



**NEW YORK**  
STATE OF  
OPPORTUNITY™

**Empire State  
Development**

# **RFP to Assist New York State in Retaining Jobs through the Retention and Expansion of Military Bases**

**Issued: Empire State Development**

**Release Date: January 11, 2019**

**Submission Deadline: February 4, 2019 by 2 PM EST**

Designated Contacts for this Procurement:

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All contacts/inquiries shall be made by email to the following address:  
Militarybases2019RFP@esd.ny.gov

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

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## I. INTRODUCTION

Empire State Development is New York's chief economic development agency. The mission of Empire State Development is to promote a vigorous and growing economy, encourage the creation of new job and economic opportunities, increase revenues to the State and its municipalities, and achieve stable and diversified local economies. Through the use of loans, grants, tax credits and other forms of financial assistance, Empire State Development strives to enhance private business investment and growth to spur job creation and support prosperous communities across New York State.

## II. OVERVIEW

According to the most recent data released by the Bureau of Economic Analysis, New York State military bases account for approximately 55,500 full-time and part-time jobs<sup>1</sup>, providing \$2.2 billion in wages and salaries to employees<sup>2</sup>. New York State's primary military installations include:

- Niagara Falls Reserve Station
- Fort Drum, Watertown
- Air Force Research Laboratory, Rome
- Eastern Area Defense Sector, Rome
- Defense Finance Accounting Service, Rome
- Stratton Air National Guard Base, Scotia
- Hancock Field, Air National Guard Base, Syracuse
- Watervliet Arsenal, Albany
- West Point
- Fort Hamilton, Brooklyn
- Stewart Air National Guard Base, Newburgh
- Gabreski Air National Guard Base, Westhampton

The economic benefits created by New York State military installations continue to be subject to the Department of Defense's ongoing budgetary constraints and force structure adjustments, and future rounds of Base Realignment and Closure (BRAC).

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<sup>1</sup> U.S. Bureau of Economic Analysis. (September 2018). SAEMP27N Full-Time and Part-Time Wage and Salary Employment by NAICS Industry - Govt. and govt. enterprises wage and salary employment in Military. BEA Data – Regional Data: GDP and Personal Income. Retrieved from: [http://apps.bea.gov/iTable/iTableHtml.cfm?reqid=70&step=30&isuri=1&TableId=31&State=0&Category=431&YEAR\\_END=-1&AREA=36000&YEAR=2017&YEARBEGIN=-1&Classification=NAICS&UNIT\\_OF\\_MEASURE=Levels&STATISTIC=2002&Area\\_type=0&Major\\_Area=0#.XA6avrFwurU.e mail](http://apps.bea.gov/iTable/iTableHtml.cfm?reqid=70&step=30&isuri=1&TableId=31&State=0&Category=431&YEAR_END=-1&AREA=36000&YEAR=2017&YEARBEGIN=-1&Classification=NAICS&UNIT_OF_MEASURE=Levels&STATISTIC=2002&Area_type=0&Major_Area=0#.XA6avrFwurU.e mail)

<sup>2</sup> U.S. Bureau of Economic Analysis. (September 2018). SAINC7N Wages and Salaries by NAICS Industry - Govt. and govt. enterprises wage and salary employment in Military. BEA Data – Regional Data: GDP and Personal Income. Retrieved from: [http://apps.bea.gov/iTable/iTableHtml.cfm?reqid=70&step=30&isuri=1&TableId=29&State=0&Category=429&YEAR\\_END=-1&AREA=36000&YEAR=2017&YEARBEGIN=-1&Classification=NAICS&UNIT\\_OF\\_MEASURE=Levels&STATISTIC=2002&Area\\_type=0&Major\\_Area=0#.XA6dkLlq3Pk.e mail](http://apps.bea.gov/iTable/iTableHtml.cfm?reqid=70&step=30&isuri=1&TableId=29&State=0&Category=429&YEAR_END=-1&AREA=36000&YEAR=2017&YEARBEGIN=-1&Classification=NAICS&UNIT_OF_MEASURE=Levels&STATISTIC=2002&Area_type=0&Major_Area=0#.XA6dkLlq3Pk.e mail)

ESD is seeking the services of a Consultant with military base economic development experience to identify growth opportunities and retention strategies that maximize New York State's military installations as economic contributors and job generators for the State.

