



NEW YORK
STATE OF
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Empire State
Development

New York
Convention Center
Development
Corporation

REQUEST FOR PROPOSALS

JACOB K. JAVITS CONVENTION CENTER
SITE K - 418 11TH AVENUE
MANHATTAN, NEW YORK



RFP RELEASE DATE:	MARCH 4, 2021
SITE TOUR AND INFORMATION SESSION:	WEEK OF MARCH 15, 2021
DEADLINE TO SUBMIT QUESTIONS:	MARCH 26, 2021 BY 5:00 PM EST
DEADLINE TO SUBMIT PROPOSALS:	MAY 6, 2021 BY 2:00 PM EST

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I. INTRODUCTION

New York State Urban Development Corporation d/b/a Empire State Development, a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation (“ESD”), on behalf of its subsidiary, New York Convention Center Development Corporation (“CCDC”), is seeking proposals (“Proposals”) from qualified parties for the commercial or mixed-use development of 418 11th Avenue in the City of New York (the “Project”). The Project offers an opportunity to develop one of the last remaining vacant parcels on the West Side of Midtown Manhattan.

The subject property comprises Block 707, Lots 1, 13 and 56 and is approximately 1.2 acres (the “Site”). It is located on 11th Avenue directly east of the main entrance to the Jacob Javits Convention Center (“Javits Center”) and is in direct proximity to the High Line, Hudson Yards, and Hudson River Park and waterfront. The Site has been referred to in prior materials as “Site K” or “35/36.”

The Site is owned by CCDC, which was authorized to develop and construct the Javits Center and is currently overseeing its expansion. New York Convention Center Operating Corporation (“CCOC” or “Operating Corporation”) is a separate and independent New York State public benefit corporation authorized to operate and maintain the Javits Center. CCDC owns the Javits Center property, including the Site that is the subject of this RFP, and leases the Javits Center to CCOC. CCDC and CCOC have separately appointed Boards of Directors.

Each party that submits a 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.”

II. RFP TIMELINE & NOTICE

The following are significant dates in this RFP process:

<u>Event</u>	<u>Timeline</u>
1. RFP Release Date	March 4, 2021
2. Site Visit and Information Session	Week of March 15, 2021
3. Deadline for Submission of Questions	March 26, 2021 by 5:00 PM EST
4. Deadline to Respond to Questions	April 9, 2021
5. Submission of Proposals	May 6, 2021 by 2:00 PM EST
6. Respondent Interviews	TBD

IMPORTANT NOTICE: *A restricted period under the Procurement Lobbying Law is currently in effect for this procurement (“Procurement”) and will remain in effect until the selection of a Designated Developer. Respondents are prohibited from contact related to this Procurement with any New York State employee other than the designated contact listed below and those specified as such during the course of the Procurement (“Designated Contact(s)”), or anyone specifically exempt from the law. Please see <https://ogs.ny.gov/acpl> for more information.*

Designated Contact for the Procurement: John Discolo

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

III. SITE DESCRIPTION & CONTEXT

A. Location & Description

The Site (see Figure 1) is approximately 1.2 acres (or approximately 52,363 square feet), bounded by 35th and 36th Streets, and 11th Avenue and Hudson Boulevard West, in Manhattan, New York City. Located directly across 11th Avenue from the Javits Center and one block from the High Line, the #7 subway line, and Hudson Yards, the Site is located in a neighborhood that has benefited from extraordinary public and private investment over the last decade.

The Site includes an above-ground MTA Ventilation Shaft & Mechanical Building (“MTA Ventilation Shaft”) serving the #7 subway line (see Figure 2), a ventilation shaft serving the Javits Center (“Javits Ventilation Shaft”), and an active below-grade train track owned by Amtrak. These infrastructure components must remain on the Site under permanent easements (described in **Section III. C: Easements and Infrastructure**), and the Project must accommodate these existing structures and maintain minimum clearance on all sides.



Figure 1: Context Map



Figure 2: View of Site looking northeast from the intersection of 35th Street and 11th Avenue, including MTA Ventilation Shaft

B. Zoning, Allowable Uses & Building Code

The Site is subject to the 2005 Special Hudson Yards District Zoning (“Hudson Yards Zoning”), with the exception of those components that are overridden in the 2006 Jacob K. Javits Convention Center Expansion and Renovation Civic Project and Land Use Improvement Project (“Javits Center GPP”) (see Appendix B). It is anticipated that ESD will modify the Javits Center GPP as necessary to effectuate the Project. Proposals should not exceed a 24 Floor Area Ratio (“FAR”) equivalent. Mixed-use Proposals may propose residential use up to a 12 FAR equivalent.

Respondents may propose a commercial or mixed-use development. Hotel uses that are complementary to the Javits Center are encouraged but not required. Manhattan Community Board 4 (“CB4”) has expressed a preference for residential use at the Site, although this is not a requirement of the RFP. For informational purposes, CB4’s Affordable Housing Plan can be found here: <https://cbmanhattan.cityofnewyork.us/cb4/wp-content/uploads/sites/10/2021/01/29-HHHS-Updates-to-MCB4-Affordable-Housing-Plan-01.04.21.pdf>.

Proposals including residential use must include 30% affordable units affordable to households earning an average of 80% of Area Median Income (“AMI”), with no households earning more than 130% AMI. Affordable proposals should be in compliance with *Affordable New York*, and all affordable housing units must be located on site and be permanently affordable. The Designated Developer will be required to enter into a regulatory agreement with New York State Homes and Community Renewal (HCR) governing the terms of the affordable housing. The Designated Developer will not be eligible for direct government subsidy, including tax-exempt bonds and 4% tax credits.

Any development on the Site will be subject to the New York City Construction Codes, including the General Administrative Provisions, Building Code, Plumbing Code, Mechanical Code,

Fuel Gas Code, and Energy Conservation Code.

