

# **Request for Proposals**

## **Erie Canal Bicentennial Public Art Installation Canalside, Buffalo NY**



**Issued: May 31, 2022**

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

Designated Contacts for this Procurement:

Primary Contact:                      Ralph Volcy  
Secondary Contact:                      John Discolo

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

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

**Submission Deadline: July 14,2022 by 8:00PM EST**

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## I. INTRODUCTION

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

## II. OVERVIEW

The Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (ESD), invites internationally and critically acclaimed artists to submit qualifications and proposals for The Erie Canal Bicentennial Public Art Installation at Canalside (the “Project”) in the City of Buffalo, NY. ECHDC seeks artists who can demonstrate the ability to design and implement heritage-focused public art commissions.

ECHDC feels it is important to create high-quality and appealing public art components at Canalside and throughout the Buffalo Waterfront that will attract visitors but will also make the citizens of Buffalo proud of our history and the current redevelopment of our waterfront.

The opening of the Erie Canal in 1825 was a critical event in the history of the United States, opening the heartlands of the continent. It also transformed Buffalo from a frontier village to the eighth-largest city in the United States over a span of just 75 years. The Western Terminus of the canal, at what is now Canalside, became a commercial hub and a transshipment point that moved rivers of immigration westward and rivers of cargo eastward – American Express and Wells Fargo were created on its docks, and the Canal District became a global trade center and, at the same time, notorious as one of the roughest waterfronts in the world. Through the Canal Era, Buffalo grew exponentially as many of the immigrants who arrived here by the canal – more than ever arrived at Ellis Island – settled here instead of continuing their journeys west.

ECHDC is inviting artists to submit qualifications and proposals that prove their ability to work within the historic context while incorporating ECHDC’s vision to revitalize Western New York’s Waterfront and restore economic growth to Buffalo based on the region’s legacy of pride, urban significance, and natural beauty. The current project budget is not to exceed \$250,000. ECHDC has retained the services of an Art Consult who will facilitate the evaluation of qualification submission packages and will recommend to the ECHDC up to three (3) qualified artists based upon the evaluation criteria explained in this document. The three (3) “semi-final” artists will contract with the Art Consultant and receive a \$10,000 stipend to complete their proposal. After public presentations and final evaluations, one artist or team will be selected for the commission.

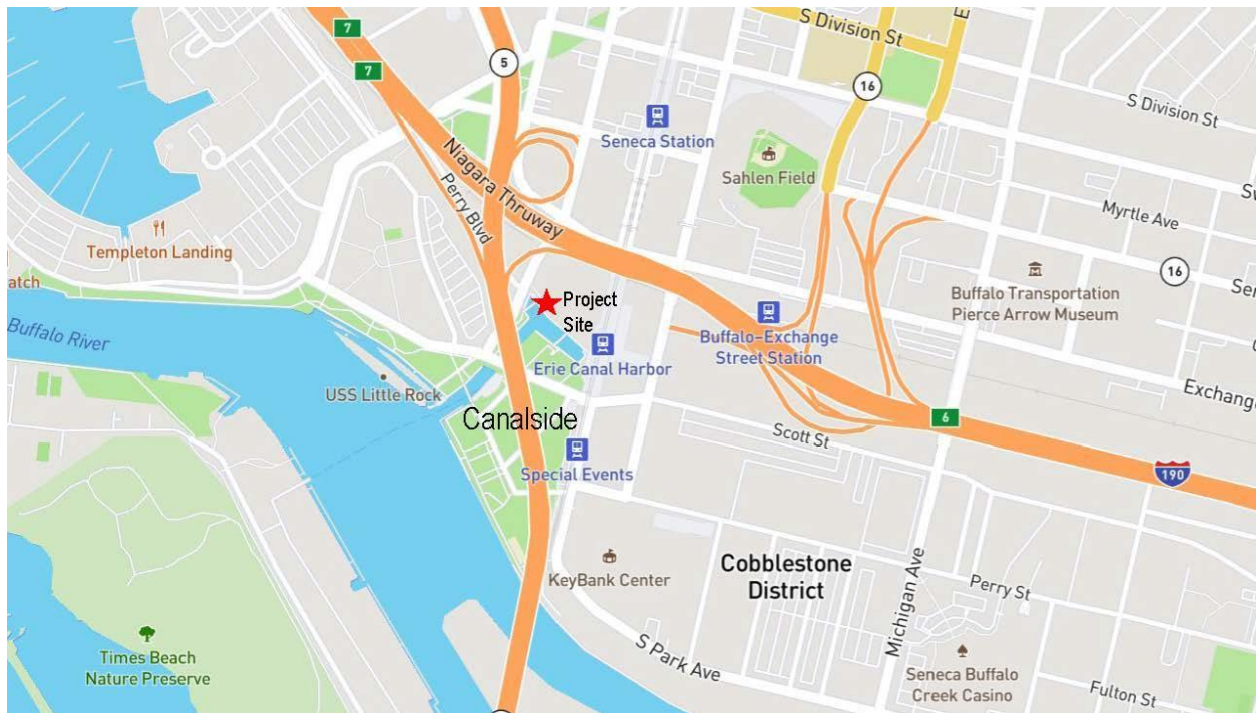
### **MWBE & SDVOB Subcontractor Interest**

