



**Empire State
Development**

REQUEST FOR APPLICATIONS

Gowanus Neighborhood Mixed Income Housing Development Program

APPLICATION RELEASE DATE: July 21, 2023
DEADLINE TO SUBMIT APPLICATIONS: September 29, 2023

Designated Contacts for this Procurement:
Primary Contact: John F. Discolo
Secondary Contact: Ralph Volcy

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

Applications must be sent to the designated Dropbox:
<https://www.dropbox.com/request/hYs9AgFiUEUapdNM4sLo>

I. INTRODUCTION

New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) is inviting owners/long term lease holders/option holders of property (“Developers”) to apply to develop rental residential developments under ESD’s Gowanus Neighborhood Mixed Income Housing Development Program (the “Program”). The Program would provide an alternative mechanism for providing tax relief for certain residential developments within the boundaries of the Gowanus Neighborhood Rezoning that meet certain levels of affordability pursuant to having vested in the Real Property Tax Law § 421-a(16) tax exemption program (“Affordable New York”).¹ The goal of ESD’s Program is to facilitate much needed rental housing development, including affordable housing units within New York City, and to facilitate the achievement of the City’s other goals for the Gowanus Neighborhood Rezoning.

II. BACKGROUND

Gowanus Neighborhood Rezoning

On September 22, 2021, the New York City Planning Commission approved the Gowanus Neighborhood Rezoning. The approval culminated a multi-year community engagement process that developed a shared long-term vision for the area, which the Commission determined to be a neighborhood in need of widespread remediation of large underdeveloped and underutilized brownfield sites with rich transit access. The Commission determined the Gowanus Neighborhood Rezoning would create approximately 8,500 new residential units with approximately 3,000 new affordable homes as a result of the Mandatory Inclusionary Housing (“MIH”) designation in connection with the rezoning. For residential developments within the Gowanus Neighborhood Rezoning a total of 25% of the housing must be affordable, on average, to households making 60% of Area Median Income (“AMI”). Residential developments within the Gowanus Neighborhood Rezoning will be required to comply with MIH, the provisions of which are included in New York City Zoning Resolution Section 23-90 (Inclusionary Housing).

In addition, the Commission determined the Gowanus Neighborhood Rezoning would spur economic and job growth; facilitate brownfield remediation; foster safe, more active streets; create a vibrant, accessible, and resilient waterfront; generate new community resources; and support the overall remediation of the Gowanus Canal.

Affordable New York

Affordable New York was the residential tax exemption program that facilitated the development of mixed-income housing throughout New York City. It expired on June 15, 2022, with developments vested into the program required to secure Temporary Certificates of Occupancy (“TCO”) for all residential units by June 15, 2026. Failure to meet this deadline results in ineligibility for the tax benefit.

¹ Affordable New York is a tax exemption program available to projects meeting affordability criteria delineated by the statute creating that program, that commenced construction between January 1, 2016, and June 15, 2022, and that complete construction on or before June 15, 2026.

The uncertainty for certain developments to meet the 2026 TCO deadline has deterred new residential construction throughout New York City. This has created a significant barrier to the implementation of residential development within the boundaries of the Gowanus Neighborhood Rezoning and the realization of the housing, economic redevelopment, and environmental goals developed collaboratively by community, elected, and public agency stakeholders.

Facilitating housing production within the Gowanus Neighborhood Rezoning district through ESD’s Program will provide much needed additional housing, including affordable housing, in the Gowanus community. It will also contribute to economic growth through the creation of construction and permanent jobs in the neighborhood, spur brownfield cleanups and contribute to the continued revitalization of the area.

III. PROGRAM OVERVIEW

To spur development, through a Request for Applications, ESD will accept submissions from developers with shovel ready or near-term ready vested rental Affordable New York sites. A development shall be deemed vested under Affordable New York if it has a Commencement Date on or before June 15, 2022. Commencement shall mean, with respect to any multiple dwelling, the date upon which excavation and construction of initial footings and foundations lawfully begins.