### **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 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 MWBE or SDVOB certification to [Militarybases2019RFP@esd.ny.gov](mailto:Militarybases2019RFP@esd.ny.gov). Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

### **III. SCOPE OF WORK**

The responsibilities of the Consultant shall include, but not be limited to the following:

- A. Support Installation Assessments.
  - 1. Inform iterative assessments of all New York bases, and the economic and demographic analyses of areas surrounding each base in relation to the State's retention and growth strategy.
  - 2. Provide recommended updates to the State's strategic plan in order to retain installations and attract new missions.
  - 3. Provide analyses, reports, and other information on competing installations in other states.
- B. Advise on the State's Retention and Development Program.
  - 1. Inform the State's retention and development plan for each major military installation, including strategies to increase visibility of and support for the bases.
  - 2. Explore new mission opportunities for the bases, including compatible missions from federal agencies other than the Department of Defense.
    - a. Opportunities identified for Air Force bases should give priority to missions related to air cargo, fueling, or other operations utilizing the airfield, hangars, and other support facilities.
  - 3. Provide information and support up the chain of command in each military service as bases are evaluated.
- C. Identify and Analyze Other State Assets.
  - 1. Prepare an inventory and analysis of State assets such as universities, private sector businesses, and industries that could help position the State for new missions and defense-related investments.
- D. Prepare and Support State Military Priorities.
  - Under direction of the Washington Office of the Governor ("Washington Office"):
    - 1. Provide support for tours of military bases by members of Congress and relevant federal officials.

2. Assist Washington Office in maintaining a military base priorities list.
    - a. Provide support for this list so that State bases receive available funding.
    - b. Assist the State in preparing requests to the NY congressional delegation for defense authorization bill and report language and defense appropriations program funding to support base retention / growth priorities.
  3. Help the State pursue Homeland Security and other defense related funding opportunities.
  4. Provide military expertise to State government officials on issues affecting State bases and on defense issues that may impact other State agencies.
  5. Support event participation and Washington visits by senior officials from the State and base community leaders as identified by the State. Set up appointments with key military agency personnel and House/Senate members and staff who are decision-makers for State military bases.
  6. Monitor and seek to influence the work of any BRAC or BRAC-like efforts for the benefit of New York State.
  7. Provide information and guidance pertaining to the Trump Administration's personnel policies, their effect on the Defense Budget, and the impact that these policies will have on the New York State Reserve Component.
  8. Assist in the coordination of the local communities, State Agencies, and the Pentagon in order to address concerns associated with possible environmental issues in and around reserve component installations.
- E. Provide Technical Assistance
1. As it relates to other elements of the Scope of Services, provide technical assistance to municipalities, not-for-profit organizations, local development corporations, local economic development zone administrative boards, and/or business improvement districts to analyze potential development opportunities or obstacles as it relates to retaining and expanding economic activities on military bases.

#### **IV. SCHEDULE OF ANTICIPATED DATES**

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

Release of RFP	Friday, January 11, 2019
Deadline for Submission of Questions	Thursday, January 17, 2019
Deadline for ESD to Respond to Questions	Monday, January 28, 2019
Pre-bid meeting (if applicable)	To be Determined as Necessary
Submission of Proposals (date and time)	Monday, February 4, 2019 by 2:00 EST
Interviews (if necessary)	To be Scheduled as Necessary
Announcement of Successful Respondent	Monday, February 18, 2019
Anticipated Contract Start Date	To be Announced in April 2019

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

## **V. SELECTION CRITERIA**

Proposals may be reviewed by ESD and other State officials, including but not limited to the Washington Office of the Governor. The award of the solicitation may be subject to, as required under applicable law and regulation, review and/or approval of the ESD Directors, the Comptroller of the State of New York, and/or the New York State Attorney General. When evaluating proposals, the following criteria will be considered in the associated weighted percentages:

1. Respondent's relevant experience with military base programming, retention and redevelopment, including complexity and size of engagements by the respondent as a consultant firm for public entities and states comparable to New York State. (40%)
2. Proposed partners' and associates' qualifications and experience working on relevant and similar projects, including with comparable states' Air National Guard and Army National Guard; and with state congressional delegations. (30%)
3. Technical approach and methodology for required Scope of Services. (15%)
4. Anticipated cost of services and willingness to work with ESD to minimize costs. (15%)

ESD also reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of their proposals and to ensure a full and complete understanding of each proposal. ESD shall undertake to pursue uniformity in the questions it asks to Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. ESD reserves the option to hold oral interviews as part of the selection process, in which case ESD shall convene a committee of staff who shall be permissible contacts for the purpose of such interviews, and Respondents who are invited will receive additional instructions upon their invitation.

ESD anticipates that a single Respondent will be conditionally designated based upon ESD's determination of the best value for ESD and New York State.

