



Division of Minority and Women's Business Development

THE NYS MWBE CERTIFICATION ASSISTANCE PROGRAM REQUEST FOR PROPOSALS

Issued: May 20, 2020

Submission Deadline: June 30, 2020 by 2:00 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 Discolo
Secondary Contact: Raymond Emanuel

All contacts/inquiries shall be made by email to the following address:
2020SuperCap@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

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:

- i. To assist State agencies in providing equal opportunities to MWBEs to seeking and participate on State contracts;
- ii. To review applications by businesses seeking certification as an MWBE, and to maintain a directory of certified MWBEs; and,
- iii. 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 a consulting firm (herein after “Awardee”) that will be required to provide technical assistance through the entire process of completing and/or updating NYS MWBE certification applications to applicants identified by DMWBD. The awardee must contact, assist, and establish communications necessary to complete a thorough review of applications submitted by an applicant identified by DMWBD throughout New York State in submitting and/or updating a certification application, then provide to DMWBD an application’s certification recommendation. The awardee must demonstrate its technology and infrastructure to deliver all mandated services under the contract remotely, including but not limited to technical assistance and consultation to applicants; review and analysis of all documents; submission of documents to DMWBD; and all other related outreach required. The awardee’s technology for remote services must be sufficient to accommodate the expected number of applicants within the timeframe of the contract.

The awardee is expected to complete at least 1,900 application reviews in one (1) year.

DEFINITIONS

The following definitions are provided for clarification of terminology utilized within this RFP.

- **Applicant/MWBE Applicant** – The business enterprise applying for NYS MWBE Certification as a bona fide MWBE.
- **Awardee** – The firm/vendor selected by ESD to be responsible for administering the NYS MWBE Certification Assistance Program in their region.
- **Certification Recommendation** – Recommended decision for certification or denial of a submitted application. Analysis and certification recommendations completed and submitted by the awardees to DMWBD do not replace the analysis to be completed by DMWBD certification analysts.
- **Division of Minority and Women’s Business Development (“DMWBD”)** – A Division under Empire State Development, responsible for administering the State of New York’s MWBE program.

- **Minority and Women-owned Business Enterprise (“MWBE”)** – A business enterprise which has been certified by the Division of Minority and Women’s Business Development as meeting all eligibility requirements set forth by NYS Article 15-A of the Executive Law. For more information on the NYS MWBE certification process go to: <https://esd.ny.gov/doing-business-ny/mwbe>
- **NYS Mentor Protégé Program (“MPP”)** – Aims to expand the capacity, technical knowledge, and participation of MWBEs in state contracting opportunities. The MPP is administered by DMWBD, which approves and monitors mentor-protégé engagement.
- **The New York State Contract System (“NYSCS”)** enables users to apply for NYS MWBE certification, search for NYS MWBE certified firms, and easily interact with our State agencies and authorities.
- **Red Flags** – Flags that would indicate that a firm has elements that may prevent it from meeting MWBE Certification eligibility requirements. An extensive review may be necessary. DMWBD will provide awardees with information on red flags.
- **Rejected MWBE Application**– An application is rejected if an applicant is non-compliant to request(s) from DMWBD in the time allotted. If an application is rejected, the applicant cannot reapply for 90 days from the date of rejection.
- **Respondent** – The firm/vendor responding to this RFP. This firm is applying to be considered as a possible administrator the NYS MWBE Certification Assistance Program in their region.
- **Returned MWBE Application**– An application is returned to the applicant if the applicant does not meet the certification criteria for MWBE certification. This includes if (1) too many required documents are missing in the submitted application; (2) the applicant does not meet the requirement of having at least one (1) year in business; (3) ethnicity of the applicant is not one that Article 15-A recognizes; (4) applicants are not US citizens or permanent resident aliens; and/or, (5) ownership is not at least 51% held by minority and/or women members. Applicants may resubmit an application once the deficiencies have been corrected.
- **Service-Disabled Veteran-Owned Business (SDVOB)**- is a program that allows eligible Veteran business owners to get certified and participate in contracting opportunities. The Office of General Services is responsible for certifying eligible SDVOBs and maintaining the directory of certified SDVOB firms.

