



**Empire State
Development**

**REQUEST FOR PROPOSALS
FOR THE PURCHASE AND REDEVELOPMENT
OF DOWNSTATE CORRECTIONAL FACILITY**

121 Red Schoolhouse Road, Fishkill, New York 12524





Empire State Development

Issued: July 18, 2023

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 RFP:

Primary Contact: Ralph Volcy
Secondary Contact: John Discolo

All contacts/inquiries shall be made by email to the following address:
DownstateCFacilityRFP23@esd.ny.gov

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

Applications must be sent to the designated Dropbox:
<https://www.dropbox.com/request/7iol8opKx5KefyIWpWEL>

Submission Deadline: August 23, 2023 by 2:00 PM EST

Late Submissions will not be taken into consideration

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I. INTRODUCTION

New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”), is seeking proposals for the purchase and redevelopment (the “Project”) of an approximately 80 acres site located at 121 Red Schoolhouse Road, Fishkill, NY (the “Site”). Each party that submits a response (“Proposal”) to this Request for Proposals (“RFP”) is referred to herein as a “Respondent,” and the Respondent that is conditionally designated through this RFP process is referred to herein as the “Designated Developer.”

The Site was formerly the Downstate Correctional Facility. The facility was vacated in March 2022 as part of New York Governor Kathy Hochul’s initiative for the Department of Corrections and Community Supervision (“DOCCS”) to decommission a number of correctional facilities in order to reduce costs in response to a shrinking prison population. The approximately 80-acre Site includes all of the facility’s buildings and the immediately surrounding land.

The Site was reviewed as part of Governor Hochul’s Prison Redevelopment Commission (the “Commission”). The Commission’s report and recommendations can be found on ESD’s website (<https://esd.ny.gov/sites/default/files/Prison-Redevelopment-Commission-Report-2022.pdf>). The materials provide a site plan, building and infrastructure inventory and an overview of surrounding assets and market and site analysis.

ESD invites all qualified parties to submit proposals for the reuse and redevelopment of the Site in accordance with the goals and objectives of the Project and the parameters specified in this RFP. Each party that submits a response (“Proposal”) to this RFP is referred to herein as a “Respondent.” A Respondent who is conditionally designated through this RFP process is referred to herein as a “Designated Developer.”

ESD is interested in proposals that will provide maximum benefits to the surrounding community and generate the highest economic return for the State. Given the unique location of the Site in the growing Beacon/Fishkill area, the Project presents a unique and exciting opportunity for redevelopment for the purposes specified in this RFP.

II. RFP TIMELINE

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

Release of RFQ	July 18, 2023
Site Tour Date and Location	August 2, 2023 at 1:00 PM EST 121 Red Schoolhouse Road, Fishkill, NY 12524
Deadline for Submission of Questions	August 9, 2023 by 5:00 PM EST
Deadline for ESD to Respond to Questions	August 16, 2023
Deadline for Submission	August 23, 2023 by 2:00 PM EST
Interview If necessary	TBD
Announcement of Successful Bidders	TBD

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

III. SITE DESCRIPTION

I. Site Summary

Downstate Correctional Facility (Downstate CF or the Site) is a former maximum-security prison campus located at 121 Red Schoolhouse Road, Fishkill, NY 12524. The Site opened in June 1979 and served as one of the Department of Corrections and Community Supervision (DOCCS)'s four receiving and classification centers. Newly incarcerated individuals were typically housed at the Site for a few weeks before being assigned to a permanent facility.

Operations at the Downstate Correctional Facility ceased, and the facility was vacated in March 2022. At that time, decommissioning of the facility was initiated. The objective of the decommissioning was to take the necessary action to preserve the buildings and associated systems and infrastructure in a systematic manner that minimizes the degradation of the buildings and facility systems due to inactivity and exposure to the elements.

The maximum-security Site covers approximately 70 acres of land, 45 of which are within the perimeter security and 25 of which are outside. The perimeter security is composed of an earthen berm surrounding the entire facility and two rows of fencing topped with razor ribbon.

There are 37 buildings on the property, totaling approximately 558,000 square feet. The Site is improved with four nearly identical and symmetrical housing structures (core buildings) that are connected by tunnels to a central reception and commons structure (reception center). The core buildings are composed of single-occupancy cells with a collective capacity for approximately 1,200 incarcerated individuals; each core building also has a small library. The reception center houses the kitchen and cafeteria, medical offices, chapel, and commissary among other services. Other structures on the Site include guard stations, storage sheds, and mechanical rooms.

