



**Empire State
Development**

**New York
Convention Center
Development
Corporation**

REQUEST FOR PROPOSALS TO DEVELOP THE JACOB K. JAVITS CONVENTION CENTER SITE K

418 11TH AVENUE, NEW YORK, NY 10018





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REQUEST FOR PROPOSALS TO DEVELOP THE JACOB K. JAVITS CONVENTION CENTER SITE K

Issued: 07.10.23

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until announcement of the Designated Developer. Respondents are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below.

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:

CCDCSiteK2023RFP@esd.ny.gov

Proposals must be sent to the designated Dropbox:

<https://www.dropbox.com/request/NVI3QG4MRrt50RdRPHGh>

This RFP is posted on the Empire State Development website:

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

Submission Deadline: September 20, 2023 by 2:00 PM EST

Late proposals will not be accepted.

TABLE OF CONTENTS

I. INTRODUCTION.....	5
II. RFP TIMELINE.....	6
III. SITE DESCRIPTION & CONTEXT	7
A. Location & Description.....	7
B. Zoning, Allowable Uses & Building Code.....	8
C. Easements & Infrastructure	9
D. Ownership, PILOT & Other Payments	10
E. Environmental Conditions & Review Process	11
F. Utilities.....	11
G. Transportation Access.....	12
H. Open & Public Spaces.....	12
IV. DEVELOPMENT REQUIREMENTS	13
A. Development Objectives	13
B. Development Program	13
C. Transaction Structure.....	14
D. Cost Agreement & Imprest Account.....	14
E. MWBE and SDVOB Subcontractor Interest	15
V. REQUIRED PROPOSAL CONTENTS	16
A. Project Description.....	16
B. Site Plan and Architectural Design.....	16
i. Community Benefits & Jobs.....	17
ii. Community Outreach Plan.....	17
C. Financial Proposal and Development Schedule.....	17
D. Development Schedule.....	18
E. Respondent Description & Experience	18
VI. SELECTION CRITERIA.....	22
VII. DEVELOPER DUE DILIGENCE	23
VIII. DISPOSITION PROCESS	24
IX. PROPOSAL SUBMISSION INSTRUCTIONS	26
A. Proposal Submission	26
B. RFP Inquiries.....	27
C. Site Visit.....	27
X. GENERAL PROVISIONS	27
XI. PROCUREMENT FORMS AND REQUIREMENTS.....	28
A. Conflicts of Interest	28
B. State Finance Law Sections 139-J and 139-K Forms.....	29
C. Vendor Responsibility Questionnaire	30
D. Iran Divestment Act	31
E. Executive Order 16.....	31
F. Executive Order 177	31
G. Non-Discrimination and Contractor & Supplier Diversity Requirements.....	32
H. Encouraging the Use of NYS Businesses in Contract Performance Form	38

I.	<i>Certification under State Tax Law Section 5-A</i>	38
J.	<i>Schedule A</i>	38
K.	<i>Project Sunlight</i>	39
L.	<i>Insurance Requirements</i>	39
M.	<i>W-9 Form</i>	40

APPENDICES

Appendix A: Prior Environmental Reports

Appendix B: Prior General Project Plans

Appendix C: Easements

Appendix D: Survey of Site K

Appendix E: Cost Letter

Appendix F: RFP Checklist

Appendix G: ESD IT Security Standards Brief

I. INTRODUCTION

New York State Urban Development Corporation d/b/a Empire State Development, a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation (“ESD”), on behalf of its subsidiary, New York Convention Center Development Corporation (“CCDC”), is seeking proposals (“Proposals”) from qualified parties for residential/mixed-use development, including affordable housing, of 418 11th Avenue in the City of New York, 10018 (the “Project”). The Project offers an opportunity to develop one of the last remaining vacant parcels on the West Side of Midtown Manhattan.

The subject property comprises Manhattan Block 707, Lots 1, 13 and 56 and is approximately 1.2 acres (the “Site”). It is located on 11th Avenue directly east of the main entrance to the Jacob Javits Convention Center (“Javits Center”) and is in direct proximity to the High Line, Hudson Yards, and Hudson River Park and waterfront. The Site has been referred to in prior materials as “Site K” or “35/36.”

The Site is owned by CCDC, which was authorized to develop and construct the Javits Center and has overseen its expansion. New York Convention Center Operating Corporation (“CCOC” or “Operating Corporation”) is a separate and independent New York State public benefit corporation authorized to operate and maintain the Javits Center. CCDC owns the Javits Center property, including the Site that is the subject of this RFP, and leases the Javits Center to CCOC. CCDC and CCOC have separately appointed Boards of Directors.

Each party that submits a Proposal to this RFP is referred to herein as a “Respondent.” A Respondent who is conditionally designated through this RFP process is referred to herein as a “Designated Developer.”

II. RFP TIMELINE

ESD anticipates this RFP process will proceed on the following schedule:

<u>Event</u>	<u>Timeline</u>
1. Release of RFP	July 10, 2023
2. Deadline to RSVP for Site Tours	July 24, 2023 by 5:00 PM EST
3. Site Visit	August 2, 2023
4. Deadline to Submit Questions	August 4, 2023 by 5:00 PM EST
5. Deadline for ESD to Respond to Questions	August 18, 2023
6. Submission of Proposals	Sept. 20, 2023 by 2:00 PM EST
7. Respondent Interviews	TBD
8. Announcement of Successful Respondent	TBD
9. Anticipated Contract Start	TBD

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

III. SITE DESCRIPTION & CONTEXT

A. Location & Description

The Site (see Figure 1) is approximately 1.2 acres (or 52,363 square feet), bounded by 35th and 36th Streets, and 11th Avenue and Hudson Boulevard West, in Manhattan, New York City. Located directly across 11th Avenue from the Javits Center and one block from the High Line, the #7 subway line, and Hudson Yards, the Site is in a neighborhood that has benefited from extraordinary public and private investment over the last decade.

