



Wayfinding & Interpretive Signage
REQUEST FOR QUALIFICATIONS

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Issued by:

Erie Canal Harbor Development Corporation

A subsidiary of the New York State Urban Development Corporation d/b/a

Empire State Development

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I. INVITATION TO SUBMIT PROPOSALS

The Erie Canal Harbor Development Corporation, a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (ESD), is seeking qualifications from well qualified professional design firms and/or teams with extensive experience in environmental graphic design, industrial design, wayfinding and interpretive systems design, and mobile application development for complex urban environments with heavy pedestrian usage, multimodal access, and historic significance; and experience working with signage fabricators to develop a comprehensive wayfinding and interpretive signage program in the public spaces in and around Canalside, a twenty-one acre waterfront district in downtown Buffalo, New York.

II. PROJECT BACKGROUND

Buffalo, New York

Buffalo is the second most populous city in the state of New York, second only to New York City. Located in Western New York on the eastern shores of Lake Erie and at the head of the Niagara River, Buffalo is the principal city of the Buffalo-Niagara Falls metropolitan area and the seat of Erie County. The city itself has nearly 300,000 residents in 52.5 square miles, while the entire metropolitan statistical area has over 1,200,000 residents.

Canalside

For decades Buffalo, New York's Inner Harbor and Waterfront sat desolate and underutilized until 2005, when the Erie Canal Harbor Development Corporation (ECHDC) was formed to spearhead Buffalo's Waterfront revitalization and reclaim the area as one of America's brightest historical treasures. Millions of dollars in both public and private investment have transformed the Inner Harbor into what is now known as Canalside- a mixed use urban entertainment destination. Open to the public since May 2008, Canalside features several fully restored facets of the original Erie Canal Harbor including the Commercial Slip, Boardwalk, and the Historic Public Canals. A year round attraction that hosts over one million visitors annually, Canalside boasts thousands of events, concerts, festivals, family activities, attractions, historical and cultural programming, art, food, and tours that capitalize on and showcase the diverse resources of the Western New York Region. In addition, the Historic Public Canals are frozen in the winter months to become New York State's largest outdoor ice skating rink. For more information, visit www.CanalsideBuffalo.com.



Canalside Site Plan

Figure II-1

ECHDC is currently leading Phase 3 of Canalside Development. The Canalside Project Area is bounded on the north by Upper Terrace and Exchange Streets and Perry Boulevard; on the east by Washington Street and Seymour H. Knox III Plaza; on the south by Perry Street and the Buffalo River; and on the west by Erie Street, Marine Drive, and Pearl and Commercial Streets. See Figure II-1.

The Canalside project includes both public and private investment for commercial (retail, lodging, and office) and cultural spaces on approximately 20 acres. Canalside provides various year-round offerings and experiences, including a seasonal outdoor ice skating rink, restaurants, entertainment venues, hotels/lodging, cultural attractions, and vast public spaces, including but not limited to the First Niagara Center, HARBORCENTER, One Canalside, the Historic Public Canals, and the Central Wharf/Commercial Slip. In addition, the site benefits from an efficient roadway network that supports regional and

international access to Canada via the Peace Bridge, to the NYS Thruway via Interstate-190, NYS Department of Transportation Route 5, and NTFA's Metro Rail system; and proximity to a host of both local and regional historic, natural, and cultural attractions, include Niagara Falls. Parking in the Canalside area is located within parking garages, with a few small surface lots and a number of on-street parking options also available. It can also be accessed via watercraft with nearly 1,000 linear feet of docking space.

a. Canalside's Private Development Projects

Canalside has two significant private investment projects: One Canalside and HARBORCENTER.

One Canalside is a \$30 million mixed-use project that transformed the former Donovan State Office Building into a mixed-use development. The project began in December 2007, when ECHDC assumed ownership of the vacant building, remediated hazardous waste materials, and completed interior demolition. After a public bidding process, the building was then purchased by Benderson Development who stripped the building down to its steel beams and gave it a modern exterior and interior. One Canalside is anchored by the law offices of Phillips Lytle and also includes a Courtyard Marriot and Pizza Plant restaurant.

HARBORCENTER is a \$200 million mixed use sports and entertainment complex in front of the First Niagara Center, developed by Buffalo Sabres' owners Terry and Kim Pegula. HARBORCENTER consists of a 200 room Marriott hotel, two NHL-sized ice rinks, a state of the art training facility, 716 Food and Sport restaurant, a flagship Tim Hortons Café and Bake Shop, retail shops on the first floor, and an 800 space parking ramp.

b. The Historic Public Canals

The Historic Public Canals, a \$20 million investment in public space on the former location of Buffalo's Memorial Auditorium, is an interpretive landscape of water features and site amenities as dictated by the 1915 survey of the terminus of the Erie Canal. The alignment of the Canals, Towpaths, and Bridges help visitors understand the history and character of the former canal district, the terminus of the Erie Canal and its significance to the City of Buffalo, New York State and the Nation. Opened in 2014, The Canals are actively programmed year-round with a variety of fitness classes, events, activities, and amenities. In addition to the landside activities, the Canals are home to a number of waterside vendors and activities including paddle and pedal boats, remote-controlled sailboats, and SUP Yoga Classes. During the winter months the Canals are drained, frozen, and open for ice rink activities- including open skate, curling, ice bike rentals, skating classes, and pond hockey. Canalside hosts over 60,000 skaters, ice-bikers, and curlers during the winter season.