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD’s website for reference by the bidding

community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to [PublicArtInstallationRFP@esd.ny.gov](mailto:PublicArtInstallationRFP@esd.ny.gov). Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

### III. SCOPE OF WORK

The Erie Canal Bicentennial Public Art Installation is to be designed for and incorporated into the historic Main Canal area of the property referred to as the *Immigrant Steps and Towpath*. The address of the Main Canal area is 130 Main Street, Buffalo NY. The installation will be permanent on the site and therefore should be fabricated using substantial materials that will resist deterioration from environmental impacts and public interaction.



Canalside Location Map

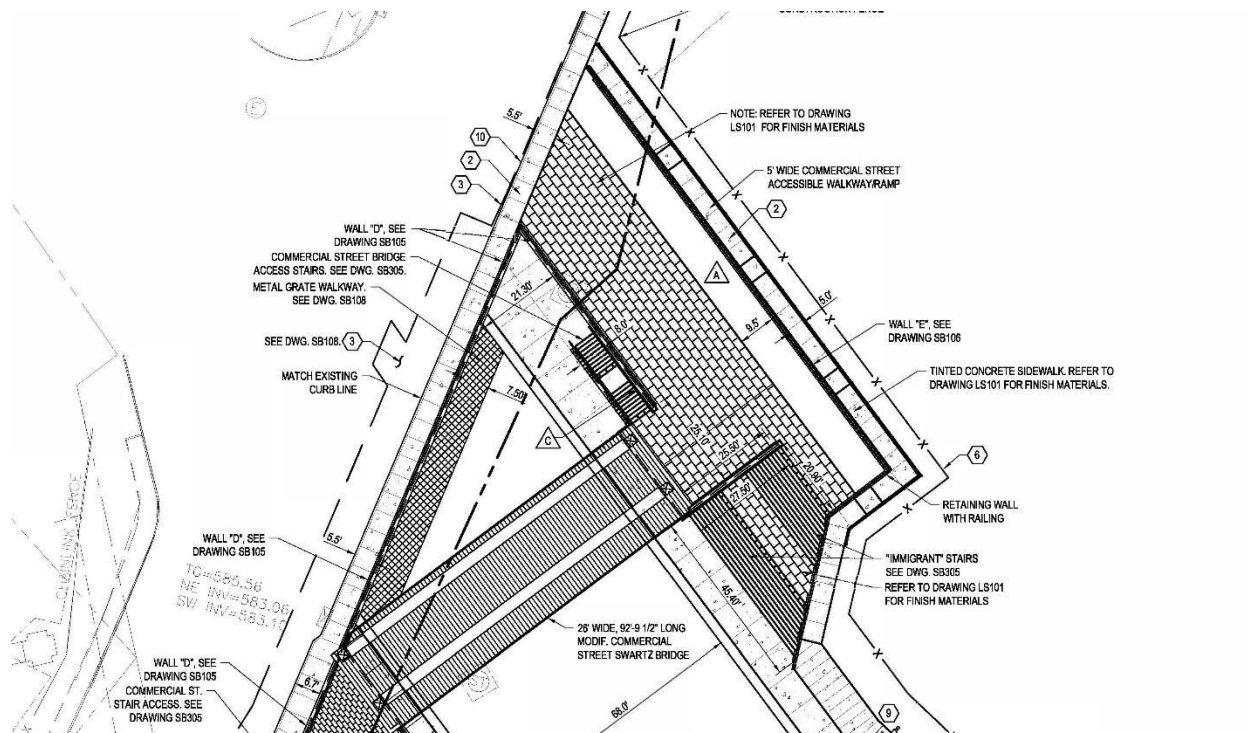
#### **Immigrant Steps**

A flight of steps, re-created now in the Canalside development, was a pathway trod by millions of immigrants and immigrant families as they left the line boats they took from New York or Albany to climb to the streets of Buffalo, seeking to build a new life in the growing ethnic communities of Buffalo or hoping to book passage on a lake schooner or steamboat headed west on the Great Lakes. “Steamboat hotels” waited if they needed an overnight room, or in warm weather many slept on the docks. Most carried with them all they had in the world, small cargoes in this human river; money was tight, and carefully spent. There are no accurate counts of their numbers, but this migration built great cities on the Lakes and settled the interior of the country, in one year alone, 1859, a quarter million people left Buffalo for the West. Most of the immigrants from the Canal Era (1825 until the rise of the railroads in the 1880s) came from Ireland, Germany or Scandinavia. There were smaller streams from the American South during the Underground

Railroad years, and displaced Native Americans also used the canal in its early years to move west.

Today's "Immigrant Steps" honor the location of the original steps at the juncture of the Erie Canal's end and the Commercial Slip that connected the canal to the Buffalo River and Great Lakes, but they are not an exact replica and are built for the present-day flow of people from street level to the faux canal at water level.

The treads of the steps are solid granite with a thermal finish with a typical 6" rise and 12" tread depth. The landings at the top and mid-span are red sandstone slabs, 2'x3' nominal dimension. The overall dimensions are 20.90' wide at the top of the stairs and 45.40' wide at the bottom with an overall length of 27.50' including a 9.50' landing mid span.



Immigrant Stairs to Towpath

