



Empire State Development

THE NYS MWBE

BUSINESS GROWTH ACCELERATOR (BGA)

REQUEST FOR PROPOSALS

Issued: October 2, 2019

Submission Deadline: November 5, 2019 by 12:00 PM ET

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

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:

BGA2019RFP@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

I. INTRODUCTION

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

The Division of Minority and Women Business Development (“DMWBD”) seeks to promote equality of economic opportunities for MWBEs and to eliminate barriers to their participation on State contracts. Specifically, the Division implements Article 15-A of the Executive Law, which codifies the State policy of supporting participation of minorities and women on State contracts.

DMWBD’s Key objectives are:

1. To assist State agencies in providing equal opportunities to MWBEs to seeking and participate on State contracts;
2. To review applications by businesses seeking certification as an MWBE, and to maintain a directory of certified MWBEs; and,
3. To promote the business development of MWBEs through education and outreach to MWBEs, prime contractors, and NYS agencies and authorities.

DMWBD is seeking proposals from public and private partnerships to award a grant to five (5) Incubators (awardees responsible for the design, implementation, operation, and reporting of the Business Growth Accelerator Program) to fund the delivery of the Business Growth Accelerator (BGA) Program in one (1) of five (5) regions (Buffalo, Syracuse, Albany, NYC, and Rochester). Each Incubator will work with DMWBD to design and implement a cohort training program for approximately 15-20 NYS MWBE certified businesses. The BGA is an 18-month (twelve (12) months business development curriculum, and six (6) months for the development of a business growth plan) program that is expected to begin Spring 2020.

II. OVERVIEW

MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this Grant. The listing will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to BGA2019RFP@esd.ny.gov. Nothing prohibits an MWBE or SDVOB Vendor from proposing as a prime contractor.

Per Article 4-A of the Economic Development Law, technical assistance to MWBEs through this educational program must include, but is not limited to:

1. The development and execution of business plans for MWBEs, including the formation, acquisition, management, or diversification of the firm;
2. Assistance with loan applications for obtaining funds from public and private financing sources, and the development of a working capital budget; and,
3. Referrals to other providers of technical assistance, where appropriate, including the Entrepreneurial Assistance Program (EAP) established pursuant to Article 9 of the Economic Development Law.

DEFINITIONS

- The following definitions are provided for clarification of terminology utilized within this RFP:
 - **Cohort** – Group of 15-20 firms selected by the Incubator participate in the training, services and other activities offered by the Incubator, throughout the entirety of the BGA program.
 - **Credit Growth** – Firm demonstrating expanded abilities to secure business loan(s), establish line of credit, improve business owner(s)' credit score, and/or improve business likelihood of receiving approval from lending institutions.
 - **Division of Minority and Women's Business Development (DMWBD)** – A Division under the Empire State Development Corporation responsible for administering New York State's MWBE program.
 - **Dollar Amount of Increased Sales** – Dollar amount of increased sales reported by the businesses for the reporting quarter.
 - **Expanded Employment** –The creation of new positions or hiring of new talents to continue alignment with business growth. The number of employees hired. Part time employees must be entered as .50.
 - **Incubator** – Awardees responsible for the design, implementation, operation, and reporting of the BGA program These may include Colleges or Universities, or community based Non-Profit Organizations or Public or Private organizations.
 - **Jobs Retained** – Number of positions kept with no reduction in overall employment from the time the participating business-initiated engagement in the BGA initiative.
 - **Matching Dollars/Matching Funds** – The dollar amount contributed by the Incubator for the BGA. This match may not be paid by State funds, must come from non-State sources, and may not include enrollment fees. These costs are to be funded by the operator or a partner as cash or in-kind contributions. The selected Incubators are required to contribute a match in an amount no less than 50% of the amount of funding provided by DMWBD. See Section VI for further information on requirements.
 - **Minority and Women-owned Business Enterprise (MWBE)** – A business which has been certified by the Division of Minority and Women's Business Development as meeting all eligibility requirements set forth by NYS Executive Law 15-A. For more

information on the NYS MWBE certification process go to:
<https://esd.ny.gov/mwbe-new-certification>.

