

# REQUEST FOR PROPOSALS

## Broadway Market Business Support Services

3-Year Term Contract for Consulting Services and Business Plan Implementation Support in Buffalo, New York



**Empire State  
Development**

**Issued:** March 13, 2023

**Pre-Proposal Site Tour:** April 13, 2023

**Proposals Due:** May 15, 2023 at 3:00p.m. ET

**Respondents must request a dedicated Dropbox for submitting a digital version of their proposal and any inquires to [BroadwayMarketDevelopment@esd.ny.gov](mailto:BroadwayMarketDevelopment@esd.ny.gov) by April 10, 2023.**

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## **APPENDICES**

Appendix A: History of the Broadway Market

Appendix B: Summary of Business Plan Assessment - Strengths and Weaknesses

Appendix C: Broadway Market Business Plan (Full Report)

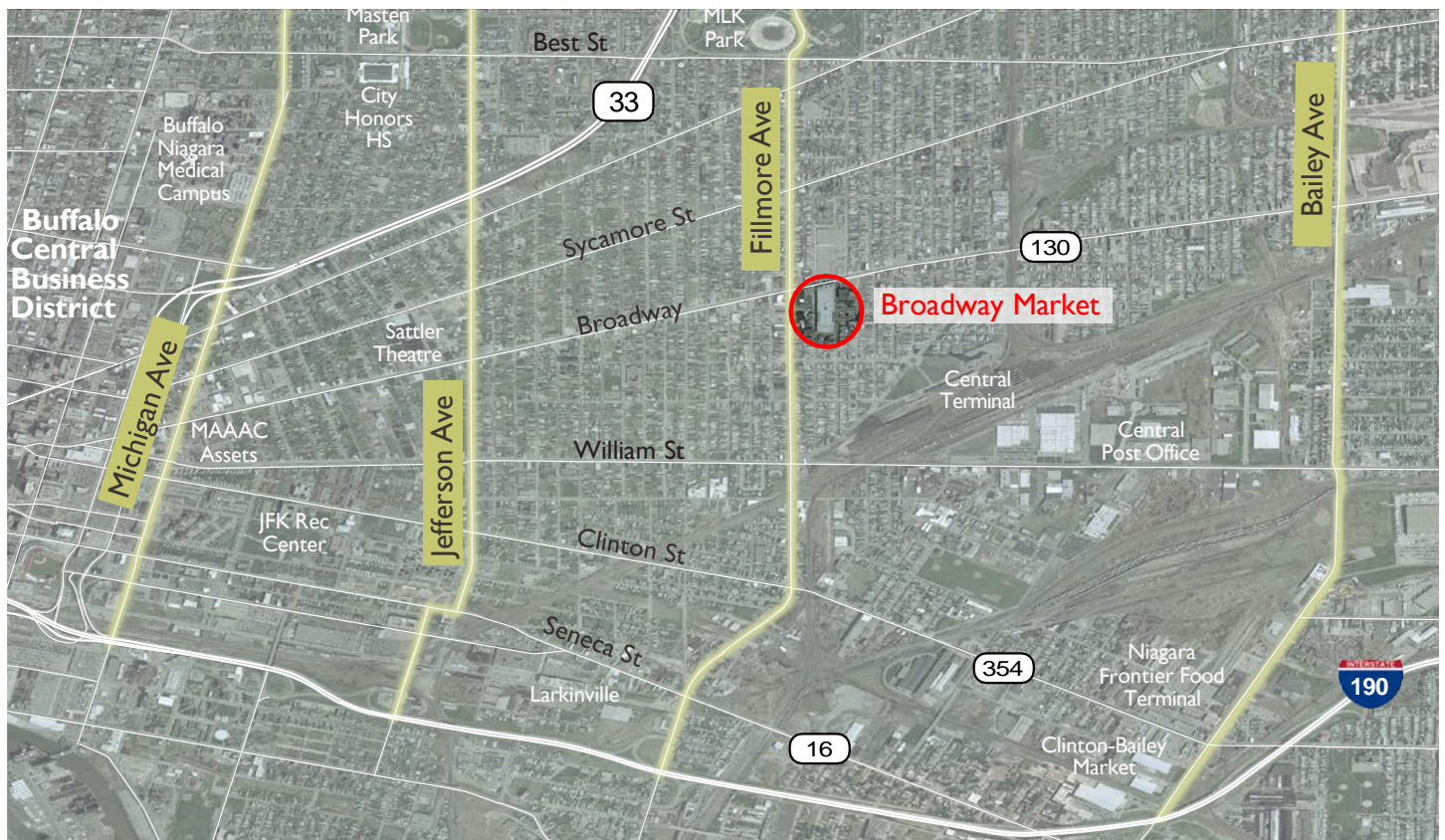
# I. INTRODUCTION

Empire State Development (ESD) is seeking to engage a qualified consultant or consultant team (hereinafter referred to as the “Consultant” or the “Contractor”) to provide organizational and strategic planning support to assist in operationalizing recommendations from a comprehensive business plan and capital improvement effort for revitalizing the Broadway Market (the “Market”), a public market located on the East Side of Buffalo, New York. ESD is partnering with the City of Buffalo via the Mayor’s Office of Strategic Planning and the Department of Public Works, Broadway Market Management, Inc., and local philanthropic organizations, led by the University at Buffalo Regional Institute (UBRI) (AKA the “Project Partners”), as part of a broader economic development initiative in East Buffalo.

The Market is one of the oldest and largest public markets in the United States and is a significant asset to the City and its surrounding neighborhood. Famed for its old-world shopping atmosphere, the beloved Broadway Market’s concept of selling fresh and unique products remains unchanged since it first opened in 1888. Over its history, the Market has evolved as a focal point of Polish-American heritage in Buffalo, especially during the Easter season. More recently, the Market has expanded its mission to include fresh foods and goods from a multitude of cultures from across Buffalo, Western New York and the world. But despite its historical significance and its role as an anchor in the local food system, the Market struggles to attract consistent traffic throughout the year. Its reliance on annual and monthly influxes of shoppers has hampered its ability to reinvest in its facility and recruit new vendors. This has led to stagnation and an inability to compete with other food venues.

