



# Empire State Development



## Request for Proposals ESD 2018 Cybersecurity Services

**Issued: July 20, 2018**

Designated Contacts for this RFP:

Primary Contact: [deanine.lena@esd.ny.gov](mailto:deanine.lena@esd.ny.gov)  
Secondary Contact: [chris.medve@esd.ny.gov](mailto:chris.medve@esd.ny.gov)  
Additional Contacts: [matt.watson@esd.ny.gov](mailto:matt.watson@esd.ny.gov)

All contacts/inquiries shall be made by email to the following address: [Cyber-security@esd.ny.gov](mailto:Cyber-security@esd.ny.gov)

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

**PROPOSAL DUE DATE AND TIME:  
On or before 4:00 PM ET on August 10, 2018**

## Contents

I.	INTRODUCTION .....	2
II.	OVERVIEW .....	2
III.	SCOPE OF WORK.....	2
IV.	SCHEDULE OF DATES.....	4
V.	SELECTION CRITERIA .....	4
VI.	SUBMISSION OF PROPOSALS.....	5
i.	Technical Proposal .....	5
ii.	Administrative Proposal.....	8
VII.	QUESTIONS .....	9
VIII.	GENERAL PROVISIONS.....	9
IX.	CONTRACTUAL REQUIREMENTS.....	10
i.	Non-Discrimination and Contractor & Supplier Diversity Requirements .....	10
ii.	Not-For-Profit Organizations .....	16
	APPENDICES .....	18
	Appendix A - Fee Proposal and Budget Form.....	18
	Appendix B - Diversity Practices Scoring Matrix .....	18
	Appendix C - Diversity Practices Questionnaire .....	18

## **I. INTRODUCTION**

The mission of Empire State Development (“ESD”) is to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York. Empire State Development's (ESD) Division of Science, Technology and Innovation (“NYSTAR”) offers programs that assist companies from start-up through maturity, leveraging the state's unparalleled investment in world-class technology assets and expertise. ESD seeks to award funding to a non-profit organization to undertake a cybersecurity assessment and implementation project.

## **II. OVERVIEW**

NYSTAR is awarding up to \$300,600 to a non-profit organization to implement cybersecurity assessments and compliance implementation related to NIST SP 800-171. These new cybersecurity-related grant funds are intended to assist about 30 manufacturers with moving toward compliance with the security protocols in NIST SP 800-171, a requirement they face under DFARS Clause 252-204-7012. New York State is home to over 10,000 defense contractors, of which over 1,600 are manufacturers. The companies and their suppliers face the risk of losing defense industry business if they are found to be in non-compliance with DFARS 252-204-7012/ NIST SP 800-171. NYSTAR seeks a non-profit Recipient who will utilize this OEA grant funding to provide cybersecurity assessments and compliance implementation to manufacturers in New York State that are either a current or prospective participant in the defense supply chain.

### **MWBE & SDVOB Subcontractor Interest**

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this contract. The listing will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to [Cyber-security@esd.ny.gov](mailto:Cyber-security@esd.ny.gov).

### **Method of Disbursement**

Funds will be disbursed in arrears, at agreed upon project milestone(s). Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, including program reports. Prior to the disbursement of funds, the grant award is subject to ESD Board approval and execution of a Grant Disbursement Agreement.

## **III. SCOPE OF WORK**

Recipient will utilize this OEA grant funding to offset a portion of the costs for providing cybersecurity assessments and compliance implementation to manufacturers in New York State

that are either a current or prospective participant in the defense supply chain. The project will be conducted over no more than 13 months. Estimated schedule is as follows, though overlap may occur.

**Months 1-3:** The recipient will market and promote the available assistance.

**Months 3-13:** The recipient will conduct cybersecurity assessments for 30 or more qualified companies, and will conduct compliance implementation projects with a sub-set of those companies.

The recipient should expect to complete the following steps.