The property to be developed must comply with the site’s zoning regulations and all local building and construction codes and other similar local requirements. To implement the Program, the fee title to the property to be developed would be transferred to ESD (for nominal consideration) for the duration of the site’s involvement with the Program, and the property would be leased back to the site’s developer and would be subject to supplemental rent (such supplemental rent referred to as a “Payment in Lieu of Tax” or “PILOT”), which would require payments at a reduced level that would mirror the residential tax exemption that the site would have received under Affordable New York in exchange for affordable housing requirements that are based on Affordable New York’s options, with the addition that the required affordable housing units be permanently affordable. The applicant would also be required to comply with all other requirements and obligations (including, without limitation, labor) of the Affordable New York Program. At the conclusion of the Program, the lease would terminate, title of the property would revert to the tenant or its designee and the site would become subject to the applicable real estate property taxes at that time.

IV. TIMELINE

The following are significant dates under the application process:

Event	Timeline
Application Release Date	July 21, 2023
Application Due Date	September 29, 2023

Note ESD may reopen the application period after the Application Due Date and before December 31, 2023.

V. ELIGIBILITY

Threshold Eligibility

ESD will only accept applications for developments meeting the following requirements:

1. Located in the Special Gowanus Mixed Use District Plan (New York City Zoning Resolution Article VIII, Chapter 9) (see attached Exhibit C).
2. Vested under Affordable New York by June 15, 2022. A development shall be deemed vested under Affordable New York if it has a Commencement Date on or before June 15, 2022. Commencement Date shall mean, with respect to any eligible multiple dwelling, the date upon which excavation and construction of initial footings and foundations lawfully begins.
3. Provide for at least 50 rental residential units.
4. All units will be registered as rent stabilized that would have been required to be rent stabilized under Affordable New York. Provided further that all affordable units will comply with Affordable New York except that they shall be permanently affordable.
5. At the time of application submission, the proposed plans for the site must comply with the site's underlying zoning district regulations, applicable local building and construction codes, and all other regulatory requirements for construction.
6. Not receiving any other residential tax exemption/abatement/credit, except tax credits related to the Brownfield Cleanup Program or any other environmental remediation program.
7. Provide evidence of ownership or path to imminent ownership.
8. Comply with ESD's Minority- and Women-Owned Business Enterprises contracting requirements.
9. Acceptance of ESD's lease terms and other contracting requirements, including but not limited to indemnification, insurance, administrative fee, cost agreement and responsibility requirements (including financial and organizational capacity, legal authority, integrity and previous experience evidencing ability to complete the proposed development).

Additional Program Requirements

Developments must receive a Temporary Certificate of Occupancy for all residential units within 48 months of construction commencement. The 48-month timeline for receiving TCO may be extended at the discretion of ESD.

Information on all requirements and benefits of Affordable New York can be found [here](#). During the PILOT period, developments will be subject to ongoing monitoring and compliance review with respect to the affordable housing units.

VI. PROCESS AND TIMELINE

Once developments are deemed eligible, applicants will be required to enter into a cost agreement with ESD to cover legal, environmental, and other expenses.

The development will need to comply with the City Environmental Quality Review Act ("CEQRA"), the State Environmental Quality Review Act ("SEQRA"), and/or the National Environmental Policy Act ("NEPA"); the New York State Historic Preservation Act; and all other applicable statutes and regulations. As part of ESD's approval process, developments will require ESD Director approval and approval by the Public Authorities Control Board.

To close on the transaction, applicants must agree to the terms and enter into a standard form of lease, PILOT agreements, restrictive declaration, regulatory agreements, and other ancillary documents. These will be provided to applicants subsequent to notification of eligibility. Applicants will also be required to submit a fee of \$3,000 per residential unit at the time of closing.

VII. APPLICATION SUBMISSION REQUIREMENTS

Applicants must submit the following materials to ESD in one (1) submission package:

1. Development descriptions which must include
 - a. Street address(es), block and lot(s)
 - b. If multiple buildings, describe the entire development for which the submission is applying for Program consideration.
 - c. Number of units (affordable and market rate) and total square footage of residential and non-residential spaces
 - d. Unit mix for affordable and market-rate units, building stacking plan, and choice of Affordable New York affordability option
 - e. Number of units in each applicable income band
 - f. Affirmative statements that the development will comply with both the construction and building service workers labor standards that are applicable under Affordable New York.
2. Development timeline
 - a. Describe and document the construction start and estimated completion date
 - i. Include a letter from a construction lender supporting the applicant's timeline for closing on construction financing if not already done so
 - ii. Include a letter from the development's contractor describing the estimated construction schedule
 1. If developments have already secured construction financing and completed construction beyond the minimum requirements for vesting pursuant to Affordable New York, provide an explanation for why the development would not be completed prior to June 15, 2026.
 - iii. If the development will be undertaken in multiple phases, describe the timeline for completing the first development phase with the

documentation noted in i. and ii. and the proposed schedule for completing the remaining phase(s) that are included in the Program application.