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 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 2020SuperCap@esd.ny.gov . Nothing prohibits an MWBE or SDVOB Vendor from proposing as a prime contractor.

III. SCOPE OF WORK

DMWBD is seeking proposals from public and private partnerships to award a grant to a consulting firm (herein after “Awardee”) that will be required to provide technical assistance through the entire process of completing and/or updating NYS MWBE certification applications to applicants identified by DMWBD. The awardee must contact, assist, and establish communications necessary to complete a thorough review of applications submitted by applicant identified by DMWBD throughout New York State in submitting and/or

updating a certification application, then provide to DMWBD an application's certification recommendation. The awardee must demonstrate its technology and infrastructure to deliver all mandated services under the contract remotely, including but not limited to technical assistance and consultation to applicants; review and analysis of all documents; submission of documents to DMWBD; and all other related outreach required. The awardee's technology for remote services must be sufficient to accommodate the expected number of applicants within the timeframe of the contract.

The awardee shall provide the services described herein for a term of one (1) year and is expected to complete at least 1,900 application reviews in one (1) year. DMWBD reserves the right, at its sole discretion, to extend any agreement with the awardee for an additional term of one (1) year or to terminate any agreement after a term of six (6) months. DMWBD shall determine whether to extend any engagement with an awardee based upon factors including, but not limited to:

- i. the awardee's compliance with the reporting requirements identified herein;
- ii. success submitting at least the minimum required number of complete applications; and,
- iii. the number of applications the awardee correctly analyzed and submitted.

Once the DMWBD analyst has all the information necessary, a final determination will be made. Upon submission of the MWBE application, the awardee must update the contact information of the applicant on the NYSCS to reflect the applicant's information, regardless of the outcome of the final decision, before closing out of the file.

TECHNICAL ASSISTANCE PROGRAM

As part of their response, respondents must provide DMWBD with a methodology for assisting MWBE applicants. The awardee must demonstrate its technology and infrastructure to deliver all mandated services under the contract remotely, including but not limited to technical assistance and consultation to applicants; review and analysis of all documents; submission of documents to DMWBD; and all other related outreach required. The awardee's technology for remote services must be sufficient to accommodate the expected number of applicants within the timeframe of the contract.

The methodology submitted must detail the respondent's plans to complete:

1. Outreach - Awardee will contact the applicant identified by DMWBD to be assisted through the NYS MWBE Certification Assistance Program ("CAP"). The awardee will serve as the main point of contact between DMWBD and the applicant and provide their contact email as the primary email on the NYSCS when submitting an application.
2. One-on-One Technical Assistance - As part of the creation of this technical assistance program, awardees must provide applicants with one-on-one assistance in completing MWBE certification applications. This includes the collection and upload of the required documents listed in the NYS MWBE application, to submit a fully completed MWBE application.
3. Critical Analysis and Certification Recommendation - Once all documents have been collected, awardees must complete a critical analyze of each application to be submitted, and assess each applicant's eligibility, using the analysis template provided by DMWBD post program award, and recommend a decision on possible certification to DMWBD. Awardee may request additional documents from the applicant throughout their analysis if the required documents are not enough

to determine the applicant's eligibility for MWBE certification. All additional documents requested by the awardee must also be uploaded into the NYSCS application. The awardee will provide DMWBD with a certification recommendation and any red flags, to be defined by DMWBD, found in the MWBE applications. The awardee cannot/will not inform the applicant of recommendations and/or red flags identified.

4. Training: DMWBD will provide training on the required documentation needed for a complete NYS MWBE application once program awardee has been selected. DMWBD will also provide awardee with trainings on the criteria and methodology to apply in the analysis of MWBE applications, to supplement their knowledge and understanding of the eligibility requirements.
5. Data Management and Collection - Awardee must put in place strategies for data collection and management. This includes procedures for collection of required documents listed in the MWBE application, as well as procedures for collection of additional documents through an awardee's document request to the applicant. Procedures must also include how the documents will be managed to be kept safely and of a confidential nature.
6. Reporting - As part of the monthly progress report, awardees must provide DMWBD with individualized Coversheet/Checklist for each application submitted (template to be provided by DMWBD), summarizing each application submitted, the analysis completed, any document requests, red flags and certification recommendations. The monthly progress report must be submitted directly to the designated DMWBD Project Manager. Awardees must also submit monthly progress and financial reports, updating DMWBD of the status of the CAP. In addition to the outlined deliverables, each awardee must provide ESD with monthly progress reports and monthly progress and financial reports to receive grant payments. See Section VII for additional reporting requirements and information. A program narrative is required as part of the Monthly Progress and Financial Reports, which does not include attachments and other required back-up documentation. 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 applicants.