Most buildings, including the core buildings and reception center, were built in 1979 – the same year the prison opened and was first occupied. Some guard stations, storage sheds, and mechanical rooms were built over the next few decades, through 2003.

2. Site Context

The Town of Fishkill is located in the southwest part of Dutchess County and surrounds the City of Beacon. As of the 2020 Census, the Town of Fishkill had a population of approximately 24,500 residents. Fishkill is home to Dutchess Stadium, located approximately 0.6 miles north of the Site across Interstate 84 (I-84). The Town of Fishkill is also home to a 3.2 million square foot distribution center operated by Gap, Inc. More than 1,500 New Yorkers are employed in full-time and seasonal positions at the facility.

The town has also seen a surge in technology/advanced manufacturing companies in recent years. GlobalFoundries, a multinational semiconductor manufacturing and design company, opened a facility in a former IBM office in East Fishkill in 2015. The facility was acquired by ON Semiconductor in 2023, retaining all employees and planning for further growth.

Beacon was a regional manufacturing hub with several brick and hat factories and printing facilities until it experienced a period of commercial decline in the 1960s. However, the city saw an artistic resurgence

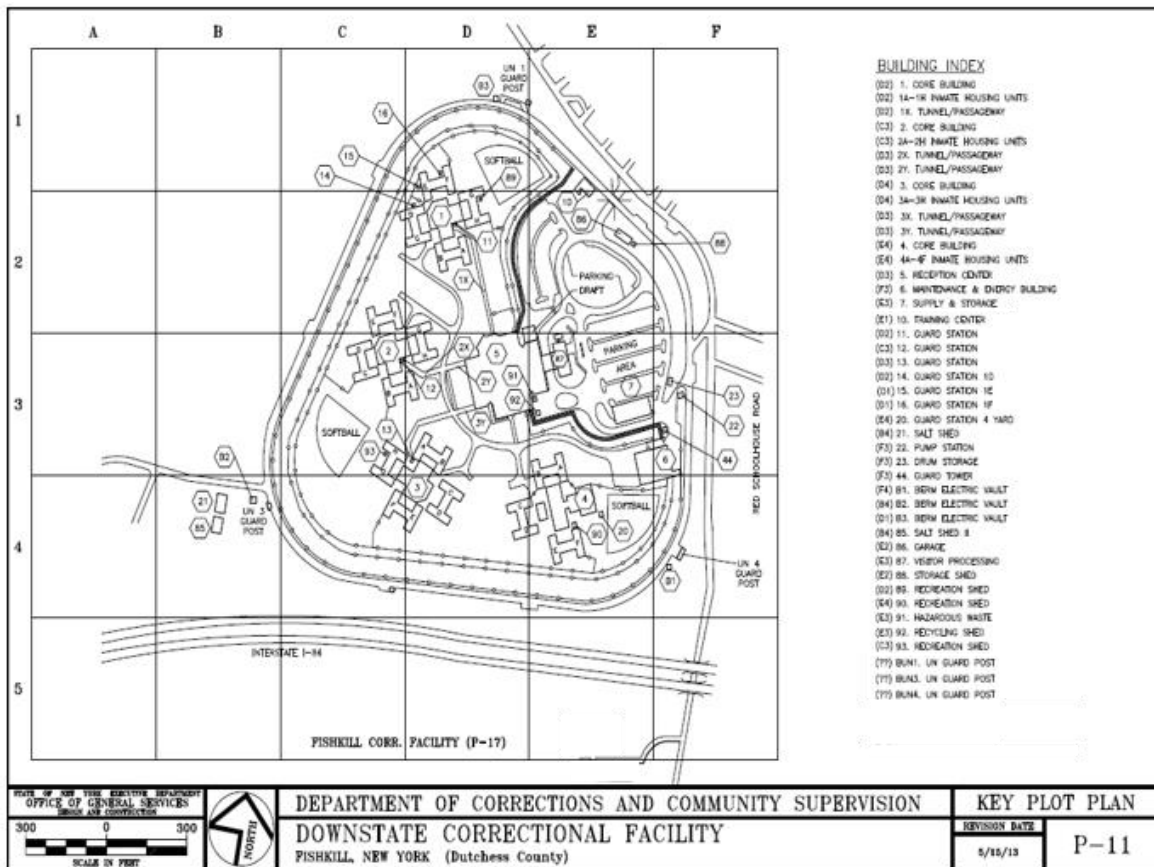
in the 1990s, followed by the opening of major cultural institutions like Dia Beacon. The city has also become a popular weekend destination, given its proximity to New York City and the Hudson Valley's outdoor recreation opportunities, including hiking trails.