3. Architect's affidavit evidencing the project's units and square footage by use and affirming full compliance with all applicable NYC zoning, building, and construction regulations, and any other regulations required for construction
4. Architect's affidavit confirming that the market rate and affordable units share a common entrance
5. Architect's affidavit evidencing the development is vested in Affordable New York
6. Copy of NYC Department of Buildings permits
7. Environmental review documentation, other than the 2021 Gowanus Neighborhood Rezoning Environmental Impact Statement, completed pursuant to CEQR, SEQR and/or NEPA, e.g., an Environmental Assessment Form ("EAF"), Environmental Assessment Statement ("EAS"), Environmental Assessment ("EA"), Negative Declaration, Finding Of No Significant Impact ("FONSI"), Draft Environmental Impact Statement ("DEIS") / Final Environmental Impact Statement ("FEIS"), Statement of Findings, and/or Record of Decision ("ROD") (if environmental review has not been completed or was not required, provide an explanation in an addendum noting for example, if the development is an as-of-right development). Note: Digital links to files will be acceptable.
8. Phase 1 Environmental Site Assessment ("ESA") (Additional documentation, e.g., Phase 2 ESA, may be submitted or subsequently requested)
9. An opinion of counsel that the development will comply with the requirements of Affordable New York
10. Current Development site photos
11. Acknowledgement that the development will comply with ESD's Minority- and Women-Owned Business Enterprises contracting requirements, as further described in Section IX. Application Submission Requirements

VIII. APPLICATION SUBMISSION INSTRUCTIONS

Respondents submitting documents are indicating their acceptance of the conditions in this RFA. Submission of qualification documents 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/hYs9AgFiUEUapdNM4sLo>

- **Proper Format:** Please create a folder with: Respondent's name – Gowanus Neighborhood Mixed Income Housing Development Program – Date of Submission. Example: MPV Construction – RFA - Gowanus Neighborhood Mixed Income Housing Development Program – 9.29.2023
- The folder should be uploaded to the Dropbox by choosing the following option: "Add Files → folders from computer". All documents must be properly labeled.

ESD reserves the right, in its sole discretion, to withdraw or modify this Request for Applications and to reject any proposal as being non-responsive.

ESD will accept written questions via email from prospective Respondents. Please submit questions to: mixedincomehousing@esd.ny.gov.

Written questions must include the requestor's name, e-mail address and the prospective Applicant represented. Responses to all timely and appropriate technical questions will be posted on ESD's website at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>. Substantive questions related to the development should also be directed to mixedincomehousing@esd.ny.gov and will be responded to accordingly.

No contact related to this solicitation with ESD Board members, ESD staff or consultants, other than emails to the designated email accounts for this solicitation listed herein will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFEI. For purposes of this section, contact shall not include responses to questions or requests from ESD staff members or consultants. Any such contact by a Respondent may be grounds for disqualification.

IX. APPLICATION SUBMISSION REQUIREMENTS

General Provisions

The issuance of this RFA and the submission of a response by an applicant 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 RFA;
- II. Revise any requirement of this RFA;
- III. Require supplemental statements or information from any responsible party;
- IV. Accept or reject any or all repos hereto;
- V. Extend the deadline for submission of responses hereto;
- VI. Negotiate potential contract terms with any applicant;
- VII. Communicate with any applicant 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 RFA, 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 RFA.

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 RFA will be at the sole cost and expense of the applicant.

All information submitted in response to this RFA is subject to the Freedom of Information Law, 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, applications may be discussed at meetings of the ESD Directors, which meetings are subject to the New York State Open Meetings Law.

