



**Empire State  
Development**

# REQUEST FOR QUALIFICATIONS FOR PRE-QUALIFIED LEGAL COUNSEL

**Issued: October 8, 2021**

**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 (refer to: Section IX – Letter i).

Designated Contacts for this Procurement:

Primary Contact:                      Ralph Volcy  
Secondary Contact:                    John Discolo

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

[LegalPreQualifiedRFQ@esd.ny.gov](mailto:LegalPreQualifiedRFQ@esd.ny.gov)

This RFQ is posted on the Empire State Development website:

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

**SUBMISSION DUE DATE & TIME: NOVEMBER 12, 2021 BY 2:00 PM**

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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.

## II. OVERVIEW

The purpose of this Request for Qualifications (“RFQ”) is to pre-qualify law firms and/or counsel (collectively, “law firms” or “firms”) as eligible to represent ESD, its subsidiaries and/or affiliates, from time to time, within ESD’s maximum rate policy, in connection with economic development projects and related activities across New York State involving various public and private sector parties. Law firms will be eligible for specific retention that may arise during the next three (3) years, beginning on or about February 2022.

This solicitation seeks to replace, not supplement, any and all pre-qualified counsel lists which will expire in March 2022. Accordingly, law firms on any existing ESD counsel list must, if they wish to continue to be pre-qualified, respond to this RFQ. Please note that existing retainer agreements will not be affected by the expiration of the pre-qualified list; however, any firm, including those currently providing services to ESD pursuant to a retainer agreement, must respond to this RFQ if they wish to be pre-qualified to provide legal services to ESD under a future contract. Note also that in order to be selected for this purpose, every respondent to this RFQ (“Respondent” or “bidder”) must agree to render services at rates not to exceed those set forth in the maximum compensation rate schedule in Section V (“Selection Criteria”) of this RFQ.

In the event that the principal partners and attorneys identified as being responsible for ESD’s matters or other key members of a pre-qualified firm’s team in a particular area of expertise, leave the prequalified law firm, the pre-qualification will “follow” these key law firm member(s). Similarly, if a pre-qualified firm combines with another firm and such principal partners and other attorneys remain with the newly combined firm, the newly combined firm will be considered to be pre-qualified in that area of expertise.

## III. SCOPE OF WORK

ESD is seeking proposals from law firms, large and small, that have demonstrated expertise in one or more of the areas of law described below (including, in each instance, litigation capabilities).

- A. **Real Estate and Land Use** – Firms selected would represent ESD on real estate and land use matters, including, but not limited to, the acquisition, sale, leasing, and licensing of real property and all negotiations related thereto; real estate development, including public-private partnerships; real estate financing; real estate taxation and tax exemption matters; national, regional and local land use matters; zoning and other land use controls; building and construction codes; compliance; enforcement of lease provisions; property maintenance; and title disputes. While ESD’s real estate

and land use matters are predominately transactional or regulatory, experience handling real estate and land use disputes (pre-litigation and litigation) is also desirable.

- B. **Construction** – Firms selected would be asked to review and analyze contracts, specifications, purchase/job orders and change orders relating to construction and design projects; advise on procurement laws, payment/performance bonds and bid award process; and construction dispute resolution, including surety related issues, litigation and alternative dispute resolution procedures.
- C. **Environmental** – Firms selected would represent ESD on environmental law matters, including, but not limited to, compliance; regulatory matters; permitting; strategic advice; environmental reviews (under the State Environmental Quality Review Act, the National Environmental Policy Act, and the New York City Uniform Land Use Review Procedure); hazardous and solid waste management; environmental issues associated with the acquisition, disposition and development of real property subject to environmental contamination, brownfields regulation, or federal or state regulatory oversight or enforcement; historic preservation; and environmental litigation and administrative proceedings.
- D. **Condemnation** – Firms selected would represent ESD on matters involving condemnation (a/k/a eminent domain) and takings jurisprudence under the New York State Eminent Domain Procedure Law (“EDPL”), the New York and United States constitutions, and all applicable laws, regulations and procedures. In addition to providing general advice, the selected firms must be qualified to handle all aspects of condemnation practice, including drafting papers; holding public hearings; conducting property acquisition negotiations; working with real estate appraisers and other consultants; advising ESD on all related matters; and representing ESD in all relevant legal proceedings, including, but not limited to, challenges to ESD’s condemnation findings and/or statutory authority, tenant relocation assistance and claims, property vacate orders, valuation trials, and any appeals related to the foregoing litigation matters.
- E. **Taxation** – Firms selected would advise ESD on matters related to federal, state and local taxes and possible tax exemptions on various projects.
- F. **Bond Financing** – Firms selected would represent ESD, its affiliates and subsidiaries on securities, bonds, taxes and other related legal matters in connection with the issuance and sale of State Supported bonds or tax-exempt conduit bonds. Work may include, but not be limited to, drafting, negotiating, and finalizing sale contracts, resolutions, supplements and amendments, disclosure documents, refunding documents and tax opinions.
- G. **Labor & Employment** – Firms selected would represent ESD in both non-litigation and litigation matters. Non-litigation matters may include, but not be limited to, advice on internal employee matters, including severance-related matters, aiding in drafting policies and best practices, and internal investigations. Litigation matters may include representation of ESD in labor/employment-related claims (e.g., Title VII, ADA, ADEA) in State and federal courts, as well as administrative hearings, arbitration and mediation.
- H. **Venture Capital Investments and Other Investments** – Firms selected would advise ESD in all legal matters in connection with New York Ventures, ESD’s venture capital funds. Such legal matters may include, but not be limited to, drafting, negotiating, and finalizing various types of investment arrangements, including stock purchase agreements, convertible debt instruments, and limited partnership arrangements. Firms selected would also provide additional legal services such as researching and incorporating competitive market terms and program requirements and policy goals into ESD’s legal arrangements.
- I. **Bankruptcy/Foreclosure/Workout** – Firms selected would advise ESD in workout matters, including, but not limited to, bankruptcy and foreclosure, related to loans, grants and all other manner of ESD assistance.