C. Easements and Infrastructure

Principle easements affecting the Site include:

- An easement held by the City of New York (“the City”) providing for the MTA Ventilation Shaft constructed as part of the extension of the #7 subway line. This easement is permanent but does not preclude development around and above the MTA Ventilation Shaft, as long as development complies with the easement and is approved by the MTA. The Designated Developer will be expected to liaise with the MTA’s External Partners Program as building design progresses.
- An easement held by Amtrak for access to its active train track and adjacent construction right-of-way. This easement is permanent but does not preclude development around and above the track, as long as development maintains minimum clearance compliant with the easement and construction plans are approved by Amtrak.
- An easement to be retained by CCDC for the Javits Ventilation Shaft. Javits is ventilated through a below-grade tunnel that runs under 11th Avenue and surfaces on the north side of the Site to the east of the MTA Ventilation Shaft. The Designated Developer will need to integrate an extension of the Javits Ventilation Shaft into their project design, ensuring that it continues to function without interruption.

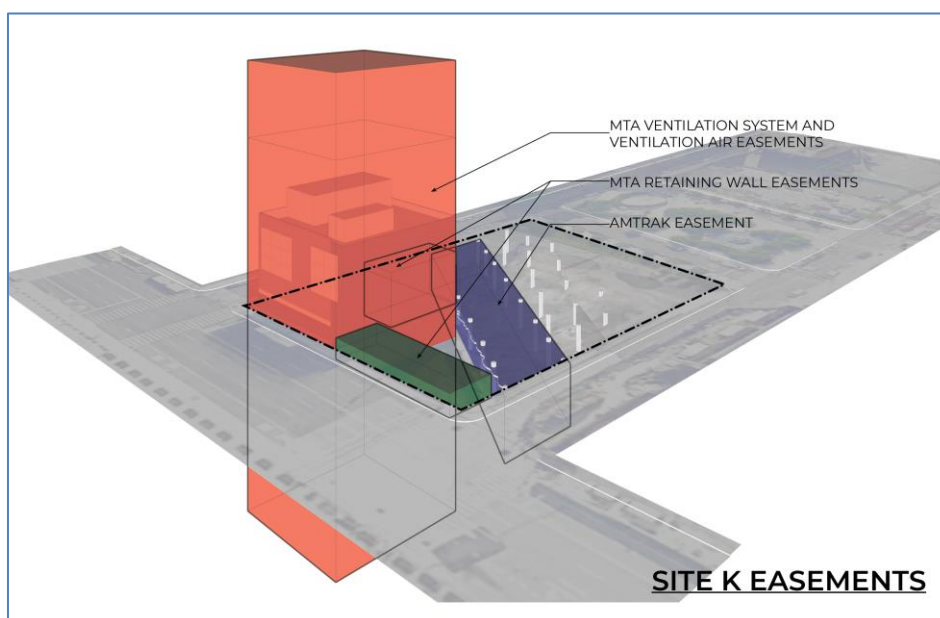


Figure 3: Site K Easements

Figure 3 illustrates the three easements described above. Depictions are for conceptual illustrative purposes only. ESD and/or CCDC do not warrant, represent or guaranty the accuracy, utility or completeness of any depictions. Per **Section VII** of this RFP, Respondents must rely on their own independent research and investigation for all matters, including but, not limited to, easements. Additional historic easements may exist on the Site, and ESD makes no warranties or representations about the totality of encumbrances that may exist with respect to the Site. Respondents are advised to conduct their own due diligence regarding site conditions. To review additional known easement documents, see Appendix C. This list may not include all encumbrances affecting the Site.

D. Ownership, PILOT & Other Payments

The Site includes three contiguous tax parcels: Block 707, Lot 1 (49,375 square feet), Block 707, Lot 13 (945 square feet) and Block 707, Lot 56 (2,043 square feet). The Site is owned by CCDC, a New York State entity, and therefore is exempt from taxes, but the Designated Developer will make payments in lieu of taxes (“PILOT”). Proposals should include estimated calculations of PILOT that reflect an amount equal to what the New York City Department of Finance (“DOF”) would assess as market rate real estate taxes. The Designated Developer will also make payments in lieu of sales tax (“PILOST”) and payments in lieu of mortgage recording tax (“PILOMRT”) in an amount that would ordinarily be due under private ownership. The Designated Developer may be subject to an assessment by the local Business Improvement District, the *Hudson Yards Hell’s Kitchen Alliance*. During the term of the long-term lease, the Designated Developer will have the right to encumber its interest in the property by mortgage for the sole purpose of securing construction and/or permanent financing solely for the Site. The Designated Developer will not have the right to encumber the fee simple absolute title of CCDC’s remainder or residual interest in the improvements during the long-term lease.

The Designated Developer may propose abatements to PILOT that are comparable to tax incentive programs under which the Project would be eligible if the Site were subject to New York City property taxes, and ESD and CCDC will consider such abatements at their sole discretion. For details of the City’s tax exemption programs, Respondents should consult relevant statutes and rules. Proposals should indicate under which tax exemption program(s), if any, Respondent believes the Project would be eligible.

E. Environmental Conditions and Review Process

Pursuant to New York’s State Environmental Quality Review Act (“SEQRA”), an environmental review of the Site and the Project must be conducted in order to approve the disposition of the Site and the Proposal. Depending upon the Proposal, an Environmental Assessment or Impact Statement may be necessary under SEQRA in order to assess the impact of the Project on the environment. Depending on the outcome of the environmental review, a mitigation plan which reduces certain anticipated environmental impacts may be required. For more information on environmental reviews and the disposition process, see **Section VIII: Disposition Process**.

The Site has the potential for petroleum-based contamination, and therefore will require additional sub-surface investigation and a Health and Safety Plan as part of the Site's redevelopment. These requirements will be set forth in the Site's Construction Environmental Protection Program, a mitigation requirement identified in the Hudson Yards Final Generic Environmental Impact Statement ("FGEIS").

Prior environmental reviews have been performed for proposed developments adjacent to or on the Site. To review such reports, refer to Appendix A. Respondents are responsible for independently confirming the most up-to-date information on environmental and zoning matters.

F. Utilities

All utilities on the Site have been disconnected and thus connections will need to be re-established by the Designated Developer. The Designated Developer will be responsible for connecting to any electric, gas, water, steam and telecom networks. To review a 2017 survey of the Site ("Survey"), refer to Appendix D. Note that the survey pre-dates the transfer of Block 707, Lot 13 and Block 707, Lot 56 to CCDC. ESD makes no warranties or representations about the accuracy of the survey. Respondents are advised to conduct their own due diligence regarding site conditions.

