



**Empire State
Development**

Request for Qualifications for Pre-Qualified List of Certified CPA as Third-Party Reviewer for Economic & Tax Credits Incentives

Issued: Monday, September 27, 2021

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – Letter i).

Designated Contacts for this Procurement:

Primary Contact: Ralph Volcy
Secondary Contact: John Discolo

All contacts/inquiries shall be made by email to the following address:
CertifiedCPARFQ@esd.ny.gov

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

Submission Deadline: Monday, November 18, 2021 by 2:00 PM EST

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I. INTRODUCTION

The mission of Empire State Development (“ESD”) is to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

II. OVERVIEW

ESD is responsible for administering tax credit programs for the television and film industry, the Broadway Theatre Industry and independent companies that specialize in the production and post-production of commercials in various media-film, video, digital-for advertisers and agencies.

Specific programs are tailored to these businesses in these industries as follows:

Film Tax Credit (Production) Program
Film Tax Credit (Post-Production) Program
NYC Musical and Theatrical Production Program
Upstate Musical and Theatrical Production Program
Commercial Production Program.

Additional information about these Programs may be found on ESD’s website at www.esd.ny.gov.

The purpose of this solicitation is to qualify certified public accountants (CPAs) with demonstrable experience in production or post-production accounting in one or more of the industries indicated above, with a preference for firms with specific experience in reviewing final applications for tax incentives in New York and other states according to agreed-upon procedures.

ESD is committed to pre-qualifying a diverse group of qualified firms that will provide high-quality accounting services to assist New York State and certain segments of its media and entertainment industry with the processing and review of final applications for tax credits. ESD strongly encourages firms that are certified by New York State as minority- and women-owned business enterprises (“MWBE”) and/or service-disabled veteran-owned businesses (“SDVOBs”), as well as firms that are not yet certified, but have applied for or are eligible for certification, to submit responses to this RFQ.

MWBE & SDVOB Subcontractor Interest

New York State certified MWBEs and SDVOBs may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to CertifiedCPARFQ@esd.ny.gov. Nothing prohibits an MWBE or SDVOB Vendor from proposing as a prime contractor.

III. SCOPE OF WORK

Qualified CPA firms may be hired and paid for by production companies to verify that production companies submitting final applications for the credits under the Programs have met all the Program requirements. Applicants could, on a voluntary basis, choose to hire pre-qualified CPA firms that would conduct a third-party verification of applications using Agreed Upon Procedures (AUPs) established by ESD. The third-party verification would be submitted by an Applicant to a Program along with the final application for a tax credit. The existing AUPs for the Film Production and Post-Production Tax Credits are provided in as a guide for respondents when responding to this RFQ. Please see Third Party Review of Final Applications in the links below:

<https://esd.ny.gov/new-york-state-film-tax-credit-program-production>

<https://esd.ny.gov/new-york-state-film-tax-credit-program-post-production>

The existing AUPS for film production and post-production will be revised and updated and AUPS for the Musical and Theatrical and Commercial Production Tax Credit Programs are being developed. Final AUPS for all Programs will be completed by January 3, 2022.

Note that inclusion on the pre-qualified certified public accountant or public accountant list does not mean or imply that any firm will in fact be selected or engaged to provide third-party verification services on behalf of applicants to any of the Programs. Such selection and engagement will take place only if an applicant voluntarily decides to submit a third-party verification along with its final application. ESD reserves the right, at its sole discretion, to annually review, add or remove firms on the pre-qualified CPA list.

IV. SCHEDULE OF DATES

It is anticipated that a contract will be awarded in response to this RFQ based on the following schedule:

Release of RFQ	Monday, September 27, 2021
Deadline for Submission of Questions	Monday, October 11, 2021 by 2:00 PM
Deadline for ESD to Respond to Questions	Thursday, October 21, 2021
Submission of Proposals (date and time)	Monday, November 18, 2021 by 2:00 PM
Announcement of Selected Firm successful Bidder	Monday, January 3, 2022
Mandatory Training Webinar(s) For Selected Firms	Week of Monday, January 10, 2022
Anticipated Final Lists of Pre-qualified Firms Established Contract Start Date	Monday, January 31, 2022

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

V. SELECTION CRITERIA

Firm Relevant Experience (40pts.) All firms must meet the criteria below and have conducted reviews and prepared reports in accordance with Agreed Upon Procedures. Accounting experience in the entertainment and media industry generally and specifically in film production, post-production, the production of commercials, or theatrical productions is most relevant. Firms that have demonstrated knowledge and understanding of tax incentive programs in these industries and how production accounting is tailored to meet program requirements is especially relevant. Firms that already prepare reports for production companies according to Agreed Upon Procedures and have established good reputations with clients will be considered to have the most relevant experience.

Firms will also be evaluated on the internal controls established for ensuring the quality and integrity of their work product.

Firms must be:

1. Licensed “Certified public accountant” or “public accountant”,
2. Registered with the NYS Education Department and is subject to the mandatory quality review requirement in Section 7410 of the NYS Education Law and is in good standing as evidenced by the most recent quality review report,
3. Accredited by a reputable national accreditation organization for accountants.