1. Devise an intake mechanism for companies to be served, limiting eligibility to manufacturers either demonstrating 30% or more business revenue from DOD-derived contracts (at any supply chain tier) or demonstrating the potential and interest to enter the defense supply chain.
2. Market and promote the available assistance. The selected sub-recipient will do outreach and promote the available assistance.
3. Together with partner organizations as needed, conduct one-on-one cybersecurity assessments for 30 or more companies. This may consist of the following steps, and other steps as deemed necessary:
  - Step 1: Physical walk-through of the business and evaluation of the use and environment of relevant devices and equipment.
  - Step 2: Line-by-line compliance check organized by the requirements of 800-171, and determination of items that are in compliance; out of compliance; or in compliance with some exceptions.
  - Step 3: Interviews with a selection of employees distributed throughout the organization to determine degree of dissemination and understanding of cybersecurity-related policies and training; identification of any discrepancies or weaknesses.
  - Step 4: Generation of report that details current compliance/non-compliance with the requirements of 800-171, including a prioritized list of items to be addressed; presentation of this report to the company.
  - Step 5: After a remediation period during which the client company addresses cybersecurity shortfalls, the sub-recipient will conduct a follow-up visit and assessment. If the client company is deemed to be in compliance with 800-171, the sub-recipient will issue a letter informally certifying compliance.
4. Many companies will be able to achieve compliance by implementing the results of the report independently or through their existing IT providers. For companies that require further assistance the sub-recipient will perform compliance implementation, and engage external consultants for large or complex projects. This compliance implementation may include but is not limited to: developing training plans; conducting training; developing policies; and preparing the submittal of compliance information to DOD contracting offices or prime contractors.
5. Develop a reporting method which, at a minimum, provides the number and types of companies engaged, whether or not they are receiving cyber assessments and/or implementation to date, their role in the defense supply chain, and final results/compliance. The sub-recipient should provide reporting and narrative updates at 3 intervals (3 months into the project, 8 months into the project and at completion of the project (14 months)) including status and progression of the project, estimated remaining need/demand in the state, and any lessons learned. ESD follows

economic impact review procedures for all programs in its portfolio, and these will be employed for all cybersecurity assistance projects supported through this grant.

#### **IV. SCHEDULE OF DATES**

It is anticipated that a recipient will be selected in response to this RFP based on the following schedule:

Release of RFP	July 20, 2018
Deadline for Submission of Questions	July 28, 2018 by 4:00 PM EST
Deadline for ESD to Respond to Questions	August 3, 2018
Submission of Proposals (date and time)	August 10, 2018 by 4:00 PM EST
Announcement of Successful Bidder	TBD

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

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

Only non-profit organizations are eligible to apply. Complete applications will be reviewed based on, but not limited to, the following criteria:

##### **Firm Experience and Qualifications (30 points)**

- Experience/Knowledge of cybersecurity, specifically DOD requirements- Capability to perform cybersecurity assessments, compliance implementation, and final assessments, either through in-house services or through utilization of outside partners. (20 points)
- Ability to engage at least 30 manufacturers in the defense supply chain or seeking to serve the defense supply chain (10 points)

##### **Staff Experience and Qualifications (25 points)**

- Team qualifications and roles (25 points)

##### **Project Plan and Approach (25 points)**

- Project plan clearly describes how the organization plans perform cybersecurity assessments and implementation (15 points)
- Demonstrates clear and measurable deliverables and anticipated completion dates. (10 points)

##### **Fee Proposal and Budget (15 points)**

- Application clearly describes how funds will be used to offset the costs of cybersecurity assessments and implementation
- Appendix A- completed fee proposal and budget form

##### **Diversity Practices (5 pts)**

- ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using the attached Diversity Practices Scoring Matrix Appendix B. Up to 5 points will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix C, submitted by each Respondent to the RFP

## **VI. SUBMISSION OF PROPOSALS**

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

### **i. Technical Proposal**

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

- A. Table of Contents
- B. Organization Experience and Qualifications
- C. Staff Experience and Qualifications
- D. Project Plan and Approach
- E. Fee Proposal and Budget