G. Transportation Access

The Site is readily accessible to multiple modes of transportation, including the #7 subway line. The Site is proximate to the Lincoln Tunnel and the West Side Highway and is a short walk from Penn Station and the Port Authority Bus Terminal. The Site is also a short walk from the NY Waterway Ferries at Pier 79 and the West 30th Street Heliport (see Figure 4).

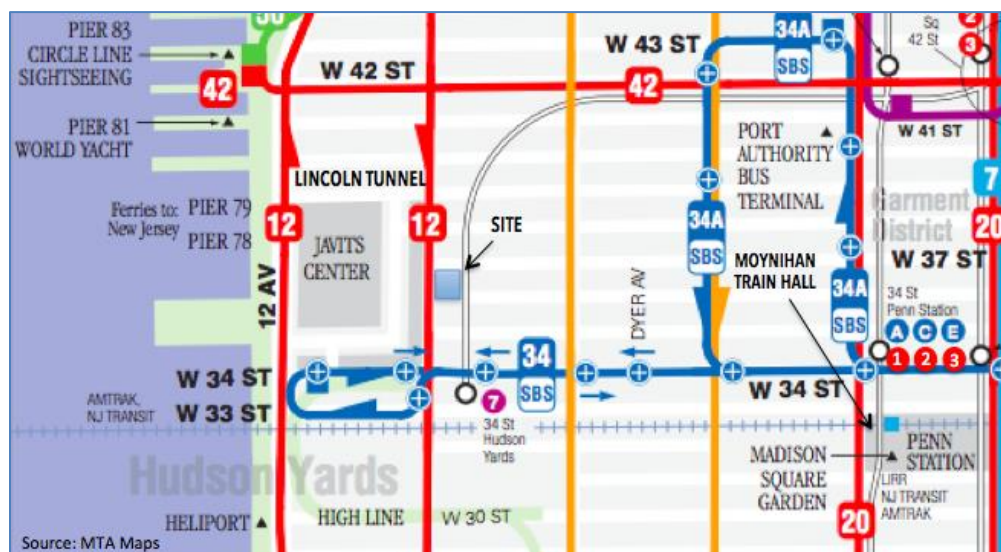


Figure 4 - Transit Proximate to the Site

H. Open and Public Spaces

The Site is within walking distance of four parks: The High Line, Hudson River Park, the Hudson Park & Boulevard, and the Public Square and Gardens at Hudson Yards. Together, these parks create a network of green spaces from West 14th Street to West 42nd Street, with the Site and Hudson Yards at its center (see Figure 5). In designing the Project, Respondents should be mindful of the Site's connection to and interface with Hudson Park directly to the east.



Figure 5 - Open Space near the Site

IV. DEVELOPMENT REQUIREMENTS

A. Development Objectives

The primary development objectives of the Project are:

- To generate revenue for New York State through the disposition of the Site;
- To create economic opportunities in New York State;
- To create affordable housing opportunities if residential use is a component of the development;
- To generate development that will be attractive, contextual, and sustainable; and
- To ensure meaningful participation by Minority-Owned Business Enterprises ("MBE"), Women-Owned Business Enterprises ("WBE") and Service- Disabled Veteran-Owned Businesses ("SDVOB").

B. Transaction Structure

It is anticipated that the Site will be leased to the Designated Developer by CCDC under a long-term ground lease with a term of 99 years. Purchase options during or after any lease term at fair market value may be considered.

C. Cost Agreement & Administrative Fee

The Designated Developer will pay ESD and CCDC's (the "Public Parties") reasonable out-of-pocket costs and expenses ("Project Costs"), including without limitation costs for consultants and legal counsel, related to the Project. Further information about Project Costs are detailed in **Section V. B. iv: Cost Agreement & Imprest Account.**

In addition, the Designated Developer will be responsible for paying an ESD administrative fee of \$1 million at the time of financial closing.

V. REQUIRED PROPOSAL CONTENTS

In addition to the required forms described in **Section XI: Procurement Forms and Requirements**, each complete Proposal must contain the following elements:

A. Project Description

i. Project Program

Each Proposal should include a detailed narrative describing all relevant aspects of the Project program ("Project Description"). The Project Description should address:

- Proposed development program and uses, including the specific mix of affordable and market rate housing proposed, if applicable;
- A list of potential commercial, retail, and/or community center or nonprofit tenants and any letters of interest and/or intent from potential tenants; and
- Any zoning overrides of the New York City Zoning Resolution, beyond those specified in the 2006 Javits GPP, necessary to effectuate the Project.

ii. Site Plan and Architectural Design

Each Proposal must include:

- A summary of the proposed building program for the Project, with gross and net square footages and equivalent zoning floor area ("ZFA") for each use;
- At a minimum, a set of concept sketches of the proposed Project; a set of schematic renderings of the proposed Project showing the principle elevations and massing, floor plans, streetscape and landscape plans, entry features and signage; circulation diagrams; and illustrations of compliance with easements described in **Section III. C: Easements and Infrastructure;**

- A description of the proposed exterior materials and other relevant specifications;
- A description of sustainable features and green building practices that will be incorporated into the Project during construction and operation; and
- A description of how the Project complies with necessary easements described in **Section III. C: Easements and Infrastructure.**

iii. Community Benefits & Jobs

Respondents must list community benefits that will be included in the Project and provided to the surrounding communities, including but not limited to: economic impact, public uses, public and community amenities, and number of jobs created by the Project, including the estimated number of direct and indirect construction and permanent jobs.

iv. Community Outreach Plan

Respondents should include a detailed outreach strategy, including a timeline for engagement with applicable stakeholders.

B. Financial Proposal and Development Schedule

i. Financial Proposals

Respondents must submit a Financial Proposal that reflects a 99-year lease structure. A Financial Proposal must include two offers: a) a single upfront ground rent payment (“Upfront Ground Rent Offer”) for a term of 99 years, and b) a proposed schedule for annual ground rent payments for a term of 99 years (“Annual Ground Rent Offer”). As stated earlier, the Site will be subject to PILOT, PILOST and PILOMRT.

Respondents must provide a high-level term sheet outlining all key deal terms including rental terms, proposed rent abatements, escalations and periodic market resets.