## **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 Respondent 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 Respondent. No information is required beyond what is specifically requested. The Corporation 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. Project Plan and Approach**
- E. Estimated Cost**

The purpose of the Technical Proposal is to provide Respondents 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, Respondents should demonstrate relevant experience by providing the following:

- A history of the firm’s consulting experience for ESD and/or similar public entities in and outside of New York State. (Where possible, please provide sample itineraries from work with any congressional delegations.)
- A proposed technical approach outlining methodology and tasks to be performed, as outlined in the Scope of Services.

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation 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 Respondent to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

#### **C. Staff Experience and Qualifications**

In this section of the Technical Proposal, Respondents should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP by providing the following:

- A description of the consulting team and relevant experience, including, but not limited to:
  - Familiarity with requested tasks, military base retention and expansion, and work with New York State and/or Empire State Development or similar states and state entities;

- Summaries of comparable projects, including, but not limited to: mission conversions to create or retain jobs; and a numeric summary by cycle or year of how installations represented by the consulting team fared under Air Force or Army Force Structure Adjustments and previous BRAC rounds. Examples must include the entity name, the name of a contact person who is able to provide a reference, a description of the type of engagement, the scope of the engagement, and the amount and basis for the firm's fee calculation (for example, contract rate or hourly rate);
- Resumes of the partners and associates who would be assigned and regularly work on this engagement.
- Staffing program and schedule. Indicate the percentage of time each of the foregoing individuals spends on public engagements. Identify the partner in charge and, for this partner, provide three client references relating to engagements similar to the type described in this RFP including, but not limited to letters of recommendation from recognized Military Affairs Councils. Also include the percentage of time this partner will dedicate to this engagement.
- List the firm's and subconsultant's State lobbying or Federal lobbying registration if applicable.
- The firm's financial statements for no less than the last three fiscal years.
- Identify any subcontractor(s) that may be part of the team and the type of work that will be performed by the subcontractor(s). In addition, specify if any of the subcontractor(s) are certified Women-Owned Businesses and/or Minority-Owned Businesses and/or Service-Disabled Veteran-Owned Businesses.
- Any other information, which you believe, would make your representation of your firm superior to that of other firms.

Information provided by references may be used for proposal evaluation purposes. The Corporation 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 Respondent to the client during the engagement.

#### **D. Project Plan/Approach**

In this section of the Technical Proposal, Respondents should demonstrate their competence and capacity to undertake the services described in this RFP by providing a proposed technical approach that explains the methodology and tasks to be performed, as outlined in the Scope of Work.

#### **E. Estimated Cost**

Please provide the following:

- The total proposed annual fee.
- The normal hourly rate of each partner and associate whose resume is provided and the hourly rate you propose to charge (as utilized to calculate the fee above).

- A schedule of all disbursements, which you anticipate will result in any additional charge and the rate of each.
- Any other anticipated fees or charges.
- An anticipated schedule of tasks. The term of the contract will be for one (1) year with, at ESD’s discretion, an option to renew the contract annually for an additional one (1), two (2) or three (3) years. Provide annual fee for optional contract extension.

**ii. Administrative Proposal**

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Respondent must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Respondents 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. State Finance Laws 139j and 139k submit with proposal  
[http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](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)
- iii. Iran Divestment Act Statement, submit with proposal  
<http://www.ogs.ny.gov/about/regs/ida.asp>
- 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-4 - MWBE and SDVOB Utilization Plan](#)
- v. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- vi. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- vii. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD’s 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, Respondents must comply with the following:

1. The Technical Proposal and the Administrative Proposal must be submitted in separately sealed packages (which may be submitted within one complete package for mailing);
2. “Original” documents must have an original signature and be clearly marked “Original”;

3. Clearly mark the outside packaging for each set of sealed proposals (Technical and Administrative);
4. Clearly mark the original and each copy as **RFP – To Assist New York State in Retaining Jobs Through the Retention and Expansion of Military Bases Proposal” submitted by [Respondent’s name]**
5. Each Respondent must submit:
  - Five (5) hardcopies and one (1) text-searchable electronic copy on CD or flash drive of the *Technical Proposal*.
  - 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  
633 Third Avenue 35th Floor  
New York, New York 10017-8167  
Attention: John Discolo  
RFP: “Military Base Consultant”**

**Late proposals will not be considered for the 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 in Section IV (Schedule of Dates) to [Militarybases2019RFP@esd.ny.gov](mailto:Militarybases2019RFP@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 Respondent or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

- amend, modify or withdraw this RFP;
- revise any requirement of this RFP;
- require supplemental statements or information from any responsible party;
- accept or reject any or all responses hereto;
- extend the deadline for submission of responses hereto;
- negotiate potential contract terms with any Respondent;
- communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;

- 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
- 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.