Although the Market has seen its share of challenges, it still plays a prominent role in the Broadway Fillmore Neighborhood and East Buffalo. For this reason, it was identified as an anchor institution to be funded through ESD’s East Side Corridor Economic Development Fund (“ESCEDF”) in 2019 and through the subsequent NYS Regional Revitalization Program (“RRP”) in 2022. This funding will help create a vibrant, competitive public market that will catalyze a healthy, diverse Broadway Fillmore neighborhood; increase business for existing Broadway Market vendors while fostering new food service entrepreneurs; and enhance local food system sustainability and community health. In total, \$43 Million has been committed thus far by the State of New York, the City of Buffalo and a consortium of local philanthropic organizations to fund renovations and provide technical assistance throughout the Market’s rehabilitation process.

In 2020, officials took the first step in the redevelopment process by commissioning a business plan to guide future operations and capital improvements. The resulting document—Buffalo’s International Broadway Public Market Business Plan (“the Plan” or the “Business Plan”)—released in January 2021, articulates a vision for transforming the Market into a unique center for regional, fresh and international foods by re-purposing the building and filling it with additional tenants and new exciting amenities. The business plan lays out several steps for renovating facilities, updating vendor stalls, providing new products and establishing a new non-profit to operate the Market.



The Broadway Market’s Location in East Buffalo

## **II. PROJECT OBJECTIVES**

ESD is seeking to engage a Consultant to serve as the “subject area expert” in effective public market operations to help the various agencies/organizations on the project team to take specific actions to execute the recommendations of the business plan and to best inform the design/construction of capital improvements to the Market. The overall objective is to create a setting at the Market for a more expansive and diverse set of vendors and offerings to facilitate year-round activity, which is both responsive to the needs of its neighborhood and serves as a regional destination.

## **III. BUSINESS PLAN RECOMMENDATIONS**

### **Recommendations for the Market’s Redevelopment**

The Business Plan proposes a fundamental transformation of the Market. By returning the Market to its historic role as the place where all regional residents can find fresh international foods and by filling the entire building with rent-paying tenants and exciting amenities, the Market can become Buffalo’s number one cultural experience.

