



**Empire State  
Development**

# **REQUEST FOR PROPOSALS (RFP) TO PROVIDE LEGAL SERVICES RELATED TO THE REDEVELOPMENT OF BELMONT PARK**

**ISSUE DATE: February 12, 2018**

**PROPOSAL DUE DATE AND TIME: March 7, 2018 12:00 PM EST  
(Late proposals cannot be accepted)**

**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. Respondents are prohibited from contact related to this procurement with any New York State employee, *other than the designated contacts listed below*. Please refer to the following for additional information.

<http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>).

Designated Contacts for this Procurement:

**Primary Contact:** John F. Discolo

**Secondary Contact:** Ralph Volcy

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

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

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

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## I. INTRODUCTION

The New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) is the chief economic development agency of the State of New York (the “State”). 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 the State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance. ESD has broad statutory powers, including, the powers to: acquire and dispose of interests in real and personal property; to enter into contracts and other instruments; lend monies take collateral (including mortgages) and to foreclose and execute on such collateral; incur debt and grant interests in collateral (including mortgages); procure insurance; override local laws, codes and regulations; and be exempt from state and local taxation. Additional information about ESD may be found on ESD’s website at [www.esd.ny.gov](http://www.esd.ny.gov).

## II. OVERVIEW

Belmont Park, located in the unincorporated hamlet of Elmont, New York, is one of the major thoroughbred horseracing facilities in the country and has been in active use since 1905. On July 31, 2017 ESD issued a RFP solicitation for the long-term lease of underutilized property located to the south of the existing Belmont Park Racetrack and Grandstand. Proposals were encouraged to consider entertainment, sports, recreation, hospitality, and retail uses and exclude residential development, gaming and horseracing. Three submissions were received. On December 21, 2017 New York Arena Partners LLC (“NYAP”)<sup>1</sup> was conditionally designated by ESD as developer of the Proposed Project (as defined below), subject to completion of the requisite environmental review, among other conditions.

NYAP proposes to construct a sports and entertainment destination (the “Proposed Project”) with associated hotel, retail, commercial, and community facilities at Belmont Park. The Proposed Project would likely include: an approximately 18,000 seat arena for the New York Islanders National Hockey League (NHL) franchise and for other entertainment events; dining, retail, and entertainment uses within a “retail village” adjacent to the proposed arena; a hotel; commercial office space; community space; publicly accessible open space; parking; and up to two pedestrian bridges.

For more information on the Proposed Project, visit:

<https://www.governor.ny.gov/news/governor-cuomo-announces-10th-proposal-2018-state-state-bringing-new-york-islanders-home-world>

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<sup>1</sup> NYAP is a joint venture among: (i) Scott D. Malkin (“Malkin”) and other principals of Malkin-affiliated entities; (ii) Sterling Equities; (iii) and a joint venture between The Madison Square Garden Company and Oak View Group, LLC.

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

This Request for Proposals (“RFP”) seeks a law firm to represent ESD in connection with the Proposed Project. ESD requires legal advice and assistance on matters pertaining to the underlying real estate transactions (expected to be ESD’s acquisition of parcels currently owned by the Franchise Oversight Board and then long term net lease of the Property by ESD to NYAP) and matters that may arise in connection with the transaction, including easements, licenses, environmental issues, sports franchise and league issues, signage and advertising, copyrights, insurance matters, construction contracting, construction and takeout financing, retail leasing, community benefit agreements, public security agreements, agreements with government entities regarding mass transit and vehicle transportation, construction related prevailing wages and labor agreements, and similar and related matters. As the Proposed Project has a stadium/arena-dominant component, ESD specifically requires assistance on matters related to stadium/arena development.

Firms must have demonstrated expertise in stadium/arena development projects, including stadium/arena leasing, and major mixed use real estate projects. The schedule for the Proposed Project has an anticipated construction start date of the second quarter of 2019, and the respondent must have proven availability to provide its services in the timeframe required.

### **IV. REQUIRED INFORMATION**

Below is the list of information and documentation required of each respondent. A proposal may be rejected if it does not include the required information and documents.

#### **A. Tab 1: Basic Information**

- 1) Provide a description of the law firm’s relevant experience. Include a brief description of representative transactions and specify the law firm’s role for each.
- 2) Indicate whether stadium/arena development services have been provided previously to any other state, local or federal entities. If so, list and describe any and all work performed including (a) the date(s) such work was performed and (b) the entity for which such work was performed.
- 3) The names of the principal partners and other attorneys with stadium/arena development experience who would be responsible for ESD’s matters, and a description of the relevant qualifications and experience of each attorney.
- 4) Identify and provide contact information for the person(s) in the firm who will be ESD’s primary point(s) of contact and provide resumes for such person(s). After a selection is made, primary point(s) of contact may not be changed without ESD approval.

