REQUEST FOR PROPOSALS

WASSAIC DEVELOPMENTAL CENTER
DUTCHESS COUNTY, NEW YORK

RFP RELEASE DATE:	**JULY 9, 2018**
SITE TOUR DATE:	**JULY 30, 2018**
DEADLINE TO SUBMIT QUESTIONS:	**AUGUST 6, 2018 BY 2:00 PM EST**
DEADLINE TO SUBMIT PROPOSALS:	**SEPTEMBER 28, 2018 BY 2:00 PM EST**
DESIGNATED CONTACTS FOR THE PROCUREMENT:	**PRIMARY CONTACT: JOHN DISCOLO**
	SECONDARY CONTACT: RALPH VOLCY

NEW YORK STATE OF OPPORTUNITY.™ | Empire State Development

TABLE OF CONTENTS

I. INTRODUCTION 3
II. RFP TIMELINE 3
III. SITE CONTEXT AND DESCRIPTION 4
Surrounding Area and Land Uses 4
Demographics 4
Site Summary 5
Transportation, Access and Parking 7
Utilities 7
Environmental Conditions 8
Natural Resources 9
Zoning 9
Access 10
Ownership and Taxes 10
Historic Resources 10
IV. DEVELOPMENT OBJECTIVES 10
V. REQUIRED PROPOSAL CONTENTS 11
VI. SELECTION CRITERIA 17
VII. DEVELOPER DUE DILIGENCE 18
VIII. DISPOSITION PROCESS 18
IX. PROPOSAL SUBMISSION INSTRUCTIONS 19
X. STATEMENT OF LIMITATIONS 20
XI. PROCUREMENT FORMS AND REQUIREMENTS 21
XII. GENERAL PROVISIONS 31
XIII. APPENDIX 32

I. INTRODUCTION

New York State Urban Development Corporation, d/b/a Empire State Development ("ESD"), is seeking proposals from responsive and responsible parties for the purchase and redevelopment of the remainder of the former Wassaic Developmental Center (the "Center"), also known as the Wassaic campus (the "Campus") of the Taconic Developmental Disabilities Services Office ("Taconic DDSO").

The Center is owned by the People of the State of New York acting through the Dormitory Authority of the State of New York ("DASNY") and is operated by the New York State Office for People With Developmental Disabilities ("OPWDD"). A portion of the Campus was sold previously. The remainder, which is the subject of this Request for Proposal ("RFP"), consists of approximately 320 acres, predominantly developed with more than 50 buildings in varying conditions ("Site").

In March 2017, ESD released a Request for Expressions of Interest ("RFEI") to solicit ideas for the Site. ESD used responses and recommendations generated by the RFEI to inform this RFP.

The goal of this RFP is to advance public policy goals and maximize economic benefits to the State of New York (the "State"), while creating a premier destination in the scenic Harlem Valley. Each party that submits a response ("Proposal") to this RFP is referred to herein as a "Respondent." A Respondent that is conditionally designated through this RFP process is referred to herein as a "Designated Developer." The State intends to dispose of the entire Site. However, Respondents may submit Proposals for specific parcels of the Site, and ESD may select multiple Designated Developers. ESD encourages teams and partnerships to jointly respond to this RFP.

II. RFP TIMELINE

The following are significant dates in this RFP process:

Event	Timeline
1. RFP Release Date	July 9, 2018
2. Site Tour	July 30, 2018
3. Deadline for Submission of Questions	August 6, 2018 by 2:00 PM EST
4. Deadline for ESD to Respond to Questions	August 20, 2018
5. Deadline for Submission of Proposals	September 28, 2018 by 2:00 PM EST
6. Interviews	TBD
7. Anticipated Designation of Developer(s)	TBD

III. SITE CONTEXT AND DESCRIPTION

SURROUNDING AREA AND LAND USES

The Site is located in the hamlet of Wassaic, part of the Dutchess County town of Amenia. It is approximately 2.5 miles west of the New York-Connecticut border, approximately two hours north of New York City, 1½ hours south of Albany, and 45 minutes east of Poughkeepsie.

Figure 1 Aerial View of the Site

Wassaic was historically developed as a small railroad village, where the New York and Harlem Railroad company connected the area's many small dairy farms to the rest of the region. Today, the hamlet, as well as the Town of Amenia, remain rural communities, increasingly home to recreational and cultural activities that serve the New York metropolitan area. Examples include the scenic Harlem Valley Rail Trail and the Wassaic Project's artist-in-residence programs. Creative and tech sectors are growing in the area. Other recent development in the area includes Silo Ridge, a luxury residential community; the renovation of the historic Troutbeck Hotel; and the Cricket Valley power plant in Dover. The Harlem Valley, named for the New York and Harlem Railroad that served it, is known for its scenic and natural resources. The rural landscapes surrounding the Site feature rolling hills, farmland, streams and wetlands, and steep forested valleys and gorges. The land uses around the Site are primarily commercial and agricultural.

