



**Erie Canal Harbor
Development
Corporation**



Terminal A Redevelopment

901 Fuhrmann Blvd, Buffalo NY

Request for Proposal

Issued: December 1, 2022

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

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

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

Proposals must be sent to the designated Dropbox:
<https://www.dropbox.com/request/Z5zCzzP9mkUoiAIRYZTv>

Submission Deadline: March 30, 2023, by 8:00 PM EST

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I. INTRODUCTION

The mission of the Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), is to revitalize Western New York’s waterfront and restore economic growth to Buffalo based on the region’s legacy of pride, urban significance and natural beauty.

II. OVERVIEW

ECHDC is seeking proposals from experienced real estate developers for the purchase and redevelopment of the building titled Terminal A and a portion of the adjacent land (See Appendix B), located at 901 Fuhrmann Boulevard along the Buffalo Outer Harbor in Buffalo, New York. Also included in the sale are nearby support buildings titled the Administration Building, Fire Pump House, and Blue Building. Each party that submits a response (“Proposal”) to this Request for Proposal (“RFP”) is referred to herein as a “Respondent”, and the Respondent that is conditionally designated through this RFP process is referred to herein as the “Designated Developer.”

Terminal A is a steel-framed, CMU infilled and brick veneered structure that was constructed in 1930-1931. This approximately 370,000 square foot building is comprised of a high-bay storage area along the south side, first and second floor storage space, and an office area on the east end of the building. The building was designed by notable architect Albert Kahn for the Ford Motor Company. Terminal A was designated a local landmark in 2019. The support buildings are comprised of the following:

- Administration Building: 6,700 square feet steel framed, brick veneered structure that consists of a garage and storage area and office spaces.
- Fire Pump House: 370 square feet structure.
- Blue Building: 4,300 square feet metal framed garage.

The lakefront property includes 1,720 linear feet of vertical seawall and approximately 4.2 acres of deep-water slip along the southern edge.

ADJACENT PROPERTIES

In 2021, the ECHDC adopted a \$150 million General Project Plan (“GPP”) for nearly 200-acres of the Outer Harbor. The Phase 1 improvements, located north of the development site, are already underway at a cost of \$43 million. The GPP can be found at:

<https://esd.ny.gov/sites/default/files/General-Project-Plan-02082-w-Exhibits.pdf>

ECHDC will maintain ownership of adjacent parcels north of 901 Fuhrmann Boulevard, including the Terminal B complex that will be partitioned from the 901 Fuhrmann parcel. Currently, the Terminal B complex is being converted into a public event facility that will host charity walks/events, concerts, and cultural festivals. The complex will consist of an open-air stage with a sloped lawn toward the

stage that can accommodate up to 8,000 visitors. Adjacent to the Terminal B complex is the Lakeside Bike Park that was opened in 2019. This public bike park includes three urban mountain bike courses, a skills course and a pump track. Situated between the bike park and Terminal B is the Great Lawn, an over 3 acre open lawn that is suitable for a variety of passive activities. Each of these elements are connected by portions of the Greenway Trail and pedestrian walkways.

Further to the north along Fuhrmann Boulevard are several other passive recreation sites that are owned and controlled by ECHDC. These are Bell Slip, Wilkeson Pointe, and First Buffalo River Marina. Bell Slip is situated at the midpoint of the ECHDC property. In 2023, construction will begin at this site to improve visitor parking, improve pedestrian trail connections, provide an overlook at the edge of Bell Slip, and construct a public restroom building. Plans are under design to improve the amenities offered at Wilkeson Pointe. In 2024, construction will begin on a new building that will offer food and beverages, as well as restrooms. The building will have a beach seating area and located adjacent to the recreation fields. The parking lot at Wilkeson Pointe will also be improved to reduce overlap with the bike trails. First Buffalo River Marina has over 100 boat slips for personal recreation and water access.

Although not immediately adjacent, the Buffalo Harbor State Park and Sun Life Marina are located just south of the development site. The marina has 1,000+ boat slips and has seen nearly \$35 million in public and private investment over the past five years.

SITE AND CONTEXT ADVANTAGES

Ownership and Taxes

Fee title/ownership of the Site rest with ECHDC. Upon selection of the developer, ECHDC will formalize the 901 Fuhrmann parcel split through the City of Buffalo, as ECHDC will continue to own the northern portion of the parcel.

