



**Empire State  
Development**

# **Request for Proposals Program Administration Consultant for East Side Main Streets Initiative**

**Issued:** Friday, May 17, 2019

**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 Director, Procurements Contract Administration
Secondary Contact:	Angela Rossi Deputy Director, Western New York Region
Additional Contacts:	Amanda Mays Director, Western New York Region

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

[E\\_SideMainSt@esd.ny.gov](mailto:E_SideMainSt@esd.ny.gov)

This RFP is posted on the Empire State Development website:

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

**Submission Deadline: Monday, June 10, 2019 by 3:00 PM EST**

**Late Proposals Will Not Be Accepted.**

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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. ESD’s Western New York Regional Office is responsible for facilitating the planning, funding, and implementation of Governor Andrew Cuomo’s Buffalo Billion economic development initiative. This effort involves a pledge to invest a billion dollars in key tradable economic sectors in Western New York (WNY), in a manner that facilitates revitalization of urban core neighborhoods, helps prepare the region’s workforce, and advances the sustainability principles of smart growth.

As part of the 2017 State budget, the Governor and the State Legislature funded a second round of Buffalo Billion funding, totaling \$500 million. A major component of the Buffalo Billion Phase II Strategy involved targeted, strategic investments along Buffalo’s four East Side commercial corridors. As part of this strategy, \$65M in state funding is dedicated to the revitalization of Buffalo’s East Side through transformational capital investments in nine investment areas along four East Side Commercial Corridors (Michigan Avenue, Jefferson Avenue, Fillmore Avenue, and Bailey Avenue). Through the establishment of goals, an analysis of economic and land use data, a look at past investments, and in-depth stakeholder engagement, Empire State Development and partners, with the assistance of University at Buffalo Regional Institute, developed a portfolio of catalytic projects aimed at improving economic conditions on Buffalo’s East Side. Governor Cuomo announced this portfolio of projects in March 2019.

Part of this portfolio is an expansion of the Better Buffalo Fund’s Buffalo Main Streets Initiative (BMSI) modeled on the New York State Main Street program. This new East Side Main Streets Initiative (EMSI) will provide funding for building renovations and public space enhancements in up to four investment areas—Jefferson Avenue Business District, MLK Park Business District, Broadway Fillmore Business District, and Kensington Bailey Business District. These investment areas were chosen because (1) they represent traditional mixed-use commercial districts, (2) there is demand from building owners, and (3) an established non-profit Local Program Administrator (LPA) has shown an ability to administer a target building renovation program through a BMSI grant. The LPA will use funds to award matching capital grants to district building owners, ensuring decisions are made at a local level with oversight from the community non-profit.

ESD’s Western New York Regional Office seeks two qualified planning, economic development, and/or architecture/engineering/environmental firms (hereinafter “the Consultant”) that will assist up to two LPAs for no more than two years with 1.) all administration elements of the fund including compliance with all local, state and federal laws and regulations, 2.) robust marketing of the fund to prospective business owners to ensure large-scale participation, and 3.) evaluating and selecting activities to be supported by the fund—adhering to strict project selection criteria, project selection processes, and design guidelines. This assistance ensures the LPAs receive the capacity building and technical expertise necessary to establish a portfolio of solid projects that have the greatest impact on the business district. At the end of two years, LPA staff should be fully self-sufficient and be able to administer the program without consultant assistance

## II. OVERVIEW

### **Background:**

Main streets and commercial corridors play a significant role in the vitality, livability and character of a neighborhood. They are the primary economic drivers in communities, embracing unique neighborhood character, providing services and amenities to residents and visitors, offering small business opportunities for entrepreneurs, and establishing crucial connections between anchor assets, residential neighborhoods and employment centers. They also often serve as the gateway to their respective neighborhoods, helping shape perceptions of visitors and potential investors. Today, the East Side's four north-south commercial corridors are often characterized by vacant lots, underutilized commercial and industrial parcels, insufficient housing and outdated infrastructure. Despite these challenges, the East Side has a number of strengths and opportunities on which to build including significant architectural, community-based and historic assets; remnants of walkable, traditional early-mid 20th-century community business districts; education and training resources; and access to public transit. Through a targeted investment strategy focused on strengthening these assets, the East Side's commercial corridors have the potential to become economic drivers and catalysts for wide-spread revitalization of the East Side.