Implementing the Business Plan should achieve the following long-term goals:

- Utilize the majority of the 500,000+ square foot building for Market uses with an expansion of and refocused offering of a variety of fresh and ethnic food stalls and international groceries as well as dine-in restaurants and prepared food stalls.

- Ensure that the Market’s tenants, employees, and staff, are representative of and serve the residents of the Broadway Fillmore neighborhood.
- Promote visitation/sales at the Market to the region’s 1.2 million residents and millions of annual visitors.
- Partner with organizations and public agencies that will help assure the Market’s success.
- Improve the accessibility of the basement and renovate it to serve the Market’s tenants
- Open the ground floor the walled exterior to the street and focus ground floor retail and attractions on restaurants, fresh food stores, and international groceries; consider using side streets as Market plazas.
- Improve customer and product circulation by replacing the escalators with new freight and passenger elevators.
- Return the Market into a year-round social space with added amenities such as special events and community spaces.
- Renovate the second-floor parking and ramps and utilize the roof for recreation and entertainment. Concept for a Renovated Exterior of the Market



Concept for a Renovated Exterior of the Market

## **Recommendations for the Market's Operations**

The Plan offers a host of recommendations for future Market operations (beginning on page 144 of the Plan). In summary it calls for the following:

- Creating an independent, nonprofit management organization.
- Hiring new staff (or contractors) to focus on property management, tenant recruitment, operations, marketing, office management, janitorial and security.
- Building more channels of communication between the Market's management and vendors.
- Improving the Market's internal communications infrastructure.
- Expanding hours and days of operation.
- Building tenant attendance and reliability.
- Hosting skills-building classes for tenants.
- Improving overall customer service.
- Increasing pay and training for employees.
- Improving the Market's marketing efforts and online presence.
- Creating product line agreements to protect vendors' investments.
- Maximizing the benefit of the Police substation located in the Market.
- Creating a parking policy.
- Overhauling vendor lease terms.

## **Progress Made to Date**

The Project Partners have already begun the business plan implementation process. The following foundational milestones have been reached (or will be reached by the execution of a contract for the work outlined in this RFP):

- Formal establishment of Broadway Market Management, Inc. (BMMI), the 501(c)(3) organization that will operate the Market;
- Adoption of initial set of bylaws;
- Appointment of initial core board members, officers, and the development of a plan to solicit additional members;
- Mobilizing to address a series of interim repairs/stabilization efforts, including roof repairs and fabricating a prototype vendor stall;
- Development of a capital improvements budget and draft schedule; and
- Concept plans for capital improvements to the building (part of the Business Plan).

## **IV. PROJECT PARTNERS AND CONCURRENT EFFORTS AT THE MARKET**

### **Project Partners**

#### **Empire State Development (ESD) Western New York Regional Office:**

The mission of 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 (NYS) 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 convening the WNY REDC—a broad-based economic development coalition made up of government, business, and community leaders; and for facilitating the planning, funding, and implementation of large-scale regional economic development initiatives. These efforts involve strategies to invest in key tradable economic sectors in WNY, facilitates revitalization of urban core neighborhoods, helps prepare the region's workforce, and advances smart growth sustainability principles. ESD is responsible for administering New York State capital funds dedicated to redeveloping the Broadway Market in both the ESCEDF and the RRP. ESD and its representatives will serve as a core Member of the Project Team, will be managing the contract and will work with the Consultant Team and Project Partners on all aspects of the work outlined in this RFP.