The Site includes an above-ground Metropolitan Transportation Authority (“MTA”) Ventilation Shaft & Mechanical Building (“MTA Ventilation Shaft”) serving the #7 subway line (see Figure 2), a ventilation shaft serving the Javits Center (“Javits Ventilation Shaft”), and an active below-grade train track owned by Amtrak. These infrastructure components must remain on the Site under permanent easements (described in **Section III. C: Easements and Infrastructure**), and the Project must accommodate these existing structures and maintain minimum clearance on all sides.

Figure 1: Context Map

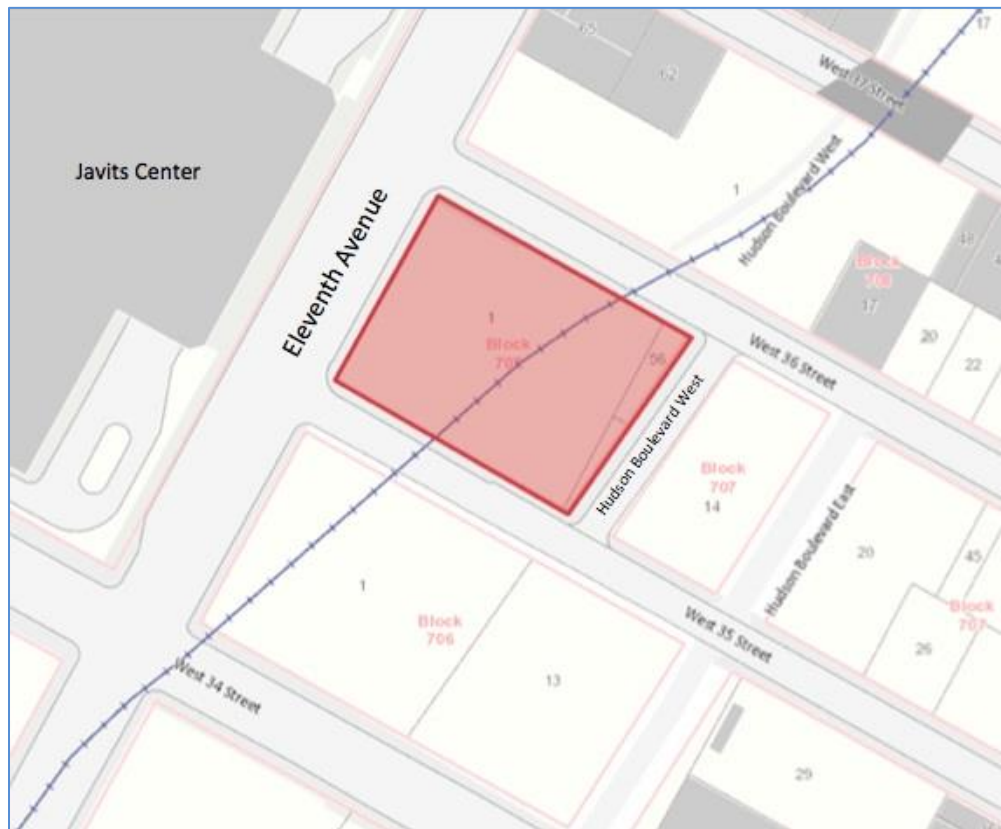


Figure 2: View of Site looking northeast from the intersection of 35th Street and 11th Avenue, including MTA Ventilation Shaft



B. Zoning, Allowable Uses & Building Code

The Site is subject to the 2005 Special Hudson Yards District Zoning (“Hudson Yards Zoning”), with the exception of those components that are overridden in the 2006 Jacob K. Javits Convention Center Expansion and Renovation Civic Project and Land Use Improvement Project (“Javits Center GPP”) (see Appendix B). ESD anticipates modifications to the Javits Center GPP will be necessary to effectuate the Project. Proposals should not exceed a 24 Floor Area Ratio (“FAR”) equivalent. Mixed-use Proposals may propose residential use up to a 12 FAR equivalent or the density specified in the applicable Multiple Dwelling Law regulations at the time of construction loan closing. Proposals must include a list of specific zoning overrides necessary to effectuate the proposed Project.

Respondents should propose a residential or mixed-use development with a minimum of thirty percent affordable units. Commercial office uses are not permitted. Manhattan Community Board 4 (“CB4”) has expressed a preference for residential use at the Site. CB4’s Affordable Housing Plan can be found here: <https://cbmanhattan.cityofnewyork.us/cb4/wp-content/uploads/sites/10/2020/01/Affordable-Housing-Plan-Summary-of-Sites-12.15.22.pdf>

Proposals must include residential uses with a minimum of 30% of the residential units affordable to households earning an average of 80% of Area Median Income (“AMI”), with no households earning more than 130% AMI. Affordable proposals should be in compliance with *Affordable New York*, and all affordable housing units must be located on site and be permanently affordable. Any additional affordable housing provided may be for households earning up to 165% AMI. The Designated Developer will be required to enter into a regulatory agreement with New York State Homes and Community

Renewal (HCR) governing the terms of the affordable housing. The Designated Developer will not be eligible for direct government subsidy, including tax-exempt bonds and low-income housing tax credits.

Any development on the Site will be subject to the New York City Construction Codes, including the General Administrative Provisions, Building Code, Plumbing Code, Mechanical Code, Fuel Gas Code, and Energy Conservation Code.