DEMOGRAPHICS

The Town of Amenia has a population of approximately 4,300. There are nearly 300 companies in the Town and a mean household income of $84,409. 89.8% of the population lives above the poverty line. Nearly 84% of residents graduated high school or attained a higher degree.

SITE SUMMARY

As part of the State's ongoing initiative to better integrate individuals with developmental disabilities into their community, the residential portion of the Campus was closed in 2014. At its peak, the Campus housed 5,500 residents. The Site is currently used for OPWDD administrative functions in four buildings. The onsite power plant is still in use. Upon disposition of the Site, OPWDD will vacate the premises, though it will retain a small cemetery on the property. Approximately 430 acres of property adjacent to the Campus were sold in 2000, including built improvements and surface and subsurface infrastructure.

The Site that is the subject of this RFP is located at 26 Center Circle, Wassaic, NY. It consists of approximately 320 acres, including nine acres of ground floor area (constituting approximately 740,000 built square feet), with buildings in varying condition. The buildings were constructed between 1927 and 1950. Please see Appendix A for a list of buildings on the Site.

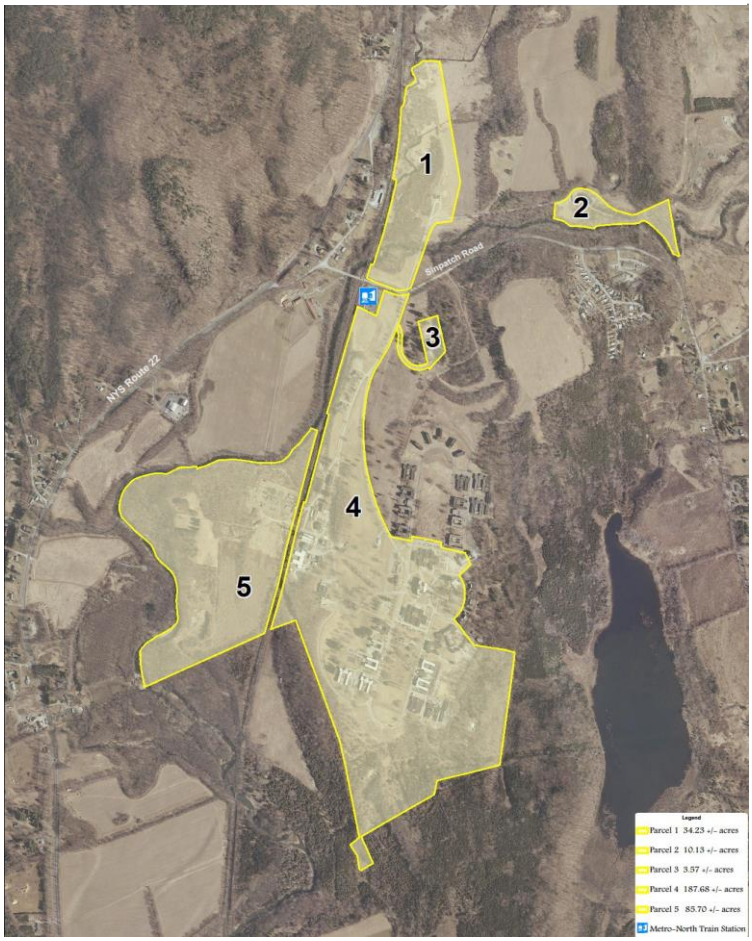
The 320 acres, less the small cemetery parcel, will be sold "AS IS" and "WHERE IS," and subject to an easement to allow limited access to the cemetery for family members. The majority of the Site's buildings are situated on top of a hill, offering expansive views of the bucolic Harlem Valley to the west, north and south. The Tenmile River Metro-North Rail Station is located at the entrance to the facility, alongside of which flows the Tenmile River. The Site's vast size, location and accessibility to New York City and the Hudson Valley make it an exciting opportunity for creative, well-planned development. Respondents are invited to propose mixed-use development plans that may include, but are not limited to, lodging and event space; residential, commercial and cultural uses; and agricultural or other seasonal land uses. See "Zoning" section below for more detail on uses.

Figure 2 Views from the Site

The Site boundaries are denoted in Figure 3. A larger version of this map, as well as other detailed images, is available in Appendix B.

For the purpose of this RFP, ESD has divided the Site into 5 parcels:

Figure 3 Site with Designated Parcels



- Parcel 1, located at the northern part of the Site, includes four well houses and a pump house that supply water to the entire Site. It is approximately 34 acres and is mostly wetlands.
- Parcel 2, located at the eastern part of the Site, houses a recreational/lodge building. The Parcel is approximately 10 acres and is accessed via a gravel road that begins on Parcel 1 and traverses private property courtesy of an easement. Webatuck Creek runs at the southern portion of Parcel 2.
- Parcel 3 contains a residential home that was once the home of the Center Director. The parcel is approximately 4 acres and is situated at the end of a secluded cul-de-sac.
- Parcel 4 contains the majority of the Site's buildings and is anticipated to be the primary area for redevelopment on the Site. It is approximately 188 acres.
- Parcel 5, separated from Parcel 4 by the Metro-North tracks. It contains a wastewater treatment plant and two closed landfills. The cemetery is also on this Parcel. Parcel 5 is approximately 86 acres.