Further, per independence Rule 101 of the American Institute of Certified Public Accountants Code of Professional Conduct, a CPA cannot provide production accounting services and agreed upon procedures services to the same production company.

General Qualifications and Experience of Proposed Staff (45 pts.) The Proposed Staff who will conduct Agreed Upon Procedures (AUP) reports for the firm will be evaluated based on their professional credentials, general experience and demonstrated success in accounting. Specific knowledge and understanding of production accounting in the entertainment and media industry, and preparing reports according to agreed upon procedures is particularly helpful. Specific experience preparing such reports for tax incentive programs will be a bonus in the evaluation of proposed staff.

Organization, Completeness, and Quality of Proposal (10 pts)

The organization, completeness, and quality of proposal, including cohesiveness, clarity of response and demonstrated understanding of accounting and film tax incentive programs will be assigned 10 points.

Quantitative Factor (5 pts)

ESD will award 5 points to respondents that are certified Minority or Women-owned Business Enterprises (“MWBEs”) as defined in section three hundred ten of the New York State Executive

Law or Service-Disabled Veteran-owned Business Enterprises (“SDVOBs”) as defined in section three hundred sixty-nine-h of the New York State Executive Law.

In order to be awarded points pursuant to the Quantitative Factor, the respondent must (1) identify itself as an MWBE or SDVOB in the response and (2) be registered with the NYS Department of State as an entity authorized to conduct business in New York State. Respondents identifying themselves as MWBEs must be listed in the directory of New York State-certified MWBEs (“MWBE Directory”) as of the closing of the period for responses to this RFQ. The MWBE Directory is available at: <https://ny.newnycontracts.com/>. Respondents identifying themselves as SDVOBs must be listed in the directory of New York State-certified SDVOBs (“SDVOB Directory”) as of the closing of the period for responses to this RFQ. The SDVOB Directory is available <https://online.ogs.ny.gov/SDVOB/search>.

VI. SUBMISSION OF PROPOSALS

Every respondent to this RFQ (“Bidder”) should submit a Two-Part Proposals which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFQ 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 RFQ. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFQ may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

i. Technical Proposal

Below is a listing of the technical information to be provided by the 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. Firm Experience and Qualifications
- C. Staff Experience and Qualifications
- E. Quantitative Factors

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 RFQ.

- A. Table of Contents

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

- B. Firm Experience and Qualifications

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

- A summary of how the firm meets each of the selection criteria indicated in Section V of this RFQ, making clear whether the firm is responding to this RFQ to be listed for just one or more than one of the tax credit programs referenced in Section II of this RFQ.
- An overview of the firm with a link to the firm's web page and/or marketing materials explaining the history of the firm, its current practice(s), organizational structure and demonstration of expertise.
- A summary of the resume or professional biography of the lead person(s) and other qualified staff who will be working on the Agreed Upon Procedures reports.
- At least three references.

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 RFQ, 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 RFQ.

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

ii. **Administrative Proposal**

Schedule A of this RFQ states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal. Appendix A must be signed and submitted with the Administrative Proposal.

- <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf> submit with proposal
- [State Finance Law §§139-j and 139-k forms](#), submit with proposal

- iii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iv. Iran Divestment Act Statement, submit with proposal
- v. 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](#)
- vi. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- vii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- viii. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD’s procurement requirements, can be found in Section IX of this RFQ (“Procurement Forms and Requirements”).

Submission of a Complete Two-Part Proposal

Firms submitting a bid are indicating their acceptance of the conditions in this RFQ. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hard copies) 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 as separate attachments in the same email preferably. If size is an issue, they could be submitted in separated emails.
2. “A complete package (Technical Proposal and Administrative Proposal) must be received by the deadline in the schedule of dates in this RFQ. Proposals should be sent to the designated email CertifiedCPARFQ@esd.ny.gov.

Late proposals will not be considered for award.

VII. QUESTIONS

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

VIII. GENERAL PROVISIONS

The issuance of this RFQ 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 RFQ;
- ii. revise any requirement of this RFQ;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any 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 RFQ, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. extend the term of any agreement on terms consistent with this RFQ.

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

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

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

Required Approvals

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

Performance

The Contractor's performance will be assessed by the Corporation according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the

resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

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

Additional Services Requested

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

Contractor Staff

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

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

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

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably

withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFQ shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

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 RFQ, as well as information about ESD's procurement requirements.

i. Conflicts of Interest

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

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFQ. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State 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.

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

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

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

https://esd.ny.gov/CorporateInformation/Data/RFQs/RequiredForms/SF_Law139_JK.pdf.

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

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

http://esd.ny.gov/CorporateInformation/Data/RFQs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

All Bidders to this RFQ must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFQ, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity 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 RFQ.

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

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep 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.

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

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

iv. Iran Divestment Act

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

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

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

v. Executive Order 177

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

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

vi. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

vii. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFQs/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.

viii. 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

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.

ix. Project Sunlight

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

x. Insurance Requirements

The selected Bidder will be required to provide the following insurance (at a minimum and to the extent applicable):

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

xi. W-9 Form

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