C. Easements & Infrastructure

Principle easements affecting the Site include:

- An easement held by the City of New York (“the City”) providing for the MTA Ventilation Shaft constructed as part of the extension of the #7 subway line. This easement is permanent but does not preclude development around and above the MTA Ventilation Shaft, as long as development complies with the easement and is approved by the MTA. The Designated Developer will be expected to liaise with the MTA’s External Partners Program as building design progresses.
- An easement held by the City providing for the MTA Retaining Walls, as defined in the Appendix C. With this easement, one may not construct or authorize construction of any improvement in the Retaining Wall Easement Area unless such improvement includes a foundation wall, which abuts the MTA Retaining Walls along the Property Segments, as defined in Appendix C, and which shall be sufficient to support the load of West 36th Street or 11th Avenue.
- An easement held by Amtrak for access to its active train track and adjacent construction right-of-way. This easement is permanent but does not preclude development around and above the track, as long as development maintains minimum clearance compliant with the easement and construction plans are approved by Amtrak.
- An easement to be retained by CCDC for the Javits Ventilation Shaft. Javits is ventilated through a below-grade tunnel that runs under 11th Avenue and surfaces on the north side of the Site to the east of the MTA Ventilation Shaft. The Designated Developer will need to integrate an extension of the Javits Ventilation Shaft into their project design, ensuring that it continues to function without interruption.

Figure 3: Site K Easements



Figure 3 illustrates the four easements described above. Depictions are for conceptual illustrative purposes only. ESD and/or CCDC do not warrant, represent or guaranty the accuracy, utility or completeness of any depictions or descriptions of the easements. Per **Section VII** of this RFP, Respondents must rely on their own independent research and investigation for all matters, including but not limited to, easements. Additional historic easements may exist on the Site, and ESD makes no warranties or representations about the totality of encumbrances that may exist with respect to the Site. Respondents are advised to conduct their own due diligence regarding the Site’s conditions. To review additional known easement documents, see Appendix C. This list may not include all encumbrances affecting the Site.

D. Ownership, PILOT & Other Payments

The Site, which includes three contiguous tax parcels of Block 707, Lot 1 (49,375 square feet), Block 707, Lot 13 (945 square feet) and Block 707, Lot 56 (2,043 square feet), is owned by CCDC, a New York State entity, and therefore is exempt from taxes.

For the Site, the Designated Developer will make payments in lieu of taxes (“PILOT”). Proposals should include estimated calculations of PILOT that reflect an amount equal to what the New York City Department of Finance would assess as market rate real estate taxes. For the purposes of this RFP, Proposals with Rental Units may assume a residential tax exemption that mirrors the terms of the expired Affordable New York program. The Designated Developer will also make payments in lieu of sales tax (“PILOST”) and payments in lieu of mortgage recording tax (“PILOMRT”) in an amount that would ordinarily be due under private ownership. The Designated Developer may be subject to an assessment by the local Business Improvement District, the Hudson Yards Hell’s Kitchen Alliance. During the term of the long-term lease, the Designated Developer will have the right to encumber its interest in the property by mortgage for the sole purpose of securing construction and/or permanent financing solely for the Site. The Designated Developer will not have the right to encumber the fee simple absolute title of CCDC’s remainder or residual interest in the improvements during the long-term lease.

The Designated Developer may propose abatements to PILOT that are comparable to tax incentive programs under which the Project would be eligible if the Site were subject to City property taxes, and ESD and CCDC will consider such abatements at their sole discretion. For details of the City's tax exemption programs, Respondents should consult relevant statutes and rules. Proposals should indicate under which tax exemption program(s), if any, Respondent believes the Project would be eligible.

E. Environmental Conditions & Review Process

Pursuant to New York's State Environmental Quality Review Act ("SEQRA"), an environmental review of the Site and the Project must be conducted in order to approve the disposition of the Site and the Proposal. Depending upon the Proposal, an Environmental Assessment or Impact Statement may be necessary under SEQRA in order to assess the impact of the Project on the environment. Depending on the outcome of the environmental review, a mitigation plan which reduces certain anticipated environmental impacts may be required. For more information on environmental reviews and the disposition process, see **Section VIII: Disposition Process**.

The Site has the potential for petroleum-based contamination, and therefore will require additional subsurface investigation and a Health and Safety Plan as part of the Site's redevelopment. These requirements will be set forth in the Site's Construction Environmental Protection Program, a mitigation requirement identified in the Hudson Yards Final Generic Environmental Impact Statement.

The Designated Developer will be responsible for conducting all due diligence investigations and remediation, including, but not limited to, environmental site assessments, which include sampling and testing of the soil, sediments, and ground water (if any). No representation or warranty is made nor shall be given by ESD, the State of New York, or any other entity as to any environmental condition at or under the Site, which is offered "AS IS" and "WHERE IS". The term "environmental condition" as used herein includes but is not limited to any hazardous and/or toxic substance as defined in any State or Federal law, rule or regulation, solid waste, petroleum and/or petroleum by-products, endangered species of fauna or flora, archeological feature or artifact or any other matter or site condition which may affect the development of the Site. Though the Site is not located in a designated flood zone, the Site incurred severe flooding during Superstorm Sandy's storm surge. Respondents are encouraged to consider this climate hazard.

Prior environmental reviews have been performed for proposed developments adjacent to or on the Site. To review such reports, refer to Appendix A. Respondents are responsible for independently confirming the most up-to-date information on environmental and zoning matters.