2.A Land Use

The Site is located in a single-family residential zoning district (R-40). Red Schoolhouse Road is lined with single-family residences, as is the adjacent Cherrywood Drive. The neighborhood is low-density with a substantial amount of undeveloped, wooded land. The Site may be eligible for a zoning variance, subject to the Town of Fishkill Zoning Board of Appeals (ZBA) process or a General Project Plan (GPP) could be considered to override local zoning. The Site is currently owned by the State and is exempt from property taxes but would be assessed by local jurisdictions if transferred to a private owner.

3. Existing Structures

The site is a former maximum-security prison on 70 acres with 37 buildings, totaling approximately 580,000 sq. ft. The buildings consist of housing units, administrative buildings, guard stations and storage facilities. The lay out is a dense network of buildings surrounded by three layers of external security with two rows of fencing topped with razor ribbon and a patrol road.



<i>Building #1: Core Bldg. Incarcerated Individuals Housing</i> <i>Building #1X: Tunnel Passageway</i> <i>Building #2: Core Bldg. Incarcerated Individuals Housing</i> <i>Building # 2X: 2Y Tunnel Passageway</i> <i>Building # 3: Core Bldg. Incarcerated Individuals Housing</i> <i>Building # 3X: 3Y Tunnel Passageway</i> <i>Building # 4: Core Bldg. Incarcerated Individuals Housing</i> <i>Building # 5: Reception Center</i> <i>Building # 6: Maintenance and Energy Bldg.</i> <i>Building # 7: Supply and Storage</i> <i>Building # 10: Training Center</i> <i>Building # 11: Guard Station</i> <i>Building # 12: Guard Station</i> <i>Building # 13: Guard Station</i> <i>Building #14: Guard Station 1D</i>	<i>Building #15: Guard Station 1E</i> <i>Building #16: Guard Station 1F</i> <i>Building #20: Guard Station 4 Yard</i> <i>Building #21: Salt Shed</i> <i>Building #22: Pump Station</i> <i>Building #23: Drum Storage</i> <i>Building #44: Guard Tower</i> <i>Building #85: Salt Shed II</i> <i>Building #86: Garage</i> <i>Building #87: Visitor Process</i> <i>Building #88: Storage Shed</i> <i>Building #89: Rec. Shed</i> <i>Building #90: Rec. Shed</i> <i>Building #91: Hazardous Waste</i> <i>Building #92 Rec. Shed</i> <i>Building #93: Rec. Shed</i> <i>Building #B1: Berm Electric Vault</i> <i>Building # B2: Berm Electric Vault</i> <i>Building #B3 Berm Electric Vault</i> <i>Building #UN4: UN Guard Post</i> <i>Building #UN1: UN Guard Post</i> <i>Building #UN3: UN Guard Post</i>
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3.A Site Infrastructure

Site utility services and systems include electrical, mechanical and infrastructure systems, including water distribution and fire hydrant piping, sanitary sewer collection system, stormwater collection system, exterior building, and street lighting, electrical and communication circuits through a network of underground conduits and manholes, and pad mounted high voltage switches and transformers.

- **Water Distribution System:** Water is provided by the City of Beacon (Beacon) via Fishkill CF. The water is delivered from Fishkill CF’s elevated storage tank to the Downstate CF Powerhouse (Building #6) via 10-inch ductile iron pipe. From Building 6, water is distributed throughout the facility via a system of underground piping. As part of the decommissioning process, the water system was drained and the supply line physically disconnected (i.e., air gapped). The Designated Developer will need to work with the City of Beacon for access. If the water system is to be utilized in its current configuration, a shared services agreement with DOCCS may be required to restore water service.

- **Sanitary Sewer System:** The Site is served by underground sanitary sewer piping and manholes throughout the property. All sewage is directed to the facility sewer pump station located near Building 7, a supply and storage building. It is then pumped to the Fishkill CF and delivered via gravity to Beacon. As part of the commissioning of the sanitary system, pumps within the forced main will be removed. If the water sanitary system is to be utilized in its current configuration, a shared services agreement with DOCCS may be required to restore sanitary system service in its current configuration.