ESD reserves the right to request revised Proposals that reflect a sale of the Site. ESD reserves the right to make such requests to all Respondents or to a subset of all Respondents as set forth in **Section VI: Selection Criteria**. Any Respondents still under consideration may be given the opportunity to revise their Proposals, and any related provisions of the RFP will be amended or deemed amended as necessary.

Respondent's Financial Proposal for the Site should assume that the Site, including any and all improvements, infrastructure and equipment at the Site, will be conveyed “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.

ii. Financing Summary and Project Pro Forma Statements

Proposals should include total Project costs, including all hard costs, soft costs, contingencies, and escalations.

Respondents must submit a 10-year pro-forma statement, provided in Excel and “live-linked,” including:

- Statement of assumptions on which all calculations are based;
- Sources and uses of funds;
- Construction budget, including any demolition costs;
- Operational budgets, including contributions to capital reserve;
- Detailed description of proposed equity investment and construction and permanent financing, including a detailed breakdown of all sources of equity and terms, including required return for equity as well as interest rate and term for financing;
- Information regarding minimum financial returns sought and all necessary capital investments over time and reserves and debt service payments associated with all financings; and
- Letters of interest and/or intent from lenders and, if applicable, equity investors.

In addition, Respondents should include a brief summary that explains at a high level how Respondent would approach the financing of the Project, including reference to any expected abatements or tax credit program equivalents. If a Proposal is contingent on receiving financing or abatements, the Respondent should include proposed terms for such financing in its Proposal.

iii. Development Schedule

Respondents must submit a development timeline, identifying the estimated length of time to reach key milestones, including commencement and completion of design; financing; commencement and completion of construction; tenant lease-up; and operational stabilization for each component of the development program. Any contingencies that may affect this timeline should be identified.

iv. Cost Agreement & Imprest Account

Respondents must provide as part of their Proposals a signed letter agreement (the “Cost Letter” or “Cost Agreement”) in the form provided in Appendix F, pursuant to which Respondent will pay the Public Parties’ Project Costs, in the event that Respondent is selected as the Designated Developer. The signed Cost Agreement shall be accompanied by Respondent’s check in the amount of \$1,000,000 (“Cost Letter Check”) payable to “NYS Urban Development Corporation

d/b/a Empire State Development”. The Cost Letter Check will not be deposited initially. If the Respondent is selected as the Designated Developer to enter into negotiations with ESD and CCDC, the Cost Letter Check will be deposited into a dedicated ESD imprest account (“Imprest Account”). If the Respondent is not selected as the Designated Developer, the Cost Letter Check will be returned to the Respondent. ESD and CCDC will draw on the Imprest Account in order to pay costs related to the Project. The Cost Letter provides that the Designated Developer will replenish the Imprest Account to \$500,000 each time the balance of the Imprest Account is reduced to less than \$250,000.

C. Respondent Description & Experience

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 order to be considered a “Qualifying Organization,” a Respondent must demonstrate significant experience, expertise and capacity in:

- Developing and managing comparable projects in urban locations which incorporate all proposed uses;
- Investing equity in substantial ground-up real estate development projects;
- At least two (2) high-rise development projects in comparable urban locations in the last ten (10) years; and
- At least two (2) projects in the last seven (7) years for which the Respondent or Respondent Team members acted as a developer and/or principal operator of buildings incorporating all proposed uses.

ESD reserves the right to determine whether a Respondent satisfies these requirements. Entities that do not meet the above eligibility criteria (e.g., construction contractors, facility managers and operations, providers of design, engineering, surveying, and specialty construction or maintenance services; and/or lenders or other capital providers, legal or financial advisors, or other providers of professional services) may participate in a Proposal as part of a “Respondent Team” that includes a Qualifying Organization.

Each Proposal must also include a description of Respondent or Respondent Team members, including:

- The intended form and structure of Respondent Team and any proposed partnerships or joint ventures, including a chart/diagram showing percentages of ownership and investment

- Name, address, phone number and email of each member of Respondent Team, their Federal EIN numbers, and contact information for a primary contact person
- A description of Respondent or Respondent Team's experience in developing all proposed uses, which may include, as applicable:
 - Developing housing while acting as a principal developer and operator of mixed-use urban developments that incorporate affordable housing;
 - Developing office, retail, hotel, and/or community space as part of an urban development while acting as a principal developer and operator of the development;
 - Marketing commercial, retail, and residential spaces in urban developments, and if residential, incorporating affordable housing; and
 - Other experience that makes Respondent uniquely suited to plan and develop the Site
- A list of 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 the Project
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Project; if available, copies of the interim financial statement for each quarter since the last fiscal year for which audited statements are provided; any details that describe the financial strength of the Respondent, including but not limited to:
 - Details of any material events that may affect the entity's financial standing since the last annual or interim financial statements provide;
 - Details of any credit rating; and
 - Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency litigation in the last three fiscal years
- Summaries of any comparable projects completed by Respondent or members of Respondent Team, including for each project:
 - Name of Respondent Team member
 - Project name
 - Current status of project / completion date or anticipated completion date
 - Project description
 - Location
 - Total Development Cost
 - Reference (name, email, telephone number)
 - Relevance to RFP
- Documentation addressing whether Respondent or any member of Respondent Team has been involved in any litigation or legal dispute against the State or any agency,

department, authority or subdivision of the State or any litigation or legal dispute regarding a real estate venture during the past five (5) years

- Description of any prior RFPs for which Respondent or members of Respondent Team have been selected, but which have not resulted in a successfully developed project
- Any additional documentation or information evidencing the strength of Respondent or members of Respondent Team and their ability to complete the Project
- All forms identified in **Section XI: Procurement Forms and Requirements** of this RFP.

Please note the following entities and individuals are precluded from responding to this RFP and from participating as part of any Respondent Team, unless otherwise authorized by ESD:

- Any consultant firm that has provided professional services to ESD, CCDC or CCOC in connection with this Project;
- Any entity that is a parent, affiliate or subsidiary of any of the foregoing entities, or that is under common ownership, control or management with any of the foregoing entities; and
- Any employee or former employee of any of the foregoing entities that was involved with the Project while serving as an employee of such entity.