Figure 4 Tenmile River Station adjacent to the Site

TRANSPORTATION, ACCESS AND PARKING

The Site is served by the Tenmile River Metro-North Station, the penultimate stop on Metro-North's Harlem Line, approximately two hours from Grand Central Terminal. The station was built in anticipation of new development on the Site. Proximity to this station makes the Site well suited for a mixed-use, transit-oriented development.

Dutchess County "Route D" buses connect the Site and the Tenmile River Metro-North Station with nearby Millbrook, Dover Plains, Pleasant Valley, and Poughkeepsie. The Site is within 1,000 feet of Route 22 and is easily accessible from I-84, I-90 and I-95. The Site is also located near the Route 22 commercial corridor between Pawling and Amenia.

Paved parking areas are located throughout the Site, generally adjacent to buildings.

UTILITIES

There is an operating electrical substation onsite, as well as onsite wells, water supply and a waste water treatment plant. See Appendix B for a map of the wells and pump house. These wells feed the pump house, which brings water to the campus, water tower and the sewage treatment plant. An onsite power plant supplies heat to the Site. Other utilities, such as natural gas, would require new infrastructure to bring them onto the Site. The wastewater treatment plant currently treats a low volume of effluent and has a SPEDES permit for .5 mgd/day. At one time, it had a capacity of approximately 1.3M mgd/day. The plant will likely need significant upgrades if it will be used to process additional loads.

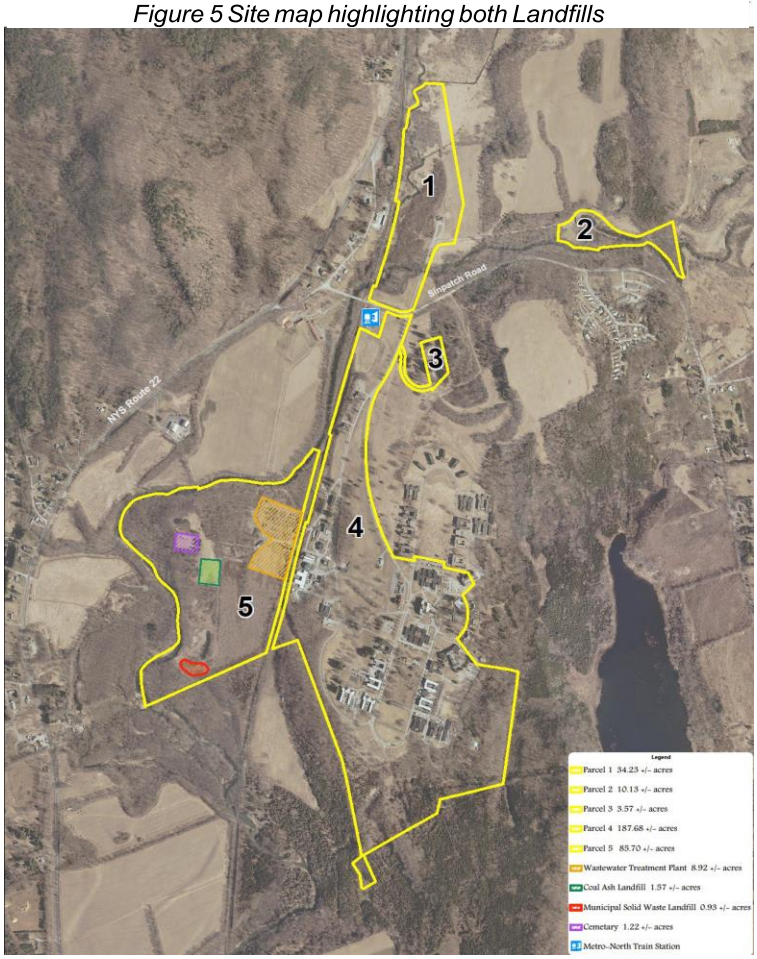
ENVIRONMENTAL CONDITIONS

There are two former landfills on Parcel 5. They are illustrated in Figure 5 (see Appendix B for a larger version). The northern one, referred to as the Coal Ash Landfill is closed and was never monitored by the New York State Department of Environmental Conservation ("DEC") due to code at the time of closure. The southern one, referred to as the Municipal Solid Waste Landfill on the map, is closed and is currently being monitored by DEC.

The majority of Parcel 2 lies within a Federal Emergency Management Agency ("FEMA") mapped floodplain. The Designated Developers(s) may consider appealing this designation to FEMA.

A Phase 1 Environmental Site Assessment is being conducted for the Site, the results of which will be made available prior to the submission deadline via an addendum to this RFP.

