



REQUEST FOR PROPOSALS

**SITE 5 WORLD TRADE CENTER
MANHATTAN, NEW YORK**

RFP RELEASE DATE:	JUNE 26, 2019
SITE TOUR AND INFORMATION SESSION:	JULY 11, 2019
DEADLINE TO SUBMIT QUESTIONS:	JULY 26, 2019 BY 5:00 PM EST
DEADLINE TO SUBMIT PROPOSALS:	SEPTEMBER 20, 2019 BY 5:00 PM EST

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I. INTRODUCTION

The Lower Manhattan Development Corporation (“LMDC”) and The Port Authority of New York and New Jersey (“PANYNJ”) are seeking proposals from qualified parties (“Respondent” or “Respondent Team”) for the disposition and redevelopment of World Trade Center (“WTC”) Site 5 (the “Project”). As the last remaining property available in the transformed WTC campus, Site 5 presents a much anticipated, premier development opportunity in New York City. Its location is unparalleled, immediately adjacent to the renowned One World Trade Center, prominent 3WTC, 4WTC, and 7WTC office buildings, and iconic Oculus transit hub.

The subject property comprises Block 54, Lot 1, and is approximately 33,000 square feet in area (the “Site”). The Site fronts Greenwich Street to the east and Washington Street to the west and occupies the entire north block front of Albany Street, in Lower Manhattan. Being part of the WTC campus, the Site offers unrivaled access to public transportation to the remainder of Manhattan, Brooklyn, and New Jersey. It is also proximate to the future Perelman Performing Arts Center, a world-class performing arts center scheduled for completion in 2021. It is bordered to the north by Liberty Park and has unobstructed views of the National September 11 Memorial and Museum, One World Trade Center, and views of the Oculus.

Once primarily an office district, the surrounding vibrant neighborhood today includes a large residential population thanks to the influx of housing and amenities recently developed in the area. Upscale hotels, public parks and plazas, major retail destinations, the nearby waterfront esplanade and harbor views all make for a unique development opportunity in one of Manhattan’s most appealing neighborhoods.

Currently, the Site is owned by LMDC, a subsidiary of Empire State Development (“ESD”). This Request for Proposals (“RFP”) is being issued pursuant to the LMDC World Trade Center Memorial and Cultural Program General Project Plan (“GPP”), approved on June 2, 2004 and amended February 14, 2007.¹

LMDC and PANYNJ invite qualified parties to submit proposals (“Proposals”) for a high-quality development at the Site. Respondents to this RFP are invited to propose either commercial development consistent with the existing GPP, or mixed-use development which may include residential development and would require modification to the GPP, and an environmental review as detailed below. LMDC would be the lead agency on any GPP modification and environmental review and would assist in the modification process.

LMDC and PANYNJ will evaluate all Proposals received in response to this RFP in accordance with the Selection Criteria listed within this RFP. A Respondent that is selected through this RFP process, pursuant to Section VII below, is referred to herein as a “Designated Developer.”

This RFP and the selection process by which a Designated Developer will be selected will follow LMDC property disposition requirements and guidelines.

¹ GPP available at <http://www.renewnyc.com/content/pdfs/GPPandSitePlan.pdf>

II. RFP TIMELINE & NOTICE

The following are significant dates in this RFP process:

<u>Event</u>	<u>Timeline</u>
1. RFP Release Date	June 26, 2019
2. Site Visit and Information Session	July 11, 2019
3. Deadline for Submission of Questions	July 26, 2019 by 5:00 PM EST
4. Deadline for LMDC/PANYNJ to Respond to Questions	August 16, 2019
5. Submission of Proposals	September 20, 2019 by 5:00 PM EST
6. Interviews (if necessary)	TBD

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this procurement (“Procurement”) and will remain in effect until approval of any contract. Respondents are prohibited from contact related to this Procurement with any New York State employee other than the designated contact listed below and those specified as such during the course of the Procurement (“Designated Contact”), or anyone specifically exempt from the law. Please see <https://ogs.ny.gov/acpl> for more information.

Designated Contact for the Procurement: John Discolo

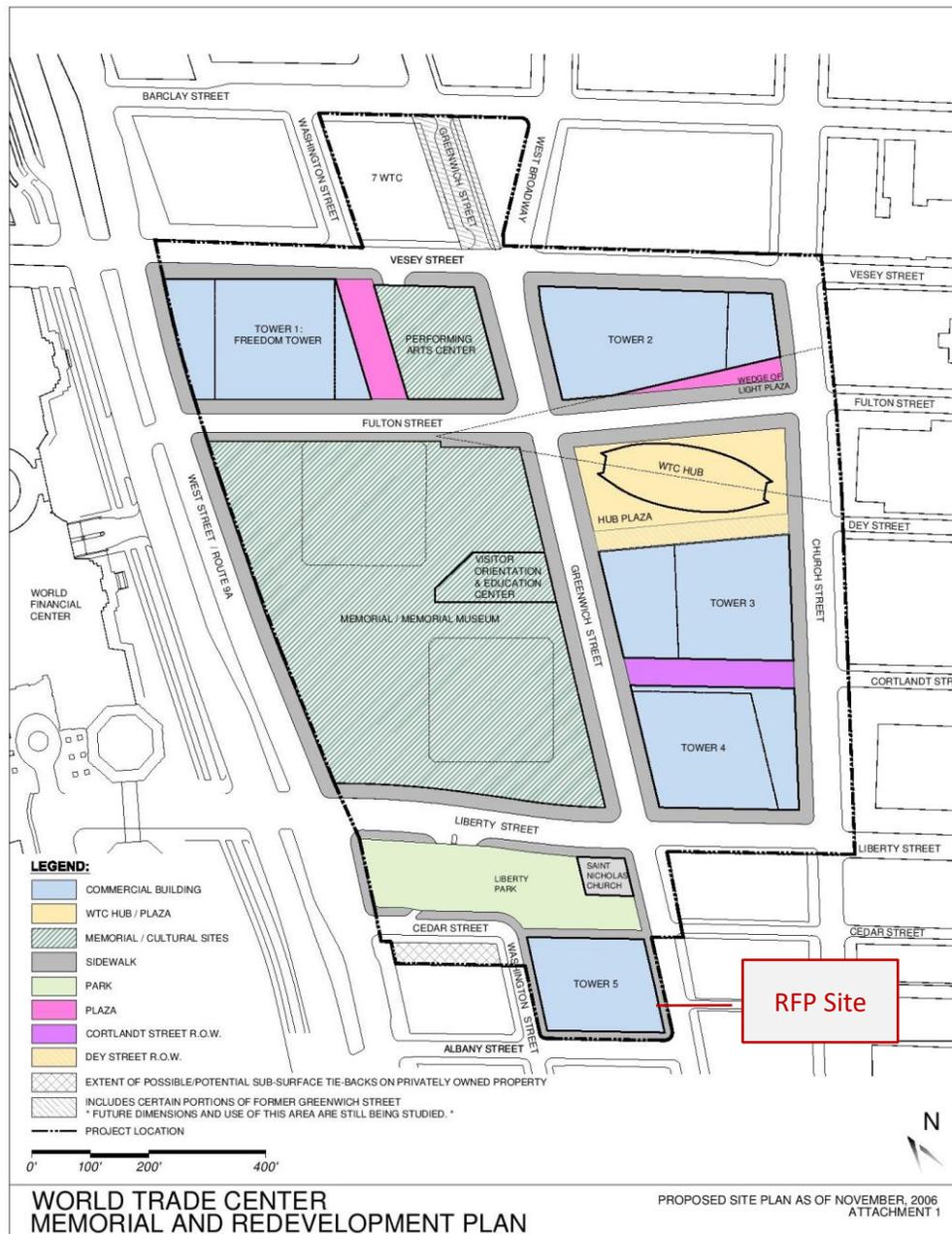
All contacts/inquiries shall be made by email to the following address: Site5RFP@esd.ny.gov

