



Workforce Strategy Development Consulting Services Request for Proposals

Issued: May 11, 2022

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Respondents are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – # 2).

Designated Contacts for this Procurement:

Primary Contact: Ralph Volcy
Secondary Contact: John Discolo

All contacts/inquiries shall be made by email to the following address:

WorkforceDevelopmentCS@esd.ny.gov.

This RFP is posted on the Empire State Development website:

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

Submission Deadline: June 10, 2022

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I. INTRODUCTION

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

II. OVERVIEW

As part of the 2022-2023 State Budget, a new Office of Strategic Workforce Development (“OSWD”) was established within Empire State Development (“ESD” or “the Organization”), a move that suggested a need to shift workforce development policy to be more targeted in meeting the needs of industry. Utilizing ESD’s relationships with employers in targeted economic sectors identified as ripe for growth and the tradable sectors identified in each of the state’s 10 regions, OSWD will drive the vision of creating industry-driven training that provides in-demand skills and direct job placement, producing new economic opportunity for un/underemployed and underrepresented workers and supporting the labor needs of the state’s highest-growth sectors.

To ensure success and cohesion across the state in implementing this new strategy, ESD is seeking a qualified firm or team (hereinafter the “Consultant” or “Respondent”) to lead the development of a comprehensive statewide industry-driven workforce development strategy for the Organization. This process will result in a framework that creates an overall set of goals and priorities for ESD across the state that will clearly articulate its central vision, ways of measuring success, and industries of focus – clearly identifying the unique role of ESD in workforce development within the larger ecosystem of workforce development policy efforts and programming across state agencies.

III. SCOPE OF WORK

ESD is seeking bid proposals from qualified firms to provide necessary services including, but not limited to, the scope of work described below. Over the course of no more than 12 months, the Consultant's work will consist of various consensus building, research, planning, branding/marketing and ultimately framework development outlined below. If a Respondent represents a team of consultant firms, the Lead or “Prime Consultant” shall be responsible for all management efforts to oversee and coordinate the team, including activities of all subconsultants, to perform their respective portion(s) of the services. ESD reserves the right to amend this contract as necessary in order to complete the Project and will select one Consultant under this RFP.

Task 1: Statewide ESD Workforce Development Framework

Developing a singular way to articulate ESD’s focus for its workforce development initiatives and programming is an important objective for the Organization. It will allow ESD to effectively communicate how its work differs from and complements the initiatives of its sister state agencies also in the sector, including but not limited to the Department of Labor, State University of New York, City University of New York, and New York State Energy Research and Development Authority, among others. It will also enable ESD to enhance its relationships with the business community and make sure their growth is at the forefront of workforce policy in the state – as their success is our state economy’s success.

The Consultant will be responsible for:

- Developing consensus throughout ESD and its regional offices, and Regional Economic Development Councils to create a collective vision for the Organization’s workforce development initiatives and guiding objectives and goals for achieving impact;
- Designing and facilitating meaningful and informed stakeholder engagement with regional and statewide economic development partners including businesses, workforce training providers, trade associations, chambers of commerce, etc. and frame their input in the context of informed decision-making that can guide ESD leadership and internal stakeholders in developing its framework; and
- Guiding ESD in the dissemination of its framework to regional, statewide, and interagency partners to ensure ample communication and foster collaboration on this strategy.

Task 2: Statewide Industry Sectors and Skills Focus

Creating a central target of industry sectors and the skills needed in those industries will help focus the forthcoming grant programs and priorities for funding by ESD as part of this new workforce development framework. It will standardize the industry and sector focus across the state, so all regions are trending the same direction and providing a statewide economy ripe for growth and attraction of companies in these sectors.

The Consultant will be responsible for:

- Reviewing and assessing existing lists of statewide industry sectors and regional tradable sectors, including understanding the importance of these industries and the landscape for their growth in New York State;
- Meeting with relevant internal departments including the Strategic Business Division and Regional Directors involved in assessing and promoting growth in the State in accordance with these sectors; and
- Conducting any data analysis to create justification for the final outcomes, including but not limited to sector growth or contraction outlooks, wage data and earnings potential, comparative analysis of other states/regions, and economic impact of the sector on the state/region.

Task 3: Successful Project Lifecycle Outline

Providing and packaging guidance for ESD and grant recipients on the lifecycle of workforce development projects will be a fundamental resource and tool for informing the Organization’s efforts and guiding implementation by grant recipients.

The Consultant will be responsible for:

- Providing guidance on successful ways of conducting community outreach with the particular goal of reaching populations including, but not limited to, underrepresented racial and ethnic minorities, women, underemployed, refugees, immigrants, veterans, formerly incarcerated individuals, and individuals of low and moderate incomes;

- Demonstrating to and providing information that can be utilized by ESD and for the Organization and grant recipients on effective collaborative workforce development training programs that prioritize identification of employer skill needs, industry involvement in curriculum development, and partnerships between the training organizations and employers that foster post-completion job placement; and
- Information on supporting students through wraparound service and social services partnerships during the skills training program that increases their retention in programs and graduation rates, as well as how to support them post-job placement to ensure retention at employers.