Figure 5 Site map highlighting both Landfills



The Designated Developer(s) will be responsible for conducting all due diligence investigations and remediation, including but not limited to further environmental site assessments, including sampling and testing of the soil, sediments and ground water (if any). No representation or warranty is made nor shall be given by ESD, OPWDD, 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 by-products; endangered species of fauna or flora; archeological feature or artifact; or any other matter or site condition which may affect the development of the Site.

NATURAL RESOURCES

Wassaic Creek and Tenmile River run through the Site. Both cold water streams contain wild brown trout and have permanent easements purchased by New York State Department of Environmental Conservation ("NYSDEC") that grant anglers access and the right to fish.

More information can be found at:
https://www.dec.ny.gov/docs/fish_marine_p df/pfrtenmilewassaic.pdf

The Site contains a number of wetland areas. Please see Appendix B for a map of regulated wetland areas.

ZONING

Parcel 1 – Most of this parcel is zoned RR (Rural Residential) under the Town of Amenia Zoning Code, which allows for a variety of residential, business and community uses as-of-right or with a site plan approval or special use permit from the Town. As described in the Zoning Code, the primary purpose of the RR district is to allow residential uses in a rural setting, at a lower density than is allowed in the hamlets.

A small portion of Parcel 1 adjacent to the Metro-North station is zoned Hamlet Mixed Use (HM). The purpose of the HM district, among other things, is to allow for the creation of a new hamlet center adjacent to the commuter rail station.

Parcel 2 – This parcel is zoned RR.

Parcels 3 and 4 – Parcel 3 and most of Parcel 4 are zoned RR. However, a small portion of Parcel 4 adjacent to the Metro-North train station is zoned HM. Parcels 3 and 4 are also included in the Mixed Use Institutional Conversion Overlay Zoning District (MCO) in the Zoning Code. The purpose of this overlay district is to facilitate the redevelopment of the Campus as a mixed-use and transit-oriented development that provides jobs, public facilities, open space, housing, commercial and other non-residential development. According to the Zoning Code, the Town wishes to attract development to this district because it contains serviceable buildings and water and sewer infrastructure, as well as good highway and commuter rail access. The provisions of this overlay district are intended to streamline permitting and allow greater use flexibility.

Parcel 5 – This parcel is zoned RA (Rural Agriculture), which allows a variety of residential, business and community uses as-of-right or with a special use permit or site plan approval from the Town. The purpose of the RA district is to maintain the Town's working landscape by promoting agriculture, forestry, recreation, land conservation and low-density residential uses, as well as compatible open space and rural areas, by encouraging such activities and discouraging large-scale residential development.

Portions of the Site are included in other zoning overlay districts that have additional requirements on land development. For more information, please review the Zoning Code of the Town of Amenia, available at https://ecode360.com/13959753.

Any proposed changes to zoning or other municipal laws and regulations should be specifically identified in the Proposal.

ACCESS

Parcel 5 is accessible from Parcel 4 via a road that crosses the Metro-North tracks. The Designated Developer(s) would be responsible for upgrading the current crossing to meet MTA safety standards and for any maintenance associated with the crossing.

OWNERSHIP AND TAXES

The Site is owned by DASNY and is operated by OPWDD and is thus currently exempt from property taxes. Upon disposition and private re-use of the Site, property taxes would be assessed by local government entities, including Dutchess County, the Town of Amenia, and the Dover Union Free School District. It is anticipated that current OPWDD programmatic and administrative uses will be relocated prior to disposition of the Site. However, should OPWDD require occupancy post-closing, the establishment of a post-closing occupancy agreement will be established in which OPWDD will be required to pay fair market rent for the term of its occupancy.

HISTORIC RESOURCES

The State Historic Preservation Office ("SHPO") of the New York State Office of Parks, Recreation and Historic Preservation has determined that development at the Site will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places. However, adaptive reuse of buildings with architectural interest, such as the Chapel and the Administration Building, is encouraged. Please note that the contents of the Chapel are owned by the New York Archdiocese, and their return to the Archdiocese will have to be discussed upon determination of the Chapel's future.

IV. DEVELOPMENT OBJECTIVES

ESD is seeking Proposals for a well-integrated, mixed-use development that meets the following goals ("Development Objectives"):

- Utilizes the Site as an economic engine for the Harlem Valley region and New York State;
- Enhances and complements the area's existing resources and amenities;
- Capitalizes on the proximity of rail transit at the Site by creating new workforce housing opportunities and/or jobs for New Yorkers;
- Maximizes green building and sustainable design practices;
- Maximizes economic benefit to the State while minimizing the State's economic and environmental risk; and

- Incorporates meaningful participation by Minority-Owned Business Enterprises ("MBE"), Women-Owned Business Enterprises ("WBE"), and Service-Disabled Veteran-Owned-Businesses ("SDVOB"), per Articles 15-A and 17-B of the New York State Executive Law.

In addition, Respondents should be aware that a Local Advisory Committee, comprising local elected officials and economic development leaders, has expressed support for affordable housing (including senior housing), agricultural uses, and uses that generate new jobs for area residents.