## **Towpath**

The canal's towpath, just above water level, was generally about four feet wide and extended the length of the canal, becoming a little more complex at destination wharf areas especially in the big city. It was used by drovers (or "hoggees") driving the harnessed teams of horses or mules pulling the barges and boats along the canal. While wealthier passengers could disembark for the faster and more well-appointed packet boats plying the canals, immigrants would be packed up to a hundred at a time in the line or work boats. They could walk along the tow paths for parts of their journey, but doubtless were relieved to disembark at that journey's end. They would have crossed the path to climb the steps, facing unknown new challenges with both apprehension and hope. They faced the unknown, because there was no way to send word ahead (except at the

last moment via the “runners” who touted hotels from the last few bridges, lowered buckets for room rent money and, sometimes, simply disappeared).

Today’s “towpath” is a wide walkway used for pedestrian access to the amenities along the replicated end of the canal, a shallow water feature. The area is a year-round public space with fountain and paddle boats in the summer, ice rink activities; skating, curling, ice bikes, and food vendor kiosks and igloos in the winter, and roller skating in the fall. There is a pavilion tent used for events and equipment rentals. Seating is available and the area is regularly traversed by pedestrians moving throughout the Canalside neighborhood.

The towpath sidewalk has a 10.80’ wide exposed aggregate concrete band around the perimeter of the replica canal with a 9.20’ outer band of tinted and scored concrete sidewalk. The towpath canal walls are constructed of granite with bush hammered top and rustic rock face on the vertical canal wall.

The Erie Canal Bicentennial Public Art Installation at Canalside selection process will be completed in three (3) stages:

- Stage 1- Submission of Qualifications
- Stage 2 – Development of Proposal & Model
- Stage 3 – Design & Implementation of Art Installation

#### IV. SCHEDULE OF DATES

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

<b>Stage 1 – Submission of Qualifications</b>	
Release of RFP	May 31, 2022
Deadline for Submission of Questions	June 7, 2022
Deadline for ECHDC to Respond to Questions	June 14, 2022
Submission of Proposals (date and time)	July 14, 2022 at 8:00PM EST
Proposal Review/Interviews	July 15 - August 15 2022
Notification to Semi Final Artists	August 16, 2022
<b>Stage 2 – Development of Proposal</b>	
Site Visits and Proposal Development	August - October 2022
Submission of Proposals (date and time)	December 6, 2022 at 2:00PM EST
Public Presentation	February - March 2023
Final Selection by ECHDC	April 2023
<b>Stage 3 – Design &amp; Implementation of Art Installation</b>	
Anticipated Contract Start Date*	January 2, 2024
Fabrication and Installation Completion	May 1, 2025

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

\*Final schedule for design and installation stages to be negotiated at the time of contract execution. However, it is expected the installation will be completed between March 1 – May 1, 2025.