- J. **Governance and Regulatory Litigation** – Firms selected would be expected to advise and/or represent ESD in litigation related to the wide range of issues affecting a public entity, including day-to-day operational issues such as corporate governance, compliance with the Open Meetings Law and the Freedom of Information Law, general commercial litigation, Article 78 proceedings, actions commenced by or against ESD, its members, officers, and employees arising out of the performance of their duties and responsibilities, civil rights litigation, and allegations of constitutional law violations. In the case of Article 78 and related proceedings, knowledge of the State, its agencies, state authorities and public benefit corporations, the New York State Constitution and the laws governing the operations and relationship among the State and its related entities is required.
- K. **Intellectual Property** – Firms selected would provide legal advice and assistance regarding all aspects of enforcement of ESD’s and the State of New York’s intellectual property rights, including, but not limited to, the identification of infringing activity; preparation, transmittal and follow-up of “cease-and-desist” letters, as appropriate; the negotiation and settlement of unauthorized usage of any ESD or State of NY intellectual property; and provide legal advice and assistance, including defense, regarding any IP litigation, including, but not limited to, administrative and adversarial proceedings, domestic and international. Such legal advice shall also cover copyright matters and any Internet and social media issues related to ownership, licensing, and protection of ESD’s or the State of New York’s intellectual property.
- L. **Landlord-Tenant** – Firms selected would represent ESD on landlord-tenant disputes, including, but not limited to, enforcement and eviction proceedings.

The case volume for each practice area varies from year to year.

ESD reserves the right to assign firms with demonstrated expertise in one area of law to a legal matter that may cross over to subject matter areas typically covered by firms with expertise in other practice areas.

Bidders may submit proposals to provide Legal Services in one or multiple practice areas, but may only submit one (1) proposal, which should clearly identify the practice areas for which the firm seeks to be considered.

ESD is committed to pre-qualifying a diverse group of New York-based law firms that will provide high-quality services and that are dedicated to diversity. ESD strongly encourages law firms that are certified by New York State as Minority- and Women-Owned Business Enterprises (“MWBE”) or Service-Disabled Veteran-Owned Businesses (“SDVOB”), as well as law firms that are not yet certified, but have applied for certification, to submit responses to this RFQ.

Note that inclusion on the pre-qualified legal counsel list does not mean or imply that any firm will, in fact, be selected or engaged to provide legal services to ESD, its subsidiaries or affiliates. Such selection and engagement will take place only when a need for outside legal counsel arises, and the choice of which firm(s) will be engaged to handle a given matter will be at the sole discretion of ESD, its subsidiaries or affiliates. The purpose of the pre-qualified list is to procure legal counsel available for engagement on short notice.

## IV. RFQ PROCESS OVERVIEW

A broad overview of the RFQ process and timetable, and the requirements for inquiries and the submission of proposals, can be found in this section.