III. SITE DESCRIPTION, ZONING AND CONTEXT

A. Site Location and Context

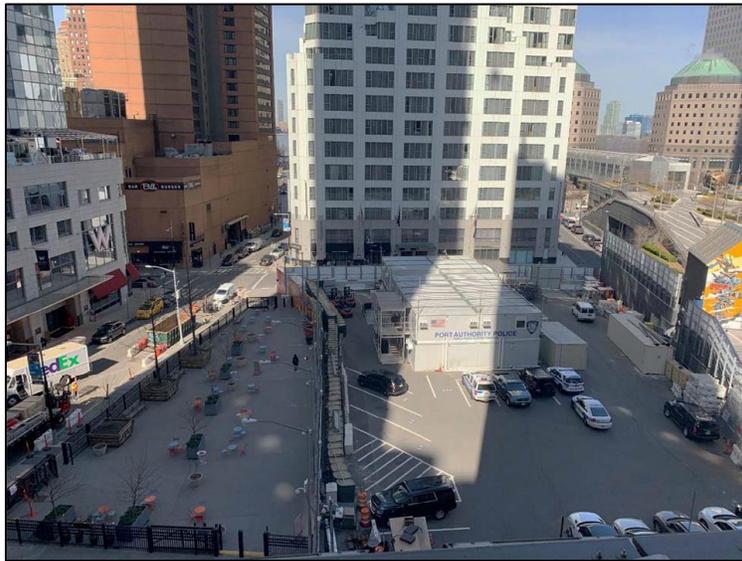
The Site is located in Lower Manhattan in the Financial District, adjacent to the neighborhoods of Tribeca and Battery Park City. The Site is bounded by Albany Street to the south, Greenwich Street to the east, Washington Street to the west, and Liberty Park to the north (see Figure 1). Currently, the Site is used by The Port Authority Police Department and the Downtown Alliance; these uses will be discontinued prior to development.

Figure 1: GPP Site Map



The Site was formerly the site of an office building owned and occupied by Deutsche Bank. LMDC acquired the Site in 2004 and completed deconstruction of the former Deutsche Bank building and excavation of the Site in 2011. The Site has excellent visibility along its frontages on Greenwich, Albany and Washington Streets. Liberty Park, a one-acre public open space that opened in 2016, and the future Saint Nicholas National Shrine, are located directly north, adjacent to the Site. To the north, the Site has unobstructed views of the National September 11 Memorial and Museum (“9/11 Memorial”), which is located within an eight-acre plaza with over 400 trees; One World Trade Center; and views of the iconic Oculus, an award-winning transportation hub designed by Santiago Calatrava.

Figure 2: Aerial View Facing West from Greenwich St



The World Trade Center Memorial and Redevelopment Plan (the “WTC Plan”) envisioned five commercial office towers that would encircle the 9/11 Memorial setting in a descending spiral, from Tower 1 (One World Trade Center), the highest at 1,776 feet, to Tower 5, the lowest at approximately 900 feet. Under the GPP and WTC Plan, the Site is the planned location of Tower 5. Although part of the WTC Plan, the Site is not located within the structural below-grade “bathtub” of the WTC and is not connected to WTC infrastructure, loading or parking.

In 2017, PANYNJ and LMDC entered into two easement agreements for the benefit of the Site, one over Liberty Park and one over the Saint Nicholas parcel. The Liberty Park easement (**Appendix A**) provides for an entrance from the Site directly into the park, light and air for Tower 5, utility connections, and temporary construction access. The Saint Nicholas easement (**Appendix B**) provides for light and air for Tower 5.

Lower Manhattan has experienced a renaissance since 2001, becoming one of New York City’s most engaging neighborhoods in which to live, work and play. In the past 17 years, its residential population has more than tripled, to over 60,000 residents, and it is one of the New York City’s fastest growing neighborhoods. Lower Manhattan employs more than 300,000 workers - not only in the traditional FIRE

(finance, insurance, real estate) sector but also in the booming TAMI (technology, advertising, media, information) sector - and is home to numerous global companies.

The Site is located in an emerging neighborhood called Greenwich South, an area the Downtown Alliance identified in 2009 as having the potential to contain a denser and more diverse mix of uses including commercial, residential, retail and tourism.² In recent years, Greenwich South has emerged as a vibrant section of Lower Manhattan, with Greenwich Street at its heart, and has seen numerous construction projects and the reopening of the WTC Cortlandt Street NYC subway station. Four of the five World Trade Center towers have entrances on Greenwich Street, as does the Oculus. The neighborhood is also home to 365,000 square feet of retail on the World Trade Center site and a broad range of retail and restaurant options, from Brookfield Place on the Hudson River to the new South Street Seaport on the East River, as well as along the Broadway corridor and charming side streets such as Stone Street. The area is located a few blocks from multiple

Figure 3: Local Area Map



grocery stores, including Whole Foods Market and Eataly NYC Downtown. Additionally, GrowNYC operates a Greenmarket at the Oculus Plaza every Tuesday year-round.

The 17.4 million visitors who traveled to Lower Manhattan in 2017 could choose among 32 hotels with 7,000 rooms, including the 56-story W New York Hotel directly south of the Site, the Club Quarters Hotel directly to the west of the Site, and the Marriott Hotel southwest of the Site. An additional 13 hotels with 1,800 rooms are currently in development or under construction. The area also boasts a number of museums and cultural institutions, including the 9/11 Museum and Memorial, which has approximately 2.5 million visitors yearly. In 2021, the Perelman Performing Arts Center at the World Trade Center will open its doors, with seating for over 1,000 people. Numerous other museums and cultural attractions can be found within the neighborhood, including the Museum of the Irish Hunger Memorial in Battery Park City, the Museum of Jewish Heritage, the National Museum of the American Indian, the New York City Police Museum, the Skyscraper Museum, and the TriBeCa Film Festival. Other attractions in the area include the annual summer River to River Festival, which provides over 500 free events to the public in Lower Manhattan.