F. Utilities

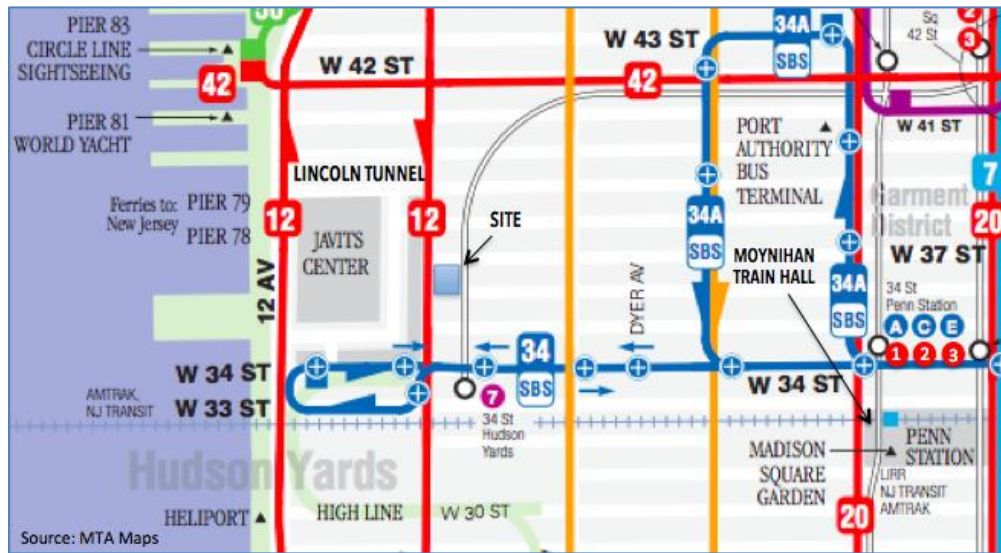
All utilities on the Site have been disconnected and thus connections will need to be re-established by the Designated Developer. The Designated Developer will be responsible for connecting to any electric, gas, water, steam and telecom networks. To review a 2017 survey of the Site ("Survey"), refer to Appendix D. Note that the survey pre-dates the transfer of Block 707, Lot 13 and Block 707, Lot 56 to

CCDC. ESD makes no warranties or representations about the accuracy of the survey. Respondents are advised to conduct their own due diligence regarding site conditions.

G. Transportation Access

The Site is readily accessible to multiple modes of transportation, including the #7 subway line. The Site is proximate to the Lincoln Tunnel and the West Side Highway and is a short walk from Penn Station and the Port Authority Bus Terminal. The Site is also a short walk from the NY Waterway Ferries at Pier 79 and the West 30th Street Heliport (see Figure 4).

Figure 4 - Transit Proximate to the Site



H. Open & Public Spaces

The Site is within walking distance of four parks: The High Line, Hudson River Park, Bella Abzug Park, and the Public Square and Gardens at Hudson Yards. Together, these parks create a network of green spaces from West 14th Street to West 42nd Street, with the Site and Hudson Yards at its center (see Figure 5). In designing the Project, Respondents should be mindful of the Site's connection to and interface with Bella Abzug Park directly to the east.

Figure 5 - Open Space near the Site



IV. DEVELOPMENT REQUIREMENTS

A. Development Objectives

The primary development objectives of the Project are to provide housing, including a minimum of 30% permanent affordable housing, and overall improvement in economic opportunities and revenue for the State of New York. Therefore, ESD is seeking Proposals for a high-quality development meeting the following objectives (the “Development Objectives”):

- Provide housing, including permanent affordable housing, as specified in the RFP;
- To generate revenue for State of New York through the disposition of the Site;
- To create economic opportunities in the State of New York;
- Provide economic benefit to the State of New York;
- Benefit Manhattan’s West Side neighborhoods;
- Incorporate sustainable building strategies that help meet the carbon reduction goals of the NYS Climate Leadership and Community Protection Act (“Climate Act”) and
- Ensure meaningful participation by certified MBE, WBE, and SDVOB entities.

B. Development Program

Respondents must include the following development program in any Proposal:

- Residential component (“Residential Component”)
 - A maximum residential floor area equivalent to 12.0 FAR may be provided;

- At least 30% of the units must be affordable according to the Affordable NY Program;
- Affordable housing units must be permanently affordable;
- Development proposals may not be contingent on use of City or State of New York subsidy sources, including tax exempt bond financing and low-income housing tax credits. Proposals that contemplate the use of any City or State financing, capital subsidies or rental subsidies for the Proposal will not be considered;
- If less than 60% of the Residential Component is income-restricted, Affordable Housing Units must be distributed throughout at least 65% of the building's stories and no more than 60% of the units on any floor may be Affordable Housing Units.
- If 60% or more of the Residential Component is income-restricted, Affordable Housing Units must be distributed throughout at least 65% of the building's stories and no more than 40% of the units on any floor may be non-income restricted units.
- To the maximum practicable extent, the design standards (including but not limited to bedroom mix and unit size) for the Affordable Housing Units should be equivalent to the standards set forth in the City of New York's Mandatory Inclusionary Housing Program, as described in Section 23-96 of the Zoning Resolution.
- Affordable Units must have equal access to amenities, entrances, elevators and other resources of the building; Fixtures and finishes must be the same as non-income restricted units.

C. Transaction Structure

ESD anticipates the Site will be leased to the Designated Developer by CCDC under a long-term ground lease with a term of 99 years. ESD will enter into one or more agreements with the Designated Developer at Closing to implement the Project requirements. Purchase options during or after any lease term at fair market value may be considered.

D. Cost Agreement & Imprest Account

The Designated Developer must enter into agreements with ESD that will require the Designated Developer to pay, from the date of its conditional designation:

- ESD's ongoing out-of-pocket costs and expenses incurred in connection with the Project and Site disposition to the Designated Developer, including, costs and expenses of environmental consultants and legal counsel;

- ESD’s administrative fee, paid at Closing, for the cost of direct and actual staff time on the project from the time of conditional designation until certificate of occupancy, at one million dollars (\$1,000,000);
- An annual asset management fee, the amount of which will be determined at time of closing.

Respondents must provide as part of their Proposal a signed letter agreement (the “Cost Letter”) in the form provided in Appendix E pursuant to which the Respondent will pay ESD for ESD’s reasonable out-of-pocket costs and expenses, including without limitation, those for consultants and legal counsel, incurred by ESD in the event that the Respondent is selected as the Designated Developer. The signed Cost Letter shall be accompanied by the Respondent’s check in the amount of \$500,000 (“Cost Letter Check”) payable to “NYS Urban Development Corporation d/b/a Empire State Development”. The Cost Letter Check will not be deposited initially. If the Respondent is selected as the Designated Developer to enter into negotiations with ESD, the Cost Letter Check will be deposited into an ESD Imprest account (“Imprest Account) for the Designated Developer. If a Respondent is not selected as the Designated Developer, the Cost Letter Check will be returned to the Respondent.