#### **City of Buffalo, Mayor's Office of Strategic Planning (OSP):**

OSP, a division within the City's Executive Department, coordinates economic development activities throughout the City of Buffalo, as well as with other public agencies including ESD and the WNY REDC. OSP is subdivided into four divisions: The Division of Development works directly with the business community and real estate developers. The Division of Real Estate handles real estate transactions related to City-owned property, including vacant lots, residential structures, and capital assets such as decommissioned schools and fire houses. The Division of Planning & Zoning oversees the administration of the City's development regulatory boards (Planning Board, Zoning Board of Appeals, and Historic Preservation Board) and engages the community in planning initiatives. The Division of Environmental Affairs handles matters related to state and federal environmental review, implementation of state and federal environmental land use laws, and oversees the Environmental Management Commission. OSP coordinates with two closely associated development agencies, the Buffalo Urban Development Corporation (BUDC) and the Buffalo Urban Renewal Agency (BURA). OSP is the current owner of the Broadway Market. OSP, specifically its Director of Development, will serve as a core member of the Project Team and will work with the Consultant Team and Project Partners on all aspects of the work outlined in this RFP.

**Broadway Market Management, Inc. (BMMI):** BMMI, the not-for-profit management entity that will now manage the Market, was created in 2022 by BURA from a then-dormant, not-for-profit local development agency that was registered with the New York Department of State (DOS). Formal action was taken to register a name change with DOS;

dismantle the board (which had been solely made up of local elected officials), issue interim bylaws, appoint initial board leadership, and take other NYS-required actions to re-purpose the entity as the framework for a Market management entity. BMMI, specifically its Director and Board chair, will serve as a core member of the Project Team and will work with the Consultant Team and Project Partners on all aspects of the work outlined in this RFP.

#### **University at Buffalo Regional Institute (UBRI):**

UBRI is a local and national award-winning research center within the University at Buffalo School of Architecture and Planning working in Western New York for over 30 years, pursuing public scholarship with community constituencies to build stronger regional economies with better places for all people. Grounded in the disciplines of research and analysis, UBRI takes an objective approach to understanding complex issues in placemaking, workforce, sustainability, and innovation, and translates this understanding into useful and relevant information for the communities they serve. Since 2011, UBRI has provided ESD with strategic planning and problem solving; public engagement, communications; and tracking, monitoring, and reporting for the region's major economic development efforts, particularly those in East Buffalo, inclusive of revitalizing the Market. UBRI played a large role in the ESD's ESCEDF; leads the Project Implementation Team for its complementary philanthropic-sponsored effort known as "East Side Avenues"; and played a key role in the development of the RRP. UBRI representatives will work with the Consultant and Project Partners on all aspects of the work outlined in this RFP.

### **Other Efforts At the Market**

Concurrent to or proceeding the scope of services in this RFP, are a number of other projects/efforts already or soon to be underway that require technical assistance from additional consultants. These include:

Engagement of an organizational consultant to assist BMMI in various general aspects of governance, organizational infrastructure, administrative, and financial functions of the new not-for-profit corporation;

Launching a search process for executive leadership for the Market with the assistance of an executive search firm;

Operationalizing specific action items from the concepts/programs outlined in the Business Plan, using a subject-area public market expert consultant that will be procured/contracted with ESD; and

Completing a short-term project for designing/ fabricating an initial test prototype for improved vendor stalls at the Market and other near-term repairs.

When necessary, the Consultant should be aware of these concurrent efforts, work in coordination with the consultants and Project Partners on these efforts, and/or be able to share information with management/ consultants responsible for these efforts.

## **V. REQUIRED SKILLS AND EXPERIENCE**

The Consultant or team must possess training, skills, and experience in the following areas of expertise:

- Project management;
- Public market or food retail management;
- Operations and facilities support for market/retail facilities including tenant leasing experience;
- Planning and oversight of capital improvement projects;
- Nonprofit organizational development including staff recruitment;
- Fundraising for both organizational and capital construction campaigns; and
- In depth knowledge of buffalo, NY and the broader region

## **VI. SCOPE OF SERVICES**

The Consultant will be tasked with working directly with the Project Partners in supporting BMMI during its first three years of operations. The focus of work will be on creating and supporting a strong core team of staff, educating vendors and the public about upcoming plans for redevelopment, and establishing foundational policies for operations, and tenant relations, particularly as the Market undergoes significant instructions. Necessary services should include, but are not to be limited to, the scope of work listed in the following tasks.