² <https://www.downtownny.com/programs/greenwich-south>

LMDC, acting as lead agency under both the National Environmental Policy Act (“NEPA”) and the New York State Environmental Quality Review Act (“SEQRA”), conducted a coordinated environmental review of the WTC Memorial and Redevelopment Plan. LMDC prepared a Generic Environmental Impact Statement (“GEIS”). The Final GEIS was released in April 2004, and a Record of Decision (“ROD”) and Findings Statement for the World Trade Center Memorial and Redevelopment Plan (“Findings Statement”) were issued June 2, 2004; both documents were amended in 2007 to reflect refinements to the project.³ The ROD includes certain Environmental Performance Commitments (“EPCs”) and Commercial Sustainable Design Guidelines (“SDGs”), as well as a programmatic agreement developed in consultation with the Advisory Council on Historic Preservation and the State Office of Parks, Recreation and Historic Preservation (the “Programmatic Agreement”), applicable to development of the Site.

Additional views of the Site are shown below in Figures 4 and 5.

Figure 4: Aerial View Facing Southeast from Washington St



³ Final GEIS and ROD and Findings Statement are available at http://www.renewnyc.com/plan_dev/environmental_review.asp

Figure 5: Aerial View Facing North from Liberty St



B. Site Access & Public Transit

The Site is located in one of the best-served areas of New York City for public transportation, serving as a major transit hub and generator of pedestrian activity. There are numerous subway stations near the Site that provide access to the 1, 2, 3, 4, 5, A, C, E, J, N, R, W and Z trains, including the recently reopened World Trade Center Cortlandt Station for the 1 train located fewer than two blocks from the Site. The Site is also fewer than two blocks from the Oculus where the PATH system can be accessed, providing connections to New Jersey on the Newark-WTC and Hoboken-WTC lines.

Local and express bus service in the area is provided by the M5, M9, M20, M22, M55 and M103. Major thoroughfares include the FDR Drive and the West Side Highway. The Site also has good accessibility to the Brooklyn and Manhattan Bridges and the Brooklyn Battery Tunnel, as well as multiple ferries providing access to other parts of Lower Manhattan, Brooklyn, Staten Island and New Jersey. Ferry service providers in the local area include New York Water Taxi, NY Waterway, Staten Island Ferry and Statue Cruises.

C. Zoning and Building Code

a. Current Zoning and Permitted Development

Although the Site is zoned C6-9 commercial and is within the Special Lower Manhattan District, the GPP supersedes municipal zoning. The GPP allows for up to 1.3 million zoning square feet (“ZSF”) of commercial uses including office, up to an 800-key hotel, and up to 150,000 ZSF of convention space, as well as up to 45,000 ZSF of retail, for a total permitted development up to 1.345 million ZSF. Building height may not exceed 900 feet.

As outlined below, Proposals may also include residential or a mix of residential and commercial uses, which would require modification of the GPP.

Redevelopment of the Site, even if consistent with the GPP, may be subject to approvals from the City of New York (“City”) as per related agreements to which the City is a party.

b. Residential or Mixed-Use Development

Respondents may propose a residential or mixed-use development. Changes to the current permitted uses will require an amendment to the GPP and environmental review. A residential or mixed-use Proposal may not exceed 1.345 million ZSF and must be capped at 900 feet in height. Of the 1.345 million ZSF permitted to be developed, no more than 1.1 million ZSF may be developed as residential. The balance could comprise commercial and/or community facility uses as well as up to 45,000 ZSF of retail.

Proposals that include any residential use must comply with the City’s Mandatory Inclusionary Housing (“MIH”) program, specifically with one of the MIH options available in Lower Manhattan. The selected option must be identified in the Proposal, and all affordable housing units must be located onsite. Although the Project is not subject to the New York City Zoning Resolution, all MIH provisions relevant to the development of the affordable units will apply as if the Site were an MIH zoning lot, and the Designated Developer will be required to enter into a regulatory agreement with the City’s Department of Housing Preservation and Development (“HPD”).

Respondents may also pair the MIH affordability requirement with any as-of-right tax incentive programs.

As described in **Section I: Introduction**, a residential or mixed-use development on the Site will require a modification to the GPP, with LMDC acting as the lead agency on the GPP modification process. The GPP modification will require LMDC Board approval and is subject to public notice, public hearing and a consideration of public comments, as well as consultation with the City of New York Department of City Planning and local Community Board. In addition, a residential or mixed-use development may be subject to further approvals under the SEQRA and NEPA environmental review process. Please see **Section VII: Disposition** for further details on required disposition approvals.

c. Building Code Considerations

The Site will either be sold or leased to the Designated Developer, at the discretion of LMDC and PANYNJ. If the Site is sold by LMDC or ESD to the Designated Developer, the Site will be leased by LMDC or ESD to the Designated Developer through the construction period, with conveyance of the Site to the Designated Developer after the construction period. During the construction period, the New York City Department of Buildings will provide oversight of code compliance for all development on the Site. However, if the Designated Developer enters into a long-term lease or a lease during construction with PANYNJ, PANYNJ tenant construction review requirements will apply, and the Designated Developer will be required to obtain appropriate permits, consents and certificates from the PANYNJ Code Compliance Office

D. Safety and Security

Respondents are encouraged to demonstrate in their Proposals an understanding of the importance of safety and security at the World Trade Center site and in the adjacent structures and surrounding neighborhood. Respondents should consider safety and security elements consistent with WTC campus construction requirements, including the prevention of progressive collapse and features and processes that harden constructed structures against a range of potential hazards and threats, such as chemical, biological, radiological, nuclear, fire, and explosive. Crime Prevention Through Environmental Design (CPTED) principles and other intelligent engineering and building technology design features should also be considered, and Respondents are advised to obtain the services of an experienced security consultant in the development of their Proposal.