Historically Aligned Canals – Skating

Figure II-2



Historically Aligned Canals – Programming

Figure II-3

c. Children’s Museum Construction

In 2012, ECHDC’s Board of Directors selected Explore and More Children’s Museum of East Aurora, New York to develop, fit-out, operate, and maintain a world-class children’s museum at Canalside. ECHDC will design and construct the core and shell of the approximately 43,000 sq ft building which will be located on a parcel just south of the

Historic Public Canals. Groundbreaking on this building is expected to occur in spring of 2017 with the ribbon cutting expected in 2018.

d. East Canal

The East Canal is located to the south of the One Canalside building and follows the alignment of the Erie Canal as dictated by the 1915 survey. The East Canal is an outdoor public space that features a granite plaza, a shallow pool of water, fountains, seating, lighting and a shaded tree grove. The water feature is approximately two feet deep, with troughs to circulate the water, and lined with Towpaths to allow the public to walk along the entire Canal. The eastern end of the East Canal integrates tree plantings with the space to create a tranquil, quiet urban oasis within the busy district. The East Canal is not designed to be drained in the winter for ice skating.



East Canal – Summer & Winter
Figure II-3

e. Central Wharf

Opened in 2008, Canalside’s Central Wharf has emerged as downtown Buffalo’s most popular public space. Overlooking the Buffalo River, the Central Wharf is home to thousands of events each spring summer, and fall, including concerts, fitness classes, musical performances, children’s activities, history tours, and a local artisan market. The Central Wharf features several fully restored facets of the original Erie Canal, including the Commercial Slip and its historic ruins, a wooden plank boardwalk that runs along the river, the “Whipple Truss” Foot Bridge, and cobblestone streets. Canalside’s signature colorful Adirondack chairs have become iconic with waterfront visitors and, combined with benches, provides a variety of seating options for visitors to take in the sweeping views of the River, the sunsets, or the Grain Elevator Light Display (www.canalsidebuffalo.com/grainelevator). The Central Wharf is also home to Clinton’s Dish take out restaurant & ice cream stand, a beer garden, 1000’ linear feet of public transient docking, as well as various waterside

activity and charter boat operators. The Central Wharf and public docks are owned by the City of Buffalo but are fully managed by ECHDC. Based on a management agreement between ECHDC and the City of Buffalo, ECHDC has exclusive management rights at the City own property.



Central Wharf & Lawns

Figure II - 4

f. Pierce, Dart, and Dunbar Lawns

Immediately adjacent to the Central Wharf are the Pierce, Dart, and Dunbar Lawns. These development sites are owned by the City of Buffalo, and were sodded in 2012 for aesthetic and functional reasons. The lawns provide large areas for passive and active recreation, and are home to many Canalside activities, including the popular Canalside Free Thursday concert series.

g. Historic Ruins & Commercial Slip

Canalside's Commercial Slip is a recreation of the historic Western Terminus of the Erie Canal and is located at the northern end of the Central Wharf. Today, the slip serves as docking space for ECHDC-approved charter boats that provide tours, sailing trips, and bike ferry service from Canalside to Buffalo's Outer Harbor. Adjacent to the Commercial Slip is the Historic Ruins- three "outdoor rooms" formed by the actual foundations of the small mercantile buildings that lined the original Commercial Slip. The Ruins have been repurposed as an intimate public space that hosts historic and cultural programming as well as private events.



Commercial Slip & Historic Ruins

Figure II - 5

III. PROJECT SUMMARY

ECHDC wishes to develop a comprehensive signage program that welcomes and guides visitors from major entrance points into the Canalside District; and establishes design standards for district wide wayfinding signage that is reflective of Canalside’s identity. While guiding visitors through the Canalside District, the program shall educate and enlighten visitors on the historical significance of the district and the role the terminus of the Erie Canal played in not only Buffalo’s but the United States’ history. ECHDC established the Canalside History Committee with the goal of developing a cohesive historic narrative that identifies the appropriate stories and periods of significance to be told at Canalside. The successful respondent shall consult with the Canalside History Committee when developing content for the interpretive components, but will be responsible for the final content and copy. ECHDC has various public art installations including “Shark Girl” by Casey Riordan Millard, and “Silent Poets” by Jaume Plensa, as well as numerous art programs and events. Public art is an integral part of Canalside’s character and the signage program should include some element of public art in its design.

The signage program shall include, but not limited to, custom wayfinding signs; street and highway signs; historic interpretive signs and interactive outdoor exhibits. In addition to the static signage, ECHDC is looking to develop a mobile application to enhance the visitor’s experience with respect to general wayfinding, guided tours, and to push information about events, amenities, and news at Canalside. ECHDC is open to digital signage to be incorporated in to the overall signage program.

Prospective designers and/or team shall recognize the complexity of Canalside with its unique urban waterfront environment; heavy pedestrian usage; thousands of year-round events and programs; historic significance; and multimodal access, including but not limited to vehicular (both highway and local streets), pedestrian, bicycle, metro-rail, and boat.

The project budget is \$750,000 for fabrication and installation of the program.