Upon closing of the Site, property taxes would be assessed by the City of Buffalo Department of Finance.

Transportation

The Site is located on Main Street and is served by several forms of public transportation, including a transit stop of the Light Rail Rapid Transit and several bus routes. The Site is one block from an entrance to the I-190 Thruway as well as NY Route 5. The Site is also the start of the Erie Canalway Trail and along the Erie County Shoreline Trail, both major recreational bicycle trails. The Site is within walking distance of the Queen City Bike Ferry, operating seasonally between the Inner and Outer Harbor.

Environmental Review

ECHDC undertook an environmental review in 2021 for its planned capital projects on properties it owns along the Buffalo Outer Harbor, in accordance with the requirements of the New York State Environmental and Quality Review Act (“SEQRA”). Given at that time any components of a possible reuse of Terminal A was at best speculative, ECHDC purposely and legally “segmented” any possible future reuse of the Terminal from that review. Accordingly, upon the selection of the development

team and prior to disposition of the property to that entity, ECHDC would be responsible, and would incur costs for, undertaking an environmental review to permit such a disposition of Terminal A based on the development team's proposed program/project, provided that the associated uses are fully permissible under the City of Buffalo's unified development ordinance (AKA the "Buffalo Green Code"), only involve the Terminal A property outlined in this RFP, and would not be of a scale/type that would trigger the need for a full environmental impact statement (EIS) process.

Utilities

The Site is serviced by public water and sewer, as well as privately-owned electric, gas, telephone and cable. The designated developer will need to work with the public and private utility companies and agencies, including the Buffalo Sewer Authority and National Grid to determine service needs and upgrades.

MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm's contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this 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 TerminalBITB2021@esd.ny.gov. Nothing prohibits an MWBE or SDVOB Vendor from proposing as a prime contractor.

III. DEVELOPMENT PRIORITIES AND COMMITMENTS

DEVELOPMENT PRIORITIES

The parcel is currently zoned N-1S Secondary Employment Center. Principal Uses allowed within this zone include the following preferred uses, but are not limited to, residential dwellings, civic and cultural facilities, lodging, retail and service, and employment facilities. The parcel also sits within the C-W Waterfront Overlay Zone which will require an Outer Harbor Review and Special Use permit for any proposed use except Open Space.

In 2019, the ECHDC formed the Terminal A Reuse Advisory Group to determine possible uses and development scenarios for the Site. The Advisory Group, representing a diverse group of citizen and development interests, completed their work in early 2022. See Appendix E for the Terminal A Reuse Report.

ECHDC is seeking Proposals that are responsive to, but are not limited by, the following development priorities:

1. Meeting Project requirements outlined in this RFP;
2. Providing a development that enhances the planned Buffalo Outer Harbor improvements;
3. Providing waterfront access to both the development tenants and the public.

4. Maximizing economic impact;
5. Minimizing the financing “gap” contribution requested of ECHDC;
6. Featuring meaningful participation of New York State-certified Minority and Woman-Owned Business Enterprises (MWBES) in the Project Team and Tenant list;
7. And incorporating sustainable building practices, Historic Preservation, and LEED Silver Core & Shell.

TRANSACTION STRUCTURE AND CERTAIN COSTS

ECHDC will entertain an all-cash sale of the Site. Under a sale, it is intended that the Site will be conveyed to the Designated Developer at closing, and that the Designated Developer will hold title during development of the Site.

Each proposer must submit sufficient data to evidence that the proposed reuse and/or redevelopment of the property will be successfully accomplished by the proposer and achieve the objectives of this RFP. The Financial Plan should include the sources, amounts, terms and conditions of financing and the proposer’s equity to be employed in the transaction. The Financial Plan must include pro-forma financial projections and a sources statement as defined below.

The proposal’s Financial Plan must include detailed pro-forma financial projections, with supporting calculations, for ten (10) years that include the following information:

1. All operating revenues, operating and maintenance expenses;
2. All capital improvements and investment;
3. PILOT and/or local assessment payments;
4. Debt service payments on any short-term or long-term financing for improvements; and
5. Projected or targeted internal rate of return (IRR).