- 5) Provide the firm's standard hourly billing rate structure.
- 6) If the law firm is a State-certified MWBE or SDVOB firm, provide documentation evidencing certification. Law firms that are not certified, but have applied for certification, should provide evidence of filing, including the filing date.
- 7) A description of the instances, if any, in which the law firm has worked with MWBE or SDVOB law firms on previous transactions by engaging in joint ventures or other partnering or subcontracting arrangements. Responses should include the nature of the engagement, how such arrangement was structured and a description of how the services and fees were allocated.
- 8) A statement of the law firm's willingness, if any, to engage in future MWBE and SDVOB partnering or mentoring arrangements with either a law firm selected by ESD or one of your choosing and if the latter, a list of co-counsel MWBE and SDVOB law firms with which the law firm is prepared to partner. Such statement should include an explanation of how the law firm would suggest structuring such an arrangement and allocating services and fees between the participating law firms.
- 9) Respondents must also submit a detailed plan identifying any and all subcontracting opportunities associated with this project, and must explain how Minority and Women-owned Business Enterprise (MWBE) and Service-Disabled Veteran-owned Business (SDVOB) businesses would be utilized.

Provide the information in the same order in which it is requested. Information provided in Tab 1 must be limited to 12 pages, in at least 12 point font, with standard margins printed on one-sided 8 ½ X 11 inch pages, and bound and marked "Tab 1."

B. Tab 2: Background Information

Background information, such as number of attorneys in the law firm, location of all offices, telephone number and e-mail address of the primary staff personnel who are anticipated to provide services to ESD, firm descriptions/brochures, resumes and organizational charts should be included in a separate "Tab 2." There is no page limit on Tab 2, but brevity is strongly encouraged.

C. Tab 3: Required Forms

In a separate "Tab 3," all forms listed in Section X of this RFP ("PROCUREMENT FORMS AND REQUIREMENTS") should be included in the same order as listed in that section.

## V. SCHEDULE OF DATES

Release of RFP	February 12, 2018
Deadline for Bidders to Submit Questions	February 20, 2018 at 12 noon EST
Deadline for ESD to Answer Questions	February 27, 2018 at 12 noon EST
Submission of Proposals	March 7, 2018 at 12 noon EST
Interviews (if necessary)	March 9, and 12 2018
Selection of Successful Bidder	Week of March 12, 2018

ESD reserves the right to modify this schedule at its discretion. Notification of changes in connection with this RFP will be made available via ESD's website at <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

## VI. SELECTION CRITERIA

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

- 1) Relevant firm experience in stadium/arena development and the qualifications and experience of the staff proposed to be assigned to the ESD engagement (50%).
- 2) Relevant firm experience in major mixed use real estate projects and experience of the staff proposed to be assigned to the ESD engagement (15%).
- 3) Demonstrated commitment of time and resources to ESD or other New York State agencies or other public entities (10%).
- 4) Overall organization, completeness, and quality of proposal, including cohesiveness, clarity of response and demonstrated understanding of ESD, its mission and activities (20%).
- 5) Diversity Practices Questionnaire (Exhibit A) (5%).

Eligible law firms must have a New York State office.

## VII. SUBMISSION OF PROPOSALS

Proposal submissions must be received by ESD on or before 12 noon on March 7, 2018. The submission should be labeled “**Belmont Legal Counsel RFP Response**” and mailed to the following address:

Empire State Development  
633 Third Avenue, 35<sup>th</sup> Floor  
New York, NY 10017  
Attn: Hector Morel, ESD Procurement Unit  
Re: Belmont Legal Counsel RFP Response

The submission should include seven (7) copies of the information and other items required by this RFP, and one additional copy on disk or flash drive (pdf format preferred). Electronic submissions will not be accepted.

## VIII. QUESTIONS

All questions, comments, requests for clarification or any other communication regarding this RFP must be submitted in writing *no later than February 20, 2018 at 12:00 P.M. EST* by email to: [belmontlegal@esd.ny.gov](mailto:belmontlegal@esd.ny.gov). Answers will be posted no later than February 27, 2018 at 12:00 P.M. EST via ESD’s website: <http://esd.ny.gov/CorporateInformation/RFPs.html>.

In addition, any changes, additions or deletions to this RFP will also be posted on ESD’s website, along with the electronic version of this RFP. Respondents should note that any necessary clarification must be requested by the deadline for questions set forth in the “Schedule of Dates” section in this RFP.

Respondents are encouraged to check ESD’s website frequently for notices of any clarification of or changes, additions, or deletions to this RFP. It is the responsibility of the Proposer to periodically check the website for any new information or addenda to the RFP.