IV. PRELIMINARY SCOPE OF SERVICES

(The following scope of work is subject to change prior to requesting full proposals)

The successful respondent and/or team will be expected to complete the following tasks:

Phase 1. Data Collection and Analysis

- a. Establish image and branding goals
- b. Define user profiles
- c. Understanding of the physical characteristics of the site and surrounding district
- d. Determine circulation pathways and decision points
- e. Allow for 1 meeting with the Canalside History Committee

Phase 2. Schematic Design

- a. Form an overview of the comprehensive project, including, but not limited to, static signage, mobile application, interactive exhibits, and potential digital signage
- b. Identify key locations and communications function within the program
- c. Determine the approaches to sign message nomenclature and hierarchy
- d. Establish typeface, symbols, material and color palette options
- e. Allow for 1 meeting with the Canalside History Committee

Phase 3. Design Development

- a. Complete inventory of all signs and mobile application functions, as well as interactive outdoor exhibits
- b. Determine physical characteristics of signs and exhibits, such as size, shape, material, mounting method, and graphic application technique.
- c. Determine communication functions for each sign such as identification, directional, operational, and interpretive signage.
- d. Draft content for historic interpretive signs shall be developed with Canalside History Committee
- e. Allow for 1 meeting with the Canalside History Committee

Phase 4. Bid Documentation

- a. Final sign and exhibit location plans
- b. Final message schedule
- c. Final sign and exhibit graphics drawings
- d. Final sign and exhibit hardware drawings
- e. Technical Specification

Phase 5. Bidding

- a. Qualify Bidders
- b. Develop bid form
- c. Respond to information requests
- d. Attend pre-bid meeting
- e. Review and provide recommendation on contract award

Phase 6. Fabrication/Installation Observation

- a. Manage coordination meetings
- b. Review and approve submittals
- c. Shop visits during fabrication
- d. Site visits during installation
- e. Develop punch list, final inspection and sign off

The successful respondent will be responsible for obtaining all necessary approvals from governing agencies, including but not limited to:

- City of Buffalo
- New York State Department of Transportation
- New York State Thruway Authority
- Niagara Frontier Transit Authority

This is a Request for Qualification. Submitting firms will be considered based on the Selection Process outlined below. A final scope of work and schedule will be distributed to the short-listed group of firms to submit full proposals.

V. SELECTION PROCESS

A. Skills Required

The successful respondent (or team) will have extensive experience in the environmental graphic design, industrial design, mobile application development,

wayfinding and interpretive signage design, and interactive outdoor exhibit design in complex urban environments with heavy pedestrian usage, multimodal access, and historic significance. The designer and/or team shall have strong design practice and experience in overseeing the fabrication and installation of complex signage systems and interactive outdoor exhibits.

The successful respondent (or team) will embrace that Canalside aspires to be a world-class, entertainment destination, and will have extensive experience designing and successfully installing signage systems and interactive exhibits with incredibly high standards.

The successful respondent (or team) will also have extensive experience working with committees and stakeholders during the design of the content of interpretive signage, specifically related to significant historic content.

B. Selection Process

Selection of the firm considered to be the "best qualified" shall be made in accordance with the following evaluation criteria and weights (100 total points) as follows:

- Experience/qualifications of the company (or companies) and staff to undertake the specific requirements of the Preliminary Scope of Services – 30 points;
- Approach of the company (or companies) on technical aspects of the services, including its overall approach to developing the signage programs, mobile applications, and exhibits – 25 points;
- Familiarity and experience working in complex urban entertainment/cultural/waterfront districts similar to Canalside – 20 Points;
- Experience of the company (or companies) with working in teams and with partners to coordinate operations with programming and events – 10 points;
- Diversity Practices – Respondents will be points based upon the contents of the Diversity Practices Questionnaire and the Diversity Practices Scoring Matrix (see Exhibit B) – 10 points.
- Experience working with stakeholder groups and committees – 5 points;

It is expected that a maximum of three (3) applicants will be selected, or 'short-listed' for interviews. **Interviews will be held on August 4-5, 2016 at ECHDC Office.** 'Short-Listed' proposers will be notified by close of business on **August 1, 2016.** Selection for interviews

will be based on an independent evaluation of the submitted qualification using the above factors. ECHDC reserves the right to forego the interview phase in the event of only one qualified response.

Selection of qualified bidders will be based on the above factors, as well as the interview performance. After the interview process, ECHDC will issue the Final Scope of Services to the qualified 'Short-Listed' proposers to provide Final Proposals. The final selection will be a "best value" selection based on the quality and project approach to the Final Scope of Services as well as the proposed cost (to include a review of the proposed number of hours and hourly rated). ECHDC reserves the right to;

- Seek clarification and revisions of proposals
- Seek a final and best offer from those firms short-listed.
- Make an award under the RFP in whole or in part.
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements for the solicitation.
- Make revisions to the scope of work after contract award to ensure that the project goals are met.

C. Proposal Requirements

Respondents or teams are required to submit one (1) signed original, five (5) hard copies, and one (1) electronic copy on CD of the proposal.

The proposal should include a cover letter or statement demonstrating the respondent's understanding of the project, scope of services, and Canalside's role as an important network of active public spaces in downtown Buffalo. The cover letter or statement should also describe the respondent's understanding of ECHDC's goals for Canalside and how the respondent would work with ECHDC to achieve those goals.

The proposal must contain the qualifications and experience of the key personnel that the respondent will assign to this project. It should also contain hourly rates for the key personnel who will work on this project.