- **Electrical Distribution:** Electric service for the Site is provided by Central Hudson. Power is distributed through underground conduits and duct banks. Power first goes to Building 6, the powerhouse, where the utility meter is located. It is then distributed at 13.2 kV (3-phase) to the main disconnect switch inside each of the core buildings, where the secondary voltage of 208 is converted by dry type transformers.

As part of the decommissioning process, the account with Central Hudson was closed and power disconnected at the point of intersection with the utility.

3.B Transportation Access

The Site is located on Red Schoolhouse Road, which spans between New York State Route 9D and New York State Route 52 (Fishkill Avenue). In addition, the Site is only two miles from Interstate 84 which connects the Site to other major highways and destinations. The Site parking lot has spaces for roughly 400 cars.

The Site also has strong access to public transportation via rail -- it is located four miles northeast of Beacon and 14 miles south of the City of Poughkeepsie (Poughkeepsie), both of which are serviced by the Metro-North Railroad's Hudson line. Poughkeepsie's train station is also serviced by Amtrak's Empire Service line, which runs between New York City (NYC) and Niagara Falls.

The Site is across the river from the City of Newburgh (Newburgh), which is served by New York Stewart International Airport.

4. State Historic Preservation

An archeological buffer is present on the site. Consultation with the State Historic Preservation Office will take place as part of the SEQRA review for the project.

5. Ownership and Taxes



The buildings highlighted in yellow on the above map are owned by ESD and the remaining buildings are owned by the State of New York under DOCCS jurisdiction. The entirety of the Site is currently exempt from property taxes. The two highlighted buildings are subject to a lease from ESD to the People of the State of New York acting through the Office of General Services (“OGS”) and a sublease to DOCCS. The remaining buildings are owned by the People of the State of New York acting through OGS and

subleased to DOCCS. All leases and subleases would be terminated in connection with the disposition of the Site to a Designated Developer.

Bidders are encouraged to contact the local assessor's office to obtain information regarding future property tax charges specific to their proposal.

5. Economic Development Incentives

Independent of this RFP, Designated Developers may apply for up to \$8 million in grant funds. If awarded, the grant funds would be available for eligible capital costs related to the redevelopment of the site. Eligible costs include: acquisition of machinery and/or equipment; demolition and environmental remediation; new construction, renovation, or leasehold improvements; acquisition of furniture and fixtures; and planning and feasibility studies related to a specific capital project or site. The application for a grant] can submitted through the Mid-Hudson Regional Office. There is no assurance that the Designated Developer will be awarded grant funds since the process and criteria for the award of grants funds are separate from and independent of the terms of this RFP. Please see **APPENDIX** for eligible expenses and details.

Additional incentives may be available for qualified projects, including the [Mid-Hudson Momentum Fund](#) and Upstate Revitalization Initiative.

IV. DEVELOPMENT OBJECTIVES AND REQUIREMENTS

The primary development objectives for the Project are to maximize benefits to the surrounding community and generate the highest economic return for the State. These benefits may include housing, commercial activity, and job creation. When proposing mixed use development with contextual multifamily housing serving a range of income levels, market rate units should cross subsidize affordable housing units.

ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals for any reason or for no reason, and to proceed (or not proceed) with the development of the Site (either by itself or in conjunction with one or more third-party(ies) without completing this RFP process.

In evaluating the capabilities of each Respondent, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP.

Proposals should be no longer than 50 pages of text.

A. Transaction Structure and Certain Costs

Every Proposal must provide a proposed set of terms in accordance with section B.3 below for the acquisition of the entire Site (inclusive of land and improvements), which will be subject to a declaration regarding conformance to an ESD General Project Plan (“GPP”) detailing the agreed development of the Site, if applicable. It is intended that the Site will be conveyed to the Designated Developer at closing, and that the Designated Developer will hold title during development of the Site.

The Designated Developer will be required to enter into a Development Agreement that provides the terms of any phasing of the Project and agreements to develop the Site in compliance with the proposed development plan.

Although ESD is requesting Proposals for sale, ESD reserves the right to request revised proposals that reflect a lease of the land only, or a sale or lease of all or a portion of the improvements, or a combination thereof. ESD reserves the right to make such requests to all Respondents or to a subset of all Respondents as set forth in Section V Selection Criteria. The determination of whether ESD will elect to dispose of the Site by sale, lease, or a combination thereof will depend on the offers received, ESD’s obligations to comply with Federal tax rules applicable to tax-exempt bond financing, and ESD’s assessment of the best interests of the State. Any such Respondents still under consideration shall be given the opportunity to revise their Proposals and any related provisions of the RFP will be amended or deemed amended as necessary.