E. Existing Site Conditions

The Designated Developer will be responsible for conducting all due diligence investigations and remediation, including but not limited to environmental site assessments, including sampling and testing of soil, sediments and ground water (if any). No representation or warranty is made nor shall be given by LMDC, PANYNJ, the State of New York (“the State”) 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 byproducts, endangered species of fauna or flora, archaeological feature or artifact or any other matter or site condition which may affect the development of the Site.

a. Site Infrastructure

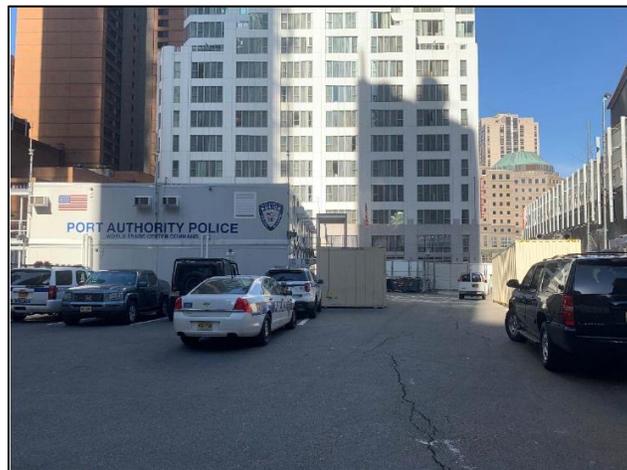
The Site is served by Con Edison (<http://www.coned.com>) for gas and electric service, and the New York City Department of Environmental Protection for water and sewer service (www.nyc.gov/dep).

All public utilities for electricity, water, and storm and sanitary sewers are currently connected to the Site.

b. Topography

Most of the Site is situated on terrain that is relatively level with a slight downward slope to the south and west (see Figure 6). The Site is at grade with adjoining streets. According to the Federal Emergency Management Agency (“FEMA”) Preliminary Flood Insurance Rate Map (“FIRM”) panel 3604970184F, dated September 5, 2007, portions of the Site are located within Zones “X” and “AE”. Zone “X” are areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood. Zone “AE” are areas that are subject to flooding by the 1% annual chance flood (100-year flood). The preliminary FIRM 100-year flood elevation in this area is 11 feet North American Vertical Datum 88. The Site is within and adjacent to a floodplain affected by coastal flooding (e.g., long- and short-wave surges in New York Harbor, the Hudson River, and East River that affect the shorelines of southern Manhattan).

Figure 6: View Facing West



c. Below Grade

Although part of the WTC Plan, the Site is not located within the structural “bathtub” of the WTC and is not connected to WTC infrastructure, loading or parking.

F. Ownership and Taxes/PILOT

The Site is currently owned by LMDC and is exempt from property taxes. Upon disposition of title of the Site to the Designated Developer, property taxes will be assessed by the City and will be payable by the Designated Developer, absent any other basis for the Site to be exempt from real property taxes.

In the event of a long-term lease of the Site by PANYNJ for purposes consistent with the current GPP, the Designated Developer will be expected to make a payment in lieu of taxes (“PILOT”) consistent with the payment PANYNJ is required to pay to the City under the existing PILOT agreement between the City and

PANYNJ, attached to this RFP as **Appendix C**. Respondents should refer to Section 4 of **Appendix C** for the PILOT agreement applicable to the Site.

In the event of a lease in all other cases (for example, lease through construction), PILOT shall be payable to the City of New York in an amount equal to such real property taxes which would be assessed and levied against the Site if not for its exemption. To the extent that all or any portion of the Site would have qualified for an as-of-right exemption, abatement, credit or other reduction from real property taxes under applicable laws or regulations if Designated Developer were the fee owner of the Site, based on Designated Developer’s exempt status and exempt use of the Site, the PILOT due under the lease shall be adjusted to reflect the amount of such as-of-right exemption, abatement, credit and/or other reduction for which Designated Developer would have qualified.

IV. SELECTION CRITERIA

LMDC and PANYNJ shall establish a review committee to evaluate Proposals. When evaluating Proposals, the following criteria (“Selection Criteria”), with the accompanying weightings, will be used to calculate an overall Proposal score.

Selection Criteria		Weighting
Financial Proposal	<ul style="list-style-type: none"> • Competitiveness of the proposed Residential Price, Commercial Price, or the present value of proposed Commercial Ground Rent Offer discounted at a discount rate of 6.25%, and financial terms⁴ • Financial feasibility of the Project 	50%
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 building practices • Benefits provided to the surrounding communities, including but not limited to economic impact, public uses, amenities and job creation 	20%
Respondent Experience and Execution	<ul style="list-style-type: none"> • Experience, financial capabilities and qualifications of Respondent to develop, finance, operate and manage projects of similar size and nature • Expediency of proposed construction commencement and completion 	20%

⁴ Residential Price, Commercial Price and Commercial Ground Rent Offer defined in **Section V: Required Proposal Contents**.

Selection Criteria		Weighting
Diversity Practices	<ul style="list-style-type: none"> • Respondent’s Diversity Practices based upon the contents of the Diversity Practices Questionnaire (Appendix D) 	10%

When responding to the Diversity Practices Questionnaire, Respondents should provide examples of committed levels of Minority- and Women-Owned Business Enterprises (“MWBE”) participation in previous projects (e.g. equity and investment partners, architects, consultants, contractors, etc). The strongest examples will be projects of similar size and scope that have included MWBE participation.

LMDC and PANYNJ reserve 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. LMDC and PANYNJ will undertake to pursue uniformity in questioning Respondents to the extent practicable, but LMDC and PANYNJ 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.

LMDC and PANYNJ anticipate that a single Respondent will be conditionally designated based upon the evaluation committee’s determination of the best Proposal for LMDC, PANYNJ, and as further described in **Section VII: Disposition Process**.

V. REQUIRED PROPOSAL CONTENTS

The following must be submitted with all Proposals. LMDC and PANYNJ reserve the right, in their sole discretion, to reject any Proposal that is deemed incomplete or nonresponsive to the RFP requirements. LMDC and PANYNJ also reserve the right, in their 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, LMDC and PANYNJ 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. LMDC and PANYNJ further reserve the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

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

A. Financial Proposal

a. Transaction Structure, Land Value and Fees

If the selected Proposal incorporates residential uses and therefore requires a modification to the GPP, it is anticipated and preferred that the Site will be leased to the Designated Developer by LMDC or ESD during the construction period and then conveyed to the Designated Developer after construction. As such, Respondents who submit a Proposal with a residential component must submit a fee purchase Proposal with an offer price (“Residential Price”), with proposed terms for a lease through construction, for the acquisition of the fee title to the entire Site (inclusive of land and improvements), subject to a restrictive declaration requiring development of the Site to conform to a modified GPP.

Respondents who submit a Proposal to develop the Site consistent with the GPP must submit either a fee purchase Proposal with an offer price (“Commercial Price”), assuming a lease through construction, or a ground lease Proposal with a ground rent offer (“Commercial Ground Rent Offer”). Respondents may also submit both a Commercial Price and a Commercial Ground Rent Offer. For both the lease through construction (in the event of a sale of the Site) and the Commercial Ground Rent Offer, Respondents must submit a term sheet detailing rental terms, escalations and periodic market resets.

