



# Empire State Development

## REQUEST FOR PROPOSALS

### TO PURCHASE AND REDEVELOP THE FORMER LINCOLN CORRECTIONAL FACILITY

31-33 West 110<sup>th</sup> Street  
NEW YORK, NY



**Issued: March 16, 2023**

**IMPORTANT NOTICE:** A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until announcement of the Designated Developer. Respondents are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below.

Designated Contacts for this Procurement:

Primary Contact: John F. Discolo

Secondary Contact: Ralph Volcy

All contacts/inquiries and request for a dedicated Dropbox link shall be made by email to the following address: [LincolnRFP@esd.ny.gov](mailto:LincolnRFP@esd.ny.gov)

**Submission Deadline: May 23, 2023 by 2:00 PM ET**

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## I. INTRODUCTION

New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) hereby requests responsive and responsible parties to submit proposals for the purchase and redevelopment of the former Lincoln Correctional Facility (“Lincoln CF”) located at 31 – 33 West 110<sup>th</sup> Street New York, New York (the “Site”). This Request for Proposals (“RFP”) represents an exciting opportunity to reimagine and redevelop the currently unused Site through a proposed ESD-sponsored Project (“Project”) in Harlem. The purpose of the Project is to redevelop the Site with affordable housing, thereby returning it to a productive use that will enhance its reintegration into the fabric of the surrounding community.

The Site was formerly used as a New York State correctional facility and is improved with an eight-story building containing approximately 70,000 square feet of floor area with a lot area of approximately 10,000 square feet. As facilities such as Lincoln CF have closed, the State has sought to dispose of such properties and repurpose them to provide economic development to their communities. ESD partners with the New York State Department of Corrections and Community Supervision (“DOCCS”), local communities, and private sector partners to redevelop these properties, breathing new life and economic activity into communities across the State.

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

ESD is interested in proposals that will provide maximum benefits to the surrounding Harlem community and generate the highest economic return for the State. Given the unique location of the Site, directly across from Central Park and proximate to transit, retail, schools, and premier cultural institutions, the Project presents a unique and exciting opportunity for redevelopment for the purposes specified in this RFP.

## II. SITE CONTEXT AND DESCRIPTION

### A. Description, Surrounding Area, and Transit Access

The Site is located at 31 – 33 West 110<sup>th</sup> Street, New York, New York in the Borough of Manhattan. (Block 1594, Lot 17) (See **Figure 1**). The brick building, which occupies the entire site, is located between Malcolm X Boulevard and Fifth Avenue—directly across the street from the Gate of the Exonerated in Central Park. The surrounding buildings are generally below nine stories and were built between 1900 and 1949. These buildings are of mixed residential, civic, and commercial use. There are public elementary, middle, and high schools within 0.3 miles or less of the Site. Throughout the last two decades, the area has become more populous; from 2000 to 2019 the Central Harlem population has increased by approximately 25 percent.



Figure 1 - Site



Figure 2 - View from Roof

The Site's location provides unobstructed, sweeping views of Central Park, which is directly across the street from the Site. (See **Figure 2**). Central Park, the largest park in Manhattan, is the most visited urban park in the United States. The Site lies in Manhattan Community District 10 in Harlem. This residential neighborhood boasts a number of restaurants, bars, live music venues, civic organizations, cultural attractions, and a rich African American history.

The Site is served by an abundance of public transit. There are five bus lines (M1, M2, M3, M4, and M10), as well as the B/C, 2/3 and 6 train lines proximate to the Site. It is also close to the Harlem - 125<sup>th</sup> Street Metro North Station, the Henry Hudson Parkway, and the FDR Drive.

## B. Site History

Throughout the twentieth and twenty-first centuries, the building has served several civic and community uses. Constructed in 1914, it was originally used by the Young Women’s Hebrew Association to serve newly arrived immigrants. During World War II, the building provided a place of rest for U.S troops. In the late 1940’s and early 1950’s the building was rented by the New York City school system and used as “The New Lincoln School.” In 1951, New York City purchased the building for continued use as a school. From 1976 until September 2019, the building operated as a minimum-security correctional facility. The facility had approximately 392 beds and serviced male



Figure 3 - Exterior of Site

incarcerated individuals. Its uses included: housing, a dining area, security offices, a gym and administrative space. Please refer to **Appendix A** to see the existing building floor plans.