As noted below in this RFP’s **Section VIII, “Disposition Process,”** in order to implement the Project and transfer the Site, ESD, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements such as the: (i) State Environmental Quality Review Act and its implementing regulations (“SEQRA”); (ii) State Historic Preservation Act; (iii) State’s Coastal Zone Management Policies; (iv) Public Authorities Law; (v) State Finance Law; and (vi) New York State Urban Development Corporation Act (the “UDC Act”). Such compliance must be completed before disposition of the Site to the Designated Developer. Please also note that Section VIII of this RFP requires that the Designated Developer enter into agreements with ESD and the State that, commencing from the date of its conditional designation, will require the Designated Developer of a proposal under Section IV. B.2. 1) above, to pay:

1. A 10% security deposit against the purchase price;
2. ESD’s out-of-pocket costs and expenses incurred in connection with the Project and the disposition to the Designated Developer of the Site, including, without limitation, costs and expenses of ESD and OGS’s third party consultants and legal counsel.

At closing, the Designated Developer of a proposal under Section IV. B.2. 1) above, will be required to pay the balance of the purchase price to ESD in addition to an ESD administrative fee of an amount equal to 6.5% of the purchase price.

Respondent’s offer for the Site should assume that the Site, including any and all improvements, infrastructure, and equipment at the Site, will be sold “AS IS” and “WHERE IS” without any representation, warranty, or guaranty as to quantity, quality, title, character,

condition, size, or kind or that the same is in condition or fit to be used for the Designated Developer's purpose.

B. Required Elements of the Proposal

1. Respondent Description

Each Respondent submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which is described in **Section X "Procurement Forms and Requirements" and included in this RFP.**

Each Proposal must include a description of the Respondent owner or the development team, including:

The intended form and structure of the owner and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner showing:

- Structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email of each member of the Respondent owner or development team. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the owner.
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five (5) years.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
- Evidence of Designated Developer's commitment to pay, from the date of its conditional designation: (i) the security deposit; and (ii) ESD's out-of-pocket costs and expenses incurred in connection with the Project and the disposition to the Designated Developer of the Site, including, without limitation, costs and expenses of consultants and legal counsel.
- Evidence of Designated Developer's commitment to pay the full purchase price for the Site (including 10% at designation and

balance at closing, if a purchase transaction) as well as an ESD administrative fee in amount equal to 6.5% of the Site purchase price (at closing).

- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.
- Disclosure of any existing or contemplated relationship with any other person or entity, including relationships with any parent, subsidiary or affiliated firm, which would constitute an actual or potential conflict of interest in connection with Respondents' Proposal or selection as the Designated Developer and completing the project. Respondents must also indicate how they will notify ESD if a conflict arises at any point after the submission of this Response, and how such a conflict would be resolved.

2. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and any plans/timing of phasing of the development. The description should address:

- The proposed use(s).
- Type, bulk and size of each component of the development program (gross and net square footages).
- Description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants.
- The description should address how this project will advance the objectives set forth in **Section V "Selection Criteria"** below if a purchase price is not being offered.

3. Purchase Price

Respondents may submit proposals in one of two ways:

- 1) Respondents may submit a proposal with no specific use requirements or 100% market rate housing. The proposal must include an all cash purchase price with a monetary value based on the highest and best use of the site. The purchase price will be increased in the event a higher value is shown an independent appraisal commissioned by ESD, up to the amount of that higher value.
- 2) Respondents alternatively may submit a proposal that meets the criteria laid out in the table set forth in **Section V "Selection Criteria"** below. If the Housing and Financial Benefits criteria is met and a minimum of 20% affordable units, cross subsidized by market rate housing is included in the proposal, the proposal does not require a purchase price.

4. Site Plan and Architectural Design

Each entity submitting a Proposal must provide the following:

- A summary of the proposed building program for the Project with square footages for each use.
- At a minimum, a set of concept sketches on 8.5" x 11" paper, showing the proposed Project and a set of schematic renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building strategies that help meet the carbon reduction goals of the New York State Climate Leadership and Community Protection Act ("Climate Act") and will be incorporated into the project during construction/renovation and operation of the improvements.
- A description of which Site buildings will be preserved, as well as any significant proposed building modifications or enhancements.