ESD will draw on the Imprest Account in order to pay costs related to the Project. The Cost Letter provides that the Designated Developer will fully replenish the Imprest Account in the amount of \$500,000 each time the balance of the Imprest Account is reduced to below \$100,000. Following Closing, any amount remaining in the Imprest Account and not required to pay outstanding costs will be returned to the Designated Developer. Instructions for submitting the Cost Letter Check are provided in **Section IX. Proposal Submission Instructions.**

E. MWBE and SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Business Enterprises (“MWBE”) and Service-Disabled Veteran Owned Businesses (“SDVOB”) may request that their firm’s contact information be included on a list of 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 certification to: CCDCSiteK2023RFP@esd.ny.gov.

Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

V. REQUIRED PROPOSAL CONTENTS

The following must be submitted with all Proposals responding to the RFP. ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or nonresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals, and to proceed (or not proceed) with the development of the Site without completing this RFP process.

In evaluating the capabilities of the Respondents, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP. ESD further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

In addition to the required forms described in **Section XI: Procurement Forms and Requirements**, each complete Proposal must contain the following elements:

A. Project Description

Each Proposal should include a detailed narrative describing all relevant aspects of the Project ("Project Description"). The Project Description should address:

- Proposed development program and uses, including the specific mix of affordable and market rate housing proposed and a description of how the Project will advance the Development Objectives set forth in this RFP;
- Type, height, bulk, and size (gross and net square footages) of the development;
- A list of potential retail, community facility, and/or nonprofit tenants and any letters of interest and/or intent from potential tenants;
- Total Development Cost;
- Any zoning overrides of the New York City Zoning Resolution, beyond those specified in the 2006 Javits GPP, necessary to effectuate the Project.
- A detailed plan for how Respondent would meet the 30% MWBE goal and a 6% SDVOB goal for the Project

B. Site Plan and Architectural Design

Each Proposal must include:

- A summary of the proposed building program for the Project, with gross and net square footages and equivalent zoning floor area for each use;
- At a minimum, a set of concept sketches of the proposed Project; a set of schematic renderings of the proposed Project showing the principle elevations and massing, floor

plans, streetscape and landscape plans, entry features and signage; circulation diagrams; and illustrations of compliance with easements described in **Section III. C: Easements and Infrastructure**;

- A description of the proposed exterior materials and other relevant specifications;
- A stacking chart showing distribution of Affordable Housing Units for the projects that are less than 100% income-restricted;
- A description of sustainable features and green building practices that will be incorporated into the Project during construction and operation; and
- A description of how the Project complies with necessary easements described in **Section III. C: Easements and Infrastructure**.

i. Community Benefits & Jobs

Respondents must list community benefits that will be included in the Project and provided to the surrounding communities, including but not limited to: economic impact, public uses, public and community amenities, and number of jobs created by the Project, including the estimated number of direct and indirect construction and permanent jobs.

ii. Community Outreach Plan

Respondents should include a detailed outreach strategy for development, job, living and leasing opportunities, including a timeline for engagement with applicable stakeholders. Such plans must ensure compliance with fair housing best practices and laws.

C. Financial Proposal and Development Schedule

Respondents must submit a Financial Proposal that reflects a 99-year lease structure. A Financial Proposal must include two offers: a) a single upfront ground rent payment (“Upfront Ground Rent Offer”) for a term of 99 years, and b) a proposed schedule for annual ground rent payments for a term of 99 years (“Annual Ground Rent Offer”). As stated earlier, the Site will be subject to PILOT, PILOST and PILOMRT.

Respondents must provide a high-level term sheet outlining all key deal terms including rental terms, proposed rent abatements, escalations and periodic market resets.

ESD reserves the right to request revised Proposals that reflect a sale of the Site instead of a long-term lease. ESD reserves the right to make such requests to all Respondents or to a subset of all Respondents as set forth in **Section VI: Selection Criteria**. Any Respondents still under consideration may be given the opportunity to revise their Proposals, and any related provisions of the RFP will be amended or deemed amended as necessary.

Respondent’s Financial Proposal for the Site should assume that the Site, including any and all improvements, infrastructure and equipment at the Site, will be conveyed “AS IS” and “WHERE IS”

without any representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Designated Developer's purpose.

Proposals should include total Project costs, including all hard costs, soft costs, contingencies, and escalations.

Respondents must submit a 10-year pro-forma statement, provided in Excel and "live-linked," including:

- Statement of assumptions on which all calculations are based;
- Sources and uses of funds;
- Construction budget, including any demolition costs;
- Operational budgets, including contributions to capital reserve;
- Detailed description of proposed equity investment and construction and permanent financing, including a detailed breakdown of all sources of equity and terms, including required return for equity as well as interest rate and term for financing;
- Information regarding minimum financial returns sought and all necessary capital investments over time and reserves and debt service payments associated with all financings; and
- Letters of interest and/or intent from lenders and, if applicable, equity investors.

In addition, Respondents should include a brief summary that explains at a high level how Respondent would approach the financing of the Project, including reference to any expected abatements or tax credit program equivalents. If a Proposal is contingent on receiving financing or abatements, the Respondent should include proposed terms for such financing in its Proposal.

D. Development Schedule

Respondents must submit a development timeline, identifying the estimated length of time to reach key milestones, including commencement and completion of design; financing; commencement and completion of construction; tenant lease-up; and operational stabilization for each component of the development program. Any contingencies that may affect this timeline should be identified.