The proposal should include a written description of the company's intended approach to the project that demonstrates an understanding of the issues and tasks at hand, and the

company's ability to fulfill them. Please indicate which roles team personnel will play as the project progresses through the design, production and installation phases.

The proposal should include detailed descriptions of the company's (or the team's) work in at least three (3) comparable and relevant projects, and references for those projects. If applicable, indicate where and how public art played a role within the signage system.

In the case of teams of more than one company, the Proposal should include projects where the team has worked together before and a detailed description of the partnership.

All proposers are encouraged to review the Canalside website, www.canalsidebuffalo.com to gain an understanding of the Canalside Districts' programming and events, branding elements, and a sense of the community's appreciation and involvement at Canalside.

Proposers should recognize that the Aud Block will be active construction projects, currently scheduled for completion in 2018.

The Proposal shall be limited to no more than 100 single-sided or 50 double-sided pages. Three-ring binders will not be accepted. Exhibit B - Required Forms do NOT count against the page limit.

D. Other Certifications & Requirements

1. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145 ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29,

2010, under the title “The State of Minority and Women-Owned Business Enterprises: Evidence from New York” (“Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified Minority-owned Business Enterprises (“MBE”) participation and 15% for New York State certified Women-owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that ESD may withhold payment 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 determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and ESD may withhold payment from the Contractor 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 bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs 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 Bidder may arrange to provide such evidence via a non-electronic method by contacting ESD’s Office of Contractor and Supplier Diversity (OCSD) at OCSD@ESD.NY.GOV. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

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

- A. An MWBE Utilization Plan (Form OCSD-4) with their bid or proposal. Any modifications or changes to the 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.

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

- B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) 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 and direct the Bidder 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 Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE 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.

The Contractor 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 Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the 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 Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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 Contractor, 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 Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form OCSD-1, to ESD with their bid or proposal.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Form OCSD-2) identifying the anticipated work force to be utilized on the Contract. If awarded a Contract, Bidder shall submit a Workforce Utilization Report (Form OCSD-3) and shall

require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a quarterly basis during the term of the contract.

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.

Form OCSD-1

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf

Form OCSD-2

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf

Form OCSD-3

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_WorkforceUtilizationReport.xlsx

Form OCSD-4

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4MWBEUtilizationPlan.pdf

In the event that the above links are unavailable or inactive, the forms may also be requested from ESD’s Office of Contractor & Supplier Diversity (“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 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 Exhibit B).

2. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses

NEW YORK STATE LAW

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York 19

State, respondents for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Respondents need to be aware that they will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, Respondents are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

For purposes of the RFP, ESD hereby establishes a goal of 3% for SDVOBs, based on the current availability of qualified SDVOBs. The Contractor must document Good Faith Efforts to provide meaningful participation by SDVOBs in the performance of the Contract.

A copy of each Respondent's SDVOB Contract Performance Use form proposing specific certified firms to be utilized or industries where SDVOB firms shall be sought is to be included as part of the response to this RFP. A copy of the form is available at: <http://esd.ny.gov/CorporateInformation/Data/RFPs/SDVOBContractPerformanceUse.pdf>

General inquiries or questions relating to aforementioned policies, MWBE and SDVOB participation and the goals specified herein may be addressed to OCSD at OCSD@ESD.NY.GOV.

3. 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 responses a properly completed Form ST-220-CA, a copy of which is accessible at the Required Forms for Vendors link at the ESD web site. (<http://esd.ny.gov/CorporateInformation/RFPs.html>).** 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.

4. State Finance Law Sections 139-j and 139-k

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, ECHDC 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 (x) 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 below; (y) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD web site under “RFPs/RFQs”); and (z) 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 of and Agreement pursuant to State Finance Law as part of their submittal.**

The Procurement Requirements also require ESD and ECHDC staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective

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.

For the purpose of compliance with State Finance Law Sections 139-j, contact with Kaitlin McGee Chmura, Project Manager of ECHDC is considered permissible. Contact information for Ms. Chmura is provided in Section IX.

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/RFPs.html> (under “ESD Policy Regarding Permissible Contacts under SFL 139”)

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and the sub-consultants complete the forms required above.

5. Insurance Coverage

Please note that **upon selection** for this Project, the Consultant will be required to demonstrate/provide the following insurance coverage, adding “additionally insured” as outlined in Exhibit A, Section A.5:

- Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate
- Auto Liability insurance - \$1 million each accident Umbrella Liability insurance - \$5 million per occurrence / \$ 5 million aggregate
- Excess Umbrella Liability insurance - \$5 million per occurrence / \$ 5 million aggregate
- Must show evidence of Workers’ Compensation insurance and Disability Benefits insurance in compliance with the laws of the State of New York and Employers Liability insurance with limits of \$1 million Bodily Injury each Accident, \$1 million Bodily Injury by Disease - Policy Limit and \$1 million Bodily Injury - Each Employee
- The Erie Canal Harbor Development Corporation and the NYS Urban Development Corporation d/b/a Empire State Development must be named as additional insureds on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Liability policies
- As respects General Liability, the additional insured endorsements shall be on forms at least as broad as ISO Forms CG 20 10 07 04 & CG 20 37 07 04 combined and shall

not include any exclusions that limit the scope of coverage beyond that provided to the named insured. All policies listed above should include a waiver of subrogation in favor of ECHDC & NYS UDC d/b/a ESD.