## **V. SUBMISSION REQUIREMENTS**

Every respondent to this RFP (“Bidder”) should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive. Artists are strongly encouraged to conduct independent research based on the information provided as well as visit the project location. The artist is expected and required to attend the artwork dedication event in person if and when such an event takes place.

### **Stage 1 – Submission of Qualifications**

#### **Technical Proposal**

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

- A. Table of Contents
- B. Artist/Team Overview, Statement, CV & Project Images
- C. Proposal Overview, Supporting Documents, & References
- D. Detailed Budget, Timeline, and Maintenance Plan
- E. Diversity Practices [OR] Quantitative Factors

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

- A. Table of Contents

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

- B. Artist/Team Overview, Statement, CV & Project Images

- All professional artists or artist teams living in the United States may apply. If artists apply as a team, all team members should be listed on the application, specifying a team leader to receive notifications. Please include for applicant or each team member:

- Name
  - Business name (if applicable)
  - Physical address
  - Mailing address
  - Telephone
  - Website
  - Email
  - Social media handle(s)
- Artist Statement(s)  
In one or two sentences, provide a general understanding of your work and practice. Each team member should provide a statement on multi-member teams.
  - Artist(s) CV/Resume (PDF or DOC format only, 4 pages max)  
Teams must submit a CV for each artist on the team with a total of 4 pages per team member.
  - Image Examples  
Include images (5 max) that give an overview of your creative practice (up to 5 images for each team member on multi-member teams). Each of the image files must include the title of the image, size, materials and brief description.

#### C. Proposal Overview, Supporting Documents, & References

- Statement of interest in the project which includes related experience (500 words max)
- Proposal Description including the proposed artwork concept, physical materials, and how it responds to the unique history of the site. (750 word max)
- Images of proposed artwork and supporting documents. This is visual collateral which will support your written proposal. Include drawings or other relevant visual information here.
  - Include images and/or links to video, audio files (Max 5 files). Each of the image files must include the title of the image, size, materials and brief description.
- Images of Past Projects and References
  - Include images and/or links to video, audio (Max 10 files). Submit images of completed artwork that provides a sense of the proposed artwork you would produce if chosen for this commission; teams are encouraged to include projects created by the team. Each of the image files must include the title of the image, year, size, materials and brief description.
  - For any commissioned project(s), also include the client, budget and location
- References
  - Submit the names and contact information for up to three references with whom you worked on past projects of the same scale

#### D. Detailed Budget, Timeline, and Maintenance Plan



- Submit your total budget which is inclusive of all costs associated with the artwork project, including but not limited to: artist fee and expenses (sub-consultants, travel/lodging, printing, overhead, etc.), artwork shop drawings and specifications; artwork materials and fabrication, lighting fixtures (if applicable), storage (if applicable), transportation and installation; related permits, license, insurance; and if significant site modifications need to be made.
  - The artist will be required to establish a 10% contingency within their proposed budget. Any expenses that exceed the contracted amount will be the artist's responsibility
- Submit your estimated schedule for fabrication and installation
- Submit a proposed maintenance plan for the work following installation

E. Diversity Practices

**Administrative Proposal**

An Administrative Proposal is not required for the Stage 1 submission.

**Stage 2 – Development of Proposal (Semi-Finalist Only)**

**Technical Proposal**

Up to three finalists will be selected from the original proposals and will be provided with a stipend of \$10,000 to create a comprehensive presentation which includes the following:

- A. Final written description of the proposed artwork
- B. Concept renderings/drawings of the proposed artwork including location, dimensions, materials, colors and finishes
- C. Final artwork budget, including identification of fabricator and fabricator fees (if applicable)
- D. Background experience and references for the fabricator (if applicable and unknown to the committee)
- E. Artwork schedule including final design through installation
- F. A summary of maintenance requirements for the proposed artwork
- G. A three-dimensional scale model of the piece illustrating its incorporation into the site

Each semi-finalist will meet with the Art Consultant either in-person or via Zoom at least twice during the presentation creation period (August - October 2022) to review the materials and maquettes and ensure timeline accuracy.