- **Mobilization Funding** – Initial payment made to Incubator at the beginning of the program to cover program initiation costs.
- **Pre-assessment** – Incubator will be required to evaluate the businesses participating in the BGA to determine what they already know, what they are interested in and how they learn best.
- **Post assessment** – Incubator will be required to evaluate the businesses who participated in the BGA to determine if they learned what they were taught. Performing comprehensive examination of a business to establish a business’ benchmark for business operations, financial/accounting, sales, marketing, and management.
- **Success Story** – A firm which has demonstrated achievements in business growth, through securing contracts (public or private), expanding its workforce, improving its credit status, securing a business loan, establishing a line of credit, creating strategic alliances which leads to tangible results, expansion in equipment(s), relocation to facility greater business operations, and/or implementation of acquired technical skills/techniques that lead to tangible results. Success Stories grow in areas where minimum metric benchmarks have been provided.

- **Supply Demand Utilization (SDU)** – An initiative based on an analysis conducted by DMWBD, which reviewed State agency expenditure in certain industries and utilization of certified firms in those categories. The initiative aims to increase utilization of certified firms in targeted industries on state contracting opportunities (View Appendix A).

III. SCOPE OF WORK

The Incubators’ responsibilities include, but are not limited to:

- **Training Delivery:**
 - **Curriculum design** (within and no more than 60 days from the execution of the grant contract) and implementation with clearly defined benchmarked metrics noted for success, and trainings focused on:
 - **Technology:** Incubator will evaluate the technological competencies of participants to determine areas of opportunity for implementing technology into the business strategic plan to leverage operational efficiencies. Such areas as, but not limited to, Software (CRM, HRM, Financial etc.); Digital Marketing (Social Media, market research).
 - **Scaling and Market Growth:** Incubator will assist in creating a detailed market analysis (market size and growth potential, customer, competition, channel analysis, working medium, economy, investment medium analysis, etc.) that will include marketing recommendations, target market selection

and identify niche markets determining market entry strategies (deciding value proposal, positioning of the brand, target customer, product, determining price levels and channel strategy). And, conduct a feasibility analysis to determining road map and action plan.

- **Business to Business/Business to Agency:** Incubator shall identify opportunities for alignment with stakeholder strategies, both public and private sectors; engage events with the agencies/authorities and prime contractors to interact with the participants to secure public and private sector contracts as a prime or sub-contractor in areas with potential growth opportunities; increase sales and job creation through increased State contract participation. Identify opportunities for collaboration with prime vendors and/or joint ventures, as well as mentor-protégé opportunities through the NYS mentor-protégé program (View Appendices B1 and B2).
- **Human Resources Management:** Incubator will design an operational and organizational model with strategies to support business expansion and recruitment effort. Leadership and Organizational Behavior (Business Operations, Employee Management, Project Management, Computer Skills, Human Resources, Workers Compensation), Legal (Compliance, Employment/Labor Law, Industry Regulations, Business Law)
- **Financial Acumen:** Incubator will collaborate with each participant to design a five-year strategic plan that includes goals, objectives, and metrics. This plan should include a short- and long-term financial strategy to ensure the scaling and market growth and provide ongoing capital investment, as well as staffing, budgetary, and operating guidance.
- **Access to Capital:** Incubator will collaborate with DMWBD and other Agencies or organizations to ensure that the Access to Capital program resources available through Empire State Development, the Small Business Administration (SBA), and other entities are presented in the curriculum.
- **Training Duration:** Training duration can be of any length; however, shorter learning modules are preferred. (i.e. one-two hour(s), half day, full day, 2-4 half-day sessions, etc.)
 - Classroom in-person practical training experience offered in a short course format with a maximum of four (4) classroom training sessions.
 - Delivery methods such as one-to-one training and webinars should be utilized. This is to ensure that the Incubator is assisting firms seek out contracting opportunities and develop proposals.
 - Blended learning – combining face-to-face classroom methods with e-learning activities to form an integrated instructional approach;
 - One-to-One Training Coaching - concentrated focus on individualized one-on-one coaching to help and identify the skills the participants need to accelerate. Each participant firm to receive 35 to 50 hours of consultation, proportionate to what is needed and contingent on the results of the performed gap analysis. (View Appendix C and D); and
 - Webinars – interactive, web-based video conference, with interactive tools approach to engage learners and enhance learning.