Note: No State, ESD/ECHDC and/or other public assistance sources shall be assumed in the projected pro forma, other than those public sources that are widely available and for which the developer may be entitled or eligible to apply (e.g., brownfield or historic tax credits). However, the financial plan may include an identified funding “gap” related to realization of the proposed development, as follows:

$$\text{Projected Project Cost} - \text{Private Financing} - \text{Developer Equity} = \text{Financing Gap (if any)}$$

The proposal’s Financial Plan must also include a statement of sources and uses setting forth:

1. Sources and amounts of financing and proposers’ equity to be invested in the development of the property; and
2. Evidence of financing consistent with sources and uses, including but not limited to: expressions of interest from lenders, letters of credit, and performance bonding capacity.

Respondents are encouraged to browse ESD incentive programs at:

<http://esd.ny.gov/BusinessPrograms.html>.

As noted below in this RFP’s Section VIII Disposition Process, in order to implement the Project and transfer the Site, ECHDC, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements such as: (i) the State Environmental Quality Review Act and its implementing regulations (“SEQRA”); (ii) the State Historic Preservation Act; (iii) the State’s Coastal Zone Management Policies; (iv) Public Authorities Law; (v) State Finance Law; and (vi) the New York State Urban Development Corporation Act (the “UDC Act”). Such compliance must be completed before disposition of the Site to the Designated Developer for the Project. Please also note that Section VIII of this RFP requires that the Designated Developer enter into agreements with ECHDC and the State that will require the Designated Developer to pay, commencing from the date of its conditional designation:

1. Under a purchase, a 10% security deposit against the purchase price; or
2. In the event the purchase price is below market value, the Designated Developer and ECHDC shall negotiate a security deposit based on a percentage of the development value; and
3. ECHDC’s out-of-pocket costs and expenses incurred in connection with the Project and the disposition to the Designated Developer of the Site, including, without limitation, costs and expenses of ECHDC’s consultants and legal counsel.

IV. SCHEDULE OF DATES

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

Release of ITB	December 1, 2022
Pre-bid meeting at Terminal A	December 15, 2022 at 1:00 PM
Deadline for Submission of Questions	January 6, 2023
Deadline for ESD to Respond to Questions	January 20, 2023
Submission of Proposals (date and time)	March 30, 2023 by 8:00 PM EST
Interviews (if necessary)	June 2023
Announcement of Successful Bidder	September 2023

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

V. SELECTION CRITERIA

In reviewing and evaluating proposals and preparing recommendations for the ECHDC Board of Directors, ECHDC staff will consider such criteria (all criteria considered by ECHDC being referred to collectively as the “Selection Criteria”) that, in ECHDC’s sole and absolute discretion, are in the best interests of ECHDC and the State. The criteria listed below are of significant concern:

- 1) Extent that the proposed Project advances the objectives outlined in the RFP. (20 points)
- 2) Extent that the proposed Project preserves the historic Terminal A structure, including incorporation of preservation guidelines established by the New York State Historic Preservation Office. (10 points)

- 3) Extent that the proposed Project yields the highest level of public benefits (e.g., private taxable investment, new jobs/opportunities, highest return on the land, external benefits to the City's setting [e.g., expansion of retail choices/offerings, extension of visitor stay, quality of life improvements], etc.) with the least amount of public investment. (15 points)
- 4) The overall proposed quality of the development plan, design, proposed timetables, and the extent that the proposed Project incorporates preferred Principal Uses allowable under the current zoning, complements and enhances local community development/tourism objectives and existing/planned Outer Harbor projects. (15 points)
- 5) Extent that the proposed Project Team demonstrates a proven track record in successfully completing similar waterfront redevelopment efforts. (15 points)
- 6) The quality of the overall financial plan and impact of the proposal, including (15 points):
 - a) The use of reasonable and attributable assumptions;
 - b) The level of proposed private investment;
 - c) The level of demonstrated financial capacity to realize the proposed Project, documented through sources such as, but limited to expressions of interest from lenders, letters of credit, and/or performance bonding capacity; and
 - d) Projected long-term economic benefits to the local community (e.g., property/sales/bed tax revenues, job creation, etc.).
- 7) Firms will be evaluated on their Diversity Practices, as evaluated on the attached Diversity Practices Questionnaire. (5 points)
- 8) Extent that the proposed Project Team, and/or individual members or member firms on the Team, meet the requirements of the NYS Comptroller's Office and ESD policies on procuring Responsible Vendors, specifically in the following four major categories: (5 points)
 - Financial and Organizational Capacity to Undertake the Project: Factors to be considered include, but are not limited to, assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, or existence of appropriate accounting and auditing procedures for control of property and funds.
 - Legal Authority to do Business in New York State: Demonstrated by a foreign corporation's registration with the New York State Department of State under the Business Corporation Law or Not-for-profit Corporation Law (Note that both foreign and domestic businesses and not-for-profit corporations, limited partnerships, limited liability partnerships, and limited liability companies must all file documentation with the Department of State for such authority) and absence of any findings removing/preventing such authority.
 - Integrity: Factors to be considered include, but are not limited to, criminal indictments or convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by federal, state or local governments, or prior determinations of integrity-related non-responsibility.