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

Procurement Forms and Requirements

Additional requirements for this RFA are described below. Relevant forms, where required to be submitted, must be executed, and included in the submission in the same order as listed below:

1. Conflict of Interest
2. 139 J&K
3. Vendor Responsibility Questionnaire
4. Insurance Requirements
5. Non-Discrimination and Contractor & Supplier Diversity Requirements:
<https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>
6. W-9
7. Executive Order 16

1) Conflicts of Interest

Applicant 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 applicant to this RFA or terminate any contract entered into as a result of this RFA should ESD determine that the applicant has violated any of these requirements.

A. Gifts and Offers of Employment: Applicant 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. Applicant 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: Applicant 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 applicant or former officers and employees of ESD, in connection with your rendering services in this RFA. If a conflict does or might exist, applicant must describe how it would eliminate or prevent it.

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

2) State Finance Law Sections 139J and 139K forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFA. These Procurement Requirements: (1) govern permissible communications between potential applicants and ESD or other involved governmental entities with respect to this RFA; (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 RFA. Compliance with the Procurement Requirements requires that all communications regarding this RFA, 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 Applicants 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 ESD website under "RFPs"); and periodic updating of such forms during the term of any contract resulting from this RFA.

Applicants 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 applicants during the Restricted Period, make a determination of the responsibility of applicants and make all such information publicly available in accordance with applicable law. If an applicant is found to have knowingly and willfully violated the State Finance Law provisions, that applicant and its subsidiaries, related or successor entities will be determined to be a non-responsible applicant 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 RFA.

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: https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

All potential applicants are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

3) Vendor Responsibility Questionnaire

All Applicants to this RFA 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 RFA, and in addition must demonstrate that both the applicant and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the applicant must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the applicant, if any, shall include clauses providing that the applicant 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 nonresponsible. On request, model language to this effect will be provided to any applicant to this RFA.

To assist in the determination of responsibility, ESD requires that all applicants to this RFA 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. Applicants 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 application.

To enroll in and use the Vend-Rep System, see 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

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)."

4) Insurance

Insurance requirements will be determined by ESD on a site-specific basis after a determination of Program eligibility.

5) Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women-Owned Business Enterprises and Equal Opportunities for Minority Group Members and Women

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority and Women-owned Business Enterprises ("MWBE") and the employment of minority group members and women in the performance of ESD contracts.

BUSINESS PARTICIPATION OPPORTUNITIES FOR MWBEs

For contracts resulting from this solicitation, ESD may establish a goal for MWBE participation based on the scope of work and project description identified in the RFA response. Such contracts may set forth additional requirements that will encourage business participation opportunities for MWBEs. 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 RFA, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as

a result of this RFA 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 RFA, 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 application, 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 application. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

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

- B.** If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, 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 application.

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 it 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 application in response to this solicitation, the respondent agrees with all of the terms and conditions in [SCHEDULE B – PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSIENSS 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 application.

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%20Utilization%20Plan.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-DISABLE 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.** For purposes of this solicitation, ESD will establish a goal based on the scope of work and project description identified in the RFA response. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://sdves.ogs.ny.gov/business-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.

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

Request for Waiver

- A.** Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.
- B.** In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for a 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 SDVOB identified within the 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.

6) W-9 Form

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

7) Executive Order 16

In accordance with New York State Executive Order 16, ("EO-16), all applicants 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 an application, each applicant and each person signing on behalf of any applicant certifies, and in the case of a joint application, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each applicant 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.

EXHIBIT A

Administrative Proposal (Contractual Procurement Forms and Requirements)

1. Conflict of Interest Form

<https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>

2. 139J&K

https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

3. Vendor Responsibility Questionnaire

www.osc.state.ny.us/vendrep

4. Non Discrimination and Contractor and Supplier Diversity Forms

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%20Utilization%20Plan.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>

5. W9 Form

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>

6. Executive Order 16 Certification

<https://esd.ny.gov/sites/default/files/EO16-certification.pdf>

EXHIBIT B
ESD IT Security Standard Brief

<https://esd.ny.gov/sites/default/files/ESD-Security-Standard-Brief.pdf>

EXHIBIT C
Gowanus Neighborhood Rezoning/Program Boundaries

Appendix A - Special Gowanus Mixed Use District Plan

LAST AMENDED 11/23/2021

Map 1: Subdistricts (11/23/21)