### **Objectives:**

We heard from the community that there is a need to expand neighborhood-serving businesses including retail, restaurants, and other services, and increase mixed-use opportunities along the corridors. At the same time, there is a desire to maintain the historic character of the buildings on the corridors and re-establish traditional walkable community business districts. Buildings along the corridors have a broad range of needs— from exterior façade renovations, to interior improvements, to systems improvements, to code compliance upgrades—that range in scale and cost. BMSI is working in these communities, but there have been challenges for LPAs and the business communities such as limited capacity for small non-profits to administer funds; limited trust, understanding of funding requirements and limited outreach to business owners; few financing mechanisms to cover up front costs; unique challenges to renovating this aging building stock; and limited expertise in design and project selection. We believe that with greater assistance for building owners and improved capacity to market and implement the program (services to be provided by the Consultant), an expanded building renovation program could improve the business climate, combat vacancies, and contribute to the overall revitalization of the corridors.

### **Project Area:**

Consultants will be assigned to assist LPAs in up to two of the following business districts:

- A. Jefferson Avenue Business District (Jefferson Ave. addresses between East Ferry St. and Dodge St., as well as establishments on corner lots).
- B. MLK Park Business District (Fillmore Ave. addresses between East Ferry St. and N Parade Ave., as well as establishments on corner lots).

- C. Broadway Fillmore Business District (Fillmore Ave. address between Sycamore St. and Paderewski Dr., and buildings with a Broadway address between Memorial Dr. and Reed St., as well as establishments on corner lots in this targeted area).
- D. Kensington Bailey Business District (Bailey Ave. address between LaSalle Ave. and Rte. 33, as well as establishments on corner lots in this targeted area).

**Experience and Expertise:**

ESD invites professional, financially-sound consulting firms or teams to submit proposals. The consultant or project team should have a full range of relevant experience in improving business districts. The following expertise is of particular value to the project:

- Past experience administering a BMSI, New York State Main Street program and/or related program.
- Economic development and planning for business districts.
- Architectural design and historic preservation.
- Experience with the Buffalo Green Code.
- Innovative approaches to marketing, public outreach and engagement.
- Experience working in diverse communities, especially new immigrant communities.
- Experience working with community non-profits.
- Knowledge of real estate development and construction management, especially involving public financing.
- Experience with the State Environmental Quality Review Act (SEQR) and New York State Office of Parks, Recreation and Historic Preservation (OPRHP or SHPO).

**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 [E\\_SideMainSt@esd.ny.gov](mailto:E_SideMainSt@esd.ny.gov). Nothing prohibits an MWBE or SDVOB Vendor from proposing as a prime contractor.

**III. SCOPE OF WORK**

EMSI will follow the same general administration processes as the New York Main Street Program and the Buffalo Main Streets Initiative for program activities related to Target Area Building Renovations. As described above, the pre-selected targeted project areas for the EMSI are the Jefferson Avenue Business District, MLK Park Business District, Broadway Fillmore Business District and the Kensington Bailey Business District. **The information, documents and forms [here](#) provide detailed information on successful administration of a Buffalo Main Streets Initiative program. Consultants should review all documents pertaining to the Targeted Area Building Renovations program activities prior to responding to this RFP.**

In general, the Consultant will assist the LPA with ensuring successful completion of all assisted projects (approximately 5-10 projects per year); evaluating and selecting activities to be supported; entering into contracts with participating property owners; and assuring compliance with all local, state and federal laws and regulations.

Below is a summary of the Scope of Services. The Consultant will not only be responsible for assisting the LPA with the following scope but will also provide the LPA with the knowledge and know-how to continue this work independently at the end of two years.