Note: The quality of service provided to applicants is a major concern of ESD, and is therefore tracked closely through on-site visits, interviews with clients, client satisfaction surveys, review and verification of reports, data submitted in the program year, and such other actions as ESD determines are appropriate. Also, the awardee must be able to provide remote technical assistance and consultation to applicants.

Awardee must update and submit all MWBE applications for any firm identified by DMWBD that agrees to utilize the awardee's services. Awardee must advise applicants if the applicant does not meet the minimum [NYS MWBE certification eligibility requirements](#).

PROCEDURES FOR THE PROTECTION OF CONFIDENTIAL INFORMATION

Awardee must also identify procedures to keep the confidentiality of documents submitted by applicants as part of their methodology. Awardee will be required to assist applicants in collecting and transmitting highly confidential data and information which may include, but is not limited to, banking records, tax records, customer lists, and social security numbers. These documents and information will need to be scanned and directly uploaded to the NYSCS and may not be retained after a certification file has been closed out by the

awardee. All data provided by applicants to awardee must be kept strictly confidential and be used only for the purposes described herein. Awardee must have procedures implemented to protect the confidential information of applicants. This includes, but is not limited to:

- Not utilizing public document sharing websites;
- Limiting access to confidential records only to those employees who need access for the performance of their job duties;
- Not storing records with confidential information on computers or other electronic devices that are not secured against unauthorized access;
- Not displaying confidential information on documents, computer screens, PDAs, etc., that can be seen by the general public;
- Not sending confidential information over the Internet or via Email unless encrypted, password-protected, or otherwise secured;
- Determining specific chains of command and procedures that confidential information will travel through;
- Keeping all confidential information in a secure location, such as a secure computer folder and/or locked cabinet; and,
- The destruction/deletion of documents after an application has been submitted and the file has been closed out.

The awardee shall document and provide a security/record management plan describing in detail their procedures for data security, record management, transportation, and destruction to ensure the strict confidentiality of all documents and data provided by applicants. This deliverable is to be submitted after their selection, and include specific details on their risk identification management, quality assurance, and communication approach strategies. Awardee must also agree to sign and return confidentiality agreements with ESD. Additional steps to keep confidentiality will be determined during contract signing.

The awardee shall have an affirmative duty to preserve the confidentiality and safekeeping of all documents and “Confidential Information.” In particular, except to the extent that the use or disclosure of any Confidential Information is required to carry out the awardee’s assigned duties for the Department, the following is prohibited:

- (1) Misappropriation; use for the purpose of competing with ESD, either directly or indirectly; disclosing to any third party, either directly or indirectly; or aiding anyone else in disclosing to any third party, either directly or indirectly; all or any part of any Confidential Information; or,
- (2) Use, disclose, divulge or communicate directly or indirectly to any third party: (a) the names, addresses and other contact data regarding any NYS MWBE applicants; or (b) the details of any contracts, business transactions, negotiation, or confidential information of any NYS MWBE applicants.

NYS Cyber Security Policies and Guidelines must be adhered to at all times. They can be referenced here: <http://its.ny.gov/tables/technologypolicyindex> as applicable to the project. The NYS Encryption Standard referenced at: <https://its.ny.gov/document/encryption-standard> provides guidelines for protecting data in transit and at rest.

Awardee must agree that all confidential information will be maintained and kept strictly confidential throughout the term of the Contract and after engagement with ESD ends.

If there is any mishandling or unauthorized disclosure of confidential information received by awardees, termination, civil action and/or any other remedies available to ESD by law will be taken.