Each semi-finalist will be required to work with the Art Consultant on a public presentation of their final proposal and maquettes. Details of the venue and timing will be confirmed with the artists.

Each semi-finalist artist or artist team preparing final concept proposals must agree to the following:

- The artist or artist team shall retain intellectual property rights to the artwork commissioned
- The ECHDC shall have the unconditional right to retain the proposal materials (drawings, illustrations) for public art education purposes, whether or not the artwork is selected for implementation. Full credit will be given to the artist or artist team if the proposal is disseminated by print or digital means.
- If utilizing the proposal for future public art applications, the artist shall give credit to the ECHDC
- Proposed artwork must be original and unique to this artwork commission opportunity. No editions or replicas of pre-existing work may be submitted.

### **Administrative Proposal**

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Respondent must agree to abide by these requirements and provide any information requested by the Corporation 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. Insurance Certificate
- ii. W-9 Form, submit with proposal  
<https://www.irs.gov/pub/irs-pdf/fw9.pdf>
- i. Vendor Responsibility Questionnaire, submit with proposal or submit online (and include copy of submitted form with proposal  
[https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/111511\\_VendorForprofit.pdf](https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/111511_VendorForprofit.pdf)

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

### **Stage 3 – Design and Implementation of Art Installation (Finalist Only)**

#### **Technical Proposal/Final Fabrication and Installation**

A final artist or team of artists will be selected in early April 2023 with the contract for design, fabrication, and installation to take place between January 2024 through May 2025.

During the contractual period, the Art Consultant will work with the selected artist(s) to ensure that the accepted fabrication and installation schedule is adhered to.

From the period of January through December of 2024, the Art Consultant will meet with the selected artists(s) on a monthly basis for a progress report regarding creation/fabrication. If the selected artist lives in WNY the meetings will take place predominantly and when possible in-person, if the artist(s) lives outside of the area the meetings will take place via Zoom.

From the period of January 2025 through March 2025 the Art Consultant will meet with the selected artist(s) on a bi-weekly basis (every two weeks) to ensure that the goals of the proposal and fabrication are met, and to help the artist organize installation of the works before May 1, 2025.

The Art Consultant has installation resources in WNY that can be shared should the selected artist(s) need assistance with finalizing the logistics of installation.

### **Administrative Proposal**

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Respondent must agree to abide by these requirements and provide any information requested by the Corporation 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. Conflict of Interest Form, submit with proposal  
<https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>
- ii. State Finance Law §§139-j and 139-k forms, submit with proposal  
[https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf)
- iii. Vendor Responsibility Questionnaire, submit with proposal or submit online (and include copy of submitted form with proposal)  
[https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/111511\\_VendorForprofit.pdf](https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/111511_VendorForprofit.pdf)
- iv. Iran Divestment Act Statement, submit with proposal
- v. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>
- vi. Executive Order 16  
<https://esd.ny.gov/sites/default/files/EO16-certification.pdf>
- vii. Executive Order 177  
<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>
- viii. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
  - a. OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement  
<https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>
  - b. OCSD-2 - Staffing Plan  
<https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>
  - c. OCSD-4 - MWBE and SDVOB Utilization Plan  
<https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

- ix. Encouraging the Use of NYS Businesses in Contract Performance Form, submit with proposal  
<https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>
- x. Certification under State Tax Law Section 5-a 220-CA or Affidavit, submit with proposal  
<https://esd.ny.gov/sites/default/files/ST220CA.pdf>
- xi. W-9 Form, submit with proposal  
<https://www.irs.gov/pub/irs-pdf/fw9.pdf>

Additional information about these items, and ESD's procurement requirements, can be found in Section IX of this RFP ("Procurement Forms and Requirements").