- Previous Contract or Project Performance: Factors to be considered may include reports of less than satisfactory performance, early contract/project termination for cause, contract/project abandonment, court determinations of breach of contract, etc.

VI. SUBMISSION OF PROPOSALS

PROPOSAL REQUIREMENTS

The following are the requirements for all proposal submissions. ECHDC reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. ECHDC also reserves the right, in its sole discretion, to reject any and all proposals for any reason or for no reason, and to proceed (or not proceed) with the development of the Site (either by itself or in conjunction with one or more third-party) without completing this RFP process.

In evaluating the capabilities of the Respondent, ECHDC 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. ECHDC further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents. The initial Proposals should be no longer than 100 pages of text.

Respondent's financial offer for the Site should assume that it will be transferred in "AS IS" and "WHERE IS" condition. Each complete Proposal must contain the following elements:

1) Respondent Description

Each entity submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which is described in Section 4, Paragraph 8 Procurement Forms and Requirements.

Each Proposal must include a description of the Respondent owner (under a sale) or the development team, including:

- The intended form and structure of the owner and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner or tenant entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email and of each member of the owner or tenant entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the owner or tenant entity.
- Documentation addressing whether the Respondent, or any participating member of

the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five years.

- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
- Evidence of Designated Developer's commitment to pay, from the date of its conditional designation, the security deposit.
- Evidence of Designated Developer's commitment to pay the full purchase price for the Site (including 10% at designation and balance at closing).
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.

2) Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and any plans/timing of phasing of the development. The description should address:

- The proposed use(s) and building program.
- Type, bulk and size of each component of the development program (gross and net square footages).
- Description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants and a description of how such tenants align with the Development Goals set forth in Section 2 of this RFP.
- The description should address how the Proposal will advance the Development Goals set forth in Section 2 above.
- The description should address how the Proposal will meet the requirements of Section 3 above.
- The description must include the estimated construction budget.

3) Financial Offer Terms

Respondents are encouraged to submit offers to purchase the Site, expressed in a fixed dollar amount, which may be a nominal, to be paid at closing. Under this scenario, transfer of title will be by quit-claim deed (without any representations or warranties) at the closing. The Designated Developer will be required to enter into a Development Agreement that provides the terms of any phasing of the Project and agreements to develop the Site in compliance with the proposed development plan.

An exception in terms of contingencies is that Respondents should note any assumptions with respect to the contingency of capital funding to be contributed by ECHDC towards the costs of the development.

4) Site Plan and Architectural Design

Each entity submitting a Proposal must provide the following:

- A summary of the proposed building program for the Project with square footages for each use.

- At a minimum, a set of drawings on 11" x 17" paper, showing the proposed Project and a set of concept, ground-level renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building practices that will be incorporated into the project during construction/renovation and operation of the improvements.

5) Development Timeframe

Respondent must submit a development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization for each component of the development program. Any contingencies that may affect this time line should be identified.

6) Team Member Qualifications

- Identification and qualifications of each member of the development team, including all persons or entities that will design, develop, or operate the Project, as well as the attorney, architect, engineer, general contractor and other professionals, as appropriate, including leasing and management, who will be involved with this Project.
- A description of similar projects undertaken by the members of the Respondent's team, particularly mixed-use, urban development projects (including a statement of the dollar value of such projects, the project manager's name and key partners, where applicable).
- A summary of the availability of each of the principal members of each firm and their availability for commitment to the Project.
- Documentation addressing whether any participating team members have been involved in litigation or legal dispute regarding a real estate venture during the past five years.
- Background information of the owner or tenant entity, including resumes describing the relevant experience of all principal members. This information must be submitted for every participant in a joint venture and should highlight similar projects (including a project description and approximate dollar value for each).