V. REQUIRED PROPOSAL CONTENTS

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

In evaluating the capabilities of the Respondents, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP. ESD reserves 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 in **Section XI: Procurement Forms and Requirements**, each complete Proposal must contain the following elements:

A. RESPONDENT DESCRIPTION AND QUALIFICATIONS

Each Respondent 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," Respondent should demonstrate:

- Significant experience and expertise in developing and operating real estate;
- Successful completion of at least one large-scale real estate project in the last ten years; and
- Equity investments in substantial real estate development projects.

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

Background information on Respondent's organizational structure should include all members of the Respondent Team, as well as the relevant experience of all principal members. Specifically, Proposals must include:

1. The intended form and structure of the Respondent Team, including details of any proposed partnerships or joint ventures. A chart or diagram of the partnership structure must also be included.

2. Name, address, phone number and email of each member of the Respondent Team, and identification of the individual who will be authorized to act on behalf of the Respondent as the primary contact and who will be available to answer questions or requests for additional information. Respondents must also provide their Federal Employer Identification Number ("EIN").

3. Current operating budget and previous three (3) years of audited financials. 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 Team should be provided, including but not limited to:

   - details of any material events that may affect any 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 (3) fiscal years.

4. A copy of the most recent credit report for key members of the Respondent Team.

5. Documentation addressing whether any participating member of the 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 any litigation or legal dispute regarding a real estate venture during the past five (5) years.

6. Summaries of comparable projects completed by members of the Respondent Team. For each project listed, the following information is requested:

   - Name of Respondent Team Member
   - Project Name
   - Completion Date
   - Project Description
   - Location
   - Current Status of Project
   - Total Development Cost
   - Reference Name, Email Address, Telephone
   - Relevance to RFP

7. Description of any prior State RFPs for which Respondent was selected but which have not resulted in a successfully developed project.

8. Any additional documentation or information evidencing the strength of the Respondent Team and its ability to complete the proposed project.

9. All required procurement forms identified in **Section XI: Procurement Forms and Requirements of this RFP.**

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

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

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

B. PROJECT DESCRIPTION

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

- ☐ Proposed use(s) and improvements on the Site, including a general description of how the project will connect to existing roadways and interact with the surrounding area;
- ☐ A summary of the proposed building program;
- ☐ A list of potential tenants and any letters of interest and/or intent from potential tenants;
- ☐ Estimated total development cost;
- ☐ How this project will advance the Development Objectives set forth in this RFP;
- ☐ An estimate of the economic impacts of the proposed project, including number of direct and indirect permanent and construction jobs estimated to be created by the project; and
- ☐ A detailed plan identifying subcontracting opportunities, if any, associated with this project, and how Minority and Women-owned Business Enterprise (“MWBE”) and Service-Disabled Veteran-owned Business (“SDVOB”) businesses would be utilized.

C. SITE PLAN AND ARCHITECTURAL DESIGN

Each Proposal must include:

- Type, height, bulk and size of each component of the development program (gross and net square footages). If a housing use is proposed, please detail the type and mix of affordable and/or market rate housing.
- At a minimum, a set of concept sketches of the proposed project and a set of schematic renderings, showing the overall site plan of the proposed project, principle elevations, general building massings, streetscape and landscape plans, entry features 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.
- A summary of anticipated construction and environmental challenges.

D. PARKING AND CIRCULATION

Proposals should include a plan for parking and vehicular and pedestrian circulation through the Site.

E. ZONING CALCULATION

Respondents must submit a preliminary zoning analysis showing all calculations, including proposed use groups and required/proposed parking. Any proposed changes to zoning and other municipal laws and regulations should be specifically identified in the Proposal. Respondents must identify any desired zoning changes and any required permits and authorizations necessary to effectuate the project.

F. DEVELOPMENT TIMEFRAME

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

G. FINANCIAL INFORMATION

Respondent must submit a description of project financing and sufficient evidence that the proposed redevelopment and operation of the Site will be successfully accomplished by the Respondent and achieve the Development Objectives ("Financial Plan").

The Financial Plan should include purchase price, anticipated sources and uses of funds, and details of proposed financing, including equity and any development and/or financing fees. Respondents interested in including adjacent or related properties as part of their project should detail the impact of this additional property in the Financial Plan.

The Financial Plan must detail sources and uses of funds for project development, and cash flows for operation, presented in live-linked Excel format with supporting calculations, and include the following information:

- Total estimated development cost;
- Estimated costs of environmental review, remediation, construction/renovation, including any demolition costs, and a break-out of hard and soft costs and fees; indicate escalation rates as appropriate;
- Projected operating revenues, operating and maintenance expenses, and net operating income (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 financings);
- Estimates of local property tax payments and/or payments in lieu of taxes (PILOTs) to various public jurisdictions;
- Debt service payments on any short-term or long-term financing for improvements;
- Projected or targeted internal rate of return (IRR);
- Sources and amounts of financing and equity to be invested in the development and operation of the Site; and
- 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.