Each of the Residential Price, Commercial Price, and Commercial Ground Rent Offer for the purchase of the Site must be expressed in a fixed, non-contingent⁵ dollar amount. In the case of a sale, transfer of title will be by quit-claim deed (without any representations or warranties) at the post-construction closing. The Designated Developer will be required to pay the entire Commercial Price or Residential Price at closing.

LMDC and PANYNJ reserve the right to request revised Proposals that reflect a lease of the land only, or a sale or lease of all or a portion of the Site, or a combination thereof. LMDC and PANYNJ reserve the right to make such requests to all Respondents or to a subset of all Respondents as set forth in **Section IV: Selection Criteria**. The determination of whether LMDC and PANYNJ will elect to dispose of the Site by sale, lease, or a combination thereof will depend on the offers received, LMDC’s obligations to comply with Federal tax rules applicable to tax-exempt bond financing, and an assessment of the best interests of LMDC and PANYNJ. 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.

As noted below in **Section VII: Disposition Process**, in order to implement the Project and dispose of the Site, LMDC and PANYNJ, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements, including but not limited to: (i) NEPA and SEQRA; (ii) the National Historic Preservation Act, State Historic Preservation Act, and Programmatic Agreement to the extent applicable; (iii) the State’s Coastal Management Policies; (iv) New York State Public Authorities Law; (vi) State Finance Law; (vii) New York State Urban Development Corporation Act (“UDC Act”); and (viii) any actions required by the U.S. Department of Housing and Urban Development relating to federal funds used in the original acquisition and improvement of the Site. Such compliance must be completed before disposition of the Site to the Designated Developer for the Project. LMDC and PANYNJ may also consult with or otherwise

⁵ For purposes of the Residential Price, Respondents should assume that the GPP will be modified in the event a residential or mixed-use Proposal is selected for this RFP.

involve other State entities as necessary to review the Proposals and select the Designated Developer. Please note that if a modification to the GPP is required, amendments to certain other existing legal documents may also be required.

Please note that the Designated Developer must also enter into agreements with LMDC and/or PANYNJ that will require the Designated Developer to pay, from the date of its conditional designation:

- i) Beginning at designation, LMDC/PANYNJ'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 LMDC/PANYNJ's third party consultants and legal counsel (see "Other Transaction Considerations" below); and
- ii) At initial closing, LMDC's administrative fee at closing, equal to the lower of 6.5% of the Purchase Price or one million dollars (\$1,000,000).

Respondent's financial offer 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.

b. Financing Summary and Project Pro Forma Statements

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 and 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 incentives or tax credit programs. If a Proposal is contingent on receiving financing or incentives, the Respondent should include proposed terms for such financing in its Proposal.

c. Other Transaction Considerations

Respondents must provide as part of their Proposals a signed letter agreement (the “Cost Letter”) in the form provided in **Appendix E**, pursuant to which Respondent will pay LMDC/PANYNJ for LMDC/PANYNJ’s reasonable out-of-pocket costs and expenses, including without limitation those for consultants and legal counsel, incurred by LMDC and/or PANYNJ in the event that Respondent is selected as the Designated Developer. Upon conditional designation, the Designated Developer must deliver to LMDC a check in the amount of \$500,000, which will be deposited into an imprest account (“Imprest Account”). LMDC and PANYNJ will draw on the Imprest Account in order to pay such costs related to the Project. The Cost Letter provides that the Designated Developer will replenish the Imprest Account in the amount of \$250,000 each time the balance of the Imprest Account is reduced to less than \$250,000.

B. Project Program Design, and Community Benefits

a. Project Program

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

- Proposed development program and use(s), including the specific mix of affordable and market rate housing proposed, if applicable;
- Type, height, bulk and size (gross and net square footages) of each component of the Project;
- A list of potential commercial, retail and/or community center or nonprofit tenants and any letters of interest and/or intent from potential tenants;
- Total Project costs, including all hard costs, soft costs, contingencies, and escalations; and
- Any modifications to the GPP that are necessary to effectuate 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 for each use;
- At a minimum, a set of concept sketches of the proposed Project and a set of schematic renderings of the proposed Project showing the principle 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 features and green building practices that will be incorporated into the Project during construction and operation consistent with the ROD and Findings Statement and the ROD Addendum⁶; and
- A description of proposed development’s security features including but not limited to how the design would prevent progressive collapse and utilize hardened constructed structures against a range of potential hazards and threats, such as chemical, biological, radiological, nuclear, fire, and explosive.

c. Community Benefits

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.

Respondents should detail these plans and highlight how they are responsive to community needs, where appropriate.

d. Community Outreach Plan

Respondents should also include a detailed outreach strategy and plan, including a timeline for engagement with applicable stakeholders.

C. Respondent Experience and Execution

a. Respondent 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 or Respondent Team must collectively demonstrate significant experience, expertise and capacity in:

⁶ ROD Addendum available at <http://renewnyc.com/content/pdfs/RODAddendum.pdf>

- Developing and managing comparable projects in urban locations which incorporate all proposed uses;
- Equity investments 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 Team members acted as a developer and/or principal operator of buildings incorporating all proposed uses.

LMDC and PANYNJ reserve the right to determine whether a Respondent satisfies these requirements based on the experience of Respondent Team's constituent members. 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 Team, 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
- A description of 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 office, retail, hotel and/or community space as part of an urban development while acting as a principal developer and operator of the development;
 - Marketing commercial, retail and residential spaces in urban developments, and if residential, incorporating affordable housing; and
 - Other experience that makes Respondent uniquely suited to plan and develop the Site.
- 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 list of all persons or entities that will design, develop, or operate the Project, as well as the

attorney, engineer, general contractor 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. In addition, any details that describe the financial strength of the Respondent should be provided 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 provided;
 - 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 members of Respondent Team. For each project, the following information is requested:
 - 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)
 - 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 or any agency, department, authority or subdivision of the State or PANYNJ 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 has been selected, but which have not resulted in a successfully developed project
- Any additional documentation or information evidencing the strength of Respondent and its ability to complete the Project
- All forms identified in **Section X: Procurement Forms and Requirements** of this RFP

Information provided by references may be used by LMDC and PANYNJ for proposal evaluation purposes. LMDC and PANYNJ 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 responsiveness of Respondent to the client during the engagement. LMDC and PANYNJ reserve the right to decide, at their sole discretion, the method of communication by which LMDC and/or PANYNJ will contact references.

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 LMDC and PANYNJ:

- Any consultant firm that has provided professional services to LMDC or PANYNJ in connection with this Project;
- 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 who was involved with the Project while serving as an employee of such entity.

Notwithstanding the foregoing, if LMDC and PANYNJ determine in their 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 by LMDC or PANYNJ, then LMDC and PANYNJ may provide written authorization that such firm, entity or employee may respond to the RFP or participate on a Respondent Team.

b. Development Timeframe

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.