7) Project Information Supplement ("RFP Workbook")

Respondents are required to include a completed RFP Workbook via the Dropbox <https://www.dropbox.com/request/Z5zCzzP9mkUoiAIRYZTv>.

Instructions for completing the RFP Workbook are included in the Excel file that has been posted with this RFP as **Appendix I**.

Among other items, completing the RFP Workbook requires Respondents to enter and submit information on the following subjects:

- a) *Key General Assumptions*: Sustainability; Public Benefits; Project requirements; Project Timeline; Design Guideline Overrides (if applicable); Economic Benefits; M/WBE and SDVOB Participation; NYS Vendor Participation; Project Contingencies;

and Endorsements.

- b) *Key Financial Assumptions*: Development and Leasing Summary; Estimated Development Cost and Rents by Use; Financing Summary; and Stabilization Information.
- c) *Development Budget*: Acquisition; Site Work; Construction; Soft Costs; Construction Finance; Permanent Finance; Reserves; Marketing and Other.
- d) *Development Timeline*: Projected Expenditures and Square Footage of Development by Phase.
- e) *Sources of Funds*: Debt Attraction Calculation; Proposed Permanent Financing.
- f) *Pro Forma*: Cash flows for the development and Project operation periods, including details of any as-of-right or discretionary real estate tax, other tax, energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should include all necessary capital investments over time and reserves and debt service payments associated with the financings. Respondents are required to complete all Pro Forma worksheets in the format provided by the RFP Workbook. If Respondents wish, however, they may also complete a supplementary, fully optional Pro Forma as identified on the tab “Pro Forma (Hardcode)” in order to highlight any discrepancies between the existing format constraints and a more precisely modeled Project.

In completing the RFP Workbook, with respect to financial information, Proposals should address the following:

- Pro forma cash flows in live-linked Excel format for the development and Project operation periods, including details of any as-of-right or discretionary real estate tax exemptions, other tax exemptions and energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should extend out to at least thirty (30) years of operations and include all necessary capital investments over time and reserves and debt service payments associated with the financings.
- Construction/renovation sources, budget, and uses of funds, including details of equity and financing sources and a break-out of all soft and hard costs and development and financing fees. Indicate escalation rates to account for any increases in construction/renovation costs in the budget or contingences.
- Permanent sources and uses of funds, including details of equity and financing sources and all development fees and financing fees to be paid.

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

i. Technical Proposal

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

- A. Table of Contents
- B. Respondent Description
- C. Project Description
- D. Financial Offer Terms
- E. Site Plan and Architectural Design
- F. Development Timeframe
- G. Team Member Qualifications
- H. Diversity Practices

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

A. Table of Contents

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

B. Respondent Description

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

- The intended form and structure of the owner and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner or tenant entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email and of each member of the owner or tenant entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the owner or tenant entity.
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five years.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.

- Evidence of Designated Developer’s commitment to pay, from the date of its conditional designation, the security deposit.
- Evidence of Designated Developer’s commitment to pay the full purchase price for the Site (including 10% at designation and balance at closing).
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.

C. Project Description

- The proposed use(s) and building program.
- Type, bulk and size of each component of the development program (gross and net square footages).
- Description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants and a description of how such tenants align with the Development Goals set forth in Section 2 of this RFP.
- The description should address how the Proposal will advance the Development Goals set forth in Section 2 above.
- The description should address how the Proposal will meet the requirements of Section 3 above.
- The description must include the estimated construction budget.

D. Financial Offer Terms

E. Site Plan and Architectural Plan

- A summary of the proposed building program for the Project with square footages for each use.
- At a minimum, a set of drawings on 11” x 17” paper, showing the proposed Project and a set of concept, ground-level renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building practices that will be incorporated into the project during construction/renovation and operation of the improvements.

F. Development Timeline

G. Team Member Qualifications

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

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to

perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

H. Diversity Practices

ii. Administrative Proposal

Schedule A of this ITB 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.

- 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. Iran Divestment Act Statement, submit with proposal
<https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>
- 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 ITB ("Procurement Forms and Requirements").

Submission of a Complete Two-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. All Proposals must be received by 8:00 PM EST on Thursday, March 30, 2023. 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, Respondents must comply with the following:

- i. The Technical Proposal and all related appendices must be submitted electronically before the submission deadline via the Dropbox
<https://www.dropbox.com/request/Z5zCzzP9mkUoiAIRYZTv>.