## C. Zoning and Land Use

Currently, the Site is zoned R8. ESD will consider overriding NYC zoning through a General Project Plan (“GPP”), as provided under the New York State Urban Development Corporation Act (“UDC Act), in order to effectuate the Development Program described in **Section III.B**.

Respondents should propose a building that that is massed as a tower over a base. A minimum 10-foot set-back should be provided over a base height that respects the adjacent buildings and the neighborhood context. Proposals must include a list of specific zoning overrides necessary to effectuate the proposed Project.

#### **D. Utilities**

Con Edison (<http://www.coned.com/>) serves the Site with natural gas and electricity. The New York City Department of Environmental Protection ([www.nyc.gov/dep](http://www.nyc.gov/dep)) provides water and sewer services to the Site. For more information on the Site's utilities, reference the Facility Closure Plan in **Appendix B**.

#### **E. Cultural and Historic Resources**

According to information currently posted on the Cultural Resource Information System ("CRIS") webpage (<https://cris.parks.ny.gov/>), the State Historic Preservation Office of the New York State Office of Parks, Recreation and Historic Preservation made a determination on February 12, 2012 that the Lincoln Correctional Center did not meet the criteria for listing on the State and National Register of Historic Places. All parties interested in submitting a response to this RFP will be responsible for conducting their own due diligence with respect to such status of the Site at the time their proposals are submitted.

#### **F. Environmental Conditions**

The Designated Developer will be responsible for conducting all due diligence investigations and remediation, including, but not limited to, environmental site assessments, which include sampling and testing of the soil, sediments, and ground water (if any). No representation or warranty is made nor shall be given by ESD, DOCCS, the State or any other entity as to any environmental condition at or under the Site, which is offered "AS IS" and "WHERE IS." The term "environmental condition" as used herein includes but is not limited to any hazardous and/or toxic substance as defined in any State or Federal law, rule or regulation, solid waste, petroleum and/or petroleum by-products, endangered species of fauna or flora, archeological feature or artifact or any other matter or site condition which may affect the development of the Site.

#### **G. Ownership and Taxes**

The Site is currently owned by ESD, is operated by DOCCS, and is thus currently exempt from property taxes. The Site is subject to a lease from ESD to the People of the State of New York acting through the Office of General Services ("OGS") and a sublease to DOCCS, both of which would be terminated in connection with the disposition of the Site to a Designated Developer.

At title or ground lease closing ("Closing"), the Designated Developer will take ownership and possession of the Site without contingencies. The Designated Developer will be responsible for all applicable taxes, including but not limited to New York City and New York State Transfer Taxes due with respect to ESD's conveyance of the Site to the Designated Developer, subject to any exemptions that may be available.

In the event of a sale, the Site will be subject to New York City real property taxes and charges. Property tax exemptions may be available for eligible Projects or Project components. For details of relevant tax exemption programs, Respondents should consult relevant statutes and rules. Proposals should indicate which tax exemption program(s), if

any, Respondents plan to utilize. It is the Designated Developer’s responsibility to apply for and meet the requirements of any specific tax benefit program(s). (See **Section IV.F** for additional details.) More information on NYC property taxes and the NYC Department of Finance can be found at [www.nyc.gov/dof](http://www.nyc.gov/dof).

## **H. PILOT**

ESD will consider Proposals that contemplate a ground lease structure, where ESD would retain ownership of the Site and implement a payment in lieu of taxes (PILOT). In order to implement a PILOT and comply with certain legal restrictions, the Designated Developer would need to enter into a separate contract to demolish the Site’s existing building prior to Closing. The cost of the demolition work under the contract would be advanced by the developer as work progressed and payment by ESD for the work would be made at Closing. The demolition contract would indemnify ESD, DOCCS, and OGS.

Proposed PILOTs should be substantially similar to existing tax exemption and abatement programs. The length of the PILOT’s abatement period and the amount of the abatement will be negotiated between the Designated Developer and ESD and will depend on the amount and regulatory period of affordable housing in the Proposal.