PROGRAM REPORTING REQUIREMENTS

Awardee must prepare and submit Monthly Progress Reports and Monthly Progress and Financial Reports:

Report Type	Report Information
Monthly Progress Report	<ul style="list-style-type: none"> • List and status of all firms assisted, even if no applications were submitted (template to be provided by DMWBD); • Coversheet/Checklist for each application submitted in the respective month; <ul style="list-style-type: none"> a. Coversheet/Checklist must include documented template analysis of each application, b. Coversheet/Checklist must highlight and summarize the application and any critical information, including red flags found for any firm/application, even if no application was submitted; c. Coversheet/Checklist must include a certification recommendation for the MWBE application submitted • Additional information as determined by DMWBD and the selected awardee.
Monthly Progress and Financial Report	<ul style="list-style-type: none"> • Program narrative and progress of deliverables; • Detailed work plan for the upcoming month, identifying outreach and application submission goals; • Detailed summary of outreach activities in the previous month. Areas where goals stated in the previous report were missed or exceeded must also be identified; • The number of applications submitted, including application type (new MWBE certification or recertification); • Must include all invoices and proof of payments for the previous month; and, • Any additional information as determined by DMWBD and the selected awardees.

PROGRAM 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
Number of total certification applications submitted	≥100 applications
Percentage of applications returned	5%
Percentage of applications rejected	5%
Percentage of application red flags correctly identified	80%
Percentage of fully completed/updated applications	90%

PROGRAM FUNDING

ESD intends to award (1) grant during this cycle. The awardee will, subject to approval by ESD and execution by awardee (s) of the grant disbursement agreement in such form as ESD shall require, receive a grant of up to \$1,000,000 for the entirety of the twelve (12) month MWBE Certification Assistance Program, contingent upon the availability of funds, approval from the Division of Budget, and approval from DMWBD to continue the program after the first six (6) months. No more than half of the awarded amount, \$500,000, will be paid during the first six (6) months of the program and is contingent upon completing 950 files. Payment will be released once those files are **complete, reviewed, and accepted** by DMWBD.

Payments will be made monthly on a reimbursement basis, after submission of invoices with the monthly mandatory reports, as described in Section III. Invoices must reflect the categories used in the budget submitted as part of the RFP response. Award must provide ESD with their rates per hour and/or application for each staff member to be working on this program, submitted at the time of response to this RFP. Awardee of this grant may not charge any fees for their services to firms which they are assisting to complete a NYS MWBE certification application. **A budget must be provided by respondents, which delineates what reimbursements ESD should expect to be made (See Appendix A).**

The grant is to be used only for the purposes stated in the organization’s application or otherwise approved, in writing, by ESD.

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	May 20, 2020
Deadline for Submission of Questions	June 5, 2020 2:00pm
Deadline for ESD to Respond to Questions	June 15, 2020
Pre-bid meeting (optional to attend)	June 19,2020
Submission of Proposals (date and time)	June 30, 2020 2:00 PM
Bid Opening	June 30, 2020 4:00 PM
Interviews	July 13 – July 20, 2020
Announcement of Successful Bidder	July 28, 2020

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

V. SELECTION CRITERIA

Mentorship of Minority and Women-owned Business Enterprises Pursuant to 5 NYCRR § 142.3(h), the Director of DMWBD has established participation in a Mentor-Protégé Relationship as the only metric for evaluating the diversity practices of bidders responding to this RFP. Bidders may elect to propose a mentorship with a Minority and Women-owned Business Enterprise certified such by the Division. **Accordingly, bidders should include, as part of their technical proposal, responses to the questions posed**

in Appendix B. The bidder should indicate whether they plan to participate in the NYS Mentor-Protégé Program in their technical proposal. If they plan to participate in the mentorship protégé program, then bidders are asked to provide a response to Appendix B. The bidder’s proposal response to Appendix B will be formally evaluated. The successful bidder’s final Mentor—protégé agreement, if applicable, will be subject to approval by the Division. Any costs associated with the Mentorship Program needs to be incorporated in the total cost bid in the cost proposal (Appendix A). No costs are to be included in the technical proposal. Respondents must also submit a detailed plan identifying what subcontracting opportunities, if any, would be available and explaining how the MWBE subcontracting goals established will be met.