E. Respondent Description & Experience

Each Respondent submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In order to be considered a "Qualifying Organization," a Respondent must demonstrate significant experience, expertise and capacity in

- Developing and managing comparable projects in urban locations which incorporate all proposed uses including affordable housing;
- Investing equity in substantial ground-up real estate development projects;

- At least two (2) high-rise development projects in comparable urban locations in the last ten (10) years; and
- At least two (2) projects in the last seven (7) years for which the Respondent or Respondent’s team (“Respondent Team”) members acted as a developer and/or principal operator of buildings incorporating all proposed uses.

For this RFP, up to twenty (20) points (see **Section VI: Selection Criteria**) will be awarded to Respondent Teams that include one or more New York State or New York City Certified Minority and/or Women-Owned Business Enterprise(s) (each an “MWBE Developer”) that will solely or collectively hold at least 40% of the managing ownership interest in the Residential Component of the Project and must receive a commensurate interest in the totality of the economic benefits of the Project, including, but not limited to, all available cash flows and sale/refinancing proceeds. A fee-only arrangement for the minority and/or women owned business(es) will not satisfy this requirement (unless developer fee is the only cashflow available to the Respondent Team under any applicable term sheet(s) used). Projects with lower MWBE ownership percentages will be awarded fewer points in the Quantitative Factors section of the Selection Criteria.

ESD reserves the right to determine whether a Respondent satisfies these requirements. Entities that do not meet the above eligibility criteria (e.g., construction contractors, facility managers and operations, providers of design, engineering, surveying, and specialty construction or maintenance services; and/or lenders or other capital providers, legal or financial advisors, or other providers of professional services) may participate in a Proposal as part of a Respondent Team that includes a Qualifying Organization.

Each Proposal must also include a description of Respondent or Respondent Team members, including:

- The intended form and structure of Respondent Team and any proposed partnerships or joint ventures, including a chart/diagram showing percentages of ownership and investment
- Name, address, phone number and email of each member of Respondent Team, their Federal EIN numbers, and contact information for a primary contact person
- A description of Respondent or Respondent Team’s experience in developing all proposed uses, which may include, as applicable:
 - Developing housing while acting as a principal developer and operator of mixed-use urban developments that incorporate affordable housing;
 - Developing community space as part of an urban development while acting as a principal developer and operator of the development;
 - Marketing, retail, and residential spaces in urban developments;
 - Experience leasing affordable housing; and

- Other experience that makes Respondent uniquely suited to plan and develop the Site
- A description of the General Contractor’s (“GC”) experience in developing all proposed uses and other experiences that makes the GC uniquely suited to construct the Project;
- A description of the Property Manager’s experience in operating mixed-use mixed-income projects;
- A list of all persons or entities that will design, develop, or operate the Project, as well as the attorney, engineer, GC, and other professionals, as appropriate, including leasing and management, who will be involved with the Project
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Project; if available, copies of the interim financial statement for each quarter since the last fiscal year for which audited statements are provided; any details that describe the financial strength of the Respondent, including but not limited to:
 - Details of any material events that may affect the entity’s financial standing since the last annual or interim financial statements provide;
 - Details of any credit rating; and
 - Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency litigation in the last three fiscal years.
- Summaries of any comparable projects completed by Respondent or members of Respondent Team, including for each project:
 - Name of Respondent Team member;
 - Project name;
 - Current status of project / completion date or anticipated completion date;
 - Project description;
 - Location;
 - Total Development Cost;
 - Reference (name, email, telephone number); and
 - Relevance to RFP;.
- Documentation addressing whether Respondent or any member of Respondent Team has been involved in any litigation or legal dispute against the State of New York or any agency, department, authority or subdivision of the State of New York or any litigation or legal dispute regarding a real estate venture during the past five (5) years;

- Description of any prior RFPs for which Respondent or members of Respondent Team have been selected, but which have not resulted in a successfully developed project;
- Any additional documentation or information evidencing the strength of Respondent or members of Respondent Team and their ability to complete the Project; and
- All forms identified in **Section XI: Procurement Forms and Requirements** of this RFP.

Please note the following entities and individuals are precluded from responding to this RFP and from participating as part of any Respondent Team, unless otherwise authorized by ESD:

- Any consultant firm that has provided professional services to ESD, CCDC or CCOC in connection with the Site;
- Any entity that is a parent, affiliate, or subsidiary of any of the foregoing entities, or that is under common ownership, control or management with any of the foregoing entities; and
- Any employee or former employee of any of the foregoing entities that was involved with the Project while serving as an employee of such entity.

Notwithstanding the foregoing, if ESD determines in its sole discretion that there is no conflict, or that adequate safeguards are in place to prevent the conflict from occurring, or that all of the work provided by such firm, entity or, employee has been made publicly available, then ESD may provide written authorization that such firm, entity or employee may respond to the RFP or participate on a Respondent Team.

VI. SELECTION CRITERIA

ESD shall establish an evaluation committee to evaluate Proposals. When evaluating Proposals, point values will be assigned to each Proposal based on the following criteria (“Selection Criteria”). The maximum number of points any Proposal may receive is 100.

Selection Criteria		Weighting
Project Program and Design and Community Benefits	<ul style="list-style-type: none"> Proposed development plan’s program of uses, site plan, project design (including attractiveness and buildability), and incorporation of sustainable and resilient building practices Benefits provided to the surrounding communities, including but not limited to economic impact, public uses, amenities and job creation 	Up to 35 points
Financial Proposal and Development Schedule	<ul style="list-style-type: none"> Competitiveness of the proposed financial offer and financial terms, including competitiveness of the present value of the proposed Upfront Ground Rent Offer and the Annual Ground Rent Offer discounted at a discount rate of 6.25% Timeliness and feasibility of Development Schedule Financial feasibility of the Project 	Up to 20 Points
Respondent Experience and Execution	<ul style="list-style-type: none"> Experience, financial capabilities and qualifications of Respondent team to develop, finance, construct, operate and manage projects of similar size and nature Experience with affordable housing marketing, leasing, compliance, and operations 	Up to 25 Points
Quantitative Factors	<ul style="list-style-type: none"> ESD will award up to 20 points based on percentage of MWBE Developer ownership in the project as described in Section V. E. 	0 points for <20% MWBE Ownership 10 points for 20% MWBE Ownership 15 points for 30% MWBE Ownership 20 points for 40% MWBE Ownership

ESD reserves the right to conduct in-person interviews with or pose questions in writing to individual Respondents in order to clarify the content of Respondents' Proposals and to ensure a full and complete understanding of each Proposal. ESD will undertake to pursue uniformity in questioning Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. Respondents who are invited for an interview will receive additional instructions upon their invitation.

ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or nonresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals, and to proceed (or not proceed) with the development of the Site without completing this RFP process.

In evaluating the capabilities of Respondents, ESD may use any and all information available, including information not provided by Respondents. Proposals should clearly and concisely state the unique capabilities, experience, and advantages of Respondent and demonstrate Respondent's capability to satisfy the requirements and objectives set forth in this RFP. ESD further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

ESD anticipates that a single Respondent will be conditionally designated based upon the evaluation committee's determination of the best Proposal, and as further described in **Section VIII: Disposition Process**.

VII. DEVELOPER DUE DILIGENCE

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be disposed of "AS IS" and "WHERE IS" without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for Respondent's purpose.

Information regarding the RFP will be posted on the ESD website (<https://esd.ny.gov/doing-business-ny/requests-proposals>). Respondents are encouraged to check for updates. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this RFP by sending an email to CCDCSiteK2023RFP@esd.ny.gov.

Respondents must rely solely on their own independent research and investigations for all matters, including, but not limited to: encumbrances, including easements; costs; including taxes; title; survey; development; financing; construction; and remediation. Respondents should not rely on the information provided in connection with this RFP. ESD and CCDC make no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to potential or actual Respondents.

VIII. DISPOSITION PROCESS

After a review of the Proposals, ESD intends to conditionally designate one or more of the Respondents as a Designated Developer. The Designated Developer will enter into a Term Sheet (“Term Sheet”) with ESD regarding the disposition of the Site and the Project.

In order to implement the Project and transfer the Site, ESD and CCDC, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements such as: (i) SEQRA and its implementing regulations; (ii) the New York State Historic Preservation Act; (iii) the New York State Coastal Zone Management Policies; (iv) New York State Public Authorities Law; (v) New York State Finance Law; (vi) the New York State Urban Development Corporation Act (the “UDC Act”); and all other applicable laws and regulations. Certain approvals and compliance will be required prior to disposition of the Site to the Designated Developer, and certain compliance under these and other regulations may be ongoing. ESD may also consult with or otherwise involve other entities as necessary to review the Proposals and select the Designated Developer.

Specifically, ESD and CCDC intend to:

1. Conduct a SEQRA-compliant environmental review of the Project, which may require preparation of either an environmental assessment or environmental impact statement;
2. Prepare, in accordance with the UDC Act and in consultation with the Designated Developer, if necessary, a proposed Modification to the existing Javits GPP (“MGPP”) for the Project reflective of the Designated Developer’s Proposal and of the environmental review, which will be expected to comply with all building, fire, and other applicable codes and regulations;
3. Present to ESD and/or CCDC Directors for adoption for purposes of a public hearing any requisite draft environmental review, any draft MGPP, essential transaction contract terms, any required Public Authorities Law findings, any municipal law and regulation overrides, and any other applicable statutory or regulatory requirements;
4. Give prior notice of and conduct a public hearing in order to receive comments from the public on any proposed MGPP and essential contract terms (including any requisite draft environmental review);
5. Review such public comments, and prepare a final environmental review for Directors’ acceptance;
6. Present to the ESD and/or CCDC Directors for either affirmation or modification any proposed MGPP as a final MGPP and authorize the Project and the proposed transaction;
7. Present the Project to the Public Authorities Control Board and Office of State Comptroller for review and approval, if required;
8. In consultation with the Designated Developer, prepare and record in the New York State Register, a declaration for the Site regarding conformity of the Project, including, as may be applicable, overrides of municipal laws and regulations, permitted uses, bulk and height limits, permanent affordability for the Affordable Housing Units, and similar matters with any MGPP; and

9. Deliver Site to the Designated Developer via long-term lease in accordance with final development documents among ESD and/or CCDC and Designated Developer.

IX. PROPOSAL SUBMISSION INSTRUCTIONS

Schedule A of this RFP states standard requirements that must be included in every contract entered with ESD. The successful Respondent must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, Respondent 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 Respondent's proposal.

- i. <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal;
- ii. [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. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>, submit with proposal;
- v. <https://esd.ny.gov/sites/default/files/EO16-certification.pdf>;
- vi. <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>;
- vii. 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](#); and
 - o [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- viii. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal;
- ix. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal; and
- x. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in **Section XII** of this RFP ("**Procurement Forms and Requirements**").

A. Proposal Submission

Firms submitting proposals 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, hardcopies, emails) will not be accepted. When submitting proposals, Respondents must comply with the following:

- Proposals must be uploaded to the Dropbox prior to the deadline as indicated in the Table of Events/Schedule of Dates. <https://www.dropbox.com/request/NVI3QG4MRrt50RdRPHGh>
 - o **Proper format:** Please create a folder with: Respondent's name – Site K RFP – Date of Submission. example: MPV Construction, Inc. – Site K RFP – 08.31.23
 - o Included in that main folder should be two sub-folders, one for the Administrative Proposal and the other for the Technical Proposal. The main folder should be uploaded to the Dropbox by choosing the following option: "Add Files → folders from computer". All documents in the two sub-folders should be properly labeled.