Task 4: Uniform Metrics and Measures of Success

Establishing a standard set of metrics and ways of measuring success is imperative so ESD can articulate program impacts in a uniform way across the state and communicate the success in its efforts to meet the needs of employers in NYS. ESD’s Office of Strategic Workforce Development will be establishing and maintaining a database to track the implementation and impact of its grants and as such will need guidance on the qualitative and quantitative data points for inclusion.

The Consultant will be responsible for:

- Creating a set of key performance indicators the Organization will hold itself to in regard to the data points and metrics for common program tracking across the region and the state;
- Guiding ESD staff on appropriate metrics to include in grant agreements to measure impact of its forthcoming funding programs;
- Including both analytical data points as well as qualitative improvements from the industry-driven workforce development policy such as removing barriers to employment, creation of career ladder paths, attaining an increase in wages, etc.; and
- Providing a framework for reporting out impact by ESD to the public with regular frequency.

IV. SCHEDULE OF DATES

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

Release of RFP	Wednesday, May 11, 2022
Deadline for Submission of Questions	Wednesday, May 18, 2022 By 8:00 PM
Deadline for ESD to Respond to Questions	Friday, May 20, 2022
Submission of Proposals	Friday, June 10, 2022 @ 8:00 PM
ESD Board Approval and Contracting	TBD
Contract Start Date	TBD

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

V. SELECTION CRITERIA

ESD reserves the right to make all decisions regarding the selection of proposals submitted.

1. Skills Required

The selected Consultant team should be proficient and have demonstrated experience in projects of a similar nature. The following minimum qualifications of the Consultant submitting proposals to be considered for evaluation include:

- Ten years of experience providing strategic framework development services for projects of similar scope, complexity and visibility;
- Experience on projects of a similar nature);
- Experience with State agencies and processes.

In evaluating proposals submitted pursuant to this request, ESD places high value on the following factors, not necessarily in order of importance:

- Approach in methodology with respect to the scope of services that demonstrates maximum comprehension of and ability to provide such services;
- Commitment of principals to lead the team and devote time to the project;
- Experience of Consultant and staff being assigned to the project in general, and in particular, providing consulting services to municipalities, economic development agencies, and/or other governmental agencies.
- Quality of work product as demonstrated in submitted work samples of past projects;
- Ability of the prime Consultant to identify sub-consultants with the necessary qualifications for a project of this type.
- Ability of the Consultant to complete projects within schedules and to maintain budget.
- Conformity with or exceeding applicable ESD policies noted herein, including specific policies relating to non-discrimination and affirmative action subcontracting goals.
- Cost of services.

2. Selection Process

Respondent proposals will be evaluated on a “best value” basis using the following weighted Selection Criteria:

- **Experience and Qualifications** (20 points): Proposals will be evaluated based on the expertise of team members and demonstrated successful experience in complex strategic development activities with requirements such as those described in this RFP.
- **Technical Approach** (30 points): Proposals will be evaluated on the quality and completeness of the proposed approach to accomplishing the tasks and deliverables as described in the Scope of Services in this RFP.
- **Subject Matter Expertise** (15 points): Proposals will be evaluated on the Respondent’s ability to demonstrate knowledge of workforce development best practices, particularly in utilizing industry- and employer-driven strategies, and access to data and resources to inform its work.

- **Capacity** (10 points): Proposals will be evaluated on the degree to which it is documented that there is qualified staff in sufficient numbers that can be assigned and deployed immediately to the tasks described herein and to bring the project to a timely conclusion.
- **Cost Proposal** (15 points): Proposals will be evaluated on the Quality of the Applicant institution's justification/rationale for the use of the requested funds
- **Diversity Practices** (10 points): ESD has determined, pursuant to New York State Executive Law Article 15-A, 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 (See Appendix B).

ESD reserves the right to remove Respondents from competitive consideration at one or more points throughout the Solicitation process based on these criteria. Some or all Respondents may be asked to modify their Proposals during the solicitation process, if ESD determines that such modifications will result in an improved result. ESD reserves the right to make such requests to all Respondents or to a subset of all Respondents.

ESD also reserves the right to conduct interviews with or pose questions in writing to individual Respondents to clarify the content of their Proposals and to ensure a full and complete understanding of each Proposal. ESD shall undertake to pursue uniformity in the questions it asks to 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.

VI. SUBMISSION INSTRUCTIONS

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

i. Technical Proposal

Below is a listing of the technical information to be provided by the Respondent. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be submitted via the designated email.

- A. Table of Contents
- B. Firm Experience and Qualifications
- C. Staff Experience and Qualifications
- D. Project Plan and Approach
- E. Estimated Cost
- F. Diversity Practices

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

A. Table of Contents

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

B. Firm Experience

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

- Each Respondent shall submit materials that highlight its unique strengths, breadth of knowledge, and experience.
- A description of the Consultant's organizational structure noting the principals, project manager(s), and professional staff who would work directly with ESD for the duration of the project. Include resumes of key people.
- Overall description of the Consultant's relevant work, including examples of up to three (3) relevant projects that the Consultant has completed.
- Provide references. Include the projects worked on and the names of contact persons who are able to provide references.
- A representation that the Consultant can devote significant and appropriate staff and support staff to the project for all tasks and phases of the project.
- Any other information that you believe would make the Consultant's work on behalf of ESD superior to that of other respondent's information.