**A. COMPLETE THE ESD FUNDING AND DISBURSEMENT PROCESS TO LAUNCH THE PROGRAM**

1. Assist LPA with Incentive Proposal outlining the general terms and conditions of the grant being offered by ESD.
2. Assist LPA with the completion of materials for ESD Board approval.
3. Assist LPA with ESD Grant Disbursement Agreement, which will outline the terms and conditions for the disbursement of funds.
4. Develop an Administrative Plan that provides an overview of the processes required to administer a program contract.
5. Determine how the administration of the program will be integrated into the LPA's existing organizational structure.
6. Establish the procedure for requesting and receiving funds based upon EMSI Guidelines

**B. DEVELOPMENT OF THE PROGRAM**

1. Marketing the Program: conduct extensive outreach in the awarded target area to make all property owners aware of the availability of financial assistance. At a minimum:
  - Develop and distribute informational materials to market program availability.
  - Provide instructions and assistance on how to apply.
  - Hold public informational meetings to present information and answer questions.
2. Project Selection
  - Develop and formalize project selection criteria and a selection process that prioritizes:
    - Projects that are visually prominent.
    - Projects that exhibit design features desirable in traditional urban neighborhood business district development (e.g., active/pedestrian-oriented ground floor uses, mixed building uses, transparency in storefronts to allow views in/out of businesses, appropriately-scaled/placed business signs, proper lighting, etc.)
    - Projects that would restore or preserve historic properties in danger of being lost in whole or in part to disrepair or damage.
    - Projects that will result in new goods, services, food, restaurant, or other types of uses that will enhance the quality of life and desirability of the neighborhoods served by the business district.

- Projects that will reduce blight, contribute to the economic recovery of the target area, or realize a stabilization or expansion of a Main Street business.
  - Identify Project Selection Committee to implement the project selection process and generate funding decisions.
3. Design Guidelines
- Using the Buffalo Green Code as a guide, develop design guidelines for exterior renovations. These guidelines will be consistent with the requirements of the State Historic Preservation Office and Secretary of the Interior's Standards for Rehabilitation.

### **C. DEVELOPMENT OF PROJECTS**

1. Building Assessments
  - Meet with identified building owners to discuss desired renovations and budget for renovations.
  - Inspect identified buildings to determine their suitability for reuse and/or rehabilitation. In certain cases, perform preliminary building assessments to inform and prioritize capital improvements with building owners.
2. Work Write-up / Scope of Work
 

Provide an evaluation of each identified building including a general building condition analysis, proposed design concept renderings, scope of work, and order of magnitude cost estimates. The scope of work must also address the following:

  - Immediate health and safety concerns.
  - The correction of code violations.
  - Lead-based paint hazards that may exist in buildings that contain residential units.
  - Radon hazards in buildings that contain residential units.
  - Installation of energy conservation measures.
  - Consistency with program design guidelines.
  - Preservation of historical elements of the building.
3. Design
  - Consider design while developing a participating building's scope of work. The goal is to respect the original building design while maintaining consistency with the overall design of the Main Street area.
  - Enforce the design standards throughout the development process.
  - Submit building information and proposed project scopes of work for each participating project to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP or SHPO) for approval through their Cultural Resource Information System (CRIS).
4. Environmental Review
 

Assess effects of each activity in accordance with the State Environmental Quality Review Act (SEQR).

  - Prepare programmatic and individual project (site-specific) Environmental Review paperwork.

- Compile documentation, including maps, relevant records and findings, for project site(s) specific environmental review
  - Submit final scopes/designs to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP or SHPO) for approval through their Cultural Resource Information System (CRIS).
  - Complete Environmental Assessment of project site(s) to determine the level of investigation required to complete the site contamination review, following program requirements and using ASTM guidelines.
  - Prepare Environmental Review paperwork.
5. Bid Process
    - Complete an appropriate procurement process for all activities to be reimbursed with program funds, based on the scope of work, with a minimum of two bids or proposals for all activities to establish the reasonableness of project costs.
    - Exercise appropriate oversight over the entire process to ensure that it is fair, efficient and free of actual and perceived conflicts of interest.
  6. Contracting Procedures
    - Enter into a contract with the property owner to provide the program financial assistance. The contract will outline the roles and responsibilities for both the LPA and the participating property owner.

**D. CONSTRUCTION MANAGEMENT/QUALITY CONTROL**

1. Construction monitoring of renovation activities, including ensuring adherence design standards.
2. Final inspection to verify that the work was completed properly and is consistent with the contracted scope of work.

**E. FINANCIAL MANAGEMENT**

Determine policy and process (based on program guidelines) for financial transactions, including the creation of written policy on internal controls to inform the process for review and approval of requests for disbursement of funds.