### A. Key Events and Dates

It is anticipated that the Notice of Award will be based on the following schedule:

|                                                  |                                 |
|--------------------------------------------------|---------------------------------|
| Release of RFQ                                   | On or about October 8, 2021     |
| Deadline for Submission of Questions             | October 20, 2021 by 2:00 PM ET  |
| Deadline for ESD to Respond to Questions         | October 27, 2021                |
| Submission of Proposals (date and time)          | November 12, 2021 by 2:00 PM ET |
| Evaluations and Interviews (if deemed necessary) | November 2021 – December 2021   |
| Announcement of Successful Bidders               | On or about February 2022       |

Please note that ESD reserves the right to change any of the dates announced in this RFQ. In the event of a change, such modifications will be posted on ESD’s website at [www.esd.ny.gov](http://www.esd.ny.gov). **Firms shall be solely responsible for periodically checking the website throughout the RFQ process for such changes or updates, and no individualized notices shall be provided.**

### B. Questions

Questions or requests for clarification regarding the RFQ should be submitted via email, citing the RFQ page and section in accordance with the schedule in Section IV (“Schedule of Dates”) to [LegalPreQualifiedRFQ@esd.ny.gov](mailto:LegalPreQualifiedRFQ@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 RFQ.

### C. Preliminary Review

The selection process will begin with a preliminary review and evaluation of each written proposal to determine if the submission contains all required information specified in the RFQ, in the form and content required in Section VI (“Submission of Proposals”). Proposals that do not pass the preliminary review stage will be rejected and will not undergo further evaluation.

### D. Evaluation Committee and Criteria for Selection

Proposals passing the preliminary review stage will undergo an evaluation process conducted by ESD employees and, at ESD’s sole discretion, other stakeholders (“Evaluation Committee”). Respondents may be requested by ESD to clarify the contents of their proposals. Other than to provide such information as may be requested by ESD, no Proposer will be allowed to alter its proposal or add information after the Deadline for Submission of Proposals.

**E. Interviews (if necessary)**

ESD reserves the right to determine in its sole discretion whether interviews with one or more of the proposing Firms will be necessary. The purpose of the interview is to assist ESD in better understanding the Respondent’s ability to provide the required services. The proposed lead attorney, as well as any other key personnel who would be responsible for providing legal services, should participate in the interview. The purpose of the interview is to impart to the Evaluation Committee an understanding of how specific legal services will be furnished. The interview will be evaluated on the basis of whether it substantiates the information provided by the Respondent in its written response to this RFQ and any other information requested by the Evaluation Committee prior to the interview.

**F. Scoring of Proposals**

The Evaluation Committee will evaluate each proposal based upon a 100-point scale containing the criteria set forth in Section V (“Selection Criteria”) of this RFQ.

**G. Selection of Firms**

ESD, at its sole discretion but in accordance with the provisions of this RFQ, will determine which proposals best satisfy its requirements.

**H. Board Approval**

Any Firm selected by the Evaluation Committee to be on the Prequalified List must be approved by the Board of ESD.

**V. SELECTION CRITERIA**

Eligible law firms must have a New York State office and will be subject to ESD contracting requirements including, among other things, limitations on hourly fees.

Although proposed fees will be considered, ESD reserves the right to negotiate a lower or different fee structure with any law firm(s) selected. The billing rate to be paid for any engagement of legal services will be as set forth in a retainer agreement.

Please be advised that, at present, the maximum rates paid by ESD are the lesser of the following hourly rates or the firm’s billing rates normally charged to its governmental clients:

|                                  |                   |
|----------------------------------|-------------------|
| Partner/Of Counsel               | \$600.00 per hour |
| Senior Associate <sup>1</sup>    | \$550.00 per hour |
| Mid-level Associate <sup>2</sup> | \$500.00 per hour |

<sup>1</sup> Senior associates have at least four years of experience.

<sup>2</sup> Mid-level associates have three or four years of experience.

|                               |                   |
|-------------------------------|-------------------|
| Junior Associate <sup>3</sup> | \$425.00 per hour |
| Law Clerk <sup>4</sup>        | \$325.00 per hour |
| Legal Assistant/Paralegal     | \$150.00 per hour |

This maximum rate structure is subject to change from time to time by action of the ESD Directors.

In certain cases where third parties have agreed to reimburse ESD’s legal fees, retained law firms may be compensated at higher rates than set forth above.