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Respondent to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

C. Staff Experience and Qualifications

In this section of the Technical Proposal, Respondents should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP. Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and responsiveness of the Respondent to the client during the engagement.

D. Project Plan and Approach

In this section of the Technical Proposal, Respondents should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

- A description of how the Consultant would work with ESD leadership and the various stakeholders identified in the scope of work on this project.
- A description of how the Consultant intends to address the scope of work set forth in Section III of this RFP.
- A description of how the Consultant intends to maintain the schedule, including specific methods that would be employed.
- A list of subconsultants by respective discipline.
- A description of how the Consultant's response will promote the participation of Minorities and Women on this project.

E. Estimated Cost

- A proposed fee for all Consultant services delineated by task, as outlined in Section III Scope of Work. The proposal must include a detailed staffing plan broken down by task.
- The hourly rate of each principal and staff member whose resume is provided or whose job category may be required.
- A list of anticipated reimbursable expenses and the rate charged for each without markup. Please indicate under reimbursables, a detailed list of working models, presentation models, renderings, or other work product to be furnished during each state of services which is not included in basic services covered by the proposed fee schedule and the cost for each.

F. Diversity Practices

ii. **Administrative Proposal**

Schedule A of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Respondent must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. 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. Conflict of Interest Form, submit with proposal
<https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>
- ii. State Finance Law §§139-j and 139-k forms, submit with proposal
https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf
- iii. Vendor Responsibility Questionnaire, submit with proposal or submit online (and include copy of submitted form with proposal)
https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/111511_VendorForprofit.pdf
- iv. Iran Divestment Act Statement, submit with proposal
<https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>
- v. <https://esd.ny.gov/sites/default/files/EO16-certification.pdf>

- vi. <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>
- vii. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - o OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
<https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>
 - o OCSD-2 - Staffing Plan
<https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>
 - o OCSD-4 - MWBE and SDVOB Utilization Plan
<https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>
- viii. Encouraging the Use of NYS Businesses in Contract Performance Form, submit with proposal
<https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>
- ix. Certification under State Tax Law Section 5-a 220-CA or Affidavit, submit with proposal
<https://esd.ny.gov/sites/default/files/ST220CA.pdf>
- x. W-9 Form, submit with proposal
<https://www.irs.gov/pub/irs-pdf/fw9.pdf>

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

Submission of a Complete Two-Part Proposal

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. All Proposals must be received by 8:00 PM EST on Friday, June 10. Submission of proposals in a manner other than as described in these instructions will not be accepted. When submitting each proposal, Respondents must comply with the following:

1. The Technical Proposal and all related appendices must be submitted electronically before the submission deadline via the designated email
WorkforceDevelopmentCS@esd.ny.gov.
2. The Administrative Proposal and all related forms must be submitted electronically before the submission deadline via the designated email
WorkforceDevelopmentCS@esd.ny.gov. It is essential that the instructions in Appendix A - Administrative Proposal Check List are followed when submitting the different forms.

Late proposals will not be considered for award.

VII. QUESTIONS

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section IV (Schedule of Dates) to WorkforceDevelopmentCS@esd.ny.gov. Questions will not be accepted orally and any question

received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

VIII. GENERAL PROVISIONS

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

- i. amend, modify or withdraw this RFP;
- ii. revise any requirement of this RFP;
- iii. require supplemental statements or information from any responsible party;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any Respondent;
- vii. communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. extend the term of any agreement on terms consistent with this RFP.

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

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

IX. 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 VI of this RFP, as well as information about ESD's procurement requirements.

1. Conflicts of Interest

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

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the

offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this 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 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.

2. 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 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 the designated contact persons listed above; the completion by Respondents of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

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

https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SFLaw139_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 Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

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. Both the prime consultant and any sub-consultants complete the forms required above.

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

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State

Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

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 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)."

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

4. Iran Divestment Act

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

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

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

5. Executive Order 16

In accordance with New York State Executive Order 16 that "all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.

The complete text of Executive Order can be found:

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

6. Executive Order 177

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

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

7. Non-Discrimination and Contractor & Supplier Diversity Requirements

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

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30 percent for MWBE participation, (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

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

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [**SCHEDULE B - PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement

does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

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

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

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

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

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

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

Form OCSD-3:

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

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-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.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. ESD recognizes the need to

promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, 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

- A. ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely

or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of

deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

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

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

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership

in doing business in New York State, Respondents for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

9. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

10. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent’s responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Respondents do not need to complete the entire Schedule A with the submission of their Proposal. However, Respondents should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Respondents will need to accept these terms prior to contract execution.

11. Project Sunlight

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

12. Insurance Requirements

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

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

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

13. W-9 Form

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