### **Submission of a Complete Proposal**

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

- A. The Technical Proposal and all related appendices must be submitted electronically before the submission deadline via the designated email:  
[PublicArtInstallationRFP@esd.ny.gov](mailto:PublicArtInstallationRFP@esd.ny.gov).
- B. The Administrative Proposal and all related forms must be submitted electronically before the submission deadline via the designated email [PublicArtInstallation@esd.ny.gov](mailto:PublicArtInstallation@esd.ny.gov). It is essential that the instructions in Appendix A - Administrative Proposal Check List are followed when submitting the different forms.

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

## **VI. SELECTION CRITERIA**

ECHDC reserves the right to make any and all decisions regarding the selection of proposals submitted, as well as the capacity to consider proposals received after the deadline.

The artist or team should be proficient and have demonstrated experience in public art projects of a similar nature to the proposed scope of work. In evaluating proposals submitted pursuant to this request, high value is placed on the following factors, not necessarily in order of importance:

- Approach in methodology with respect to the scope of work
- Quality of work product as demonstrated in submitted work samples of past projects
- Ability of the artist or team to complete the project within the scheduled timeframe and to maintain budget

- Conformity with or exceeding applicable ECHDC policies noted herein, including specific policies relating to non-discrimination and affirmative action subcontracting goals
- Cost of services

### **Selection Process for Stages 1 & 2**

Semi-final and final selections will be awarded based on evaluation of the submitted proposals as defined in the Submission Requirements. The ECHDC reserves the right to:

- Seek clarification and revisions of proposals
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring full and complete understanding of an offeror's proposal and/or to determine an offeror's compliance with the requirements
- Make revisions to the scope of work after contract award to ensure that the Project is completed

The artist or team will be scored and selected based on the following criteria (total 100 points):

- **Artwork Concept (25 points)**  
Artwork reflects authenticity, originality, evokes response or inquiry, demonstrates relevance, and is appropriate for the site, history, architecture, occupants and environment. Addresses artwork themes & goals defined in RFP.
- **Feasibility (25 points)**  
Proposed budget is clear, specific, and detailed indicating the artwork can be fully implemented. Schedule is clear, specific, and detailed indicating the artwork can be fully implemented.
- **Durability, Permanence and Safety (25 points)**  
The artwork is materially and structurally sound. Artwork is resistant to theft, vandalism, and is low maintenance. Proposed artwork does not create unsafe conditions nor utilize unsafe materials. Concept can adhere or adapt to ADA guidelines and applicable code requirements.
- **Uniqueness of the Assets (15 points)**  
Artistic process of the artist/artist team and what they will bring to the Canalside Immigrant Steps Project.
- **Diversity Practices (10 points)**

### **Diversity Practices (10 pts)**

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using the attached Diversity Practices Scoring Matrix Appendix B. Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix B, submitted by each Respondent to the RFP.

## **VII. RESERVED RIGHTS**

## **VIII. QUESTIONS**

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

## **IX. GENERAL PROVISIONS**

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

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

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

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

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

## **Required Approvals**

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

## **Performance**

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

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

## **Additional Services Requested**

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

## **Contractor Staff**

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

proposed changes in staff. The Corporation, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

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

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

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

## **X. CONTRACTUAL REQUIREMENTS**

### **1. Conflicts of Interest**

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

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is



involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
  
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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

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

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

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

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by 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 Bidder is found to have knowingly and willfully violated the State Finance

Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at: [http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf). All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

### **3. Vendor Responsibility Questionnaire**

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. 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).”

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

#### **4. Iran Divestment Act**

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

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

The list in question is maintained by the Office of General Services. For further information and to view this list please go to:

<https://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf>

#### **5. Executive Order 16**

In accordance with New York State Executive Order 16 that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.

The complete text of Executive Order can be found:

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

#### **6. Executive Order 177**

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

The required certification for can be found at:

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

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

### **CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

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

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

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

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

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

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

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

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

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

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

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

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

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

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

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

### **Equal Employment Opportunity Requirements**

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

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

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

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

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

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

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

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

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

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

Form OCSD-3:

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

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

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

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

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

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

### **SDVOB Utilization Plan**

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

- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

#### **Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time



during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

### **Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to 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.

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

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

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

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

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

## **10. Schedule A**

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

Please note 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.

## **11. 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.

## **12. Insurance Requirements**

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

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

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

and must be signed and included in all Proposals.

## **13. W-9 Form**

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