- **Conduct study of opportunities in the region**
 - Incubator shall proactively connect applicants with mentors targeted to their industry;
 - Incubator shall proactively seek contract opportunities during the BGA Program and help coach participant firms through successfully bidding on the contract;

- **Staff plan** (instructors, additional technical staff and non-technical staff)
 - Identify the location of the principal servicing office that will be responsible for the project implementation. DMWBD requires that the Incubator maintain a servicing office in the region for the duration of the contract;
 - Describe the composition of the team, including an organizational chart of the entire team;
 - Identify the key personnel, and describe their expertise, their time provided to firms in this contract, and how the key personnel tasks/activities will be assigned, monitored, and measured;
 - Describe any technical capabilities that would facilitate efficient and effective communication of the services offered with the target groups;
 - Describe how the team will deliver the Scope of Work as described within.
 - This description should include proven experience, innovations, and performance measures for contract success, enrollment, data collecting, information distribution, training course delivery, and other relevant services for contract service delivery.

- **Post cohort implementation support**
 - Six-month program consisting of group topic-based sessions and 2-4 additional private consulting sessions (DMWBD envisions one group per week for a period of 24 weeks, but understands that this may evolve with development of the curriculum
 - Smaller, more one-to-one meet-ups at regular after graduation fostering peer-to-peer learning and facilitated issue processing sessions, to advance the growth plan and addressing implementation challenges
 - Additional post-graduation implementation support from mentors and the instructor team
 - By the end of the program, each participant must have a “Business Growth Plan” tailored to each business specific business objectives and focused on increasing sales and growth.

- **Detailed Reporting and invoicing to DMWBD**
 - Incubator must collect, assess, and submit information on all participants during the full 18 months program reporting period;
 - Incubator must clearly present methods of evaluation and post-graduation monitoring process on all participants;
 - Incubator will also immediately provide any feedback regarding applicants’ complaint

- Class Cancellation: If enrollment is low (below the minimum fifteen (15) participant requirement), Incubator will notify to the Division of Minority and Women’s Business Development prior to the course dates to the DMWBD.
- Reports must contain information on, but not limited to, the following:
 - *Program Narrative* – The narrative (not a list of activities or itinerary) should discuss and highlight the activities initiated or performed. Furthermore, it should clearly state what impact these activities had on the overall operations of the program and/or impacts on cohort members.
 - *Program Accomplishments* – Provide quantitative and qualitative information on program progress and accomplishments of cohort members during the reporting period.
 - *Long term*: This includes revenue changes (positive or negative), job creation, financial credibility (i.e. securing business loans), capacity to purchase/add on equipment (if applicable), state contracts secured, etc.
 - *Immediate/ Short term*: Attendance in program events, hours participated in one-on-one sessions, topics covered in on-on-one sessions, action items/next steps agreed on during one-on-one sessions, classes attended.
 - *Client Narrative* – Discuss and/or highlight on-going services provided to specific clients, such as specifics related to one-on-one session activities/lessons.
 - *Coordination and Operational Linkages with Other Sources of Business Assistance* – Describe efforts to coordinate and establish linkages with other organizations, public and private, to work with on the Business Growth Accelerator. Identify organizations and summarize nature of coordination of linkages.
 - *Program Modifications/Work Plan Changes* – Describe any needed program or work plan modifications. (All modifications/changes must be made in writing and must be approved by DMWBD prior to implementation.)
 - *Supportive Documents* – Copies of attendance sheets and program or trainer evaluation forms.