- Professional Liability Insurance of \$2 million each claim / \$2,000,000 policy term aggregate.

An individual certificate (including hold harmless) must be provided to each of the following organizations: New York State Urban Development Corporation d/b/a as Empire State Development Corporation, the Erie Canal Harbor Development Corporation, the New York State Department of Transportation, and the City of Buffalo.

6. Vendor Responsibility

ESD ask vendors to register in the State's Vendor Responsibility System (VendRep System). The VendRep 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. Vendors are asked to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company's trade industry.

7. Project Sunlight

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 for services 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, Proposers and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

8. Iran Divestment Act

As part of ECHDC/ESD procurement guidelines, upon submission of proposal, the prime Consultant shall comply with the Iran Divestment Act. The following language shall be submitted on company letterhead and signed by the Consultant;

"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."

9. Encouraging use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers 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. Such partnering may be as sub-contractors, suppliers, protégés or other supporting roles (herein collectively called "Subcontractors").

Bidders/proposers need to be aware that, if selected through this ESD solicitation, they will strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in performing the contract, including without limitation: (i) purchasing commodities that are of equal quality and functionality; and (ii) in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the questions below:

(A) Do you anticipate the need for Subcontractors fulfilling the requirements of this ESD contract? Yes No

(B) Will New York State businesses be used in the performance of this ESD contract as Subcontractors? Yes No

NOTE: If the answer to question (B) is Yes, please identify New York State businesses that will be used and attach identifying information (e.g., name, address, contact information, nature of business).

VI. PRE-SUBMITTAL CONFERENCE

The Erie Canal Harbor Development Corporation will be made available at a non-mandatory, pre-submittal conference **on July 12, 2016 at 12:00 Noon Eastern Standard Time (EST)** at 95 Perry Street, Suite 500. A tour of the site will follow at 1:00pm. Please contact Kaitlin McGee Chmura, ECHDCProcurement@esd.ny.gov or (716) 846-8238, if you plan to attend the pre-submittal conference and tour by **July 11.**

VII. PROJECT COST & SCHEDULE

ECHDC had budgeted \$750,000 for the fabrication and installation of the signage programs.

The major projected milestones on the consultant selection schedule are as follows:

- | | |
|--|-------------------------------|
| 1. RFQ Advertised | June 28, 2016 |
| 2. Pre-Submittal Conference & Site Tour: | July 12, 2016 (12:00noon EST) |
| 3. Questions Due: | July 15, 2016 |
| 4. Answers to Questions Issued: | July 19, 2016 |
| 5. Qualifications Due: | July 27, 2016 (2:00pm EST) |
| 6. Notification of shortlisted firms: | August 1, 2016 |
| 7. Interviews: | August 4-5, 2016 |
| 8. RFP Issued to Successful Respondents | August 9, 2016 |
| 9. Proposals Due | August 24, 2016 |
| 10. ECHDC Board Approval: | September 12, 2016 |

VIII. TIME & PLACE OF SUBMISSION

Respondents will not receive compensation or reimbursement of any expenses associated with preparing and/or submitting the proposal.

Respondents are required to submit one (1) original, five (5) copies, and one (1) electronic copy on CD of their submittal **prior to 2:00 P.M. EST on July 27, 2016**. Responses shall be firmly sealed in an envelope or box, and contain the Respondent's name and return address.

Please be advised that under no circumstances will ECHDC obligate itself to consider a response which is received after the deadline or does not include the basic items described above.

Responses shall be delivered to:

Thomas P. Dee, President
Erie Canal Harbor Development Corporation
Attn: Canalside Environmental Graphics & Signage RFQ 2016
95 Perry Street, Suite 500
Buffalo, New York 14203

The ECHDC reserves the right to reject a submittal if any document or item listed in this RFP is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a respondent without further consideration:

- Evidence of collusion among Respondents;
- Any attempt to improperly influence any member of the evaluation panel or Committees;
- Discovery that a Respondent purposely misled or knowingly provided false or inaccurate information in a submittal;
- A Respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Existence of any unresolved litigation or legal disputes

The ECHDC reserves the right to reject any and all submittals and to waive any informalities or irregularities in procedure.

IX. ADDITIONAL INFORMATION

Any all questions or requests for additional information or documents will be accepted no later than **close of business on July 15, 2016** to:

Kaitlin McGee Chmura, Project Manager

Erie Canal Harbor Development Corporation
95 Perry Street, Suite 500
Buffalo, New York 14203
(716) 846-8238
ECHDCProcurement@esd.ny.gov

Questions shall be **submitted in written form** and answers will be sent via e-mail on **July 19, 2016**. Additional information may become available and, substantive questions and document requests may be made available at any point during this process.

X. GENERAL TERMS & CONDITIONS

In addition to the terms and conditions stated elsewhere in this RFQ/P, it is subject to the terms and conditions set forth in Exhibit A hereto.

XI. ATTACHMENTS

- Exhibit A – General Terms and Conditions (including Schedule A)
- Exhibit B – Required Forms

SCHEDULE A

**CONDITIONS APPLICABLE TO THE CORPORATION'S AGREEMENTS
FOR MATERIALS/SERVICES**

ARTICLE 1
GENERAL TERMS

1.1 THE CORPORATION. As used herein, the "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") unless the Contract for Materials/Services of which this Schedule A forms a part has been entered into by a subsidiary entity of ESD, in which case the "Corporation" shall mean such subsidiary.