5. Development Timeframe

Respondent must submit a development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; demolition as needed; commencement and completion of construction; potential tenants; and operational stabilization for each component of the development program. Any contingencies that may affect this timeline should be identified.

6. Mechanicals, Equipment, Infrastructure

Respondent shall provide an overview of how the principal spaces, systems and building elements existing at the Site would be modified or re-used or demolished. Proposal should outline all necessary development, including modifications from current "as-is" condition, and include an estimated schedule, budget, and funding sources.

7. Flood Zones

Proposals should identify any flood zone and note how Respondent will meet Federal Emergency Management Agency guidelines as necessary.

8. Team Member Qualifications

Proposals should include a list of and background information for all key members of the development team, including:

- Identification and qualifications of each member of the development team, including all persons or entities that will design, develop, or operate the Project, as well as the attorney, engineer, general contractor and other professionals, as appropriate, including leasing and management, who will be involved with this Project.

- A description of similar projects undertaken by the members of the Respondent’s team.
- A summary of the availability of each of the principal members of each firm and their availability for commitment to the Project.
- Documentation addressing whether any participating team members have been involved in litigation or legal dispute regarding a real estate venture during the past five years.
- Background information of the owner, including resumes describing the relevant experience of all principal members. This information must be submitted for every participant in a joint venture and should highlight similar projects (including a project description and approximate dollar value for each).

V. SELECTION CRITERIA

ESD invites Respondents to submit Proposals that maximize the economic benefit to the Town of Fishkill, City of Beacon, Dutchess County and the State through high-quality reuse and redevelopment of the Site.

ESD shall establish a selection committee to evaluate Proposals. When reviewing Proposals using the alternative in Section IV 3.B. 2) above, the selection committee will consider the following criteria and assign point values to each such Proposal based on their evaluation. The maximum number of points any such Proposal may receive is 100.

Proposals may be reviewed by ESD and other State officials.

Criteria		Achievable Points
Housing and Financial Benefits	<p>Housing: Creation and construction of housing in a mix of unit sizes and affordability ranges, without use of housing subsidies. More points will be awarded to proposals with greater amounts of affordable housing units, with the maximum points awarded to proposals that include a minimum of 20% affordable units subsidized by market rate housing.</p> <ul style="list-style-type: none"> • Market rate housing • Housing that serves a diversity of income levels • Affordability of units in accordance with community needs¹, • Proportion, if any, of the project that is income-restricted, • Financial feasibility of project without use of housing subsidies. 	<p>5 points or less for proposals that include 100% market rate housing</p> <p>Up to 30 points for proposals that include a minimum of 20% affordable units subsidized by market rate housing</p>

¹ Please refer to Hudson Valley Pattern for Progress Report for an overview of the area’s needs: [Q1-The-Great-People-Shortage-5.10F.pdf \(pattern-for-progress.org\)](https://www.pattern-for-progress.org/Q1-The-Great-People-Shortage-5.10F.pdf)

Respondent Qualifications	<ul style="list-style-type: none"> • Experience, financial capabilities, and qualifications of the Respondent Team in developing, financing, leasing, operating, and managing projects of similar size and/or with similar combinations of uses • More points will be awarded to Respondents with experience with government owned sites. 	Up to 20 points
Financial Feasibility	<ul style="list-style-type: none"> • Respondent’s demonstrated financial condition to complete the Project; availability of identifiable funding sources to finance the Project; sufficient revenue to support operating revenues, scheduled payments related to capital costs, reserve fund contributors and debt service. 	Up to 15 points
Development Concept and Program	<ul style="list-style-type: none"> • Creativity and feasibility of the proposed development plan, building design, mix of uses, and conformity to the Development Objectives • Incorporation of sustainable building elements and operational practices • Other direct benefits to surrounding community, including but not limited to economic impact and job creation 	Up to 15 points
Alignment with regional economic development priorities	<ul style="list-style-type: none"> • Alignment with the Mid-Hudson Regional Economic Development Council’s Live-Work-Play strategy² 	Up to 10 points
Diversity Practices	<ul style="list-style-type: none"> • Diversity and commitment to equal opportunity programs. Respondents to the RFP will be evaluated for diversity practices using the attached Diversity Practices Questionnaire. (See Appendix B) 	Up to 10 points

Other Criteria:

- Schedule and Timing: Proven ability to complete the Project in a timely manner.