## **I. MWBE & SDVOB Subcontractor Interest**

New York State certified Minority- and Women-Owned Businesses and Service-Disabled Veteran Owned Businesses may request that their firm’s contact information be included on a list of firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS certification to: [LincolnRFP@esd.ny.gov](mailto:LincolnRFP@esd.ny.gov). Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

## **III. DEVELOPMENT OBJECTIVES & REQUIREMENTS**

### **A. Development Objectives**

The primary development objectives for the Project are to provide affordable housing, community facility uses, and overall improvement in economic opportunities. Therefore, ESD is seeking Proposals for a high-quality development that meets the following objectives (the “Development Objectives”):

- Provide affordable housing and cultural/educational uses as specified in the RFP;
- Use high-quality design features throughout the project including the creative use of art, masonry, panels or other approaches to improve any blank lot-line wall conditions;

- Provide economic benefit to the State;
- Benefit Harlem and surrounding communities;
- Incorporate sustainable and green building practices; and
- Ensure meaningful participation by certified MBE, WBE, and SDVOB entities.<sup>1</sup>

## B. Development Program

Respondents must also include the following the development program in any Proposal:

- Residential component (“Residential Component”)
  - A maximum amount of Residential floor area equivalent to an FAR of 12.0 may be provided.
  - ESD will consider either Proposals with homeownership units (“Homeownership Units”) or Proposals with rental units (“Rental Units”) for the Residential Component. Proposals may not include a mix of Rental and Homeownership Units.
  - City or State subsidy sources may ONLY be used for Homeownership Units. Proposals the include Homeownership Units may integrate City and/or State subsidy sources within applicable term sheet maximums. It is expected that any income-restricted Rental Units would be cross-subsidized by other Rental Units. Proposals that contemplate the use of any capital or rental subsidies for Rental Units will not be considered.
  - All or a portion of these units must be income-restricted (“Affordable Housing Units”). If the Affordable Housing Units are Rental Units, they must be permanently affordable. All Affordable Housing Units that are Homeownership Units must comply with the requirements of the relevant city and/or state subsidy programs. Should there be any discrepancy between city and state programs regarding the regulatory and resale periods for Homeownership Units, the city program requirements should take precedence.
  - Rents for any income-restricted Rental Units should be set at an average of 60% of the 2023 Area Median Income and divided into no more than three income tiers.
  - If less than 60% of the Residential Component is income-restricted, Affordable Housing Units must be distributed throughout at least 65% of the building’s stories and no more than sixty percent of the units on any floor may be Affordable Housing Units. Otherwise, Affordable Housing Units must be distributed throughout at least 65% of the building’s stories and no more than forty percent of the units on any floor may be non-income restricted units. To the maximum practicable extent, the design standards (including but not limited to bedroom mix and unit size) for the Affordable Housing Units should be equivalent to the standards set forth in the City of New York’s Mandatory Inclusionary Housing Program, as described in Section 23-96 of the Zoning Resolution.
  - Proposals dependent upon transferrable development rights or light/air easements from neighboring parcels will not be considered.

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<sup>1</sup> More information on MBE, WBE and SDVOB requirements is set forth below in **Section XII, Procurement Forms and Requirements.**

- ESD will enter into one or more agreements with the Designated Developer at Closing to implement the requirements above.
- Community Facility Component
  - The base of the building may include a cultural or educational space—that addresses a community need—not to exceed 2.0 FAR. Respondents may consider the use of New Market Tax Credits to offset the construction cost of the Community Facility Component.

Massing guidelines for the development program are further described above in **Section II.C., Zoning and Land Use.**

The Development Objectives and program will be effectuated through an ESD GPP for the Project and a restrictive declaration in favor of ESD, which will be recorded against the Site to ensure that the Site is developed in compliance with the GPP and with any other applicable requirements related to the Project.

### **C. Transaction Structure & Approvals**

It is anticipated that ESD will enter into an agreement or multiple agreements with the Designated Developer that will memorialize the parties’ rights and responsibilities in connection with the proposed disposition and development of the Site.