In evaluating proposals submitted pursuant to this request, ESD will consider the following factors:

Each proposal will be evaluated on a 100-point scale and the Evaluation Committee will consider the following factors:

| POINTS | CRITERIA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20     | General qualifications and experience of the Firm as evidenced by the responses to the information requested in <b>Section VI (“Submission of Proposals”)</b> of this RFQ, including without limitation client reference checks.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 30     | Relevant firm experience for each applicable area of law for which prequalification is sought and the qualifications and experience of the staff proposed to be assigned to an ESD engagement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 10     | Demonstrated experience and success working with ESD or other New York State agencies or other public entities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 10     | Anticipated cost of services and willingness to work with ESD to minimize costs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 15     | ESD will award points to respondents that are certified Minority or Women-owned Business Enterprises (MWBEs) as defined in section three hundred ten of the New York State Executive Law or Service-Disabled Veteran-owned Business Enterprises (SDVOBs) as defined in section three hundred sixty-nine-h of the New York State Executive Law.<br><br>In order to be awarded points pursuant to the Quantitative Factor, the respondent must (1) identify itself as an MWBE or SDVOB in and (2) be registered with the NYS Department of State as an entity authorized to conduct business in New York State. Respondents identifying themselves as MWBEs must be listed in the directory of New York State-certified MWBEs (“MWBE Directory”) as of the closing of the period for responses to this RFQ. The MWBE Directory is available at: <a href="https://ny.newnycontracts.com/">https://ny.newnycontracts.com/</a> . Respondents identifying themselves as SDVOBs must be listed in the directory of New York State-certified SDVOBs (“SDVOB Directory”) as of the closing of the period for responses to this RFQ. The SDVOB Directory is available <a href="https://online.ogs.ny.gov/SDVOB/search">https://online.ogs.ny.gov/SDVOB/search</a> . |
| 15     | Overall organization, completeness and quality of the response and the Firm’s demonstration of a clear understanding of ESD’s mission and activities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

<sup>3</sup> Junior associates have passed the bar exam but have less than three years of experience.

<sup>4</sup> Law clerks are law student interns for first year associates who have yet to pass the bar exam.



## **VI. SUBMISSION OF PROPOSALS**

Respondents should submit a proposal which clearly and concisely provides all the requested information. Emphasis should be concentrated on conformance to the RFQ instructions and requirements, as well as completeness and clarity in the proposal response. Respondents are advised to thoroughly read and follow all instructions contained in this RFQ. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFQ 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. ESD requests that all Technical Proposals be organized and identified to match the specific information requested below:

- A. Table of Contents
- B. Firm Practice Area, Experience and Qualifications
- C. Background Information
- D. Staff Experience and Qualifications
- E. References
- F. Rates

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 RFQ.

#### **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 Practice Area, Experience and Qualifications**

In this section of the Technical Proposal, Respondents should clearly indicate which one or more of the practice areas listed in Section III of this RFQ (“Scope of Work”) the firm is interested in serving as ESD counsel. For the practice area(s) identified, the Respondents should (a) provide a description of the law firm’s relevant experience in that area; (b) include a brief description of representative transactions in that area; and (c) specify the law firm’s role for each transaction identified.

In addition, Respondents should indicate whether services have been provided previously to ESD, any of ESD’s subsidiaries or affiliates, or any other New York State, local or federal entities. If so, Bidders should list and describe any and all work performed including (a) the date(s) such work was performed, (b) the entity for which such work was performed, and (c) the area of expertise for the work performed. Please be sure to also list and describe any experience in representing such entities in Article 78 proceedings and similar actions related to their powers and duties.

### **C. Background Information**

In this section, Respondents should briefly describe the firm's background, history, services, number of attorneys in the law firm, location of all offices, and the telephone number and e-mail address of the primary staff personnel who are anticipated to provide services to ESD. Firm descriptions/brochures, and organizational charts should be provided. There is no page limit, but brevity is strongly encouraged.

### **D. Staff Experience and Qualifications**

In this section of the Technical Proposal, Respondents should demonstrate that the proposed staff have the knowledge and ability to perform the services described in this RFQ. Respondents should provide the names and resumes of the principal partners and other attorneys who would be responsible for ESD's matters, and a description of the relevant qualifications and experience of each attorney.

Respondents should identify and provide contact information for the person(s) in the firm who will be ESD's primary point(s) of contact.

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 RFQ, and the responsiveness of the Respondent to the client during the engagement.

### **E. MWBE/SDVOB Status or Partnering**

If the law firm is a State-certified MWBE or SDVOB firm, provide documentation evidencing certification. Law firms that are not certified, but have applied for certification, should provide evidence of filing, including the filing date. Bidders should also provide a description of the instances, if any, in which the law firm has worked with MWBE and SDVOB partnering or mentoring arrangements with either a law firm selected by ESD or one of your choosing; and, if the latter, provide a list of co-counsel MWBE and SDVOB law firms with which the law firm is prepared to partner. Such statement should include an explanation of how the law firm would suggest structuring such an arrangement and allocating services and fees between the participating law firms.