D. Diversity Practices and MWBE and SDVOB Participation

LMDC and PANYNJ have determined that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (**Appendix D**).

Respondents will be expected to make good faith efforts to achieve a 30% MWBE contracting goal (20% Minority-owned Business Enterprise (“MBE”) participation and 10% contracting goal for Women-owned Business Enterprise (“WBE”) participation and a 6% Service-Disabled Veteran-Owned Business (“SDVOB”) contracting goal on the Project, including certain subcomponents (e.g. professional services including

design, engineering, and environmental review; services related to financing and refinancing; and construction).

Respondents shall provide a detailed plan identifying how they would achieve the MWBE and SDVOB goals described above in their RFP submission.

The Designated Developer is required to submit an MWBE and SDVOB Road Map (“Road Map”) within three months after designation for review and approval by LMDC and PANYNJ. The Road Map, or comprehensive MWBE and SDVOB Plan, is a formal, comprehensive plan describing how the Designated Developer will execute, monitor and establish internal controls to ensure full MWBE compliance with its commitment to meet the established MWBE participation goal of 30% (20% for MBE participation and 10% for WBE participation) and the SDVOB goal of 6%.

The Road Map must detail all project work areas that will be targeted for MWBE and SDVOB utilization and substantiated value estimates for each project work area totaling the MBE, WBE and SDVOB goals. The Designated Developer must update the Road Map as vendors are identified and shall revise the Road Map as appropriate, and if areas targeted for MWBE and/or SDVOB utilization are not met, new work areas must be targeted. The Designated Developer is also responsible for relaying these goals to any lower tier subcontractors and reporting on any utilization from lower tier subcontractors as part of the Road Map submitted. The Designated Developer must update the Road Map as requested by ESD/LMDC/PANYNJ. Any changes or modifications to already approved firms and work areas on the Road Map may be completed only with the written approval of ESD/LMDC/PANYNJ.

The Designated Developer will also be expected to submit an acceptable Utilization Plan as described in the “Non-Discrimination and Diversity Requirements” section of **Section X: Procurement Forms and Requirements**.

Respondent or Respondent Team members identifying themselves as MWBEs must be listed in the directory of either the New York State-certified MWBEs⁷ or PANYNJ-certified MWBEs⁸ as of the deadline for submitting Proposals to this RFP. Respondents identifying themselves as SDVOBs must be listed in the directory of the New York State-certified SDVOBs as of the deadline for submitting Proposals to this RFP.

E. Additional Submission Requirements

a. Procurement Forms

⁷ Eligibility requirements for New York State-certified MWBEs are available at [https://esd.ny.gov/doing-business-ny/mwbe/mwbe-certification-eligibility-requirements#definition-of-a-minority-owned-business-enterprise-\(mbe\)](https://esd.ny.gov/doing-business-ny/mwbe/mwbe-certification-eligibility-requirements#definition-of-a-minority-owned-business-enterprise-(mbe)).

⁸ Eligibility requirements for PANYNJ-certified MWBEs are available at <http://www.panynj.gov/business-opportunities/sd-become-certified.html>.

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. [State Finance Law §§139-j and 139-k forms](#) (submit with Proposal)
- b. [Vendor Responsibility Questionnaire](#) (submit with Proposal or submit online and include copy of submitted form with Proposal)
- c. Iran Divestment Act Statement (submit with Proposal)
- d. Non-Discrimination and Contractor & Supplier Diversity Requirements (submit with Proposal)
 - i. [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - ii. [OCSD-2 - Staffing Plan](#)
 - iii. [OCSD-4 – MWBE and SDVOB Utilization Plan](#)
- e. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#) (submit with Proposal)
- f. [W-9 Form](#) (submit with Proposal)
- g. [Executive Order 177 Certification](#)
- h. Conflicts of Interest Attestation (submit with Proposal)

Additional information about these items, and LMDC’s procurement requirements, can be found in **Section X: Procurement Forms and Requirements**.

VI. 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 LMDC 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 Site5RFP@esd.ny.gov.

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

VII. DISPOSITION PROCESS

After a review of the Proposals, LMDC and PANYNJ intend to select one winning Respondent to this RFP as the Designated Developer. If the selected Proposal requires modification of the GPP, designation of the Designated Developer will occur upon the execution by the Designated Developer and LMDC of either, at the sole discretion of LMDC, a (i) contract of sale; or (ii) term sheet. If the selected Proposal is consistent with the GPP, designation of the Designated Developer will occur upon the execution by the Designated Developer and PANYNJ of, at the sole discretion of PANYNJ, a (i) contract of sale; (ii) contract to lease with a fully negotiated lease attached; or (iii) lease agreement. Designation is subject to LMDC and PANYNJ Board of Directors approvals and other public approvals as described below. Additionally, the Designated Developer will enter into agreements with LMDC and other State agencies, or PANYNJ as necessary, regarding payment by the Designated Developer of costs and expenses as described in “Financial Proposal” in **Section V: Required Proposal Contents**.

In addition to approvals of the LMDC and PANYNJ Boards of Directors, the disposition of the Site is also subject to approvals of the Commissioner of the Office of General Services (“OGS”), the Public Authorities Control Board (“PACB”), the Comptroller of the State of New York (“OSC”), and the New York State Attorney General.

In implementing the Project, including the disposition process, LMDC will ensure completion of an environmental review of the Project in accordance with SEQRA and NEPA. LMDC will lead the SEQRA and NEPA review in accordance with the UDC Act and in consultation with the Designated Developer.

VIII. PROPOSAL SUBMISSION INSTRUCTIONS

A. Proposal Submission

Eleven (11) hard copies of the Proposal and four (4) electronic copies on separate flash drives, identified as “Site 5 WTC RFP,” must be received by LMDC by **September 20, 2019, 5:00 PM EST** at the following address:

Lower Manhattan Development Corporation
c/o Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Procurement Department
Re: Site 5 WTC RFP

It is the responsibility of each Respondent to ensure timely submission of its Proposal. Proposals received after the scheduled date and time cannot be accepted.

Respondent accepts all provisions of this RFP by submitting a Proposal and is responsible for the accuracy of its submission.

LMDC and PANYNJ reserve the right, in their sole discretion, to withdraw or modify this RFP and to reject any Proposal as being non-responsive.

B. RFP Inquiries

LMDC and PANYNJ will accept written questions via email from prospective Respondents up to and no later than July 26, 2019, 5:00 PM EST. Please submit questions to: Site5RFP@esd.ny.gov

Written questions must include the requestor's name, e-mail address and the prospective Respondent represented. Responses to all timely and appropriate questions will be posted on ESD's website on or about August 16, 2019 at: <https://esd.ny.gov/doing-business-ny/requests-proposals>.