If the disposition is structured as a fee conveyance, ESD will enter into a purchase and sale agreement with the Designated Developer and convey fee title to the site by quitclaim deed, without representations or warranties. Under this scenario, the Designated Developer also would execute a restrictive declaration in favor of ESD, to be recorded against the Site, requiring development and use of the Site to conform to the GPP.

If the disposition is structured as a lease, ESD will retain fee title to the Site and enter into a ground lease with the Designated Developer of sufficient duration to allow the proposed development to be implemented and under terms and conditions to be negotiated, consistent with publicly supported affordable housing developments of the type contemplated for the Site.

Unless a PILOT is used (see **Section II.H**), it should be presumed that no part of the Site will remain in ESD or other public ownership and jurisdiction post-conveyance. This includes, but is not limited to, easements or other agreements for ingress/egress or construction staging. As noted below in **Section VIII, Conveyance Process**, in order to implement the Project and sell/lease the Site, ESD, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements including but not limited to: (i) New York’s State Environmental Quality Review Act and its implementing regulations (collectively, “SEQRA”); (ii) Public Authorities Law; (iii) Section 14.09 of the New York State Historic Preservation Act, to the extent applicable; (iv) State Finance Law; (v) the UDC Act; and (vi) the Public Authorities Accountability Act. Such compliance must be completed before conveyance of the Site to the Designated Developer for the Project. ESD may also consult with or otherwise involve other State entities as necessary, including OGS, DOCCS, and New York State Homes and Community Renewal (“HCR”), to review the RFP and select the Designated Developer.

The sale or lease of the Site is subject to approval of the ESD Board of Directors and OGS, and may also be subject to approval by the Public Authorities Control Board (“PACB”), the Comptroller of the State of New York, the New York State Attorney General, and the State Division of Budget.,

Respondent’s financial offer for the Site should assume that the Site, including any and all improvements, buildings and infrastructure, utilities, trade fixtures, machinery and equipment, and personal property 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 purposes.

#### **D. Cost Letter and Imprest Account**

The Designated Developer must enter into agreements with ESD that will require the Designated Developer to pay, from the date of its conditional designation:

- ESD’s ongoing out-of-pocket costs and expenses incurred in connection with the Project and Site disposition to the Designated Developer, including, costs and expenses of environmental consultants and legal counsel; and
- ESD’s administrative fee, paid at Closing, equal to the cost of direct and actual staff time on the project from the time of conditional designation until conveyance, capped at one million dollars (\$1,000,000).

Respondents must provide as part of their Proposal a signed letter agreement (the “Cost Letter”) in the form provided in **Appendix C** pursuant to which the Respondent will pay ESD for ESD’s reasonable out-of-pocket costs and expenses, including without limitation, those for consultants and legal counsel, incurred by ESD in the event that the Respondent is selected as the Designated Developer. The signed Cost Letter shall be accompanied by the Respondent’s check in the amount of \$500,000 (“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, the Cost Letter Check will be deposited into an ESD Imprest account (“Imprest Account) for the Designated Developer. If a Respondent is not selected as the Designated Developer, the Cost Letter Check will be returned to the Respondent. ESD will draw on the Imprest Account in order to pay costs related to the Project. The Cost Letter provides that the Designated Developer will fully replenish the Imprest Account in the amount of \$500,000 each time the balance of the Imprest Account is reduced to below \$250,000. Following Closing, any amount remaining in the Imprest Account and not required to pay outstanding costs will be returned to the Designated Developer.

#### **IV. REQUIRED PROPOSAL CONTENTS**

The following must be submitted with all Proposals responding to the RFP. 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 the Respondents, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP. ESD further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

In addition to the forms required as described later in **Section XII, Procurement Forms and Requirements**, each complete Proposal must contain the following elements (the "Technical Proposal"):

#### **A. Respondent Description and Qualifications**

Each Respondent 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," Respondent firms or joint ventures of firms ("Respondent Teams") must demonstrate collectively significant experience, expertise, and capacity in:

- Developing and operating affordable housing and community facility space;
- Equity investments in substantial or ground-up real estate development projects;
- At least two (2) completed similar development projects in the last ten years; and
- At least two (2) projects in the last seven years for which Respondent acted as a developer and/or principal operator of buildings incorporating affordable housing and community space.