**F. ONGOING MAINTENANCE**

1. Ensure that program participants are aware of the maintenance responsibilities and the Declaration requirement early in the process.

**G. CONTRACT COMPLETION AND CLOSEOUT**



#### **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 17, 2019
Deadline for Submission of Questions	May 24, 2019 by 5:00 PM EST
Deadline for ESD to Respond to Questions	May 27, 2019
Submission of Proposals (date and time)	June 10, 2019 by 3:00 PM EST
Interviews (if necessary)	Week of June 17 to June 21, 2019
Announcement of Successful Bidder	TBD
Anticipated Contract Start Date	TBD

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

#### **V. SELECTION CRITERIA**

Respondents should carefully review the goals and requirements of this RFP, including all License Documents, Attachments and Addenda. All proposals will be evaluated on criteria that will include the following, provided that the relative value of all financial offers will be evaluated based on a standard term. Proposals will be evaluated for “best value” based on the following criteria listed below:

##### **A. EXPERIENCE, QUALIFICATIONS AND REFERENCES (50 POINTS)**

1. Respondent and affiliated partners have successfully completed project(s) similar in size and scope and have developed a team with the skillsets to perform the duties outline in the scope of services.

##### **B. PROJECT UNDERSTANDING (30 POINTS)**

1. The respondent demonstrates a clear understanding of the project.
2. Ability to perform the required scope of services in given timeframe. Demonstrates that the consultant or team has sufficient capabilities, resources and staff to deliver high quality services on a short time frame and within budget.
  - i. 4.i. Respondent should also provide a plan on how they would meet a 30% MWBE goal and a 3% SDVOB goal on this engagement.
3. Quality and Completeness of the Application Proposal: All required documents have been submitted and the project is presented in a clear and concise manner.

##### **C. CONSULTANT FEE ESTIMATE (10 POINTS)**

Respondents to the RFP will be evaluated to the RFP will be evaluated on the quality of the overall

fee estimate. Elements to be evaluated include but are not limited to:

1. The use of reasonable and attributable assumptions;
2. The anticipated level of effort proposed for each task/subtask related to descriptions/assumptions included in the Project Approach;
3. Reasonableness of in the programming of labor categories/rates for each task/subtask based upon experience/skill sets required; and
4. Overall projected cost of the effort.

#### **D. DIVERSITY PRACTICES (10 POINTS)**

Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire (See Appendix A) submitted by each Respondent to the RFP.

ESD reserves the right to short list proposals and to interview prospective teams prior to final scoring. ESD also reserves the right to seek final and best offers from bidders prior to making any contract award.

### **VI. SUBMISSION OF PROPOSALS**

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

#### **i. Technical Proposal**

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

- A. Table of Contents
- B. Cover Letter and/or Executive Summary
- C. Qualification Statement
- D. Overall Approach
- E. Project Schedule
- F. Fee Estimate

The purpose of the Technical Proposal is to provide Bidders 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. Cover Letter and/or Executive Summary**

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

1. Summarize your organization's or team's ability to undertake the work being solicited for in this RFP.
2. Present the major themes of your proposed approach to the effort—how you will meet the challenge.
3. Present the main strengths of your skill sets and experience in administering a Buffalo Main Streets Initiative program, New York State Main Street program and/or related program.
4. Present key abilities of your proposed team and discuss any critical “distinguishers”—why your organization should be selected over others.
- 5.

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

In this section of the Technical Proposal, Bidders should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP.

1. Proposed Team. Respondents shall include firm profiles of the proposed Prime Consultant and any Sub-Consultants, as applicable.
2. Relevant Past Projects. Respondents shall provide no more than ten, one-page experience sheets (Note: additional materials will not be considered) summarizing the best examples of current and/or past projects undertaken by the firm and/or members of the team that are most similar and relevant to the process outlined in this RFP (see Section VII Experience and Expertise).
3. Information with respect to location, size, uses, approximate contract value, and dates of engagement.
4. Graphic material/photographs illustrating efforts.
5. Contact information (i.e., name, phone, and email) for applicable references for each representative contract.
6. Include an organizational chart identifying members of the Consultant team (Prime and Sub-Consultant firms) as well as their respective administrative, management and professional responsibilities. If any, note any prior working relationships among the Prime Consultant and Sub-Consultant firms.