1.2 SUPERVISION BY THE CORPORATION. The services to be performed by Contractor under this Agreement shall be subject to the general supervision and direction of the Corporation provided that neither the Corporation's exercise nor failure to exercise such supervision and direction shall relieve the Contractor of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.3 CONTRACTOR'S REPRESENTATIVE. The Contractor shall designate in writing to the Corporation one individual, satisfactory to the Corporation, who shall be responsible for coordinating all of the services to be rendered by the Contractor and who shall be the Corporation's normal point of contact with the Contractor on matters relating to such services. Such individual shall be replaced upon the Corporation's written request.

1.4 CORPORATION'S REPRESENTATIVE. The Corporation shall designate in writing to the Contractor an individual who will serve as the Corporation's Representative and normal point of contact for the Contractor in regard to this Agreement and the Contractor's services and obligations hereunder. The Corporation may from time to time change this designation by written notification to the Contractor.

1.5 CONTRACTORS AS INDEPENDENT CONTRACTOR. Notwithstanding any other provisions of this Agreement, the Contractor's status (and that of any Subcontractor) shall be that of independent contractor and not that of an agent or employee of the Corporation. Accordingly, neither the Contractor nor any Subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Corporation.

1.6 APPROVAL OF SUBCONTRACTORS. The Contractor shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subcontractor") in connection with the performance of its obligations under this Agreement without the prior written consent of the Corporation. The Contractor shall inform the Corporation in writing of the name, proposed service to be rendered, and compensation of the Subcontractor, and of any interest the Contractor may have in the proposed Subcontractor.

1.7 APPROVALS OR ACCEPTANCE BY THE CORPORATION. Whenever action is to be taken, or approval or acceptance given, by the Corporation, such action, approval or acceptance shall be deemed to have been taken or given only if so taken or given by the Corporation's Representative, by the official of the Corporation who signed this Agreement on behalf of the Corporation, or by another officer or employee of the Corporation duly designated by such signing officer to represent the Corporation in connection therewith. The Corporation shall notify the Contractor in writing of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Corporation's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by the Contractor hereunder shall in no way relieve the Contractor of responsibility for such materials.

1.8 CONFLICT-OF-INTEREST. The Contractor represents and warrants that:

(a) The Contractor has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Contractor's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of the Corporation, or any of its subsidiaries shall be permitted by the Contractor to share in any benefit to arise from the Contractor's work.

(c) The Contractor shall not permit any officer, employee, agent or director of the Corporation, or any of its subsidiaries to participate in any decision relating to this Agreement which affects the personal interest of the aforementioned individuals, or the interests of any corporation, partnership, or association in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of the Corporation, or any of its subsidiaries be permitted by the Contractor to have any interest, direct or indirect, in this Agreement or the proceedings thereof.

(d) The Contractor shall cause, for the benefit of the Corporation, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), (c) of this Section 1.8. The Contractor will take such action in enforcing such provisions as the Corporation may direct, or, at its option, assign such rights as it may have to the Corporation for enforcement by the Corporation.

1.9 NO BROKER. The Contractor represents that it has not employed any person, corporation or partnership, to solicit or procure this Agreement, and has not made, and will not make, any payment or agreement for the payment of any commission, percentage, brokerage or contingent fee, or other compensation in connection with the procurement of this Agreement.

1.10 NOTICE OF OVERRUNS AND DELAYS. The Contractor shall promptly give written notice to the Corporation's Representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, which may result in an

increase in: (a) the compensation due Contractor; (b) reimbursable expenses; (c) the number of hours necessary to perform the work; and/or (d) which may delay completion of the work or extend the Completion Date.

ARTICLE 2
DOCUMENTS AND RECORDS

2.1 OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS. All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Contractor under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Corporation, and the Corporation shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specifications and other documents with out payment of any additional royalty, charge or other compensation to Contractor. Upon request of the Corporation during any stage of the work, Contractor shall deliver all such materials to the Corporation. The Contractor further agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of the Corporation, except that Contractor may retain copies of such reports and other documents for general reference use.

2.2 MAINTENANCE OF RECORDS. The Contractor shall maintain, and shall require any and all subcontractors to maintain, until six (6) years after completion of services hereunder or termination of this Agreement by the Corporation: (a) the original books, documents, materials and other records created or collected in the course of Contractor's (and Subcontractors') performance of its (their) obligations under this Agreement (and any subconsulting agreement), and indexes of the same; (b) unless waived or modified in writing by the Corporation, complete and correct records of time spent by Contractor (and Subcontractor) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Contractor is being reimbursed for out-of-pocket expenses, complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement (and any subcontract), including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Contractor (and Subcontractors) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Contractor (and Subcontractor) in performing its obligations hereunder (or under any subcontract). Contractor (and Subcontractor) shall make such books, records and indexes available to the Corporation, the State of New York, any other governmental entity having an interest in the performance of services under this Agreement (or any subconsulting agreement) and any of their authorized representatives for review and audit at all such reasonable times as the Corporation or any such other entity may from time to time request. Contractor shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Contractor invoices in accordance with this Agreement.

This Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 3
TERMINATION

3.1 DEFAULTS BY CONTRACTOR. If any material representation made by the Contractor in this Agreement shall prove to be false or misleading in any material respect, or if the Contractor shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of ten (10) days after written notice from the Corporation specifying the occurrence, omission or failure giving rise to such default, or if, in the opinion of the Corporation, by reason of the nature of such default, such default cannot be cured within such ten (10) day period, then if the Contractor shall not within such period commence with due diligence the curing of such default and thereafter prosecute and complete the curing of such default as promptly as possible, except that the Corporation shall not be required to give Contractor such written notice and Contractor shall not have such right to cure for Contractor's failure to comply with Section 1.10 hereof, the Corporation, in addition to any other remedies or claims it may have with respect to such representation or such default may terminate this Agreement immediately upon verbal or written notice to the Contractor. In the event of such termination, the Corporation, without waiving any such remedy or claims, (including consequential damages) shall not be required to pay the Contractor any portion of the fee specified in this Agreement remaining to be paid for which valid vouchers have not been submitted pursuant to this Agreement on or before the date of the Corporation's notice of termination.

3.2 OPTIONAL TERMINATION BY THE CORPORATION. The Corporation at any time, in its sole discretion and with or without cause, may terminate this Agreement or postpone or delay all or any part of the Agreement upon written notice to the Contractor. In the event of such termination, postponement or delay, the Corporation shall pay the Contractor for professional time and out-of-pocket expenses incurred by Contractor to the date that notice of such action is received by Contractor. The Contractor agrees to cause any agreement or contract entered into by Contractor with any Subcontractor to provide for an optional termination by Contractor consistent with the provisions of this Section 3.2.

ARTICLE 4
INDEMNIFICATION

4.1 Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all injuries to persons (natural and otherwise), including without limitation death, and all physical and other damage(s) sustained by persons while performing or resulting from the performed work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Contractor pursuant to this Agreement.

4.2 Contractor agrees to defend, indemnify and hold harmless the Corporation, the State of New York and, if the Corporation is an ESD subsidiary, ESD and each of their respective officers, directors, commissioners, employees and representatives (collectively, the "Indemnitees") from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for

injuries to persons natural or otherwise, and including without limitation death and other damage(s), if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the Indemnites by reason of claims against Contractor or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnites for reasonable attorneys' fees incurred in connection with the above.

4.3 Contractor shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Contractor or its Subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Contractor, its Subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

This Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 5

PROVISIONS REQUIRED BY LAW

5.1 CONTRACTOR TO COMPLY WITH LEGAL REQUIREMENTS. The Contractor in performing its obligations under this Agreement shall comply with all applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full herein.

5.2 CONTRACTOR TO OBTAIN PERMITS, ETC. Except as otherwise instructed in writing by the Corporation, the Contractor shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Corporation or the Contractor in connection with this Agreement.

5.3 WORKERS' COMPENSATION INSURANCE. The Contractor agrees that:

(a) It will secure Workers' Compensation and Disability insurance and keep insured during the life of this Agreement such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Worker's Compensation Law; and

(b) This Agreement shall be voidable at the election of the Corporation and of no effect if the Contractor fails to comply with this provision.

5.4 NO ASSIGNMENT WITHOUT CONSENT. The Contractor agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of the Corporation;

(b) If the prohibition of Section 5.4(a) be violated, the Corporation may revoke and annul this Agreement and the Corporation shall be relieved from any and all liability and obligations thereunder to the Contractor and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Contractor and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

5.4 NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY. The Contractor shall comply, and cause each of its subcontractors to comply, with the provisions of Schedule B attached to and made a part of this Agreement, relating to non-discrimination and contractor & supplier diversity.

5.5 TAX LAW SECTION 5-a COMPLIANCE.

(a) If this Agreement has a value in excess of \$100,000 during the term of this Agreement, the Contractor shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law

(Found here: https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). A copy of the Contractor's initial Form ST-220-CA is attached hereto as Appendix A.

(b) The Contractor's certification shall be updated if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

(c) If the Contractor is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Contractor is exempt), the Contractor shall so certify to the Corporation, including in such certification the reason(s) for exemption, in affidavit submitted in lieu of Form ST-220-CA (the form of affidavit may be found here: http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf).

5.6 STATE FINANCE LAW SECTION 139-J & 139-K COMPLIANCE. If the value of this contract is over \$15,000, the Contractor hereby certifies that all information provided to the Corporation with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law Section § 139-j, attached to this Agreement as Appendix B, and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Appendix C, is complete, true and accurate (Found here: http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf). The Contractor acknowledges that the preceding sentence is a material representation upon which the Corporation is relying in entering into this Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement shall be subject to termination pursuant to Section 3.1 hereof.

ARTICLE 6
OTHER STANDARD PROVISIONS

6.1 NO WAIVER. No failure by the Corporation to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by Contractor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Corporation. No waiver of any breach shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

6.2 ASSIGNMENT BY THE CORPORATION. The Corporation may transfer and assign any and all of its rights and obligations under this Agreement, including transferring and assigning its rights to the Contractor's performance of any portion of the services provided for herein, together with the Corporation's obligations and rights pertaining to such portion of services, to any partnership, firm, corporation, governmental agency or department or other entity which the Corporation determines has undertaken or will undertake any part of the Agreement. The Corporation shall give the Contractor written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Corporation of any further liability or obligation hereunder

6.3 NO ASSIGNMENT BY CONTRACTOR. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the Corporation's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The Corporation retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the Corporation's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

6.4 GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of New York, except where the Federal supremacy clause requires otherwise.