ESD invites all qualified parties to submit proposals for the reuse and redevelopment of the Site. For this RFP, up to twenty (20) points (see **Section VI: Selection Criteria**) will be awarded to Respondent Teams that include one or more Minority and/or Women-Owned Business Enterprise(s) (each an "MWBE Developer") that will solely or collectively hold at least 51% of the managing ownership interest in the Residential Component of the Project and must receive a commensurate interest in the totality of the economic benefits of the Project, including, but not limited to, all available cash flows and sale/refinancing proceeds. A fee-only arrangement for the minority and/or women-owned business(es) will not satisfy this requirement (unless developer fee is the only cashflow available to the Respondent Team under any applicable term sheet(s) used). Projects with lower MWBE ownership percentages will be awarded fewer points in the **Quantitative Factors** section of the **Selection Criteria**.

Each MWBE Developer must be certified by the City or State of New York.

Respondent Teams must be led by a Qualifying Organization. ESD reserves the right to determine whether a Respondent satisfies these requirements based on the experience of the Respondent Team's constituent members. Entities that do not meet the above eligibility criteria (e.g., construction contractors, facility managers and operators, 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 submission as part of a Respondent Team that includes a Qualifying Organization.

Each proposal must also include a description of the Respondent Team including:

- The intended form and structure of the team. Any proposed partnership or joint venture must be clearly explained. A chart or diagram of the partnership structure must also be included. In addition, the following requirements should be addressed:
  - Experience developing and managing affordable housing: Respondent Team members should describe their previous experience as principal developer and/or operator of large developments incorporating affordable housing.
  - Experience developing and operating community facilities: Respondents should describe their previous experience acting as principal developer and/or operator of community facilities that were part of a mixed-use development or stand-alone projects.
  - Other experience that makes the Respondent Team uniquely suited to plan, develop, and manage the proposed project.
- Name, address, phone number and email of each member of the Respondent Team. Respondents must also provide their Federal Employer Identification Number ("EIN") and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials. If available, copies of the interim financial statement for each quarter since the last fiscal year for which audited statements are provided. In addition, any details that describe the financial strength of the Respondent should be provided 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 provided;
  - 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 comparable projects completed by members of the Respondent Team. For each project, the following information is requested:
  - Name of Respondent
  - Project Name
  - Completion Date
  - Project Description
  - Location
  - Current Status of Project
  - Total Development Cost
  - Reference Name, Email Address, Telephone
  - Relevance to RFP
  
- Documentation addressing whether any participating member of the 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 years.
  
- Description of any prior RFPs for which Respondent has been selected, but which have not resulted in a successfully developed project.
  
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project.
  
- All required procurement forms identified in **Section XII, 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 or DOCCS in connection with the 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 who 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 by ESD, then ESD may provide written authorization that such firm, entity or employee may respond to the RFP or participate on a Respondent team.

## **B. Project Description**

The project description should include a detailed narrative describing all relevant aspects of the Project. The description should address:

- Proposed development program and a description of how the Project will advance the Development Objectives set forth in this RFP;
- Type, height, bulk, and size (gross and net square footages) of the development;
- A list of proposed partners or tenants and any letters of credit or intent from potential tenants, including proposed community facilities;
- Total Development Cost;
- Estimated number of direct and indirect permanent and construction jobs estimated to be created by the Project; and
- A detailed plan on how Respondent would meet a 30% MWBE goal and a 6% SDVOB goal for the Project.

## **C. Site Plan and Architectural Design**

Each Respondent must include:

- A summary of the proposed building program for the Project with gross and net square footages for each use;
- At a minimum, a set of concept sketches of the proposed Project and a set of schematic renderings of the proposed Project showing the principal elevations and massing, floor plans, streetscape, landscape plans, entry feature and signage;
- A description of the proposed exterior materials and other relevant specifications; and
- A description of sustainable features that will be incorporated into the Project during construction and operation.
- A stacking chart showing the distribution of Affordable Housing Units for projects that are less than 100% income-restricted

#### **D. Zoning Calculation**

Respondents must submit a zoning analysis showing all calculations of proposed preliminary gross square feet, zoning equivalencies, and proposed uses. Respondents must identify all desired zoning overrides, and any required permits and authorizations to effectuate the Project.

