

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

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

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

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, 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 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: <https://online.ogs.ny.gov/SDVOB/search> Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

### SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on OCSD-4.
- 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 of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Respondent agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent and direct the Respondent 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 Respondent's 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 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.

ALL FORMS ARE AVAILABLE AT: <http://ogs.ny.gov/Core/SDVOBA.asp>

#### **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 the nation. In recognition of their economic activity and leadership in doing business in New York State, Respondents for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In

order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

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

Any contract resulting from this RFP 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 RFP 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 RFP will require periodic updating of the certifications contained in Form ST-220-CA. RFP Proposals 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.

#### **vii. Schedule A**

Following final selection of Consultant, ESD will prepare a contract defining all project terms and conditions and the Consultant’s responsibilities in conformance with Schedule A. A sample can be found at:

[https://esd.ny.gov/sites/default/files/ScheduleA-Services\\_Materials-3818.pdf](https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf)

***Please note 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**

Consultant will be required to provide the appropriate insurance coverage as determined by USAN/ESD. USAN and ESD must be named as additional insureds on a primary and non-contributory basis on certain policies. All policies above should include a waiver of subrogation in favor of USAN and ESD.

#### **x. Executive Order (EO) 177 Certification**

In accordance with Executive Order No. 177 (issued on February 3, 2018, available here:

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO177.pdf>)

any entity that provides goods or services to ESD must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the New York State Human Rights Law. Accordingly, all bidders must submit an **EO 177 certification form** with their proposal

#### **xi. W-9 Form**

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

### **XI. APPENDICES**

Appendix A - Niagara Falls Economic and Market Assessment Report 2011

Appendix B - Diversity Practices Questionnaire

Appendix C - Standard Contract Requirements