**OTHER THAN THE CONTACT WEB ADDRESS IDENTIFIED ABOVE, PROSPECTIVE RESPONDENTS SHALL NOT APPROACH ESD EMPLOYEES DURING THE RESTRICTED RFP PERIOD PROCESS ABOUT ANY MATTERS RELATED TO THIS RFP OR ANY QUALIFICATIONS SUBMITTED PURSUANT THERETO.**

## **IX. GENERAL PROVISIONS**

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

- 1) amend, modify or withdraw this RFP;
- 2) revise any requirement of this RFP;
- 3) waive any requirements of this RFP that are not material;
- 4) seek clarifications and revisions of responses to this RFP;
- 5) require supplemental statements or information from any responsible party;
- 6) accept or reject any or all responses to this RFP;
- 7) extend the deadline for submission of responses to this RFP or otherwise modify the schedule set forth in this RFP;
- 8) negotiate potential contract terms (including, among other things, the hourly billing rate structure and its application and MWBE participation) with any respondent to this RFP;
- 9) engage in discussions with any respondent to this RFP to correct and/or clarify responses;
- 10) require clarification at any time during the procurement process and/or require correction of responses for the purpose of assuring a full and complete understanding of a respondent's proposal and/or determine a respondent's compliance with the requirements of the solicitation; and
- 11) 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.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding law 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 responding law firm.

All information submitted in response to this RFP is subject to the Freedom of Information Law, 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, all responses may be discussed at meetings of the ESD Directors, which are subject to the Open Meetings Law.



## **X. PROCUREMENT FORMS AND REQUIREMENTS**

Additional requirements for this RFP are described below. Relevant forms, where required to be submitted, must be executed and included in the submission in the same order as listed below:

### **1. 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 listed below; the completion by respondents of the “Offerer Disclosure of Prior Non-Responsibility Determinations” and the “Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j(3) and §139-j(6)(b);” and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the “Offerer Disclosure of Prior Non-Responsibility Determinations” and the “Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j(3) and §139-j(6)(b)” as part of their submittal. Copies of these forms are available at: [http://www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](http://www.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 prospective 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 prospective respondent is found to have knowingly and willfully violated the State Finance Law provisions, that prospective 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.

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://www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.pdf](http://www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf). All potential respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants must each complete the forms required above.

## **2. Vendor Responsibility Questionnaire**

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

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

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

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website ([http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)) and execute accordingly pertaining to the company’s trade industry. Per the website, respondents are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

## **3. Iran Divestment Act**

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

“By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that

each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law.”

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <http://www.ogs.ny.gov/about/regs/ida.asp>.

#### **4. Non-Discrimination and Contractor and Supplier Diversity Requirements**

##### **Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

#### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified MWBEs and the employment of minority group members and women in the performance of ESD contracts.

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

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

For purposes of this solicitation, ESD hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15% for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. 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.

ESD encourages MWBE law firms to respond to this solicitation and to provide such documentation necessary to establish their status as such. ESD also encourages law firms that may be eligible for MWBE certification to respond to this solicitation. ESD will strongly consider qualifying proposals from MWBE law firms in response to this solicitation.

Law firms responding to this solicitation that are not MWBE-certified are strongly encouraged to consider partnering, or other joint venture arrangements, with other certified MWBE law firms in order to give MWBE law firms the opportunity to participate in the legal services performed under contracts to be awarded to pre-qualified legal counsel by ESD.

General inquiries or questions relating to the aforementioned policies, MWBE participation, and the goals specified herein may be addressed to the Office of Contractor and Supplier Diversity (“OCSD”) at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

### **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 quarterly basis during the term of the Contract.

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:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_1MWBEEEOPolicyStatement.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf)

Form OCSD-2: [http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_2StaffingPlan.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf)

Form OCSD-3:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_WorkforceUtilizationReport.xlsx](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_WorkforceUtilizationReport.xlsx)

Form OCSD-4:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_4MWBEUtilizationPlan.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4MWBEUtilizationPlan.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 Exhibit A).

## **5. Service-Disabled Veteran-Owned Businesses**

### **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 6% 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 with their bid.

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 ESD.



**Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to 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.

ALL FORMS ARE AVAILABLE AT <http://ogs.ny.gov/Core/SDVOBA.asp>

ESD encourages SDVOB law firms to respond to this solicitation and to provide such documentation necessary to establish their status as such. ESD also encourages law firms that may be eligible for SDVOB certification to apply for certification to the Division. ESD will strongly consider qualifying proposals from SDVOB law firms in response to this solicitation.

Law firms responding to this solicitation that are not SDVOB-certified are strongly encouraged to consider partnering, or other joint venture arrangements, with other certified SDVOB law firms in

order to give SDVOB law firms the opportunity to participate in the legal services performed under contracts to be awarded to pre-qualified legal counsel by ESD.

General inquiries or questions relating to the aforementioned policies, SDVOB participation, and the goals specified herein may be addressed to OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

#### **6. 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/proposers 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>.

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

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

#### **8. 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,” which can be found at: [https://esd.ny.gov/sites/default/files/ScheduleA\\_LawFirms\\_0.pdf](https://esd.ny.gov/sites/default/files/ScheduleA_LawFirms_0.pdf)

Respondents should review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as respondents will need to accept these terms as a condition to contract execution.

**9. Project Sunlight** *(for review only – no submission requirement)*

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined as any substantive in-person meetings or video conferences that are 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 for real property (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.

**10. W-9 FORM**

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