### **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.

By the final business day at the end of the third month of the Contract, the Contractor will submit a NYS Military Base Retention and Expansion Plan (“NYS Military Base Plan”) which consists of the following reports and assessments, stating projections and anticipated activities where appropriate:

- Threat Assessment: an analysis of the federal policy, political, and funding issues that threaten each of NYS’ military bases and their personnel.

- Economic Progress Review: a report of the economic activities generated in NYS by the Contractor's activities.
- Performance Comparison Report: a summary report regarding the State's performance, relative to other states, in retaining and developing NYS' military bases, and the Contractor's performance therein.

Additionally, at the end of every calendar year, the Contractor will provide the Corporation with a revised NYS Military Base Retention and Expansion Plan. The NYS Military Base Plan that is submitted at the end of the year should discuss the activities undertaken by the Contractor over the respective calendar year, and where appropriate, include updates to the Threat Assessment, Economic Progress Review, and Performance Comparison Report. The Corporation will utilize monthly progress reports and/or periodic meetings between the Contractor and the Washington Office of the Governor to ensure that the project is carried out on a timely basis and results in effective recommendations and work products. The Corporation will also ask for memos on the Contractor's community engagement efforts, and the Corporation may also ask for copies of agendas and minutes from meetings the Contractor engages in to carry out its work for this Contract.

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 Respondent's submission pursuant to Section VI of this RFP, as well as information about ESD's procurement requirements.

### **i. 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 below; the completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC 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 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](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 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.

## **ii. 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) 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](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)."

### **iii. 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: <http://www.ogs.ny.gov/about/regs/ida.asp>.

### **iv. Non-Discrimination and Contractor & Supplier Diversity Requirements**

#### **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

##### **A. General Provisions**

- a. Empire State Development (ESD) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- b. The respondent to the subject solicitation agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and

women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). The Respondent’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.

- c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to ESD pursuant to the Contract and applicable law.

**B. Project Goals**

- a. For purposes of this procurement, ESD hereby establishes an overall goal of 0% for MWBE participation.

**C. Equal Employment Opportunity (EEO)**

- a. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to this solicitation.
- b. In performing the Project, the selected Contractor shall:
  - 1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The Contractor shall submit an EEO policy statement to ESD within seventy-two (72) hours after the date of the notice by ESD to award the Contract to the Contractor.
  - 3. If the Contractor, or Subcontractors, does not have an existing EEO policy statement, ESD may provide the Contractor or Subcontractor a model statement (see Form – OCSD-1 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
  - 4. The selected Contractor’s EEO policy statement shall include the following language:
    - i. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or

marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

- ii. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- iii. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- iv. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

c. Form OCSD-3 – Workforce Utilization Report

1. The selected Contractor shall submit a Workforce Utilization Report, and shall require each of its Subcontractors to submit a Workforce Utilization Report, in excel format only on a monthly basis for construction contracts over \$100,000, or a quarterly basis for commodities and services contracts over \$25,000, during the term of the contract to [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov), by the 10<sup>th</sup> day following each end of month or quarter as applicable.
2. Separate forms shall be completed by Contractor and any Subcontractor.
3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis. Contact OCSD for additional information.

The selected Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall 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.

## **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**

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 Respondents should reference the directory of New York State Certified SDVOBs found at: <http://ogs.ny.gov/Core/SDVOBA.asp>.

- A. **Attachment A** contains a list of some certified SDVOB firms Bidders may wish to include as subcontractors as part of their response to this RFP.
- B. 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](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- C. 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), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their bid.
- 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/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Respondent/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 Respondent/Contractor and direct the Respondent/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. 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, 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, Respondent/Contractor shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Respondent/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 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/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 regard 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 ESD.

### **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 Respondents'/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](mailto: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.

The 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: [http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_2StaffingPlan.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.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](mailto:OCSD@esd.ny.gov).

### **v. 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>.

### **vi. 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.

#### **vii. 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:

[http://intranet.empire.internal/Finance/2018/ScheduleA-Services\\_Materials-March2018.pdf](http://intranet.empire.internal/Finance/2018/ScheduleA-Services_Materials-March2018.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.

#### **viii. 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.

#### **ix. Insurance Requirements**

The selected Respondents 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.

**x. W-9 Form**

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

**xi. EO 177 Certification**

In accordance with Executive Order No. 177 (issued on February 3, 2018, available here <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO177.pdf>) any entity that provides goods or services to ESD must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the New York State Human Rights Law. Accordingly, all Respondents must submit an EO 177 certification form with their proposal. The required form is titled “EO 177 Certification” and is attached to this RFP (the page after **Attachment A**).