If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, notification should be sent via email requesting clarification or modification. Should LMDC and PANYNJ find it necessary, an addendum or addenda to this RFP will be posted on the ESD website.

Other than emails to the designated email account for this RFP, which is Site5RFP@esd.ny.gov, no contact related to this RFP with LMDC, ESD or PANYNJ Board members, staff or consultants, or any other State governmental entity (except members of the State Legislature and their staff), is permitted by Respondents or employed representatives of Respondent Team during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

C. Site Visit and Information Session

An optional Site visit and information session hosted by LMDC and PANYNJ is scheduled for July 11, 2019. Respondents who wish to attend must RSVP to Site5RFP@esd.ny.gov on or before July 9, 2019. When signing up to attend, please provide the name of the Respondent, and the name, title, telephone number and email address of all representatives who are attending. LMDC and PANYNJ reserve the right to limit the number of visitors on such Site visit and to require such procedures as necessary to ensure the safety and security of visitors.

LMDC and PANYNJ reserve 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>.

IX. STATEMENT OF LIMITATIONS

The RFP submissions from Respondents, and any relationship between LMDC or PANYNJ and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP.

1. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts LMDC's and PANYNJ's rights as set forth in the RFP, including this Statement of Limitations.
2. The issuance of this RFP and the submission of a Proposal by any firm or the acceptance of such Proposal by LMDC and PANYNJ does not obligate LMDC or PANYNJ in any manner whatsoever with regard to development of the Site. LMDC and/or PANYNJ shall only incur such obligations upon execution of a formal contract by LMDC and/or PANYNJ and the Designated Developer.
3. LMDC and PANYNJ reserve the right to: (i) amend, modify, or withdraw this RFP; (ii) revise any requirements of this RFP; (iii) require supplemental statements or information from any Respondent; (iv) accept or reject any or all Proposals; (v) extend the deadline for submission of Proposals; (vi) negotiate or hold discussions with any Respondent and correct deficient Proposals that do not completely conform to the instructions contained herein; and (vii) cancel, in whole or part, this RFP, for any reason or for no reason. LMDC and PANYNJ may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Proposals will be prepared at the sole cost and expense of each Respondent.
4. All information submitted to LMDC in response to this RFP, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including but not limited to those that contain (1) trade secrets, (2) confidential information, (3) information that, if disclosed, would cause substantial injury to the competitive position of Respondent, or (4) critical infrastructure information. Respondents should identify portions of their Proposals and accompanying documents they believe fall under these exemptions by submitting their Proposals in both redacted and un-redacted form. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Along with the redacted version, Respondents may provide a detailed justification for the portions of their Proposal they believe fall into the exemptions discussed above. Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. The identified information will be reviewed, and a determination will be made as to whether the information is exempt from disclosure under FOIL. LMDC's determination may be appealed pursuant to POL §89(5)(c). Please note that if Respondents do not submit a redacted version, their Proposals may be released in un-redacted form if requested under FOIL.
5. All information submitted to PANYNJ in response to this RFP is subject to the Port Authority Public Records Access Policy. The Port Authority Public Records Access Policy can be found at the following location: <https://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>.
6. LMDC and PANYNJ reserve the right, in their sole discretion, without liability, to utilize any or all

- Proposals, including late responses, in their planning efforts. LMDC and PANYNJ reserve the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFP (collectively, the "Proposal Information") for any purpose. Each Respondent must grant an unconditional and perpetual license without charge to LMDC and PANYNJ to use any copyright or other legally protected rights in and to the Proposal Information. By submitting a Proposal, each Respondent waives any and all claims against LMDC and PANYNJ relating to the retention or use of the Proposal Information.
7. This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a Proposal. Neither LMDC nor PANYNJ will be responsible for any costs incurred by Respondents related to preparing and submitting a Proposal in response to this RFP, attending oral presentations, or for any other associated costs.
 8. To the best of LMDC's and PANYNJ's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of Proposals.
 9. Should LMDC and PANYNJ determine that negotiations with a Designated Developer will not result in an executable contract, LMDC and PANYNJ may begin negotiations with a different Respondent without again requesting Proposals.

X. 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 LMDC's procurement requirements ("Procurement Requirements").

A. Conflicts of Interest

Respondent must attest it has read, understood and will comply with the following provisions and those found in the Conflicts of Interest Attestation attached as **Appendix F**. LMDC and PANYNJ shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should LMDC or PANYNJ 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, LMDC or PANYNJ, 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, LMDC or PANYNJ 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, LMDC or PANYNJ, 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.
- 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 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 LMDC 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:

http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require LMDC 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 LMDC. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into among LMDC, ESD or PANYNJ and Respondent, if any, shall include clauses providing that Respondent remain “responsible” throughout the term of any contract, that LMDC, ESD or PANYNJ may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that LMDC, ESD or PANYNJ 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, LMDC 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 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.

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 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.

F. Non-Discrimination and Diversity Requirements

Business Participation Opportunities for New York State-Certified Minority- and Women-Owned Business Enterprises ("MWBEs")

LMDC and PANYNJ are committed to promoting opportunities for the maximum feasible participation of New York State-certified and PANYNJ-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of projects.

Business Opportunities for MWBEs

For purposes of this RFP, LMDC and PANYNJ have set an overall goal of **30%** for MWBE participation, divided between **20%** for New York State-certified or PANYNJ-certified MBE participation, and **10%** for New York State-certified or PANYNJ-certified WBE participation (based on the current availability of MBEs and WBEs) on the total cost of the development. Respondents are encouraged to utilize an assortment of NYS and PANYNJ-certified MWBEs, in order to maximize firms in each ethnic and gender category. The Designated Developer must document its good faith efforts to provide meaningful participation by MWBEs in the Project, including an explanation of any failure to meet the MWBE goals. The directory of New York State-certified MWBEs can be viewed at: <https://ny.newnycontracts.com>; and the directory of PANYNJ-certified MWBEs can be found at <https://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html>. For guidance on how LMDC will evaluate a Designated Developer’s “good faith efforts,” refer to 5 NYCRR § 142.8.

Respondent understands that only sums paid to MWBEs for the performance of a commercially useful function 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 any MWBE 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.

By submitting a Proposal, 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 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.

MWBE opportunities must be sought at every level of contracting. In addition to the submission of the above mentioned Road Map (detailing any MWBEs that have been identified as partners on the Respondent’s team and how the Respondent intends to use good faith efforts to utilize MWBE contractors throughout the Project) Respondent will also be required to submit an MWBE Utilization Plan (Form OCSD-4) with their Proposal, that, at a minimum, identifies the certified consultants, real estate developers, professional service providers and any other firms that have partnered with the Respondent by the time of response submission and/or will be utilized by the Respondent on this Development, that is also consistent with the Road Map. Any modifications or changes to an accepted MWBE Utilization Plan after the selection of a Designated Developer must be reported on a revised MWBE Utilization Plan and submitted to LMDC for review and approval. Within 30 days of its receipt of the MWBE Utilization Plan, LMDC will review it and advise the Respondent of LMDC’s acceptance of the MWBE Utilization Plan or issue a notice of deficiency to the Designated Developer.