The successful awardee must meet the following minimum requirements to be considered for the MWBE Certification Assistance Program:

1. Possess over 10 years’ experience in operating and successfully implementing technical assistance program(s) and/or consulting Federal, State, and/or Local government entities with a focus on change management and process/performance improvement;
2. Demonstrate that they possess knowledge and a clear understanding of the NYS MWBE program, program requirements, and NYS Executive Law Article 15-A;
3. Experience in successfully completing certification applications with third party firms
4. Demonstrate internal capacity to successfully complete at least 1,900 MWBE applications per year, experience, and resources to complete one-on-one assistance, data collection and protection, and outreach to possible eligible businesses; and,
5. Experience in data entry, collection, and analysis, preferably on a large scale.

If necessary, interviews for shortlisted respondents will be scheduled from July 13 – July 20, 2020 and are mandatory. Failure to participate in an interview if invited will disqualify your application.

The proposal will be scored in the following manner:

Firm Experience and Qualifications	25 Percent (25%)
Staff Experience and Qualifications	35 Percent (35%)
Project Plan and Approach/ Methodology	20 Percent (20%)
Cost Proposal and Budget/ Use of Funds	15 Percent (15%)
Mentor-Protégé Program	5 Percent (5%)

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. ESD 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. Cost Proposal and Budget
- F. Mentor-Protégé Program

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, Respondent should demonstrate relevant experience by providing the following:

- Description of business and services offered to Federal, State, or Local government entities or large size organizations;
- Detailed information on past experiences operating and successfully implementing technical assistance programs and/or leading process and performance improvement programs;
- Demonstration of strong financial standing with five (5) to ten (10) years prior;
- Description of firm experience with the NYS MWBE program and NYS Executive Law Article 15-A;
- Previous experience in completing certification applications;
- Detailed information on similar projects of this scope and budget size;
- Demonstrated examples of successfully assisting minority and women-owned businesses build capacity and expand;
- Detailed information on previous experience administering one-on-one assistance, if applicable;
- Detailing experience with data collection, data entry, and data analysis;
- The operating budget and institutional capacity for use of grant funds; and,
- References from projects with this scope for the Respondent and any partner/subcontracting organization(s), if applicable.

Information provided by references may be used by ESD for proposal evaluation purposes. ESD 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. ESD reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what ESD 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 to administer this program has the knowledge and ability to perform the services described in this RFP. Respondent must submit a detailed staffing plan for this project. The manager of the project must provide biography and demonstrate project management and process improvement experience. The manager of the project must demonstrate qualifications and experience in running large scale programs.

Information provided by references may be used for proposal evaluation purposes. ESD 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 the following:

- The proposed program methodology; and,
- The expected outcomes of the program.

F. Cost Proposal and Budget

In this section of the Technical Proposal, Respondents should provide a detailed cost proposal and program budget for use of grant funds (*See Appendix A*). Respondents must include a detailed staffing plan, including rates of staff involved with administering this program, as well as detailed information and cost of other expected expenses for program administration.

G. Mentor-Protégé Program

Pursuant to 5 NYCRR § 142.3(h), the Director of DMWBD has established participation in a Mentor-Protégé Relationship as the only metric for evaluating the diversity practices of the respondent responding to this RFP. The respondent may elect to propose a mentorship with a MWBE certified such by DMWBD. Accordingly, the respondent should include, as part of their technical proposal, responses to the questions posed in Appendix B. The respondent should indicate whether they plan to participate in the mentor-protégé program in their technical proposal. If they plan to participate in the mentorship protégé program, then the respondent is asked to provide a response to Appendix B. The respondent's proposal response to Appendix B will be formally evaluated. The successful respondent's final Mentor—protégé agreement, if applicable, will be subject to approval by DMWBD. Any costs associated with the Appendix B Mentor-Protégé Program needs to be incorporated in the total cost bid in the cost proposal. No costs are to be included in the technical proposal.