The State does not have funding allocated for this project; however, if a Proposal includes an affordable housing component that is dependent on State housing programs, Respondent should complete the underwriting template in Appendix C and include proposed terms for NYS Housing Finance Agency ("HFA") financing. HFA term sheets can be found at: http://www.nyshcr.org/Funding/HFA/NYS%20Housing%20Finance%20Agency%20Term%20Sh eet_7.14.17.pdf.

ESD will establish an account that shall be funded by the Designated Developer(s) and used by ESD and its designated agents to pay costs incurred in connection with the project, including the costs and expenses of legal counsel ("Imprest Account"). The Imprest Account shall be initially funded by the Designated Developer(s) at the time of conditional designation by ESD in the amount of one hundred thousand dollars ($100,000) and thereafter, the Designated Developer(s) shall promptly replenish the Imprest Account promptly after notice from ESD. Upon closing, any amount remaining in the Imprest Account that is not needed to pay outstanding costs will be returned to the Designated Developer(s).

H. PURCHASE PRICE

Proposals must include a purchase price expressed in a fixed, non-contingent dollar amount. This may be covered in the Financial Plan. The purchase price will be paid in full at closing. Transfer of title will be by quitclaim deed (without any representations or warranties) at closing.

I. DEMOLITION PLAN

Respondents must provide an overview of the estimated schedule, budget and funding sources for demolition, if any, of existing structures on the Site. This may be covered in the Financial Plan.

J. PUBLIC AMENITIES AND COMMUNITY OUTREACH

Proposals should list any public amenities that will be included in the project, as well as a plan for community outreach.

K. PROJECT CHALLENGES

Respondent must communicate any potential challenges or risks ESD should be aware of regarding the scope, procurement process, delivery method, term of contract, technical and financial feasibility, etc.

L. PROCUREMENT FORMS AND REQUIREMENTS

The Designated Developer(s) will enter into contractual agreements with ESD**.** Accordingly, Respondents should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Respondent's Proposal.

i. State Finance Law §§139-j and 139-k forms (submit with Proposal)

ii. Vendor Responsibility Questionnaire (submit with Proposal or online and include copy of submitted form with Proposal)

iii. Iran Divestment Act Statement (submit with Proposal)

iv. Non-Discrimination and Contractor & Supplier Diversity Requirements (submit with Proposal)
   - OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
   - OCSD-2 - Staffing Plan
   - OCSD-4 – MWBE and SDVOB Utilization Plan

v. Encouraging the Use of NYS Businesses in Contract Performance Form (submit with Proposal)

vi. Certification under State Tax Law Section 5-a 220-CA or Affidavit (submit with Proposal)

vii. W-9 Form (submit with Proposal)

Additional information about these items, and ESD's procurement requirements, can be found in **Section XI: Procurement Forms and Requirements.**

VI. SELECTION CRITERIA

ESD shall establish a review committee to evaluate Proposals. When evaluating Proposals, the following selection criteria, with the accompanying weightings, will be considered and used to calculate an overall Proposal score.

Proposals may be reviewed by ESD and other State officials. The sale of the Site is subject to approval by the ESD Board of Directors, DASNY, OPWDD, the Public Authorities Control Board ("PACB"), the Department of Budget ("DOB"), the Comptroller of the State of New York, and the New York State Attorney General.

Criteria		Weighting
Development Concept and Program	• Proposed development concept's quality, design and program of uses • Direct economic benefits of the project	30%
Financial Offer	• Competitiveness of the proposed financial terms and financial benefits to New York State, as well as the financial feasibility of the project	25%
Respondent Qualifications	• Experience, financial capabilities and qualifications of the ownership entity in developing and financing projects of similar size and/or nature	25%
Project Timing and Design	• Proposed project development and construction plan • Innovative technical solutions to enhance design, construction and/or operations/management • Incorporation of sustainable building practices	10%
Community Benefit	• Direct benefits to be realized by the community including, but not limited to, job creation and economic impacts	5%
Diversity Practices	• Up to 5% will be awarded for diversity practices, based on Respondent's Diversity Practices Questionnaire (Appendix F)	5%

ESD reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of Respondents' Proposals and to ensure a full and complete understanding of each Proposal. ESD shall undertake to pursue uniformity in the questions it asks Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. ESD reserves the option to hold oral interviews as part of the selection process; Respondents who are invited for an interview will receive additional instructions upon their invitation.

VII. DEVELOPER DUE DILIGENCE

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

ESD will post information regarding the RFP on the ESD website (http://www.esd.ny.gov/CorporateInformation/RFPs.html). Respondents are encouraged to check back for updates. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to potential or actual Respondents. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this solicitation by sending an email to wassaicRFP@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 shall not rely on the information provided in connection with this RFP. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to potential or actual Respondents.

VIII. DISPOSITION PROCESS

After a review of the Proposals, ESD intends to conditionally designate one or more Respondents as the Designated Developer(s). The Designated Developer(s) and ESD will sign a non-binding term sheet regarding key aspects of the project and disposition of the Site, and the Designated Developer(s) may enter into separate agreements with ESD and and/or other State and/or municipalities regarding payment by the Designated Developer(s) of costs and expenses.