### **Task 1: Project Management**

The Consultant will be responsible for managing a contract with ESD including regular invoicing and check-in meetings. The contract with ESD will be conducted in collaboration with all of the Project Partners.

The Consultant will also act as project manager facilitate and support outstanding tasks related to the full transition of the Market from a City of Buffalo-operated facility to a non-profit-operated facility. This will include regular meetings – with a minimum of one in-person meeting each month – with BMMI staff, the aforementioned Project Partners, and other project stakeholders, suppliers and contractors.

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*Task Deliverable: Meeting agendas and presentations*

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### **Task 2: Market Management and Facilities Operations Support**

The Consultant must develop and manage an operations plan and associated schedule that outlines specific tasks and timeframes required to implement the outstanding broad objectives of the Business Plan including but not limited to: start-up and ongoing operations of BMMI; hiring of staff; improving tenant leasing policies and current tenant management; procurement of additional consultant and operations support services; and coordinating the ongoing operations with the anticipated capital project.

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*Task Deliverable: Project management and reporting tool creation and utilization to keep project on schedule and on task*

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### **Task 3: Leasing Plan**

The Consultant will work with BMMI staff and the Project Partners to develop a long-term leasing plan including the development of policies/ agreement for tenants, parking policies, product line agreements and hours of operations.

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*Task Deliverable: Leasing Plan*

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### **Task 4: Design Review**

The Consultant must attend applicable design review meetings with the Architecture/Engineering team for the upcoming capital improvement project (still to be selected) and provide comments and recommendations to ensure the final design supports the future operations of the market.

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*Task Deliverable: Comments on project designs, drawings and specifications*

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### **Task 5: Fundraising**

The Consultant must prepare a fundraising/development plan including any short-term targets to fund the first phase of redevelopment. There will likely be short-term window of time available to raise additional funding for the first phase of redevelopment. This window will close when the Architecture/Engineering team reaches the end of the “schematic design” step in the design process for the Market’s capital improvement project.

The Consultant must prepare and submit, when applicable, grant applications on behalf of BMMI.

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*Task Deliverables: fundraising/development plan and materials related to applications*

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**Task 6: Employee Recruitment and Support**

The Consultant must develop an employee recruitment plan and provide support services to BMMI in the hiring of additional staff or independent contractors as needed including drafting of job descriptions, review of respondent qualifications and administration of selection processes. Staff or contractors will be hired at the discretion of BMMI leadership and funding agencies.

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*Task Deliverables: employee recruitment plan and collateral related to hiring new staff*  
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**Task 7: Procurement of Additional Consultants/ Contractors**

The Consultant must provide support services to BMMI in the procurement of additional consultants as needed, including drafting of request for proposal documents, communications with prospective respondents, technical review of proposals and administration of scoring processes. Any additional consultants will be hired at the discretion of BMMI leadership and funding agencies and may include, but would not be limited to, a communications consultant (including web site development) and a tenant recruitment consultant.

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*Task Deliverables: collateral documents and selection support related to procuring additional new consultants/ contractors*  
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**Task 8: Other Proposed Tasks**

Respondents may include any additional tasks that they believe will advance the implementation of the business plan. Please provide details about the task, justification for task, a description of how it will advance the Market’s renovation or future operations and any associated deliverables.



## **VII. REQUIRED PROPOSAL CONTENTS**

Proposals should demonstrate an understanding of the requirements and present the following information presented in the order shown below, clearly divided by sections. Proposals must include the following:

### **Cover Letter and/or Executive Summary**

- A summary of the Respondent team, with a complete organizational chart of key team members.
- A summary of your organization's or team's ability to undertake the services being solicited for in this RFP.
- Key abilities of your proposed team and discuss any critical "distinguishers" describing why your organization should be selected over others.
- Proposed fee (including any anticipated reimbursable expenses) and total hours for all team members.

### **Scope/Approach**

Respondents should provide (at a minimum):

- An overall description of their approach to meet the objectives of the Project
- Scope of work including a discussion about each task and who will perform the work

### **Fee Proposal**

Respondents must provide a proposed fee for all services delineated by the tasks identified in Section V. The proposal must include a detailed staffing plan broken down by task, including the anticipated hours and hourly rate of each member of the Respondent team that will be working on the project. Please note any assumptions forming the basis of the cost estimate.