Notwithstanding the foregoing, if ESD determines in its sole discretion that there is no conflict, or that adequate safeguards are in place to prevent the conflict from occurring, or that all of the work provided by such firm, entity or, employee has been made publicly available, then ESD may provide written authorization that such firm, entity or employee may respond to the RFP or participate on a Respondent Team.

D. Diversity Practices (MWBE and SDVOB Participation)

ESD has determined that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (**Appendix E**).

Respondents will be expected to make good faith efforts to achieve a 30% MWBE contracting goal (15% for Minority-owned Business Enterprise (“MBE”) participation and 15% for Women-owned Business Enterprise (“WBE”) participation) and a 6% Service-Disabled Veteran-Owned Business (“SDVOB”) contracting goal on the Project, including certain subcomponents (e.g. construction, construction-related or professional services including design, engineering, and environmental review; and services related to financing and refinancing).

Respondents shall provide a detailed plan identifying how they would achieve the MWBE and SDVOB goals described above in their Proposal.

The Designated Developer will also be expected to submit an acceptable Utilization Plan as described in the **Section XI. F: Non-Discrimination and Diversity Requirements**.

Respondent or Respondent Team members identifying themselves as MWBEs must be listed in the directory of New York State-certified MWBEs¹ as of the deadline for submitting Proposals to this RFP. Respondents identifying themselves as SDVOBs must be listed in the directory of New York State-certified SDVOBs as of the deadline for submitting Proposals to this RFP.

VI. SELECTION CRITERIA

ESD shall establish an evaluation committee to evaluate Proposals. When evaluating Proposals, the following criteria (“Selection Criteria”), with the accompanying weightings, will be used to calculate an overall Proposal score.

Selection Criteria		Weighting
Financial Proposal and Development Schedule	<ul style="list-style-type: none"> Competitiveness of the proposed financial offer and financial terms, including competitiveness of the present value of the proposed Ground Rent Offer and the Annual Ground Rent Offer discounted at a discount rate of 6.25% Timeliness and feasibility of Development Schedule Financial feasibility of the Project 	40%
Project Program and Design and Community Benefits	<ul style="list-style-type: none"> Proposed development plan’s program of uses, site plan, project design (including attractiveness and buildability), and incorporation of sustainable building practices Benefits provided to the surrounding communities, including but not limited to economic impact, public uses, amenities and job creation 	25%
Respondent Experience and Execution	<ul style="list-style-type: none"> Experience, financial capabilities and qualifications of Respondent to develop, finance, operate and manage projects of similar size and nature Expediency of proposed construction commencement and completion 	30%

¹ Eligibility requirements for New York State-certified MWBEs are available at [https://esd.ny.gov/doing-business-ny/mwbe/mwbe-certification-eligibility-requirements#definition-of-a-minority-owned-business-enterprise-\(mbe\)](https://esd.ny.gov/doing-business-ny/mwbe/mwbe-certification-eligibility-requirements#definition-of-a-minority-owned-business-enterprise-(mbe)).

Selection Criteria		Weighting
Diversity Practices	<ul style="list-style-type: none"> Respondent's Diversity Practices based upon the contents of the Diversity Practices Questionnaire (Appendix E) 	5%

When responding to the Diversity Practices Questionnaire, Respondents should provide examples of committed levels of Minority- and Women-Owned Business Enterprises (“MWBE”) participation in previous projects (e.g. equity and investment partners, architects, consultants, contractors, etc). The strongest examples will be projects of similar size and scope that have included MWBE participation.

ESD reserves the right to conduct in-person interviews with or pose questions in writing to individual Respondents in order to clarify the content of Respondents’ Proposals and to ensure a full and complete understanding of each Proposal. ESD will undertake to pursue uniformity in questioning Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. Respondents who are invited for an interview will receive additional instructions upon their invitation.

ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or nonresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals, and to proceed (or not proceed) with the development of the Site without completing this RFP process.

In evaluating the capabilities of Respondents, ESD may use any and all information available, including information not provided by Respondents. Proposals should clearly and concisely state the unique capabilities, experience, and advantages of Respondent and demonstrate Respondent’s capability to satisfy the requirements and objectives set forth in this RFP. ESD further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

ESD anticipates that a single Respondent will be conditionally designated based upon the evaluation committee’s determination of the best Proposal, and as further described in **Section VIII: Disposition Process**.

VII. DEVELOPER DUE DILIGENCE

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be disposed of “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 Respondent’s purpose.

Information regarding the RFP will be posted on the ESD website (<https://esd.ny.gov/doing-business-ny/requests-proposals>). Respondents are encouraged to check for updates. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this RFP by sending an email to SiteKRFP@esd.ny.gov.

Respondents must rely solely on their own independent research and investigations for all matters, including, but not limited to: encumbrances, including easements; costs; including taxes; title; survey; development; financing; construction; and remediation. Respondents should not rely on the information provided in connection with this RFP. ESD and CCDC make no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to potential or actual Respondents.

VIII. DISPOSITION PROCESS

After a review of the Proposals, ESD intends to conditionally designate one or more of the Respondents as a Designated Developer. The Designated Developer will enter into a Term Sheet (“Term Sheet”) with ESD regarding the disposition of the Site and the Project.

In order to implement the Project and transfer the Site, ESD and CCDC, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements such as: (i) SEQRA and its implementing regulations; (ii) the New York State Historic Preservation Act; (iii) the New York State Coastal Zone Management Policies; (iv) New York State Public Authorities Law; (v) New York State Finance Law; (vi) the New York State Urban Development Corporation Act (the “UDC Act”); and all other applicable laws and regulations. Certain approvals and compliance will be required prior to disposition of the Site to the Designated Developer, and certain compliance under these and other regulations may be ongoing. ESD may also consult with or otherwise involve other State entities as necessary to review the Proposals and select the Designated Developer.