- ii. The Administrative Proposal and all related forms must be submitted electronically before the submission deadline via the Dropbox <https://www.dropbox.com/request/Z5zCzzP9mkUoiAIRYZTv>. It is essential that the instructions in Appendix L - Administrative Proposal Check List are followed when submitting the different forms.

DO NOT SUBMITT PROPOSALS VIA ANY OTHER METHOD.

Late proposals will not be considered for award.

VII. DEVELOPER DUE DILLIGENCE

“As Is, Where Is” Condition

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be sold “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 the Respondent’s purpose (*e.g.*, conveyed by quitclaim).

Respondents must rely on their own research and investigations for all matters, including, costs, title, survey, development, financing, construction, remediation, and renovation. Previous environmental reports are included (Appendice G).

VIII. DISPOSITION PROCESS

The following is a summary description of the disposition process. After a review of the Proposals, ECHDC intends to conditionally designate one of the Respondents as the Designated Developer. The Designated Developer will enter into a Memorandum of Understanding (“MOU”) with ECHDC regarding the disposition of the Site and the Project and separate agreements with each of ECHDC and the State regarding payment by the Designated Developer of expenses as described at the end of this section. In implementing the Project, including the disposition process, ECHDC and ESD intend to:

1. Conduct a SEQRA compliant environmental review of the Project;
2. Prepare, in accordance with the UDC Act and in consultation with the Designated Developer, if necessary, a GPP (“GPP”) for the Project reflective of the Designated Developer’s Proposal, which will be expected to comply with all building, fire, and other applicable codes and regulations, as enforced by the City of Buffalo and State of New York;
3. Present to ECHDC and ESD Directors for adoption for purposes of a public hearing any requisite draft environmental review, any draft GPP, 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 on any proposed GPP and essential contract terms (including any requisite draft environmental review);
5. Review such comments, and either affirm or modify any proposed GPP as a final GPP and authorize proposed transaction;
6. Present the Project to the Public Authorities Control Board (PACB) for its approval review, if required;
7. Prepare, in consultation with the Designated Developer, and record, a declaration for the Site (the "Declaration") regarding conformance to any GPP of the Project's development at the Site, including, as may be applicable, overrides of municipal laws and regulations, permitted uses, bulk and height limits, and similar matters; and
8. Deliver to the Designated Developer, *at closing*, a quitclaim deed for the Site that is subject to the Declaration.

This process may take approximately four months from the commencement of the environmental review, depending upon the complexity of the Project the duration of that process may vary.

Upon designation by ECHDC, as noted above, the Designated Developer is expected to pay to ECHDC a security deposit in the amount equal to 10% of the purchase price or 10% of the net present value of the long-term ground lease for the Site, which will be credited toward the full purchase price or schedule of lease payments as appropriate. In the event the purchase price is below market value, the Designated Developer and ECHDC shall negotiate a security deposit based on a percentage of the development value.

The Designated Developer shall also pay all of ECHDC's out-of-pocket costs and expenses (including, without limitation, costs and expenses of consultants, legal counsel, and appraisers) related to the disposition of the Site and completion of the Project. At the time of and as a pre-requisite to its designation, such Respondent and ECHDC shall enter into an agreement pursuant to which, among other things: (i) the Respondent shall deposit into an ECHDC imprest account funds (in an amount that shall be satisfactory to ECHDC) that shall be held by ECHDC and used by ECHDC for payment of such out-of-pocket costs and expenses; (ii) each time that the balance in the imprest account falls below 50% of the original amount required to be deposited into the account, the Respondent shall promptly make an additional payment into the ECHDC imprest account so that balance in the account shall be returned to such original amount; and (iii) the amount remaining in the imprest account after all such costs and expenses are paid will be returned to the Respondent.

iii. **QUESTIONS**

Questions or requests for clarification regarding the ITB should be submitted via email, citing the ITB page and section in accordance with the schedule in Section IV (Schedule of Dates) to TerminalARedev@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 ITB.

iv. **GENERAL CONDITIONS**

Neither the State, ECHDC nor ESD make any representations or warranties whatsoever with respect to this RFP, without limiting the foregoing, representations or warranties as to: the accuracy or completeness of any information or assumptions contained in or provided in connection with this RFP or otherwise furnished to respondents; the use or development, or potential use or development, of the Project or any portion thereof; the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for the adjacent properties; the absence or presence of hazardous substances or toxic materials in, under or upon the Project and the adjacent properties; compliance with environmental laws; tax assessments that may be made by the City, tax rates that may be established by the City and/or the amount of PILOT payable; and the suitability of the Project for any specific uses or development.