Fee proposals must also include a list of anticipated reimbursable expenses and the rate charged for each without markup.

Although proposed fees will be taken into account, ESD reserves the right to negotiate a lower or different fee structure with any Consultant that is selected.

### **Proposed Schedule**

Respondents must submit a proposed schedule, indicating the time needed to complete each task and anticipated timing of project any important milestones.

### **Respondent Qualifications**

Respondents must submit a description of the respondent team's qualifications, including a brief resume (no more than one page in length) for each key professional.

### **Respondent Experience**

Respondents must submit project sheets showing relevant completed efforts by the team within the last ten (10) years, with a particular emphasis on similar projects including: an overall project description; an image(s) illustrating the project, the cost of the project; the time necessary to complete the project; and names, addresses and telephone numbers of project references who may be contacted during the period of proposal evaluation.

### **Required Forms and Certifications (attach as appendices)**

All certifications, forms, affidavits, etc. required in section XII of this RFP ("Contractual Requirements") must be completed by the lead consultant and attached as appendices to the proposal in the following order:

- NYS Licensing Certifications (if applicable)
- Conflict of Interest Attestation
- State Finance Law Sections 139-j and 139-k Form
- Vendor Responsibility Questionnaire Form (completed form or VendRep System receipt)
- Iran Divestment Act Affirmation (on company letterhead)
- Executive Order 177 Certification
- Executive Order 16 Form
- OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
- OCSD-2 - Staffing Plan (must also be completed by any subconsultants)
- OCSD-4 - MWBE and SDVOB Utilization Plan
- Diversity Practices Questionnaire
- Encouraging the Use of NYS Businesses Form
- ST-220-CA Form
- W9 Form

## **VIII. SUBMISSION INSTRUCTIONS**

### **Proposal Submission**

A PDF copy of the proposal (with any appendices) must be uploaded to a dedicated Dropbox web link (that will be unique to each Respondent) prior to the deadline shown on the cover of this document.

**Respondents must request the dedicated Dropbox web link by sending an email to:**

**[BroadwayMarketDevelopment@esd.ny.gov](mailto:BroadwayMarketDevelopment@esd.ny.gov)** by the deadline shown on the cover of this document. At the discretion of ESD, requests for deadline extensions may be considered prior to the deadline and, if granted, announced on the NYS Contract Reporter Website.

### **RFP Inquiries**

ESD will accept written questions and inquiries via email from prospective Respondents no later than deadline shown on the cover of this document. All inquiries must be submitted via email to:

**[BroadwayMarketDevelopment@esd.ny.gov](mailto:BroadwayMarketDevelopment@esd.ny.gov)**.

No contact related to this solicitation with ESD Board members, staff or consultants, other than emails to the designated email account for the solicitation will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

## **IX SELECTION CRITERIA**

The proposals will be evaluated and scored/ranked using a “best value” selection process, which looks at a variety of evaluation factors that includes, but is not limited to the propose fee, the expertise of the team and approach to the work. Specifically, the Selection Committee will consider such criteria that, in ESD’s sole and absolute discretion, are in the best interests of ESD. The criteria listed below are of significant concern:

### **Proposed Fee (20 Points)**

### **Experience of the Team (40 points)**

- Experience of Respondent team staff being assigned to the project in general, and in particular, providing consulting services to municipalities, economic development agencies and/or other governmental agencies.
- Quality of work product as demonstrated in submitted work samples of past relevant projects.
- Demonstrated ability to complete projects in an expeditious manner.

### **Feasibility of Approach (30 points)**

- Approach in methodology with respect to the scope of services that demonstrates maximum comprehension of and ability to provide such services.
- Commitment of principals to lead the team and devote time to the project.
- Ability of the prime Consultant to identify qualified subconsultants.

### **Diversity Practices (10 points)**

Respondents to the RFP will be evaluated for Diversity Practices using a Diversity Practices Questionnaire. Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire submitted by each respondent to the RFP.