#### **E. Development Timeframe**

Respondents must submit a development timeline (including phasing, if applicable), identifying the estimated length of time to reach key milestones, including commencement and completion of design; financing; commencement and completion of construction; and operational stabilization for the development program. Any contingencies that may affect this timeline should be identified.

#### **F. Financial Information**

Respondents must submit a ten-year pro-forma (“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.

Respondents should include a brief summary that explains at a high level how the 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. For the purposes of this RFP, Proposals with Rental Units may assume a residential tax exemption that mirrors the terms of the expired Affordable New York program subject to the affordability guidelines in **Section III.B** and consistent with the relationship between abatement period and affordability terms described in **Section II.H**.

In addition, Respondents must complete a submit a Cost Letter, Cost Letter Check and evidence of Respondent’s commitment to pay, from the date of its selection as Designated Developer: (i) ESD’s out-of-pocket costs and expenses incurred in connection with the Project and the disposition of the Site, including, without limitation, costs and expenses of environmental consultants and legal counsel; and (ii) ESD Administrative Fee as described in **Section IV: Development Objectives & Requirements.**

**G. Purchase Price/Ground Lease Rent**

The purchase price (or ground lease rent, as applicable) must be expressed in a fixed, non-contingent dollar amount. Any purchase price must be paid in full at Closing. In the case of a sale, ESD’s transfer of title will be by quitclaim deed (without any representations or warranties) at Closing. A purchase price would not be required for a 100% affordable Proposal.

**H. Demolition Plan**

Proposals that assume a contract between ESD and the developer for the demolition of the Site’s existing structure must provide an overview of the estimated schedule, budget, and funding sources for the demolition. Respondents may include this information in the Pro-Forma or in a supplemental file.

**I. Local Hiring Plan**

Respondents should include a narrative as part of the Proposal describing their commitment to local hiring, including an explanation of how the Project will create jobs for local residents and a summary of which community organizations Respondents will partner with in order to maximize local hiring.

**V. SCHEDULE OF DATES**

It is anticipated that this RFP process will proceed based on the following schedule:

Release of RFP	March 16, 2023
Deadline to RSVP for Site Tour(s)	March 23, 2023 by 12:00 PM EST
Site Tours	April 13, 2023 (12:00 -2:00PM)
Deadline for Submission of Questions <b>and Request for a dedicated Dropbox link</b>	April 14, 2023 by 2:00 PM EST
Deadline for ESD to Respond to Questions	April 21, 2023
Submission of Proposals (date and time)	May 23, 2023 by 2:00 PM EST
Interviews (if necessary)	TBD
Announcement of Successful Respondent	TBD
Anticipated Contract Start Date	TBD

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

## VI. SELECTION CRITERIA

ESD shall establish a selection committee to evaluate Proposals. When reviewing Proposals, the selection committee will consider the following criteria and assign point values to each Proposal based on their evaluation. The maximum number of points any Proposal may receive is 100.

Proposals may be reviewed by ESD and other State officials.

Criteria		Achievable Points
Affordable Housing and Financial Benefits	<p>This section will consider the following factors in order of importance (highest to lowest):</p> <ul style="list-style-type: none"> <li>• The proportion of the project that is income-restricted;</li> <li>• The depth of affordability in accordance with community needs; and</li> <li>• The ground lease rent or the purchase price, as applicable.</li> </ul> <p>The selection committee will deduct points from Proposals that do not appear to be financially feasible.</p>	<p>Up to 1 point for 30% Affordable Housing Units</p> <p>Up to 35 points for 100% Affordable Housing Units</p>
Respondent Qualifications	<ul style="list-style-type: none"> <li>• Experience, financial capabilities, and qualifications of the Respondent Team in developing, financing, leasing, operating, and managing projects of similar size and/or with similar combinations of uses</li> </ul>	Up to 25 points
Development Concept and Program	<ul style="list-style-type: none"> <li>• Creativity and feasibility of the proposed development plan, building design, mix of uses, and conformity to the Development Objectives</li> <li>• Incorporation of sustainable building elements and operational practices</li> <li>• Other direct benefits to surrounding community, including but not limited to economic impact and job creation</li> </ul>	Up to 20 points
Quantitative Factors	<ul style="list-style-type: none"> <li>• ESD will award up to 20 points based on percentage of MWBE Developer ownership in the project as described in <b>Section IV.A.</b></li> </ul>	<p>0 points for &lt;30% MWBE Ownership</p> <p>3 points for 30% MWBE Ownership</p> <p>7 points for 40% MWBE Ownership</p> <p>12 points for 50% MWBE Ownership</p> <p>20 points for &gt;50% MWBE Ownership</p>