Each respondent shall make its own analysis and evaluation of the Project Site, including, without limiting the foregoing: the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for all adjacent lands; the absence or presence of hazardous substances or toxic materials in, under, or upon the Project Site and adjacent lands; compliance with environmental laws; and the suitability of the Project Site for any use or development. Each respondent shall obtain its own independent legal, accounting, engineering and technical advice on all matters relating to the Project, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of the State, ESD, ECHDC and its advisors; land and improvements constituting the Project Site and adjacent to the Project Site; all local laws, regulations and conditions that may affect the use and development of the Project; and all other matters that may be material.

Respondents shall not rely upon any statement or information given to respondents by the State, ESD or ECHDC including, without limiting the foregoing, any information contained in this RFP or made available pursuant to this RFP, or otherwise.

In the event that the selected respondent does not execute a Development Agreement for the Project, ECHDC may, in their sole discretion, invite any of the other respondents to participate in a further competitive process to determine a new selected respondent.

In addition to those terms and conditions stated elsewhere, this RFP is subject to the following:

- a. The preferred developer must comply with all applicable federal, state and local laws and regulations.
- b. The preferred developer must accept the Project Site in “as is, where is” condition on the date of disposition.
- c. Conveyance by ECHDC shall be governed by a Development Agreement.
- d. ECHDC will not pay for or refund any costs and expenses incurred by any respondent in responding to this RFP or subsequent selection stages or by any preferred developer following selection and/or designation.
- e. All determinations as to the completeness or compliance of any response/proposal or as to the eligibility, qualification or capability of any respondent will be within the sole and absolute discretion of ECHDC.
- f. Selection or designation of any respondent pursuant to this RFP or subsequent selection stages will not create any rights for the respondent including, without limitation, rights of enforcement, equity or reimbursement. ECHDC shall have no obligation or liability whatsoever to any person or entity whose response/proposal is selected or designated as a result of this RFP unless and until a Development Agreement shall have been fully executed and delivered by all parties thereto and all necessary consents and approvals necessary for ECHDC entry into such agreement have been obtained, and then all such obligations and liabilities shall be solely in accordance with the terms and conditions of such Development Agreement.
- g. A respondent may be rejected if ECHDC determines, in their exercise of sole and absolute discretion, that such respondent, any respondent partner, or member of a respondent team or any principal, partner, officer, director, affiliated person, or principal shareholder of the respondent, of any respondent partner, or of any member of a respondent team, has been convicted of, or pled guilty or nolo contendere to, a felony or crime of moral turpitude, is an “organized crime figure,” under indictment or criminal investigation, or is in arrears or in default on any debt, contract, or obligation to or with ECHDC, ESD, the State, or any of their respective affiliates, subsidiaries, agencies, departments or instrumentalities. Each respondent, respondent partner, and member of a respondent team and any principal, partner officer director, affiliated person, or principal shareholder of the selected respondent, respondent partner, or member of the respondent team may be required to complete a background questionnaire with respect to the foregoing, or other matters, and may be subject to investigation by ECHDC, ESD and the State. ECHDC is under no legal obligation to dispose of the Project through a competitive bid process. This RFP does not constitute an offer of any nature and does not obligate ECHDC to undertake any action or to proceed with the Project.
- h. ECHDC will review all responses/proposals for completeness and compliance with the terms and conditions of this RFP, and may request from any and all of the developers, at any time during the selection process, additional information, material, clarification, confirmation or modification of any submitted response and/or proposal. ECHDC may also, but is not obligated, to make requests for additional material or for clarification or

modification of any submitted response and/or proposal which is incomplete or non-conforming as submitted. Submission of a response and/or proposal shall constitute the respondent's permission to ECHDC to make such inquiries concerning the respondent and members of the respondent's team as ECHDC, in their sole discretion, deem useful or appropriate including, without limitation, authorization to contact the respondent's bank(s) and credit references, and any other persons identified in the proposal and to obtain pertinent financial and other information. Except at the request or by the consent of ECHDC, in their sole discretion, no respondent will be entitled to change its proposal once submitted.