If a notice of deficiency is issued, 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

LMDC to be inadequate, LMCD shall notify 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 Proposal.

LMDC and PANYNJ may disqualify Respondent as being non-responsive under the following circumstances:

1. Respondent fails to submit an MWBE Utilization Plan;
2. Respondent fails to submit a written remedy to a notice of deficiency;
3. Respondent fails to submit a request for waiver; or
4. LMDC determines that Respondent has failed to document good faith efforts.

If selected as the Designated Developer, Respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan. Requests for a partial or total waiver of established goal requirements must be made prior to commencement of Project construction.

Respondent will also be required to submit a quarterly MWBE Contractor Compliance & Payment Report to LMDC, by the 10th day following each end of month during the period of construction, documenting the progress made toward achievement of the MWBE goals.

The above procedures for MWBE compliance may be modified depending on the nature of the eventual transaction.

- **Equal Employment Opportunity Requirements**

By submission of 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](https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf) located online at <https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf>. 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 the Contract; or (ii) employment outside New York State.

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

If selected as Designated Developer, 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 LMDC on a monthly basis until the Project is completed.

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 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.

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

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

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

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

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

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.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.

The above procedures for MWBE compliance may be modified depending on the nature of the eventual transaction.

- **Business 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. LMDC and PANYNJ recognize the need to promote the employment of service-disabled veterans and to ensure that New York State-certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of projects.

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, Respondents are expected to consider SDVOBs in undertaking the Project.

Project Goals

For purposes of this RFP, LMDC and PANYNJ have an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, Respondent or Respondent's contractor(s) 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 Contact. Additionally, the Designated Developer 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 in the Project.

The Designated Developer must document "good faith efforts" to provide meaningful participation by SDVOBs in the Project.

SDVOB Utilization Plan

- A. Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their Proposal (<https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>).
- B. The Utilization Plan shall list the SDVOBs that the Respondent intends to use, a description of the work that the Respondent intends the SDVOB to perform to meet the participation goal, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Project work the SDVOB will perform. By signing the Utilization Plan, Respondent 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, loss of eligibility to submit future RFP responses. Any modifications or changes to the agreed participation by SDVOBs after closing must be reported on a revised SDVOB Utilization Plan and submitted to LMDC.
- C. LMDC and PANYNJ will review the submitted SDVOB Utilization Plan and advise the Respondent or Respondent's contractor(s) of LMDC acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Respondent agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to LMDC a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by LMDC to be inadequate, LMDC shall notify Respondent and direct Respondent to submit, within five business days of notification by LMDC, a request for a partial or total waiver of SDVOB

participation goals on Form OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Proposal.

- E. LMDC may disqualify a Respondent's Proposal as being non-responsive under the following circumstances:
 - 1. If Respondent fails to submit an SDVOB Utilization Plan;
 - 2. If Respondent fails to submit a written remedy to a notice of deficiency;
 - 3. If Respondent fails to submit a request for waiver; or
 - 4. If LMDC determines that Respondent has failed to document good faith efforts.
- F. If selected as the Designated Developer, Respondent certifies that it will follow the submitted SDVOB Utilization Plan pursuant to the prescribed SDVOB contract goals set forth above.
- G. Respondent further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall entitle LMDC to any remedy provided herein, including but not limited to, a finding of Respondent non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Respondent shall speak to the Designated Contact for guidance.
- B. A Respondent 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. Respondent 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 LMDC at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with Respondent's waiver request is complete, LMDC shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Respondent shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan in completion of the Project. Requests for a partial or total waiver of established goal requirements must be made prior to commencement of Project construction.
- D. If LMDC, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (Form OCSD-6), determines that the Designated Developer is failing or refusing to comply with the utilization goals and no waiver has been issued in regard to such non-compliance, LMDC may issue a notice of deficiency. Respondent 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 Designated Contact.

Required Good Faith Efforts

Respondent must document good faith efforts toward utilizing SDVOBs on the Project. 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 Respondent's solicitation was not selected;
3. Dates of any pre-RFP, pre-award or other meetings attended by Respondent, if any, scheduled by LMDC with certified SDVOBs whom LMDC determined were capable of fulfilling the SDVOB goals;
4. Information describing the specific steps undertaken to reasonably structure the Project scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs; and
5. Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

The Designated Developer is required to report Monthly SDVOB Compliance to LMDC during construction of the Project for the preceding month's activity, documenting progress made towards achieving the SDVOB goals. This information must be submitted using Form OCSD-6 available on the ESD website and should be completed by the Designated Developer and submitted to LMDC, by the 10th day of each month during construction of the Project, for the preceding month's activity to: OCSD@esd.ny.gov.

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

The above procedures for SDVOB compliance may be modified depending on the nature of the eventual transaction.

G. 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 LMDC 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.⁹ 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.

H. Contractual Agreements

Following selection of a Designated Developer, LMDC and PANYNJ will prepare the applicable agreements and other closing documents that define all project terms and conditions and the Designated Developer’s responsibilities.

I. 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 LMDC by a person (also broadly defined) for the purposes of procuring a State Contract (as contemplated in this RFP) must be reported by LMDC 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.

J. Insurance Requirements

The Designated Developer will be required to indemnify and hold harmless LMDC, ESD and PANYNJ and to provide appropriate insurance coverage as determined by LMDC and PANYNJ once the structure of the transaction with the Designated Developer has been finalized.

LMDC, ESD and PANYNJ must be named as an additional insured on a primary and non-contributory basis on certain policies. All policies should include a waiver of subrogation in favor of LMDC, ESD and PANYNJ.

Any agreements among LMDC, PANYNJ and the Designated Development will include appropriate insurance and indemnification requirements.

⁹ 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

K. W-9 Form

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

XI. APPENDIX

Below is a list of appendices attached to and made a part of this RFP. All appendices can be downloaded at https://www.dropbox.com/sh/c62xnbiwy6ulccv/AABVB1h5Zn_7Fh574FYfpohsa?dl=0 (“Shared Drive”):

- Appendix A: Liberty Park Easement
- Appendix B: Saint Nicholas Easement
- Appendix C: City of New York – PANYNJ PILOT Agreement
- Appendix D: Diversity Practices Questionnaire
- Appendix E: Cost Letter¹⁰
- Appendix F: Conflicts of Interest Attestation

¹⁰ Appendix E will be posted to the Shared Drive in a future RFP addendum.