In implementing the project, including the disposition process, ESD intends to ensure completion of environmental review of the project in accordance with the New York State Environmental Quality Review Act (SEQRA). ESD may lead the SEQRA review in accordance with the UDC Act and in consultation with the Designated Developer(s). The environmental review and disposition process may take twelve (12) to twenty-four (24) months from closing, depending upon the complexity of the project.

ESD will assist the DASNY and OPWDD, as necessary, in obtaining consents and approvals, and provide notices as may be required to convey the Site to ESD at a value established in accordance with and pursuant to the Community Reinvestment Act (Unconsolidated Laws §4405 (13)).

IX. PROPOSAL SUBMISSION INSTRUCTIONS

A. PROPOSAL SUBMISSION

Five (5) hard copies and one (1) electronic copy (in the form of a flash drive) of the Proposal identified by **"Wassaic RFP"** must be received by ESD by **September 28, 2018 at 2:00 PM** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: John F. Discolo, ESD Procurement
Unit Re: Wassaic 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.

Respondents accept all provisions of this RFP by submitting a Proposal and are responsible for the accuracy of their submissions.

B. RFP INQUIRIES

ESD will accept written questions via email from prospective Respondents regarding the RFP. Please submit questions to: wassaicRFP@esd.ny.gov

Written questions must include the requestor's name, e-mail address, and the prospective Respondent Team represented, and must be received by August 6, 2018 at 2:00 PM EST. Responses to all timely and appropriate questions will be posted on ESD's website on August 20, 2018 at: http://www.esd.ny.gov/CorporateInformation/RFPs.html.

If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, notification should be sent immediately via e-mail requesting written clarification or modification to this RFP. Should ESD find it necessary, an addendum or modification to this RFP will be posted on the ESD website: http://www.esd.ny.gov/CorporateInformation/RFPs.html.

Other than emails to the designated email account for the RFP, at wassaicRFP@esd.ny.gov, no contact related to this RFP with ESD Directors, ESD staff or consultants, or any other governmental entity (except for a member of the State Legislature or State legislative staff), is allowed during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

C. SITE TOUR

An optional site visit is scheduled for **July 30, 2018**. Respondents are not required to attend but must email wassaicRFP@esd.ny.gov at least 2 days in advance if they wish to participate. When emailing regarding tour participation, please provide the name of the firm, and the name, title, telephone number and email address of all representatives who will attend. Due to security and logistical concerns, we ask that no more than five people per Respondent Team attend the tour.

ESD reserves 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. ESD reserves the right to modify this RFP schedule at its 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 at: http://www.esd.ny.gov/CorporateInformation/RFPs.html.

X. STATEMENT OF LIMITATIONS

The RFP submissions from Respondents, and any relationship between the State 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, Respondent acknowledges and accepts ESD'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 ESD does not obligate ESD in any manner whatsoever with regard to development of the Site. ESD shall only incur such obligations upon execution of a formal contract by ESD and any Designated Developer(s).

3. ESD reserves 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. ESD 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. Responses hereto will be prepared at the sole cost and expense of each Respondent.

4. All information submitted 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 those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of Respondent, or (3) 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. The State'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. ESD reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP Proposals, including late responses, in its planning efforts. ESD reserves the right to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this RFP (collectively, the "Response Information") for any purpose. Each Respondent must grant an unconditional and perpetual license without charge to ESD to use any copyright or other legally protected rights in and to the Response Information. By submitting a Proposal, each Respondent waives any and all claims against ESD and the State relating to the retention or use of the Response Information.

6. 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 response to the RFP. ESD will not be responsible for any costs incurred by Respondents related to preparing and submitting a Proposal in response to this RFP, or attending oral presentations, or for any other associated costs.

7. To the best of ESD's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of Proposals.

8. Should ESD determine that negotiations with a selected Respondent will not result in an executable contract, ESD may begin negotiations with a different Respondent without again requesting Proposals.

XI. PROCUREMENT FORMS AND REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Respondent's submission pursuant to Section IV of this RFP, as well as information about ESD's procurement requirements.

A. STATE FINANCE LAW SECTIONS 139-J AND 139-K FORMS

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Respondents and ESD 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: 1) 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 the Designated Contacts; 2) completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations; 3) 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 4) 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 submittal. Copies of these forms are available at:

https://cdn.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 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 and related or successor entities will be determined to be a non-responsible Respondent 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.

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:

https://cdn.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.

B. 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 both the Respondent Team and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, Respondents must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Designated Developer(s), if any, shall include clauses providing that the Designated Developer(s) remain "responsible" throughout the term of any 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 RFP.