7. Individual resumes should be submitted for key team members that will be engaged in the Project (no more than one [1] page in length for each staff member), stating registrations and licenses; professional and educational background; and experience relevant to this Project.

8. Current Workload.

List current projects and their status (including percentage complete) for all major task leaders (e.g., PM, deputy PM, major technical specialty leaders) included on the Consultant team

#### **D. Overall Approach**

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

1. Based upon information in this RFP and from individual research, set forth your team's overall understanding of the effort, the key objectives, challenges, and overarching issues associated with realizing these objectives.
2. Based upon your preliminary understanding of the Project context, present your Team's overall Project approach to the objectives outlined in this RFP.

#### **E. Project Schedule**

1. Respondents must provide a task-by-task schedule **for two commercial districts** that specifies the time (in days or weeks) that will be required for each task, work part, and all Scope of Service items. Include a linear timetable, with significant milestones, which outlines the sequencing, overlapping, etc., of the individual tasks. The schedule should begin coincident with notice to proceed. The schedule also should indicate the time allocated for team reviews/meetings and approvals. The timeline should be presented in weeks, starting in month one.
2. Describe the process(s) the prospective Consultant would employ to maintain strict budgetary and schedule controls on the Project.

#### **F. Fee Estimate**

1. Respondents must provide a Consultant fee estimate for each task/subtask outlined **for two business districts**. Compensation for work will be provided on a time and materials basis with a not-to-exceed limit. For purposes of preparing fee estimates for Tasks C (Development of Projects) and Task D (Construction Management/Quality Control), respondents should assume that 5-10 applications/properties will be developed each year and processed through completion on each of the two business districts over the term of the contract.
2. The fee estimate for each commercial district shall be presented as a person-hour breakdown in chart/spreadsheet format - listing each task/subtask and fully-burdened hourly rates by labor grade/category to aggregate task level costs (by labor grade/category) for each task/subtasks.

3. Material estimates and assumptions for additional non-salary direct costs (travel, printing, presentation materials, subconsultant costs, etc.) shall also be broken out in the fee estimate where applicable.
4. Please note that proposals that do not provide the Consultant Fee Estimate in the above format may be rejected without further consideration.

## ii. Administrative Proposal

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Bidders 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 Bidder'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 IX of this RFP ("Procurement Forms and Requirements").

## Submission of a Complete Two-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, electronic transmission) will not be accepted. When submitting each proposal, Bidders 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 – Program Administration Consultant for East Side Main Streets Initiative Proposal submitted by [Bidder's name]**
5. Each Bidder must submit:

- Six (6) hardcopies and one (1) text-searchable electronic copy on CD or flash drive of the *Technical Proposal*.
- One (1) original and one (1) electronic copy on CD or flash drive of the *Administrative Proposal*.

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

Empire State Development  
633 Third Avenue 35th Floor  
New York, New York 10017-8167

**Attention: Amanda Mays, Western New York Regional Director**  
**RFP: Program Administration Consultant for East Side Main Streets Initiative**

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

## VII. QUESTIONS

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

## VIII. GENERAL PROVISIONS

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

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

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or

otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

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

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

### **Required Approvals**

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

### **Performance**

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

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

### **Additional Services Requested**

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

### **Contractor Staff**

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

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

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

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



## **IX. CONTRACTUAL REQUIREMENTS**

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

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

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

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

[http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

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

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

[http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.pdf](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.

## **ii. 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](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).

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](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>

### **iii. Iran Divestment Act**

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

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

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

### **iv. Non-Discrimination and Contractor & Supplier Diversity Requirements CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE- CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

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

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

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

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a

Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

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

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

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

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

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

### **Diversity Practices**

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix A).

### **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: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). 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), 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](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.

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

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, 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>.

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

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all 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](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this

solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

#### **vii. Schedule A**

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: [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 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.

#### **viii. Project Sunlight**

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

#### **ix. 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.

**x. W-9 Form**

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

**X. APPENDIX**

**Appendix A: Diversity Practices Questionnaire**