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

#### **A. Table of Contents**

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

#### **B. Organization Experience and Qualifications**

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

- Description of access to appropriate data and/or resources to reach 30 or more defense supply chain companies- limit 1 (one) page
- Explanation of knowledge and experience in cybersecurity, with an emphasis on working with defense related assessments and implementations- limit 1 (one) page
- Sample summaries of similar projects – include brief description of goal, summary of actions, and final results- limit 2 (two) pages
- References
  - i. Two (2) references – submit a 1-page (one-page) letter of support per reference
    - 1. 1-page (One-page) letter of support- key points to hit are timeliness, communication, overall project goals and tasks, and final results

**\*\*Total page limit is 6 (six) pages as outlined above**

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

#### C. Staff Experience and Qualifications

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

- Include Resumes or Bios of staff - knowledge, experience and skills of the staff proposed to perform the scope of services- limit 1 (one) page per resume or bio
- Explain the staff member roles in the project and how well they meet the qualification requirements addressed in this RFP – limit 1(one) page

**\*\*Total page limit is 1 (one) page plus resumes/bios as outlined above**

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

#### D. Project Plan / Approach

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

- Description of the proposed intake, marketing, and outreach of services – limit 1 (one) page
- Description of the method for cybersecurity assessments, implementations, and final assessments- limit 1 (one) page
- Clear and measurable milestones and deliverables with sufficient detail of how results will be measured and reported - limit 1 (one) page
- Planned use of third subcontractor(s), if applicable- limit 1 (one) page
  - i. Provide a detailed plan identifying any and all subcontracting opportunities associated with this project
  - ii. Explain how Minority and Women-owned Business Enterprise (MWBE) and Service-Disabled Veteran-owned Business (SDVOB) businesses would be utilized.

\*\*Total page limit is 4 (four) pages as outlined above

#### E. Fee Proposal and Budget

- Description of how and what funds will be spent on- limit 1 (one) page
- Completed Budget Form and Fee Proposal- See Appendix A
  - Only the attached Appendices will be accepted
- Eligible Costs Include:
  - Equipment;
  - Materials;
  - Contractual costs (e.g. consultant fees);<sup>1</sup>
  - Personnel (e.g. salaries);<sup>2</sup>
  - Fringe Benefits (of no more than 20% of the associated personnel/salary cost); and
  - Other direct costs directly related to executing the defined project.
- Ineligible Costs Include:
  - Overhead or administrative rate;
  - Indirect costs, that is, operational expenses that are not directly related to executing the project, for example office rent, utilities, non-project-specific personnel costs;
  - Food/beverage;
  - Basic/scientific research (as opposed to applied research);
  - Capital construction, rehabilitation, or renovation; and
  - Other costs not related to the purpose of this funding.

\*\*Total page limit is 1 (one) page as outlined above plus Appendix A

---

<sup>1</sup> Consultants and vendors should be located in New York State unless the applicant demonstrates that the products, services, or expertise being procured are not available in the state. Many Empire State Development-supported innovation assets can assist with eligible project types. These include Centers for Advanced Technology, Centers of Excellence, New York Manufacturing Extension Partnership Centers, the New York State Science + Technology Law Center, Innovation Hot Spots, and Certified Business Incubators. For more information, visit <https://esd.ny.gov/doing-business-ny/innovation-development-support>

<sup>2</sup> Personnel costs may only be included for personnel directly involved in executing the project. In cases where the Bidder receives separate ESD funding for such personnel, the Bidder is advised to contact ESD in advance of responding to this RFP to discuss compliance with these guidelines.

#### F. Diversity Practices

- Complete the Diversity Practices Questionnaire – See Appendix C
- Refer to Appendix B for the Diversity Practices Scoring Matrix

## ii. Administrative Proposal

Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

- i. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
  - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
  - o [OCSD-2 - Staffing Plan](#)
  - o [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- ii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- iii. [W-9 Form](#), submit with proposal

Additional information about these items can be found in Section IX of this RFP ("Contractual Requirements").