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
http://intranet.empire.internal/Finance/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
- iv. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - o [OCSD-2 - Staffing Plan](#)
 - o [OCSD-4 - 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

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

Additional information about these items, and DMWBD's procurement requirements, can be found in Section XIII 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 – The NYS MWBE Certification Assistance Program**" **submitted by [Respondent's name]**
5. Each Respondent 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
633 Third Avenue 35th Floor
New York, New York 10017-8167
Attention: Mr. John Discolo
RFP - The NYS MWBE Certification Assistance Program
Late proposals will not be considered for award.

VI. 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 2020SuperCap@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.

VII. 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.

VIII. 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.
- D.** Respondent may not represent firms seeking MWBE certification for a period of two (2) years, from [date of contract], when contractual obligations between respondent and the DMWBD will end. Further, respondent may not represent any companies whose certification applications were either assigned and/or reviewed for a period of five (5) years from that same date of completion of the contract.

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://intranet.empire.internal/Finance/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 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."

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 for can be found at:

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

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 thirty percent (30%) for MWBE participation, fifteen percent (15%) for New York State-certified Minority-owned Business Enterprise ("MBE") participation and fifteen percent (15%) 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.

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.

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

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

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

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

Form OCSD-3:

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

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

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

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.pdf>

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

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.

i. Not-For-Profit Organizations

A not-for-profit organization receiving a grant from ESD must be or become registered and up-to-date with its filing with the Office of Attorney General’s Charities Bureau, prequalified with New York State Grants Gateway, and in compliance with all other relevant statutory requirements

New York State Grants Gateway

As part of Governor Cuomo’s initiative to better serve the people of the State of New York, a web-based grants management system, Grants Gateway, was launched in spring 2013 to improve the way grants are administered by the State of New York. Grants Gateway also offers not-for-profit organizations a portal to search for available and anticipated grant opportunities, download grant opportunities, and register to receive email notifications when specific types of grant opportunities are posted. All not-for-profit organizations receiving funds from ESD must be prequalified in Grants Gateway prior to ESD approval and the execution of a Grant Disbursement Agreement/Contract.

Grants Gateway Prequalification Process

1. Register with the Grants Gateway

- The Registration Form is available for download at www.grantsreform.ny.gov. The Registration Form can be accessed by clicking the link at the top of the page in yellow labeled “Click HERE to access the Portal or browse for more information below”.
- Include your State Financial System (“SFS”) Vendor ID on the Form; if you are a new vendor and do not have a SFS Vendor ID, include a Substitute for W-9 with your signed, notarized registration (also available from the Grants Reform Web site).
- All registrations must include an Organization Chart in order to be processed.
- Mail the completed Registration Form, Organization Chart that shows the Head of your Organization, and Substitute W-9 (if new vendor) to:
**NYS Grants Reform
99 Washington Avenue
Room 1530
Albany, NY 12210-2814**
- When you receive your login information via email, log in and change your password. This password will allow access to the Grants Reform Web site.

2. Associate your organization with a State agency (ESD) by clicking on Organization(s) and then selecting Organization Information; complete all required fields.

If you have questions about the Prequalification application, please contact ESD's program representative, Greta Carter-Williams, at greta.williams@esd.ny.gov or the Grants Reform Team by emailing GrantsReform@Budget.ny.gov with "Prequalification" in the subject line.

Attorney General's Charities Bureau and State Comptroller's VendRep System

Prior to ESD approval and execution of a Grant Disbursement Agreement/Contract, not-for-profit organizations must be registered and up-to-date with its filings with the New York State Office of the Attorney General's Charities Bureau ("OAG") and the New York State Office of the State Comptroller's VendRep System ("OSC"). Information on registration is below:

OSC

E-mail: ciohelpdesk@osc.state.ny.us

Phone: Toll free: (866) 370-4672

Locally within the Albany NY area: (518) 408-4672k

http://osc.state.ny.us/vendrep/info_vrsystem.htm

OAG

E-mail: charities.bureau@ag.ny.gov

Phone: (212) 416-8401

<http://www.charitiesnys.com/home.jsp>

Appendix A - NYS MWBE Certification Assistance Program Budget Form



CAP Budget Form -
Appendix A.pdf

Appendix B – Mentor Protégé Agreement



Mentor Protege
Agreement - Appendi