## 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 any express or implied warranties, guarantees, or representations as to quantity, quality, title, character, physical and environmental condition, size, or kind, or that the same is in condition or fit to be used for the Respondent’s purpose.

ESD will post information regarding the RFP on the RFP website <http://www.esd.ny.gov/CorporateInformation/RFPs.html>; Respondents are encouraged to check for updates. Notwithstanding ESD’s provision of such information, Respondents shall not rely on the information provided in connection with this RFP and must rely solely on their own independent research and investigations for all matters regarding development of the Site, including, but not limited to, title, the Viele map, surveys, physical and environmental conditions, remediation, development and construction costs, financing, and means and methods. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents.

Similarly, the Designated Developer shall be expected to rely solely on its own expertise and that of its consultants in purchasing and developing the Site; shall make an independent verification of the accuracy of any documents and information provided by or on behalf of ESD; and shall conduct such inspections and investigations of the Site as it deems necessary, including, but not limited to, the physical and environmental conditions thereof.

## VIII. CONVEYANCE PROCESS

The following is a summary description of the conveyance process. After a review of the Proposals, ESD intends to conditionally designate one Respondent or Respondent Team as the Designated Developer. The Designated Developer and ESD will sign a non-binding term sheet regarding key aspects of the Project and disposition of the Site, and the Designated Developer will enter into separate agreements with ESD regarding payment by the Designated Developer of costs and expenses as described in **Section IV, Development Objectives & Requirements**. In implementing the Project, including the conveyance process, ESD intends to:

- i. conduct a SEQRA-compliant environmental review of the Project, which may require preparation of either an environmental assessment (“EA”) or environmental impact statement (“EIS”);

- ii. prepare, in accordance with the UDC Act and in consultation with the Designated Developer (and after the Designated Developer has formed an HDFC), a GPP for the Project and, if a zoning override is proposed, ESD design controls (“Design Guidelines”) that will be utilized in lieu of zoning requirements for the proposed development of the Site;
- iii. assist OGS and DOCCS, as necessary, in obtaining any necessary consents and approvals;
- iv. present to ESD’s Directors the GPP for initial adoption and the EA or Draft EIS (“DEIS”) for acceptance (**subsequent to the formation of an HDFC by the Designated Developer pursuant to UDC Act § 10[a][2] (Unconsolidated Laws § 6260[a][2])**); obtain authorization from ESD’s Directors to hold a public hearing and receive public comment on the GPP and, if applicable, the DEIS;
- v. give prior notice of and conduct a public hearing to present and receive public comments on the GPP and, if applicable, the DEIS;
- vi. review public comments received at the hearing and during the public comment period; respond to them as may be appropriate; prepare a Final EIS (“FEIS”) if a DEIS was issued; request ESD’s Directors to affirm or modify the GPP and adopt findings under the UDC Act and SEQRA as necessary and authorize the proposed transactions with the Designated Developer regarding the disposition and development of the Site;
- vii. if necessary, present the proposed disposition of the Site for Project purposes to the PACB for approval and obtain all necessary approvals from other governmental entities as described above in Section III.C. of this RFP or as otherwise required by law; and
- viii. finalize a purchase and sale agreement and all transaction documents with the Designated Developer and record the executed quitclaim deed and restrictive declaration (regarding the Project’s conformance to the GPP) in the *Office of City Register*.

## IX. ADMINISTRATIVE PROPOSAL AND SUBMISSION REQUIREMENTS

Schedule A of this RFP states standard requirements that must be included in every contract entered into with ESD. The successful Respondent must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, Respondent should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Respondent’s proposal.