Specifically, ESD and CCDC intend to:

1. Conduct a SEQRA-compliant environmental review of the Project;
2. Concurrently prepare, in accordance with the UDC Act and in consultation with the Designated Developer, if necessary, a proposed Modification to the existing Javits GPP (“MGPP”) for the Project reflective of the Designated Developer’s Proposal and of the environmental review, which will be expected to comply with all building, fire, and other applicable codes and regulations;
3. Present to ESD and/or CCDC Directors for adoption for purposes of a public hearing any requisite draft environmental review, any draft MGPP, essential transaction contract terms, any required Public Authorities Law findings, any municipal law and regulation overrides, and any other applicable statutory or regulatory requirements;

4. Give prior notice of and conduct a public hearing in order to receive comments from the public on any proposed MGPP and essential contract terms (including any requisite draft environmental review);
5. Review such public comments, and prepare a final environmental review for Directors' acceptance;
6. Present to the ESD and/or CCDC Directors for either affirmation or modification any proposed MGPP as a final MGPP and authorize the Project and the proposed transaction;
7. Present the Project to the Public Authorities Control Board and Office of State Comptroller 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 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 MGPP; and
9. Deliver Site to the Designated Developer via long-term lease in accordance with final development documents among ESD and/or CCDC and Designated Developer.

IX. PROPOSAL SUBMISSION INSTRUCTIONS

A. Proposal Submission

Six (6) hard copies of the Proposal and one (1) electronic copy on a flash drive, identified as "Javits Site K RFP," must be received by ESD by **May 6, 2021, 2:00 PM EST** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Procurement Department (John F. Discolo)
Re: Javits Site K RFP

It is the responsibility of each Respondent to ensure timely submission of its Proposal. Proposals received after the scheduled date and time cannot be accepted.

Respondent accepts all provisions of this RFP by submitting a Proposal and is responsible for the accuracy of its submission.

ESD reserves the right, in their sole discretion, to withdraw or modify this RFP and to reject any Proposal as being non-responsive.

B. RFP Inquiries

ESD will accept written questions via email from prospective Respondents up to and no later than **March 26, 2021, 5:00 PM EST**. Please submit questions to: SiteKRFP@esd.ny.gov

Written questions must include the requestor's name, e-mail address and the prospective Respondent represented. Responses to all timely and appropriate questions will be posted on ESD's website on or about April 9, 2021 at: <https://esd.ny.gov/doing-business-ny/requests-proposals>.

If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, notification should be sent via email requesting clarification or modification. Should ESD find it necessary, an addendum or addenda to this RFP will be posted on the ESD website.

Other than emails to the designated email account for this RFP, which is SiteKRFP@esd.ny.gov, no contact related to this RFP with ESD or CCDC Directors, staff or consultants, or any other State governmental entity (except members of the State Legislature and their staff), is permitted by Respondents or employed representatives of Respondent Team during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

C. Site Visit and Information Session

Optional Site visit and information sessions hosted by ESD and CCDC will be scheduled for the week of March 15, 2021. Respondents are not required to attend. Respondents who wish to attend must RSVP to SiteKRFP@esd.ny.gov on or before March 10, 2021. When signing up to attend, please provide the name of the Respondent, and the name, title, telephone number and email address of all representatives who are attending. ESD reserves the right to limit the number of visitors on Site visits and to require such procedures as necessary to ensure the safety and security of visitors. ***No more than two people per Respondent Team may attend the Site tour.*** Due to uncertainty around social distancing protocols, tour sizes may be capped.

ESD reserves the right to modify this RFP schedule at their discretion. Notification of changes in connection with this RFP will be made available to all interested parties by e-mail and via ESD's website: <https://esd.ny.gov/doing-business-ny/requests-proposals>.

X. STATEMENT OF LIMITATIONS

The RFP submissions from Respondents, and any relationship between ESD and/or CCDC 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.

1. 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 entity acknowledges and accepts ESD and CCDC's rights as set forth in the RFP, including this Statement of Limitations.
2. The issuance of this RFP and the submission of a Proposal by any firm or the acceptance of such Proposal by ESD does not obligate ESD and/or CCDC in any

manner whatsoever with regard to development of the Site. ESD and/or CCDC shall only incur such obligations upon execution of a formal contract by ESD and/or CCDC and the Designated Developer.

3. ESD reserves the right to: (i) amend, modify, or withdraw this RFP; (ii) revise any requirements of this RFP; (iii) require supplemental statements or information from any Respondent; (iv) accept or reject any or all Proposals; (v) extend the deadline for submission of Proposals; (vi) negotiate or hold discussions with any Respondent and correct deficient Proposals that do not completely conform to the instructions contained herein; and (vii) cancel, in whole or part, this RFP, for any reason or for no reason. ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Proposals will be prepared at the sole cost and expense of each Respondent.
4. All information submitted to ESD in response to this RFP, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including but not limited to those that contain (1) trade secrets, (2) confidential information, (3) information that, if disclosed, would cause substantial injury to the competitive position of Respondent, or (4) critical infrastructure information. Respondents should identify portions of their Proposals and accompanying documents they believe fall under these exemptions by submitting their Proposals in both redacted and un-redacted form. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Along with the redacted version, Respondents may provide a detailed justification for the portions of their Proposal they believe fall into the exemptions discussed above. Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. The identified information will be reviewed, and a determination will be made as to whether the information is exempt from disclosure under FOIL. ESD's determination may be appealed pursuant to POL §89(5)(c). Please note that if Respondents do not submit a redacted version, their Proposals may be released in un-redacted form if requested under FOIL.
5. ESD and CCDC reserve the right, in their sole discretion, without liability, to utilize any or all Proposals, including late responses, in their planning efforts. ESD and CCDC reserve the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFP (collectively, the "Proposal Information") for any purpose. Each Respondent must grant an unconditional and perpetual license without charge to ESD and CCDC to use any copyright or other legally protected rights in and to the Proposal Information. By submitting a Proposal, each Respondent waives any and all claims against ESD or CCDC relating to the retention or use of the Proposal Information.

6. 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 Proposal. Neither ESD nor CCDC will be responsible for any costs incurred by Respondents related to preparing and submitting a Proposal in response to this RFP, attending oral presentations, or for any other associated costs.
7. To the best of ESD and CCDC's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of Proposals.
8. Should ESD determine that negotiations with a Designated Developer will not result in an executable contract, ESD may begin negotiations with a different Respondent without again requesting Proposals.

XI. PROCUREMENT FORMS AND REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Respondent's Proposal pursuant to **Section V: Required Proposal Contents** of this RFP, as well as information about ESD's procurement requirements ("Procurement Requirements").