In addition, Bidders should include a statement of the law firm's willingness, if any, to engage in future MWBE and SDVOB partnering or mentoring arrangements with either a law firm selected by ESD or one of your choosing; and, if the latter, provide a list of co-counsel MWE and SDVOB law firms with which the law firm is prepared to partner. Such statement should include an explanation of how the law firm would suggest structuring such an arrangement and allocating services and fees between the participating law firms.

## **F. References**

In this section, Bidders should provide at least three (3) client references for whom your firm has performed similar work to that required in this RFQ. For each client, describe the project's date, and services performed, and provide the name, address, and telephone number for a person at client's firm familiar with such work.

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 RFQ, and the responsiveness of the Bidder 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.

## **G. Rates**

Respondents should include a statement that the law firm will agree to bill at rates not to exceed those set forth in the maximum compensation rate schedule as set forth in Section V of this RFQ ("Selection Criteria").

### **ii. Administrative Proposal**

Section VIII of this RFQ states standard requirements that must be included in every contract entered into with ESD. The successful Respondent must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, 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 Law §§139-j and 139-k forms](#), submit with proposal
- 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 - 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 VIII of this RFQ ("Contractual Requirements").

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

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

1. Each Respondent must submit the entire response electronically, via email to: [LegalPreQualifiedRFQ@esd.ny.gov](mailto:LegalPreQualifiedRFQ@esd.ny.gov).
2. The Technical Proposal and the Administrative Proposal must be submitted in separate PDF files with titles that clearly identify the Respondent's name and whether it is the Technical or Administrative Proposal;
3. The submission email should contain the subject line: **"RFQ – Pre-qualified Legal Counsel Proposal submitted by [Respondent's name]"**

A complete email submission (Technical Proposal and Administrative Proposal) must be received by the deadline in the schedule of dates in this RFQ.

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

## **VII. GENERAL PROVISIONS**

The issuance of this RFQ 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:

- i. amend, modify or withdraw this RFQ;
- ii. revise any requirement of this RFQ;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any Respondent;
- vii. communicate with any Respondent to correct and/or clarify responses that do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFQ, 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 RFQ.

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 RFQ will be at the sole cost and expense of the Respondent.

All information submitted in response to this RFQ 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 ESD 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 ESD according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. ESD 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 ESD, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

### **Contractor Staff**

Any changes in staffing from those presented in the Proposal shall be subject to approval by ESD. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify ESD of any proposed changes in staff immediately. ESD has an absolute right and discretion to approve or disapprove any proposed changes in staff. ESD, 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 RFQ 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 RFQ 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 Respondent's submission pursuant to Section VI of this RFQ, 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 RFQ or terminate any contract entered into as a result of this RFQ 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 RFQ. 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 Joint Commission on Public Ethics or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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

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

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 must complete the forms required above.

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

All Respondents to this RFQ 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 RFQ, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity required 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 RFQ.

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).”

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



**iv. Iran Divestment Act**

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

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

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

**v. Executive Order 177**

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

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

**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 contracts resulting from this solicitation, ESD will establish a goal for MWBE participation (based on the current availability of Minority-owned Business Enterprises and Women-owned Business Enterprises). 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 RFQ, the Respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFQ pending receipt of the required MWBE documentation.

The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

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

In accordance with 5 NYCRR § 142.13, the Respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFQ, 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](mailto:OCSD@esd.ny.gov).

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

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

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

- B. If a notice of deficiency is issued, the Respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent and direct the Respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the 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 10<sup>th</sup> day following each end of month 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 contained in **SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**, which can be found at <https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf> 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 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.

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%20>

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

Form OCSD-7: <https://esd.ny.gov/sites/default/files/OCSD-7-MWBE-Expedite-Request-Form.pdf>

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

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

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

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

### **Contract Goals**

- A. For contracts resulting from this solicitation, ESD will establish a goal for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Respondent/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](mailto: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), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that Respondent intends to use to perform the Contract, a description of the work that 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 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 OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:
  - (a) If Respondent fails to submit an SDVOB Utilization Plan;
  - (b) If Respondent fails to submit a written remedy to a notice of deficiency;
  - (c) If Respondent fails to submit a request for waiver; or
  - (d) If ESD determines that 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 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 regarding 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 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.

#### **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, 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>.

#### **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 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 Respondent is not required to be registered with the State Department of Taxation and Finance. Additionally, 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](https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf)

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

#### **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 RFQ) 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.

#### **xi. Insurance Requirements**

The selected Respondent 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;
- If 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.

**xiii. Administrative Proposal Checklist**

Firms submitting a proposal shall complete and submit Appendix A (the “Administrative Proposal Checklist”) that accompanies this offering and include the same with their Administrative Proposal.