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

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

C. 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 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, 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: http://www.ogs.ny.gov/about/regs/ida.asp

D. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY REQUIREMENTS

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

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

1) Business Participation Opportunities for MWBEs

ESD has an agency-wide overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15% for New York State-certified Women-owned Business Enterprise ("WBE") participation. For purposes of this solicitation, ESD will establish a goal based on the scope of work, project description identified in the RFP response and the current availability of MBEs and WBEs. A contractor ("Contractor") on any contract resulting from this RFP ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. 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.

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, Respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may issue 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 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.

Additionally, Respondents are required to submit an MWBE Utilization Plan with their 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.

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 a written remedy in response to the notice of deficiency to OCSD at OCSD@esd.ny.gov. 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 Proposal.

ESD may disqualify Respondent as being non-responsive under the following circumstances:

a) Respondent fails to submit an MWBE Utilization Plan;
b) Respondent fails to submit a written remedy to a notice of deficiency;
c) Respondent fails to submit a request for waiver; or
d) ESD determines that Respondent has failed to document good faith efforts.

The Designated Developer(s) 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 Designated Developer(s) 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.

2) 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 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 ESD with its Proposal.

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.

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.

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.

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

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

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

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

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

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

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Appendix E).

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified (SDVOBs), 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, Respondents 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**
  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 Respondent or Respondent's Contractor(s) should reference the directory of New York State Certified SDVOBs at: https://online.ogs.ny.gov/SDVOB/search

A. 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), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their Proposal, found at: (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 to perform the Contract, a description of the work that the Respondent 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 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, 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 Respondent or Respondent's Contractor(s) of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, Respondent or Respondent's Contractor(s) 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 Respondent or Respondent's Contractor(s) and direct the Respondent or Respondent's Contractor(s) to submit, within five business days of notification by ESD, 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 Proposal.

E. ESD may disqualify a Respondent's Proposal as being non-responsive under the following circumstances:
   a) If a Respondent fails to submit an SDVOB 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.

F. If awarded a Contract, Respondent 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. Respondent 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, Respondent or Respondent's Contractor(s) shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Respondent or Respondent's Contractor(s) 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 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 ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Respondent'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. Respondent 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 (Form 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 the Designated Contacts.

- **Required Good Faith Efforts**

  In accordance with 9 NYCRR § 252.2(n), Respondent or Respondent's Contractor(s) 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:

  A. Copies of solicitations to SDVOBs and any responses thereto;

  B. Explanation of the specific reasons each SDVOB that responded to Respondent's or Respondent's Contractors' solicitation was not selected;

  C. Dates of any pre-RFP, 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;

  D. 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; and/or

  E. Other information deemed relevant to the waiver request.

- **Monthly SDVOB Contractor Compliance Report**

  In accordance with 9 NYCRR § 252.2(q), Respondent or Respondent's 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 Respondent or Respondent's 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 Respondent/Contractor shall pay damages as set forth therein.

  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.

E. ENCOURAGING THE USE OF NYS BUSINESSES IN CONTRACT PERFORMANCE FORM

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Respondents to this RFP are

strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of any 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.

F. CERTIFICATION UNDER STATE TAX LAW SECTION 5-A

Any Contract resulting from this RFP is 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 Respondents to this RFP 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 (https://cdn.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 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 for award. Only the Respondent completes Form ST 220-CA, but 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 Respondent Team members and sub-consultants.

E. CONTRACTUAL AGREEMENTS

Following final selection of a Respondent or Respondents as Designated Developer(s), ESD will prepare one or more Contracts defining all project terms and conditions and Designated Developer(s)' responsibilities.

G. PROJECT SUNLIGHT

This RFP is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a State entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a State contract (as contemplated in this RFP) 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, Respondents should consult the Laws of 2011, Ch. 399 for guidance.

H. INSURANCE REQUIREMENTS

The Designated Developer(s) will be required to provide appropriate insurance coverage as determined by ESD once the structure of the transaction with the Designated Developer(s) has been finalized.

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as an additional insured on a primary and non-contributory basis on some policies. All policies above should include a waiver of subrogation in favor of ESD.

I. W-9 FORM

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

J. EO 177 CERTIFICATION

In accordance with Executive Order No. 177 (issued on February 3, 2018, available here: https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO177.pdf) any entity that provides goods or services to ESD must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the New York State Human Rights Law. Accordingly, all bidders must submit an EO 177 certification form with their proposal. The form is attached to this RFP as Appendix D.

XII. GENERAL PROVISIONS

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

1. amend, modify or withdraw this RFP;
2. revise any requirement of this RFP;
3. require supplemental statements or information from any responsible party;
4. accept or reject any or all responses hereto;
5. extend the deadline for submission of responses hereto;
6. negotiate potential contract terms with any Respondent;
7. communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;
8. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; or
9. extend the term of any agreement on terms consistent with this RFP.

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

XIII. APPENDIX

Below is a list of appendices attached to and made a part of this RFP:

Appendix A: List of Buildings
Appendix B: Site Maps
Appendix C: HCR Underwriting Template and Team Sheet
Appendix D: EO 177 Certification
Appendix E: Diversity Practices Questionnaire