---

## Submission of a Complete Two-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, electronic transmission) will not be accepted. When submitting each proposal, Bidders must comply with the following:

1. The Technical Proposal and the Administrative Proposal must be submitted in separately sealed packages (which may be submitted within one complete package for mailing);
2. "Original" documents must have an original signature and be clearly marked "Original";
3. Clearly mark the outside packaging for each set of sealed proposals (Technical and Administrative);
4. Clearly mark the original and each copy as "RFP – ESD 2018 Cybersecurity Services Proposal submitted by [Bidder's name]";
5. Each Bidder must submit:
  - o One (1) hardcopies and one (1) text-searchable electronic copy on CD or flash drive or via email (for email send to [Cyber-security@esd.ny.gov](mailto:Cyber-security@esd.ny.gov)) of the *Technical Proposal*.
  - o One (1) original and one (1) electronic copy on CD or flash drive or via email (for email send to [Cyber-security@esd.ny.gov](mailto:Cyber-security@esd.ny.gov)) of the *Administrative Proposal*.

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

Empire State Development  
Division of Science, Technology & Innovation  
625 Broadway  
Albany, NY 12207  
Attention: Deanine Lena  
RFP: ESD 2018 Cybersecurity Services

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

## **VII. QUESTIONS**

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

## **VIII. GENERAL PROVISIONS**

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

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

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

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

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

## **Performance**

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

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

## **IX. CONTRACTUAL REQUIREMENTS**

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

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

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

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

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15 percent 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 RFP ("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 Bidder 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 Bidder 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 Bidder of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Bidder 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 Bidder and direct the Bidder 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 Bidder 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 Recipient 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 Recipient will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder agrees with all of the terms and conditions contained in [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The Bidder 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 Recipient, 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 Bidder will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form # 4, to ESD with its bid or proposal.

If awarded a Contract, Recipient 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: <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>

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 RFP the Diversity Practices Questionnaire. See Appendix C.

### **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 on public contracts 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 should reference the directory of New York State Certified SDVOBs found at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

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

**SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. 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: <https://esd.ny.gov/about-us/corporate-info>

### **ii. Not-For-Profit Organizations**

Not-for-profit organizations must complete the following prior to ESD Directors' approval and execution of a Grant Disbursement Agreement or Loan Agreement: 1) be prequalified in New York State Grants Gateway; 2) be registered and up-to-date with filings with the New York State Office of the Attorney General's Charities Bureau; and 3) be registered and up-to-date with the New York State Office of the State Comptroller's VendRep System. More information on these items is below.

#### **New York State Grants Gateway**

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

#### ***Grants Gateway Prequalification Process***

##### **1. Register with the Grants Gateway**

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

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

If you have questions about the Prequalification application, please contact ESD’s program representative, Greta Carter-Williams, at [greta.williams@esd.ny.gov](mailto:greta.williams@esd.ny.gov) or the Grants Reform Team by emailing [GrantsReform@Budget.ny.gov](mailto:GrantsReform@Budget.ny.gov) with “Prequalification” in the subject line.

### **Attorney General’s Charities Bureau and State Comptroller’s VendRep System**

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

#### **OSC**

E-mail: [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us)

Phone: Toll free: (866) 370-4672

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

[http://www.osc.state.ny.us/vendrep/info\\_vrsystem\\_vendor.htm](http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm)

#### **OAG**

E-mail: [charities.bureau@ag.ny.gov](mailto:charities.bureau@ag.ny.gov)

Phone: (212) 416-8401

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

## **APPENDICES**

**Appendix A - Fee Proposal and Budget Form**

**Appendix B - Diversity Practices Scoring Matrix**

**Appendix C - Diversity Practices Questionnaire**