Incubator awarded under this RFP must prepare and submit progress and financial reports. The Incubator as scheduled below must submit a total of eight (8) reports:

Report #	Report Title	Report Information
Report 1	Pre-Program Assessment of Firms	<ul style="list-style-type: none"> ○ Survey of the selected firms ○ Status of curriculum development ○ Summary of pre-assessment conducted ○ Confirmation of cohort including summary of each business participant ○ Attendance records (hours participated in one-on-one)

Report 2	Quarterly Report	<p>Quarterly Report for month 1-3</p> <ul style="list-style-type: none"> ○ Must include all invoices for quarter with proof of payments and receipts ○ Program Narrative ○ Progress to deliverables ○ Attendance records (hours participated in one-on-one and classes attended)
Report 3	Quarterly Report	<p>Quarterly Report for month 4-6</p> <ul style="list-style-type: none"> ○ Must include all invoices for quarter with proof of payments and receipts ○ Program Narrative ○ Progress to deliverables ○ Attendance records (hours participated in one-on-one and classes attended)
Report 4	Quarterly Report	<p>Quarterly Report for month 7-9</p> <ul style="list-style-type: none"> ○ Must include all invoices for quarter with proof of payments and receipts ○ Program Narrative ○ Progress to deliverables ○ Attendance records (hours participated in one-on-one and classes attended)
Report 5	Annual Report	<p>Quarterly Report for months 10-12 and overall annual report</p> <ul style="list-style-type: none"> ○ Must include all invoices for quarter with proof of payments and receipts ○ Progress Report of Participant firms showing: <ul style="list-style-type: none"> ○ Job creation ○ Financial credibility (i.e. securing business loans) ○ Revenue changes (positive and negative) ○ Capacity to purchase/add on equipment (if applicable) ○ State contracts secured ○ Equipment purchased ○ Capital assets acquired ○ Attendance records (hours participated in one-on-one and classes attended) <ul style="list-style-type: none"> ○ Participant retention rates ○ Program Narrative: Challenges and successes for the firms and the Incubator, detailed services provided, proposed solutions and information on successful/unsuccessful classes/topics ○ Finalized plan for months 13-18

Report 6	Quarterly Report	<p>Quarterly Report for month 13-15</p> <ul style="list-style-type: none"> ○ Must include all invoices for quarter with proof of payments and receipts ○ Program Narrative ○ Progress to deliverables ○ Attendance records (hours participated in one-on-one and classes attended)
Report 7	Program Completion Report	<p>Quarterly Report for month 16-18, and a program completion report</p> <ul style="list-style-type: none"> ○ Must include all invoices for quarter ○ Overall program narrative (for all 18 months): recommended updates and successful strategies, services provided ○ Progress to deliverables ○ Participant evaluations ○ Attendance records ○ Retention rates
Report 8	Post- Program Assessment	<p>Post - Assessment for firms 6 months after the completion of the program</p> <ul style="list-style-type: none"> ○ Must include all invoices for quarter with proof of payments and receipts ○ Progress Report of Participant firms showing: <ul style="list-style-type: none"> ○ Job creation ○ Financial credibility (i.e. securing business loans) ○ Revenue changes (positive and negative) ○ Capacity to purchase/add on equipment (if applicable) ○ State and Private contracts secured ○ Equipment purchased ○ Capital assets acquired ○ Business expansions ○ Updates on certifications/licensing ○ Updates on offered services and products ○ Attendance records (hours participated in one-on-one and classes attended) <ul style="list-style-type: none"> ○ Participant retention rates ○ Presentation of Business Growth Plan

Metrics:

Throughout program delivery, and after program completion, DMWBD expects the minimum program metrics below to be met, with the expectation that these targets can be exceeded.

Category	Metric
Participant Retention/" Graduation" Rate	85%
Success Stories	Minimum of 10

Number of firms with credit growth	10
Number of firms with secured contracts New York State Contracts and City Contracts	10
Number of businesses that receive either loan or new equity investment	10
Increased revenue sales	10% increase projected per annum
Number of firms with expanded employment	10
Number of jobs created	10
Number of jobs maintained	All- No jobs lost

Cohort Participant Firms Eligibility

- Each program cohort will be comprised approximately 15-20 participant firms. Interested participant firms are required to complete and submit an application to the Incubator to be considered for the program. DMWBD will provide the cohort application form. Within 60 days from the execution of the grant contract, the Incubator is responsible for evaluating and choosing the cohort participants, with final approval from DMWBD.
- At a minimum, participants are required to submit:
 - Submit an application to regional Incubator
 - Be a currently certified NYS MBE, WBE or MWBE
 - Must be in business for at least two (2) years
 - Must have at least two employees
 - Demonstrate annual revenues between \$100,000 and \$5 million during the most recent year
 - Business located in the Incubator region