Prior to selecting the Designated Developer, ESD reserves the right to remove Respondents from competitive consideration at one or more points throughout the solicitation based on these criteria and/or a failure to achieve minimum satisfaction of the Selection Criteria. In order to remain in competitive consideration, Respondents are encouraged to present their most competitive Proposal terms at each stage of the solicitation.

² Mid-Hudson Regional Economic Development Council Strategic Plan:
https://regionalcouncils.ny.gov/sites/default/files/2022-08/2022_Mid-Hudson_Progress_Report.pdf

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 to Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of individual interviews or written questions. ESD shall convene a committee of staff who shall be permissible contacts for the purpose of such interviews and Respondents who are invited to interview will receive additional instructions about the interview format and any further requests for information.

Proposals may be reviewed by ESD and other State officials. The sale of the Site may be subject to various approvals, as required under applicable law and regulation, which may include approval of the ESD Directors, the Commissioner of General Services, the Public Authorities Control Board (“PACB”), the Comptroller of the State of New York, and the New York State Attorney General.

VI. DEVELOPER DUE DILIGENCE

“As Is, Where Is” Condition

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be sold or long-term leased “AS IS” and “WHERE IS” without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent’s purpose (e.g., conveyed by quitclaim).

ESD will post information regarding the RFP on the RFP website (<https://esd.ny.gov/doing-business-ny/requests-proposals>); Respondents are encouraged to check back for updates. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the prospective Respondents or to the Respondents. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this solicitation by sending an email to DownstateCFacilityRFP23@esd.ny.gov.

Respondents must rely on their own research and investigations for all matters, including, costs, title, survey, development, financing, construction, remediation, and renovation.

VII. SUBMISSIONS

Submission Rules

Respondents submitting documents are indicating their acceptance of the conditions in this RFP. Submission of Proposals in a manner other than as described in the below instructions (e.g., facsimile, hardcopies, emails) will not be accepted. When providing submissions, Respondents must comply with the following: Upload the main folder to the specific Dropbox:

<https://www.dropbox.com/request/7iol8opKx5KefyIWpWEL>

Proper format: Please create a folder with company name – RFQ title – date of Submission.

example: UNIVEX, Inc. – Downstate Correctional Facility RFP – 07.21.23

Included in that main folder should be two sub-folders, one for the Administrative Documents and one for the Technical Documents. The main folder should be uploaded to the Dropbox by choosing the following option: “Add Files → folders from computer”. All documents in the two sub-folders should be properly labeled.

RFP Inquiries

ESD will accept written questions via email from prospective Respondents regarding the RFP. Please email DownstateCFacilityRFP23@esd.ny.gov with questions prior to deadline.

Written questions must include the requestor’s name, e-mail address and the Respondent represented and should be received by **August 9, 2023**. Responses to all timely and appropriate questions will be posted on ESD’s website at: <https://esd.ny.gov/doing-business-ny/requests-proposals> and the [NYS Contract Reporter](#).

No contact related to this solicitation with ESD Board members, staff or consultants, other than emails to the designated email account for the solicitation, DownstateCFacilityRFP23@esd.ny.gov, will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any such contact by a Respondent or potential Respondent will be grounds for disqualification.

Site Tours

Potential Respondents may also attend a Site tour that is anticipated to be scheduled on or around **August 2, 2023 at 121 Red Schoolhouse Road, Fishkill, NY 12524**. Please RSVP to DownstateCFacilityRFP23@esd.ny.gov by **July 31, 2023 at 5:00 PM** if you plan on participating in the Site tour. ESD may choose to offer one or more additional tour(s) at its discretion.

ESD reserves the right to modify this RFP schedule at its discretion. Notification of changes in connection with this RFP will be made available to all interested parties via the [NYS Contract Reporter](#) and ESD’s website at: <https://esd.ny.gov/doing-business-ny/requests-proposals>.