- i. <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal
- ii. [State Finance Law §§139-j and 139-k forms](#), submit with proposal
- iii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iv. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>, submit with proposal
- v. <https://esd.ny.gov/sites/default/files/EO16-certification.pdf>
- vi. <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>
- vii. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
  - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
  - o [OCSD-2 - Staffing Plan](#)
  - o [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- viii. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- ix. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- x. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD’s procurement requirements, can be found in **Section XII** of this RFP (“**Procurement Forms and Requirements**”).

#### **Submission of a Complete Two-Part Proposal**

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

1. The Technical Proposal (as described in **Section IV: Required Proposal Contents**) and all related appendices must be submitted electronically before the submission **deadline via the designated Dropbox link**
2. The Administrative Proposal and all related forms must be submitted electronically before the submission **deadline via the designated Dropbox link**.

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

#### **X. QUESTIONS**

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

## **XI. GENERAL PROVISIONS**

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

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

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

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

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

## **XII. PROCUREMENT FORMS AND REQUIREMENTS**

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

### **i. Conflicts of Interest**

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

result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member, or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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

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

Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

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

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

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make a determination of the responsibility of Respondents, and make all such information publicly available in accordance with applicable law. If a 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 solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

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

[http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf). All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

### **iii. Vendor Responsibility Questionnaire**

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

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

questionnaire. **Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.**

To enroll in and use the Vend-Rep System, see the System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) . For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

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

#### **iv. Iran Divestment Act**

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

"By submission of this bid, each 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://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf>

#### **v. Executive Order 16**

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

"By submission of a bid, each 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 in compliance with EO-16."

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

**vi. Executive Order 177**

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

**vii. Non-Discrimination and Contractor & Supplier Diversity Requirements**

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

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

**Business Participation Opportunities for MWBEs**

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

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

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

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

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

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

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

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

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

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

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

The successful Respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may

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

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

### **Equal Employment Opportunity Requirements**

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

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

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Designated Developer 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:

**Required with Proposal:**

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

**Required if selected as the Designated Developer:**

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

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

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

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

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

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

**Contract Goals**

- A. **ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs.** For purposes of providing meaningful participation by SDVOBs, the 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. Additionally, following Contract execution, Designated Developer is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Designated Developer must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

## **SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Respondent of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Respondent agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent and direct the Respondent to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on [OCSD-5](#). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Respondent fails to submit an SDVOB Utilization Plan;
  - (b) If a Respondent fails to submit a written remedy to a notice of deficiency;
  - (c) If a Respondent fails to submit a request for waiver; or
  - (d) If ESD determines that the Respondent has failed to document good faith efforts.
- F. If awarded a Contract, Designated Developer 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. Designated Developer 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 Designated Developer non-responsibility.

### **Request for Waiver**

A. Prior to submission of a request for a partial or total waiver, Respondent shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Respondent that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form [OCSD-5](#), accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Respondent's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Designated Developer shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Designated Developer is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, ESD may issue a notice of deficiency to the Designated Developer. The Designated Developer 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), Designated Developers 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 Respondent's solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Designated Developer, 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), Designated Developer 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 Designated Developer and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

### **Breach of Contract and Damages**

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

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

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

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

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

**x. Schedule A**

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

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

**xi. Project Sunlight**

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

**xii. Insurance Requirements**

The Designated Developer will be required to indemnify and hold harmless ESD and the State of New York and to provide appropriate insurance coverage as determined by ESD once the structure of the transaction has been finalized including (at a minimum and to the extent applicable):

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Evidence of Worker’s Compensation & Employer’s Liability insurance at State statutory limits;
- Evidence of Disability insurance coverage at State statutory limits;
- Environmental Liability/Pollution Legal Liability insurance may be required to the extent necessary to cover the Designated Developer’s environmental indemnification to ESD and the State of New York.

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

**xiii. W-9 Form**

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

**XIII. Appendices**

Below is a list of appendices to the RFP:

Appendix A: DOCCS Master Blue Book 2017

Appendix B: Facility Closure Plan

Appendix C: Cost Agreement