DMWBD responsibilities include, but are not limited to:

- Develop Participant Firm Cohort Application and approve Incubators recommended Participant Firm into BGA Program.
- Prepare a pre-program and post-program evaluation form for training components to demonstrate participant and overall rating of course
- Provide reporting requirements and templates
- Oversight: Analyzing required periodic Incubators reports and monitor participants progress

PROGRAM FUNDING

- DMWBD intends to award five (5) grants during this cycle, but reserves the right, in the exercise of its sole discretion, to award fewer grants based upon responses received to this RFP or for any other reason.
- The selected Incubators will receive a grant up to \$200,000 for the entirety of the BGA program, contingent upon the availability of funds and approval from the Division of Budget. The Incubator

must provide DMWBD with required reports on a timely and requested basis, and quarterly invoices that include proof of payment, as described below, to receive grant payments.

- Payments will be made quarterly on a reimbursement basis, after submission of invoices and proof of payments with mandatory reports, as described below. Invoices must reflect the categories used in the budget submitted as part of the RFP response. The only exception will be the mobilization funding during month one, reimbursed with invoices submitted with the first report.

Quarter/Months	Max Reimbursement Amount
Month 1	\$30,000, as mobilization funding
Quarters 1–6: Months 1–18	\$140,000
Month 24	\$30,000, after receipt of final program report

- The grant is to be used only for the purposes stated in the organization’s application or otherwise approved, in writing, by DMWBD. Invoices must be submitted with the program reports.

Matching Funds

- As a condition of a BGA award, the selected Incubators are required to contribute a match in an amount no less than 20% of the amount of funding provided by DMWBD. “Matching dollars”, the portion of project costs not paid by State funds, must come from non-State sources, and may not include enrollment fees; these costs are to be funded by the operator or a partner as cash or in-kind contributions and cannot be sourced from other New York State awards or grants. Applicants may match the award by one or more of the following methods: (1) applicant cash contributions; (2) applicant in-kind (i.e. non-cash) contributions; or (3) non-NYS third-party cash or in-kind contributions. At least fifty percent (50%) of the match must be a cash match, and no more than fifty percent (50%) must be an in-kind match.
- Enrollment fees collected at program start is considered program income and may not be used as part of the matching funds. Any enrollment fees collected must be used for BGA program purposes before the end of the program cycle. Incubators must include program income as part of their submitted budget in their RFP response.
- No more than ten percent (10%) of DMWBD grant and cash matching funds, combined, may be used to cover indirect expenses, also called “overhead,” “administrative,” or “general operating” expenses. No program income may be used for these overhead costs.

Incubators may charge a minimal fee to BGA participating businesses, as determined by the DMWBD sliding scale:

Annual Revenue Range During the Most Recent Year	One-Time Enrollment Fee
\$100000 – \$199,999	\$200
\$200000 – \$399,999	\$300
\$400000 – \$599,999	\$400

\$600000 – \$799,999	\$500
\$800000 – \$999,999	\$750
\$1,000,000 – \$3,000,000	\$1,250
\$3,999,999 – \$5,000,000	\$1,500

IV. SCHEDULE OF DATES

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

Release of RFP	October 2, 2019
Deadline for Submission of Questions	October 17, 2019
Deadline for ESD to Respond to Questions	October 24, 2019
Pre-bid meeting (if applicable)	October 9, 2019
Submission of Proposals (date and time)	November 5, 2019 at 12:00 PM
Interviews (if necessary)	November 26 – December 3, 2019
Announcement of Successful Bidder	January 2, 2020
Anticipated Contract Start Date	February 3, 2020

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

V. SELECTION CRITERIA

Each program cohort will be comprised approximately 15-20 businesses, with balanced industry representation based on MWBE firm availability in each industry, as identified and selected by the Incubator, and subject to DMWBD approval. To the extent possible, the Incubator will identify participants engaging in complementary business activity to provide an opportunity and encouragement for partnership and/or joint ventures between businesses seeking public contracting.