## **X. GENERAL PROVISIONS**

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

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

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

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

ESD 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 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 RFP 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 ESD. 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.

## **XI. RESERVED RIGHTS**

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.

ESD reserves the right to reject a proposal if any document or item listed in this RFP is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a respondent without further consideration:

- Evidence of collusion among respondents;
- Any attempt to improperly influence any member of the evaluation panel;
- Discovery that a respondent purposely misled or knowingly provided false or inaccurate information in a proposal;
- A respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Information leading to a determination that a respondent would not be certified as a "Responsible Vendor" as defined by the State Comptroller; and
- Existence of any unresolved litigation or legal dispute between the respondents and ESD and/or the State of New York.

ESD reserves the right to reject any and all proposals and to waive any informalities or irregularities in procedure or proposals submitted.

## **XII. CONTRACTUAL REQUIREMENTS**

This section contains additional information about the forms that are required to be included in each Respondent's submission as well as information about ESD's procurement requirements.

### **I. Conflicts of Interest**

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

- a. Gifts and Offers of Employment: Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD and/or 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 and/ or 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 and/or ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

- c. Disclosure of Ethics Investigations: Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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

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

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

[https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf)

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

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

[https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.PDF](https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.PDF)

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

### **3. Vendor Responsibility Questionnaire**

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

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

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

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website ([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).”

### **4. Iran Divestment Act**

Every Proposal made to ESD or its subsidiaries 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 respondent and each person signing on behalf of any respondent 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 respondent 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/iran-divestment-act-2012>

### **5. 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.

### **6. Executive Order 16**

In accordance with New York State Executive Order 16

(“EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

“By submission of a 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 in compliance with EO-16.”

The required certification for can be found at: <https://esd.ny.gov/sites/default/files/EO16-certification.pdf> and must be signed and included in all Proposals.

## 7. 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 and its subsidiaries are 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.

#### 7.1 Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an **overall combined 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 supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. 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 the monetary value for fees, or the markup percentage, charged by the MWBE.

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:

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.

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:

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

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

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

## **7.2 Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#).

The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the

Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

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

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

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

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-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-Contractor-Compliance-Payment-Report.pdf>

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)

## **7.3 Diversity Practices**

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire: <https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/JavitsConstructionManagement/Addendum%202.pdf>.

## **7.4 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.



### 7.4.1 Contract Goals

ESD hereby establishes an **overall goal of 6% for SDVOB participation**, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the 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.

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

### 7.4.2 SDVOB Utilization Plan

In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their bid.

The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

ESD will review the submitted SDVOB Utilization Plan and advise the Respondent/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

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.

ESD may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:

- If a Respondent fails to submit an SDVOB Utilization Plan;
- If a Respondent fails to submit a written remedy to a notice of deficiency;
- If a Respondent fails to submit a request for waiver; or
- If ESD determines that the Respondent has failed to document good faith efforts.

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.

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.

### 7.4.3 Request for Waiver

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

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 SDVOB 200, accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Respondent's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

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.

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 ESD.

#### **7.4.4 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:

- Copies of solicitations to SDVOBs and any responses thereto.
- Explanation of the specific reasons each SDVOB that responded to Respondents/Contractors' solicitation was not selected.
- 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.
- 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.
- Other information deemed relevant to the waiver request.

#### **7.4.5 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).

#### **6.4.6 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.

## **8. 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:

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

## **9. 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 (<https://esd.ny.gov/sites/default/files/ST220CA.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.

## **10. 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.

## **11. Project Sunlight**

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

## **12. Insurance Requirements**

The Contractor will be required to provide appropriate insurance coverage as determined by Empire State Development once the structure of the transaction with the Contractor has been finalized

Empire State Development must be named as an additional insured on a primary and non-contributory basis on certain policies. All policies should include a waiver of subrogation in favor of Empire State Development .

## **13.W-9 Form**

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

## **14. NYS Licensing Requirements**

Respondents (and any proposed sub-consultants) required to certify documents must present evidence that they are licensed, as applicable, to practice engineering, architecture, landscape architecture, land surveying in the State of New York.