- Respondents should send their Cost Letter Check (as described in **Section IV: Development Requirements D. Cost Agreement & Imprest Account**) to the following address:

Empire State Development
633 Third Avenue, 37th Floor
New York, NY 10017
Attn: Stacey Teran
Re: CCDC Javits Site K RFP

B. RFP Inquiries

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 II (RFP Timeline)** to CCDCSiteK2023RFP@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.

C. Site Visit

Optional site visit hosted by ESD and CCDC will be scheduled for Wednesday, July 26, 2023. Respondents are not required to attend. Respondents who wish to attend must RSVP to CCDCSiteK2023RFP@esd.ny.gov on or before July 21, 2023. Please provide the name of the Respondent, and the name, title, telephone number and email address of all representatives who are attending. **No more than two people per Respondent Team may attend the Site tour.**

ESD reserves the right to modify this RFP schedule at their discretion. Notification of changes in connection with this RFP will be made available to all interested parties by e-mail and via ESD's website: <https://esd.ny.gov/doing-business-ny/requests-proposals>.

X. GENERAL PROVISIONS

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

- amend, modify, or withdraw this RFP;
- revise any requirement of this RFP;
- require supplemental statements or information from any responsible party;
- accept or reject any or all responses hereto;
- extend the deadline for submission of responses hereto;
- negotiate potential contract terms with any Respondent;
- communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;

- 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 Respondent.

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, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the New York 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.

XI. PROCUREMENT FORMS AND REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Respondent’s Proposal pursuant to **Section V: Required Proposal Contents** of this RFP, as well as information about ESD’s procurement requirements.

Respondents must complete and submit the items listed below. Failure to submit any of the requirements below may result in the rejection of a Proposal.

A. 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 RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

1. **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 or CCDC, 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 or CCDC 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.

2. **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 or CCDC in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
3. **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 Joint 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.

B. 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, CCDC, 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 Designated Contact; 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 (each form is accessible at the Required Forms for Vendors link at the ESD website under "RFPs/RFQs"); 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 as part of their Proposal. Copies of these forms are available at: [State Finance Law §§139-j and 139-k forms](#)

The Procurement Requirements also require ESD and CCDC staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make a determination of the

responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this RFP. 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://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Respondents are solely responsible for full compliance with the Procurement Requirements. All members of a Respondent Team, including consultants, must complete the forms required above.

C. 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 their obligations under this RFP, and in addition must demonstrate that Respondent and Respondent Team principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD and CCDC. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD or CCDC and Respondent, if any, shall include clauses providing that Respondent remain “responsible” throughout the term of any contract, that ESD or CCDC may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD or CCDC may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

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

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

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) and execute accordingly pertaining to the company's trade industry. Per the Vend-Rep 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).”

D. Iran Divestment Act

Every Proposal must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

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

The list in question is maintained by the Office of General Services. For further information and to view this list please go to:

<https://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/F.htm>.

E. Executive Order 16

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

"By submission of a bid, each Respondent and each person signing on behalf of any Respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Respondent is in compliance with EO-16.”

The required certification for can be found at:

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

F. Executive Order 177

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

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

G. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30% percent for MWBE participation, 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 Designated Developer 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 has the right to assess liquidated damages if the Designated Developer fails to make good faith efforts to achieve 30% MWBE goals 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 Designated Developer’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The Respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD assess liquidated damages against the Designated Developer.

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.newycontracts.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.

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, 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 monthly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each month over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submitting a Proposal in response to this RFP, Respondent agrees with all of the terms and conditions in [**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 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 this Project; or (ii) employment outside New York State.

The Respondent is required to submit a Minority- and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its Proposal.

If selected as Designated Developer, the Respondent shall submit a Workforce Utilization Report and shall require each of its subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a QUARTERLY basis during the term of the Contract.

Pursuant to [Executive Order #162](#), the Designated Developer will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the Project, utilizing the Workforce Utilization Report, on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Designated Developer and subcontractors 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 referenced above 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-05-23.pdf>

Form OCSD-3:

<https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report-05-23.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

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

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report-05-23.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.

Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses (SDVOBs)

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: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a

contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at

that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

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

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using

form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

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.

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

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

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

I. Certification under State Tax Law Section 5-A

Any Project resulting from this RFP is subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD and CCDC from approving any 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 RFP must include in their Proposals a properly completed Form ST-220-CA or an affidavit ("Affidavit") that Respondent is not required to be registered with the State Department of Taxation and Finance.¹ Also in accordance with the requirements of STL 5-a, any Project resulting from this RFP will require periodic updating of the certifications contained in Form ST-220-CA. Proposals that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered. Only Respondent completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by Respondent and all sub-consultants.

J. 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

¹ ST-220-CA located at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf; Affidavit located at http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf

found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Respondents do not need to complete the entire Schedule A with the submission of their Proposal. However, Respondents 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 Respondents will need to accept these terms prior to contract execution.

K. Project Sunlight

This RFP 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 or CCDC by a person (also broadly defined) for the purposes of procuring a State Contract (as contemplated in this RFP) must be reported by ESD and CCDC to a database maintained by OGS 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.

L. Insurance Requirements

The Designated Developer will be required to indemnify and hold harmless ESD, CCDC, and the State of New York and to provide appropriate insurance coverage as determined by ESD and CCDC once the structure of the transaction with the Designated Developer has been finalized including (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;
- Evidence of Worker’s Compensation & Employer’s Liability insurance at State statutory limits;
- Evidence of Disability insurance coverage at State statutory limits;
- Environmental Liability/Pollution Legal Liability insurance may be required to the extent necessary to cover the Designated Developer’s environmental indemnification to ESD and the State of New York.

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

Any agreements among ESD, CCDC, and the Designated Development will include appropriate insurance and indemnification requirements.

All insurance required to be procured and maintained must be procured from insurance companies authorized to do business in the State of New York and rated at least A- VII by A.M. Best and Company or meet such other requirements as are acceptable to ESD and CCDC.

M. W-9 Form

Each Respondent must submit a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) with its Proposal.