- DMWBD will evaluate proposals based on the following criteria, not necessarily in order of importance:
 - The Incubator’s understanding of program goals and objectives as outlined in the request for proposals, through the draft of the proposed curriculum, expected programmatic outcomes;
 - The need for, and anticipated impact of, the proposed NYS MWBE BGA program on the NYS Region in which it will function through the lens of the extent of economic distress in the area(s) to be served;
 - The Incubator’s level of competency of contracting opportunities for MWBEs in regional area;
 - The Incubator’s plans for supplementing grant funding through matching funds and program income;

- The extent to which the Incubator and/or partner organizations have experience operating and successfully implementing economic development, MWBE capacity building, business management, and/or technical assistance programs;
 - The Incubator’s proposed program budget, existing operating budget, and institutional capacity for using grant funds effectively;
 - The Incubator must demonstrate how they plan to expand their existing program by utilizing the existing framework to demonstrate creative approach;
- The extent to which the Incubator has been effective in continuing or cultivating relationship with Prime contractors, Agencies, and Authorities in NYS;
- The Incubator’s completeness of the proposal; and,
- The Incubator’s documented commitment to Non-Discrimination Contractor & Supplier Diversity as noted in this RFP.

The proposal will be scored in the following manner:

Firm Experience and Qualifications	20 Percent (20%)
Staff Experience and Qualifications	15 Percent (15%)
Regional Needs and Information	20 Percent (20%)
Project Plan and Approach	35 Percent (35%)
Budget	10 Percent (10%)

VI. SUBMISSION OF PROPOSALS

Every respondent to this RFP should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

i. Technical Proposal

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

- A. Table of Contents
- B. Firm Experience and Qualifications
- C. Staff Experience and Qualifications
- D. Regional Needs and Information
- E. Project Plan and Approach
- F. Budget

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

A. Table of Contents

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

B. Firm Experience and Qualifications

In this section of the Technical Proposal, Incubators should demonstrate relevant experience by providing the following:

- Detailed information on past experiences operating and successfully implementing economic development and/or business development programs;
- Detailed information on the experience providing business management and technical assistance to clients by either the Incubator or partner organizations;
- Detailed information on similar projects of this scope and budget size;
- Demonstrate examples of successfully assisting minority and women-owned businesses build capacity and expand;
- Demonstrate examples of successfully continuing or cultivating relationship with Prime contractors in NYS;
- Detailed information on contracting opportunities for MWBEs in regional area, both currently and projected after program end;
- The operating budget and institutional capacity for use of grant funds; and,
- References from projects with this scope for the Incubator and any partner organization(s).

Information provided by references may be used by DMWBD for proposal evaluation purposes. DMWBD may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Incubator to the client during the engagement. DMWBD reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what DMWBD deems to be the most effective and efficient manner.

C. Staff Experience and Qualifications

In this section of the Technical Proposal, Incubators should provide resumes to demonstrate that the staff and any partners' staff proposed have the knowledge and ability to perform the services described in this RFP.

Information provided by references may be used for proposal evaluation purposes. DMWBD may seek additional information from references regarding subjects that include, but are not

limited to, the quality of services provided, anticipated ability to perform the services required in this RFP and the responsiveness of the Incubator to the client during the engagement.

D. Regional Needs and Information

In this section of the Technical Proposal, Incubators must demonstrate the regional needs that require the BGA program, and the information leading to decision making by the Incubators related to their region as described in this RFP by providing the following:

- Information on the need for, and anticipated impact of, the proposed NYS MWBE Business Growth Accelerator program on the NYS Region in which it will function; and,
- The extent of economic distress in the area(s) to be served.

E. Project Plan/Approach

In this section of the Technical Proposal, Incubators should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

- The proposed curriculum;
- The upcoming contract opportunities in the industries chosen;
- The proposed one-on-one counseling sessions outline;
- The expected outcomes of the program;
- The plans for supplementing grant funding through matching funds and program income; and,
- The business growth plan

Incubators must also submit a detailed plan explaining how the MWBE subcontracting goals established would be met.