Respondents must complete and submit the items listed below. Failure to submit any of the requirements below may result in the rejection of a Proposal.

A. Conflicts of Interest

Respondent must attest in its Proposal that it has read, understood and will comply with the following provisions and those found in the Conflicts of Interest Attestation attached as **Appendix G**. 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.

1. **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 or CCDC, 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 or CCDC 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.

2. **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 or CCDC 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.
3. **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 Joint 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.

B. 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, CCDC, 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 Designated Contact; the completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD website under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their Proposal. Copies of these forms are available at: [State Finance Law §§139-j and 139-k forms](#)

The Procurement Requirements also require ESD and CCDC staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this RFP. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

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 Respondents are solely responsible for full compliance with the Procurement Requirements. All members of a Respondent Team, including consultants, must complete the forms required above.

C. 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 their obligations under this RFP, and in addition must demonstrate that Respondent and Respondent Team principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD and CCDC. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD or CCDC and Respondent, if any, shall include clauses providing that Respondent remain “responsible” throughout the term of any contract, that ESD or CCDC may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD or CCDC 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. Respondents should include a copy of their Vend-Rep submission receipt or paper questionnaire in their Proposals.

To enroll in and use the Vend-Rep System, Respondents should consult the System Instructions available at www.osc.state.ny.us/vendrep. 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.

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) and execute accordingly pertaining to the company's trade industry. Per the Vend-Rep 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)."

D. Iran Divestment Act

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

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

<https://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/F.htm>.

E. Executive Order 177

In accordance with New York State Executive Order 177, all Respondents 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.

F. Non-Discrimination and Diversity Requirements

Business Participation Opportunities for Minority- and Women-Owned Business Enterprises ("MWBEs")

[New York State Executive Law Article 15-A](#) and [Parts 140-147 of Title 5 of the New York Codes, Rules and Regulations](#) require State agencies 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 State projects.

For this Project, ESD has established an overall goal of **30%** MWBE participation: **15%** for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and **15%** for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs) on the construction, construction-related services and services necessary to complete the redevelopment and disposition of the property. Respondents are encouraged to utilize an assortment of NYS-certified MWBEs, in order to maximize firms in each ethnic and gender category. The Designated Developer must document its good faith efforts to provide meaningful participation by MWBEs in the Project, including an explanation of any failure to meet the MWBE goals. The directory of NYS-certified MWBEs can be viewed at <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate the Designated Developer’s “good faith efforts,” refer to [5 NYCRR § 142.8](#).

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. For any contract where an MWBE performing a commercially useful function serves as a “supplier,” as identified in the commodity codes of their NYS MWBE certification profile, only sixty (60) percent of the total value of the contract will be counted towards the MWBE goal. For any contract where an MWBE performing a commercially useful function serves as a “broker,” as identified in the commodity codes of their NYS MWBE certification profile, only the monetary value for fees, or the markup percentage, charged by the MWBE will be counted towards the MWBE goal. Utilization credit may not be reported under any circumstances for work performed by an NYS-certified MWBE for which that MWBE is not coded to perform.

In accordance with [5 NYCRR § 142.13](#), Respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the General Project Plan and other conveyance documents resulting from this RFP, such finding constitutes a default, and ESD may impose liquidated damages.

By submitting a Proposal, Respondent agrees that if selected as the Designated Developer, it will 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 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.

MWBE opportunities must be sought at every level of contracting. Respondent must submit an MWBE Utilization Plan on Form OCSD-4 (see link below) as part of its Proposal, that at a minimum, identifies the certified consultants, real estate developers professional service providers and any other firms that have partnered with the Respondent by the time of response submission and/or will be utilized by the Respondent on this Development. ESD may disqualify Respondent as being non-responsive for failure to submit an MWBE Utilization Plan. By signing the MWBE Utilization Plan, Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, loss of eligibility to respond to future RFPs.

Once a Designated Developer is selected, any modifications or changes to an accepted MWBE Utilization Plan through Project completion must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval. ESD will review the revised MWBE Utilization Plan and advise the Designated Developer of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued, the Designated Developer 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 will notify the Designated Developer and direct it 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 default.

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

1. Respondent fails to submit an MWBE Utilization Plan;
2. Respondent fails to submit a written remedy to a notice of deficiency;
3. Respondent fails to submit a request for waiver; or
4. ESD determines that Respondent has failed to document good faith efforts.

If selected as the Designated Developer, the Respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan. Requests for a partial or total waiver of established goal requirements must be made prior to commencement of Project construction. The Designated Developer will be required to submit a monthly MWBE Contractor Compliance & Payment Report to ESD by the 10th day following the end of each month during the period of construction, documenting the progress made toward achievement of the MWBE goals. The Designated Developer may request a partial or total waiver of established goal requirements up until Project completion.

The above procedures for MWBE compliance may be modified depending on the nature of the eventual transaction.

Equal Employment Opportunity Requirements

By submitting a Proposal in response to this RFP, Respondent agrees with all of the terms and conditions in [SCHEDULE B - PARTICIPATION BY MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf) located online at <https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf>. 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 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 this Project; or (ii) employment outside New York State.

Respondent is required to submit a Minority- and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement (Form OCSD-1, see link below) to ESD with its Proposal.

If selected as Designated Developer, 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 until the Project is completed.

Pursuant to [Executive Order #162](#), the Designated Developer will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the Project, utilizing the Workforce Utilization Report, on a quarterly basis.

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

Required with Proposal:

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

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

Required if selected as the Designated Developer:

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-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%20-%20Contractor%20Compliance%20Payment%20Report.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.

The above procedures for MWBE compliance may be modified depending on the nature of the eventual transaction.

Business Participation Opportunities for Service-Disabled Veteran-Owned Businesses (SDVOBs)

[Article 17-B of the New York State Executive Law](#) provides for meaningful participation in State projects by New York State-certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), 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 projects.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in New York State, Respondents are expected to

consider SDVOBs in the completion of this Project. Such participation may be as contractors or suppliers, as protégés, or in other partnering or supporting roles.

For this Project, ESD has established an overall goal of **6%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, Respondent 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. If selected as the Designated Developer, Respondent 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 in the Project.