- i. ECHDC may at any time exclude those proposals which, in their sole discretion, fail to demonstrate the necessary qualifications for development, or which fail to comply with the terms and conditions of this RFP.
- j. ECHDC reserves the right, in their sole discretion, to reject at any time any or all proposals; to withdraw the request without notice; to negotiate with one or more developers submitting proposals and/or to negotiate with respect to, and dispose of the Project (including to parties other than those responding to this request) on terms other than those set forth herein. ECHDC reserves the right to waive compliance with and/or change any of the terms of this request and to waive any informalities or irregularities in the request process.
- k. Under no circumstances will ECHDC pay or be liable for any costs incurred by a firm/team in responding to this RFP or subsequent stage or in connection with the transfer of the Project Site.
- l. Responses and/or proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions or other compensation will be payable by the State, ESD, or ECHDC in connection with the selection of a respondent or the disposition of the Project Site. Submission of a statement of interest and/or proposal in response to this RFP or subsequent stage constitutes an undertaking by the respondent to hold harmless and indemnify and defend the State, ESD and ECHDC from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys' fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such respondent's response to this RFP or subsequent stage, selection or (non-selection) thereunder or execution (or non-execution) of a Development Agreement.
- m. Respondents of this RFP shall make no news/press release pertaining to this RFP or anything contained or referenced herein without prior written approval from ECHDC. Any news release pertaining to this RFP may only be made in coordination with ECHDC.
- n. Public access to material submitted by respondents to this RFP or subsequent stage shall be governed by the relevant provisions of the Freedom of Information Law, which constitutes Article 6 of the New York State Public Officers Law ("FOIL"), and regulations adopted pursuant thereto. If any respondent submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify

such information and state in writing the reasons why the information should be exempt from disclosure. Notwithstanding the foregoing, ECHDC shall not be liable if ECHDC releases information pursuant to FOIL which the respondent believes to be a trade secret or detrimental to its business.

- o. In the event that ECHDC becomes aware of any material misrepresentation in the information supplied by a developer, ECHDC shall have the right to reject at any time the response and/or proposal of the respondent, to refuse to negotiate or continue negotiations with the respondent and to take any other action, including retaining any deposit made by the respondent, as shall be deemed appropriate by ECHDC, in their sole discretion.
- p. The selection of a preferred developer will create no legal or equitable rights in favor of the selected developer, including rights of enforcement or reimbursement. A developer's response and/or proposal for the Project Site is not assignable and only the party identified as the developer/principal in the selected developer's submission will be permitted to execute the Development Agreement.
- q. By submitting a response and/or proposal for the Project, the developer agrees to be bound by all the terms and conditions of this RFP.

v. **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 ITB, 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 ITB or terminate any contract entered into as a result of this ITB 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 ITB. 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 ITB. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this ITB; (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 ITB. Compliance with the Procurement Requirements requires that all communications regarding this ITB, 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 Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "ITBs/RFPs"); and periodic updating of such forms during the term of any contract resulting from this ITB.

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

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

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by 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 ITB.

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 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 ITB 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 ITB, 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 ITB.

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 16

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

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

The required certification for can be found at:

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

vi. 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.

- vii. **Non-Discrimination and Contractor & Supplier Diversity Requirements**
If financial assistance is pursued through Empire State Development and/or Erie Canal Harbor Development Corporation, then the following participation goals will be required.

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 contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this ITB, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this ITB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

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

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

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals;

and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at OCSD@esd.ny.gov.

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

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [**SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

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

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

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

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

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

Form OCSD-3:

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

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>
Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf%20>
Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.pdf%20>

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

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 3% 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.

viii. 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>.

ix. 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/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

x. 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.

xi. 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 ITB) 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.

xii. Insurance Requirements

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

- Commercial General Liability insurance – \$1 million per occurrence / \$2 million aggregate;
- Auto Liability insurance - \$1 million per occurrence / \$1 million aggregate;
- Excess Umbrella insurance - \$10 million per occurrence / \$10 million aggregate minimum;
- Professional Liability insurance - \$1 million minimum (preferably \$5 million);
- Worker’s Compensation & Employer’s Liability insurance at State statutory limits;
- Disability insurance coverage at State statutory limits;

Erie Canal Harbor Development Corporation and the 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.

xiii. W-9 Form

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