F. Budget

In this section of the Technical Proposal, Incubators should provide a detailed budget for the entirety of the program, which includes the applicant's plans for supplementing grant funding through matching funds and program income (*See Appendix E for budget*).

ii. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with DMWBD. The successful Incubator must agree to abide by these requirements and provide any information requested by DMWBD in connection with these requirements. Accordingly, Incubators 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 an Incubator's proposal.

- i. **State Finance Law §§139-j and 139-k forms**, submit with Proposal and can be found at:

http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

- ii. **Vendor Responsibility Questionnaire**, submit with proposal or submit online (and include copy of submitted form with proposal). It can be found at: www.osc.state.ny.us/vendrep

- iii. **Iran Divestment Act Statement**, submit with proposal. Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

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

- iv. **Non-Discrimination and Contractor & Supplier Diversity Requirements**, submit with proposal

- [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
- [OCSD-2 - Staffing Plan](#)
- [OCSD-3 – Workforce Utilization Report](#)
- [OCSD-4 - MWBE and SDVOB Utilization Plan](#)

- v. **Encouraging the Use of NYS Businesses in Contract Performance Form**, submit with proposal

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

- vi. **Certification under State Tax Law Section 5-a 220-CA or Affidavit, submit with proposal**

To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit.

(http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance.

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

- viii. Not-For-Profit Organizations, registration and pre-qualification

- ix. **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>

- x. **Executive Order 177** - The required certification can be found at: <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals

Additional information about these items, and procurement requirements, can be found in Section IX of this RFP (“Contractual 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, electronic transmission) will not be accepted. When submitting each proposal, Incubators must comply with the following:

- i. The Technical Proposal and the Administrative Proposal must be submitted in separately sealed packages (which may be submitted within one complete package for mailing);
- ii. “Original” documents must have an original signature and be clearly marked “Original”;
- iii. Clearly mark the outside packaging for each set of sealed proposals (Technical and Administrative);
- iv. Clearly mark the original and each copy as “**RFP – The NYS MWBE 2019 Business Growth Accelerator (BGA) Proposal**” submitted by [Incubator’s name]
- v. Each Incubator must submit:
 - o Five (5) hardcopies and one (1) text-searchable electronic copy on CD or flash drive of the *Technical Proposal*.
 - o One (1) original and one (1) electronic copy on CD or flash drive of the *Administrative Proposal*.

A complete package (Technical Proposal and Administrative Proposal) must be received by the deadline in the schedule of dates in this RFP. Proposals should be sent to the following address:

Empire State Development - Procurement Unit
633 Third Avenue, 35th Floor
New York, New York 10017-8167
Attention: Mr. John F. Discolo
RFP - The NYS MWBE 2019 Business Growth Accelerator (BGA)

Late proposals will not be considered for award.

VII. 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 of dates to BGA2019RFP@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.

VIII. GENERAL PROVISIONS

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

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

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

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

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

Required Approvals

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

Performance

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

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

Additional Services Requested

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

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has an absolute right and discretion to approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

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

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

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

IX. CONTRACTUAL REQUIREMENTS

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

i. Conflicts of Interest

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

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

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- 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 Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

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

http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

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

New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

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

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

iii. Vendor Responsibility Questionnaire

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

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

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

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

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

iv. Iran Divestment Act

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

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

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

v. Executive Order 177

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

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

vi. Non-Discrimination and Contractor & Supplier Diversity Requirements

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

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15 percent for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor

("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

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

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

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

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

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

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

- 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 proposal.

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

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

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

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

Equal Employment Opportunity Requirements

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

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

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

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

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and 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. Accordingly, Incubator shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix F).

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

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

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

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

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

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

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

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

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

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

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

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

Contract Goals

- A. ESD hereby establishes an overall goal of 3% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified

SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

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

- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

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

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

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

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

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

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

- (1) Copies of solicitations to SDVOBs and any responses thereto.

(2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

(3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.

(4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

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

Breach of Contract and Damages

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

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

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

viii. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit

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

ix. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A.

A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

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

x. Project Sunlight

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

xi. Insurance Requirements

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

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

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

xii. W-9 Form

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

Attachments

Appendix A
Appendix B1
Appendix B2
Appendix C
Appendix D
Appendix E
Appendix F