In accordance with [9 NYCRR § 252.2\(i\)](#), Respondent is required to submit a completed SDVOB Utilization Plan on Form OCSD-4 (see link above) as part of its Proposal. ESD may disqualify Respondent's Proposal as being non-responsive if Respondent fails to submit an SDVOB Utilization Plan. By submitting a Proposal, Respondent agrees that if selected as the Designated Developer, it will demonstrate good faith efforts to provide meaningful participation by SDVOBs in the Project.

The Utilization Plan shall list the SDVOBs that the Respondent intends to use on the Project, a description of the work that the Respondent intends the SDVOB to perform to complete the Project, and the estimated dollar amounts to be paid to an SDVOB or, if not known, an estimate of the percentage of total project cost the SDVOB will perform. By signing the Utilization Plan, Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, loss of eligibility to respond to future RFPs.

If selected as the Designated Developer, Respondent certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs in the Project pursuant to the prescribed SDVOB contract goals set forth above. Respondent further agrees that a failure to use SDVOBs as agreed in the Utilization Plan may constitute a default and result in penalties including, but not limited to, loss of eligibility to respond to future RFPs.

If Respondent is selected as the Designated Developer, it must report and submit any modifications or changes to its approved SDVOB Utilization Plan in a revised SDVOB Utilization Plan. ESD will review the revised SDVOB Utilization Plan and advise the Designated Developer of ESD acceptance or issue a notice of deficiency within twenty (20) days of receipt. If a notice of deficiency is issued, the Designated Developer agrees that it will respond to the notice of deficiency within seven (7) business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD will notify the Designated Developer and direct it to submit within five (5) business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on Form OCSD-5 (see above). Failure to file the waiver form in a timely manner may be grounds for default.

Prior to submission of a request for a partial or total waiver, the Designated Developer will speak to ESD for guidance. In accordance with [9 NYCRR § 252.2\(m\)](#), a Designated

Developer that is able to document good faith efforts to meet the goal requirements, as set forth below, may submit a request for a partial or total waiver on Form OCSD-5 (see above), accompanied by supporting documentation. If a request for waiver is submitted with the Designated Developer's SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of the clauses below will apply. If the documentation included with the Designated Developer's waiver request is complete, ESD will evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt. The Designated Developer may request a partial or total waiver of established goal requirements up until Project completion.

If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (Form OCSD-6, see link above), determines that the Designated Developer is failing or refusing to comply with the approved SDVOB goals and no waiver has been issued in regard to such non-compliance, ESD may issue a notice of deficiency. The Designated Developer must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals, which must be made in writing to ESD.

In accordance with [9 NYCRR § 252.2\(n\)](#), the Designated Developer must document its good faith efforts toward utilizing SDVOBs on the Project. 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 any solicitations by the Designated Developer or any entities with which it contracts or partners to work on this Project, was not selected;
3. Dates of any meetings attended by Designated Developer with NYS-certified SDVOBs that ESD determined were capable of fulfilling the SDVOB goals set in the approved Utilization Plan;
4. Information describing the specific steps undertaken to reasonably structure the Project's scope of work for the purpose of contracting with, or obtaining supplies from, NYS-certified SDVOBs; and
5. Any other documentation demonstrating good faith efforts to comply with established SDVOB goals.

In accordance with [9 NYCRR § 252.2\(q\)](#), the Designated Developer is required through Project completion to report Monthly SDVOB Contractor Compliance to ESD for the preceding month's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted directly on the [New York State Contract System](#) or via Form OCSD-6 (see link above), and should be completed by the Designated Developer and submitted to ESD at OCSD@esd.ny.gov by the 10th day of each month for the preceding month's activity, through Project completion.

In accordance with [9 NYCRR § 252.2\(s\)](#), any Designated Developer found to have willfully and intentionally failed to comply with the SDVOB participation goals may be in default and subject to damages as set forth therein.

G. Certification under State Tax Law Section 5-A

Any Project resulting from this RFP is subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD and CCDC from approving any contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Respondents to this RFP must include in their Proposals a properly completed Form ST-220-CA or an affidavit (“Affidavit”) that Respondent is not required to be registered with the State Department of Taxation and Finance.² Also in accordance with the requirements of STL 5-a, any Project resulting from this RFP will require periodic updating of the certifications contained in Form ST-220-CA. Proposals that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered. Only Respondent completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by Respondent and all sub-consultants.

H. Contractual Agreements

Following selection of a Designated Developer, ESD will prepare the applicable agreements and other closing documents that define all project terms and conditions and the Designated Developer’s responsibilities.

I. Project Sunlight

This RFP 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 or CCDC by a person (also broadly defined) for the purposes of procuring a State Contract (as contemplated in this RFP) must be reported by ESD and CCDC to a database maintained by OGS 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.

² ST-220-CA located at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf; Affidavit located at http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf

J. Insurance Requirements

The Designated Developer will be required to indemnify and hold harmless ESD, CCDC, and the State of New York and to provide appropriate insurance coverage as determined by ESD and CCDC once the structure of the transaction with the Designated Developer has been finalized.

ESD and CCDC must be named as additional insureds on a primary and non-contributory basis on certain policies. All policies should include a waiver of subrogation in favor of ESD, CCDC, and the State of New York.

Any agreements among ESD, CCDC, and the Designated Development will include appropriate insurance and indemnification requirements.

All insurance required to be procured and maintained must be procured from insurance companies authorized to do business in the State of New York and rated at least A- VII by A.M. Best and Company or meet such other requirements as are acceptable to ESD and CCDC.

K. W-9 Form

Each Respondent must submit a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) with its Proposal.

XII. APPENDIX

Below is a list of appendices attached to and made a part of this RFP. All appendices can be downloaded at

https://www.dropbox.com/sh/b5q6oqkw6cmwizt/AACu4sRa6O4w7_wrY2QFagspa?dl=0.

- Appendix A: Prior Environmental Reports
- Appendix B: Prior General Project Plans
- Appendix C: Easements
- Appendix D: Survey of Site K
- Appendix E: Diversity Practices Questionnaire
- Appendix F: Cost Letter
- Appendix G: Conflicts of Interest Attestation