VIII. DISPOSITION PROCESS

The following is a summary description of the disposition process. After a review of the Proposals, ESD intends to conditionally designate one of the Respondents as the Designated Developer. The Designated Developer will enter into a Memorandum of Understanding (“MOU”) with ESD regarding the disposition of the Site and the Project and separate agreements with ESD regarding payment by the Designated Developer of expenses as described at the end of this section. In implementing the Project, including the disposition process, ESD intends to undertake the following steps, however, additional steps in order to effectuate the disposition process and comply with all relevant law, regulations and/or approvals may be required:

1. conduct a SEQRA compliant environmental review of the Project
2. prepare, in accordance with the UDC Act and in consultation with the Designated Developer, if necessary, a proposed GPP for the Project reflective of the Designated

- Developer's Proposal, which will be expected to comply with all building, fire, and other applicable codes and regulations, as enforced by the State of New York;
3. assist OGS and DOCCS, as necessary, in obtaining any necessary consents and approvals;
 4. present to ESD Directors for adoption for purposes of a public hearing any requisite draft environmental review, any draft GPP, essential transaction contract terms, any required Public Authorities Law findings, any municipal law and regulation overrides, and any other applicable statutory or regulatory requirements;
 5. give prior notice of and conduct a public hearing in order to receive comments from the public on any proposed GPP and essential contract terms (including any requisite draft environmental review);
 6. review such public comments, and present to the ESD Directors for either affirmation or modification any proposed GPP as a final GPP or modified GPP and authorize the Project and the proposed transaction;
 7. present the Project to the PACB for review and approval, if required;
 8. in consultation with the Designated Developer, prepare and record in the State Register, a declaration for the Site (the "Declaration") regarding conformity of the Project, including, as may be applicable, overrides of municipal laws and regulations, permitted uses, bulk and height limits, and similar matters with any GPP; and
 9. obtain title to the State's interests in the site from OGS and deliver to the Designated Developer, at closing, a quitclaim deed for the Site that is subject to the Declaration.

This process may take up to twelve months from the commencement of the environmental review, however depending upon the complexity of the Project the duration of that process may vary.

Upon designation by ESD of a proposal under Section IV. B.2. 1) above, , the Designated Developer is expected to pay to ESD a security deposit in the amount equal to 10% of the purchase price.

The Designated Developer of a proposal under Section IV. B.2. 1) above, shall also pay all of ESD's out-of-pocket costs and expenses (including, without limitation, costs and expenses of consultants, legal counsel, and appraisers) related to the disposition of the Site and the Project. At the time of and as a pre-requisite to its designation, such Respondent and ESD shall enter into an agreement pursuant to which, among other things: (i) the Respondent shall deposit into an ESD imprest account funds (in an amount that shall be satisfactory to ESD) that shall be held by ESD and used by ESD for payment of such out-of-pocket costs and expenses; (ii) each time that the balance in the imprest account falls below 50% of the original amount required to be deposited into the account, the Respondent shall promptly make an additional payment into the ESD imprest account so that balance in the account shall be returned to such original amount; and (iii) the amount remaining in the imprest account after all such costs and expenses are paid will be returned to the Respondent.

In addition to the full purchase price for the Site less the security deposit, at closing, the Designated Developer of a proposal under Section IV. B.2. 1) above, shall pay to ESD an administrative fee in an amount equal to 6.5% of such purchase price, which shall be separate and apart from the purchase price.

IX. STATEMENT OF LIMITATIONS

1. This RFP, submissions from Respondents to this RFP, and any relationship between ESD and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the Respondent acknowledges and accepts ESD's rights as set forth in the RFP, including this Statement of Limitations.
2. 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.

3. 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.
4. ESD reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP responses, including late responses, in its planning efforts. ESD reserves the right to retain and use all the materials and information, and any ideas or suggestions therein, submitted in response to this RFP (collectively, the "Response Information") for any purpose. By submitting a Response, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.
5. This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for

efforts expended in preparing a response to the RFP. ESD will not be responsible for any costs incurred by Respondents related to preparing and submitting a response to this RFP, attending oral presentations, or for any other associated costs.

6. To the best of ESD's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of responses.

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.

X. PROCUREMENTS FORMS AND REQUIREMENTS

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

i. Conflicts of Interest

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

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

B. Disclosure of Potential Conflicts: Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

Disclosure of Ethics Investigations: Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, “Commission”), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed above; the completion by Bidders of the 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.

Bidders 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.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make a determination of the responsibility of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not

be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

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

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

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

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

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

iv. Iran Divestment Act

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

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

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <https://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf>

v. Executive Order 16

In accordance with New York State Executive Order 16 ("EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

"By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16."

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

vi. 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.

vii. Non-Discrimination and Contractor & Supplier Diversity Requirements

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

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

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

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

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

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

- 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.

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

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

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

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

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

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

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

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

Contract Goals

- A. ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

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.

- D. 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.

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.

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

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

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

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

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

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

ix. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA

(http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit

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

x. Schedule A

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

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

xi. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

xii. 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.

xiii. W-9 Form

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