6.5 ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

6.6 CONFIDENTIALITY. Contractor hereby agrees that all data, recommendations, reports and other materials developed in the course of performance under this Agreement are strictly confidential between Contractor and the Corporation and Contractor may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from the Corporation. Notwithstanding the preceding sentence, Contractor shall cooperate fully with such third parties as the Corporation may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Contractor in connection with performance under this Agreement.

6.7 RELEASE AND DISCHARGE. Simultaneously with request for final payment hereunder, Contractor shall execute and deliver to the Corporation an instrument releasing the Corporation from any and all claims, demands and liabilities whatsoever of every kind of nature both at law and in equity arising from, growing out of, or in any way connected with this Agreement. A copy of such release is annexed hereto as Appendix D and made a part hereof.

6.8 NOTICES. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) by certified or registered United States mail, return receipt requested;
- (b) by personal delivery;
- (c) by FedEx, UPS or other recognized expedited delivery service; or
- (d) by e-mail.

Such notices shall be addressed to the parties as set forth in the Contract to which this Schedule A is appended, or to such different addresses as the parties may from time-to-time designate in writing transmitted as set forth above. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

6.9 NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily mandated), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

6.10 MISCELLANEOUS. The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any other part of this Agreement.

ARTICLE 7
BILLING POLICY

7.1 Contractor is required to submit detailed documentation in support of Contractor's request for reimbursement. Invoices should be submitted monthly and include the Corporation's contract and project numbers, if any. Contractor should also include federal identification number with the first invoice. All invoices and their accompanying documentation must be forwarded with a letter of transmittal to:

Accounts Payable Department
NYS Urban Development Corporation
633 Third Avenue
New York, New York 10017-6754

Out-of-pocket expenses should be delineated on any invoices by general category. The Contractor must submit supporting documentation for each individual expense category in excess of \$250.

7.2 REIMBURSABLE EXPENSES. Where the Agreement provides that the Corporation will reimburse Contractor for out-of-pocket expenses, the following maximum amounts apply:

7.2.1 MEALS AND INCIDENTAL EXPENSES. Reimbursed in accordance with the Federal General Services Administration ("GSA") per diem rate schedule of the fiscal year of this agreement (see <http://www.gsa.gov/portal/content/104877>), provided that the names of all attendees shall be included in the request for reimbursement.

7.2.2 PRINTING.

- (a) Internal printing or copying is not reimbursable, unless ordered by or for the specific use of the Corporation.
- (b) Outside printing will be reimbursed only to the extent of prints requested by the Corporation, and at cost evidenced by a receipt.
- (c) No postage will be reimbursed for printing requested by the Corporation.

7.2.3 TRANSPORTATION. Privately Owned Vehicle (POV) Mileage will be reimbursed in accordance with the Federal General Services Administration ("GSA") POV Mileage Reimbursement Rate found here: <http://www.gsa.gov/portal/category/104715>.

7.2.4 LODGING. Reimbursed in accordance with the Federal General Services Administration ("GSA") per diem rate schedule of the fiscal year of this agreement (see <http://www.gsa.gov/portal/content/104877>).

7.2.5 NON-REIMBURSABLES.

- (a) Flight insurance

- (b) Valet Services (except five or more consecutive days of travel)
- (c) Personal expenses of any type
- (d) Expenses paid for the Corporation's employees.
- (e) Travel to or from any office of the Corporation for administrative reasons.

7.3 EQUIPMENT AND SUPPLIES. Where the Agreement allows reimbursement for equipment and supplies, insurance or similar items, the Contractor must supply the following detailed documentation:

- (a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, insurance or other reimbursable items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).
- (b) Title to all equipment purchased pursuant to this Agreement is vested in the Corporation. The Corporation has the option of claiming any or all of such equipment.

7.4 GENERAL.

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible original receipts should be presented.
- (c) At any time or times until three years after completion of Contractor's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Corporation on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

ARTICLE 8
INSURANCE

8.1 The Contractor shall carry, and shall require each of its Subcontractors to carry, insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required depending on the nature of the services to be performed under this Agreement or a sub consulting agreement. Any such additional types or amounts of coverage shall be specified attached hereto as Appendix E.

8.2 COMMERCIAL GENERAL LIABILITY INSURANCE.

Limits of Liability:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$10,000 Medical Expense Limit (any one person)

\$1,000,000 Damage to Rented Premises (each occurrence)

- (a) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.
- (b) Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
- (c) Policy shall include coverage for Independent Contractors;
- (d) Policy shall include Contractual Liability for liability assumed under this contract

8.3 COMMERCIAL AUTO LIABILITY INSURANCE. If applicable:

Limit of Liability:

\$1,000,000 Each Accident

- (a) Policy shall be written on ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9)

8.4 WORKERS' COMPENSATION INSURANCE. Workers' Compensation and Disability Benefits as required by New York State. Proof of compliance shall be in the form specified on Appendix F.

Employer's liability

\$1,000,000 Bodily Injury each Accident

\$1,000,000 Bodily Injury by Disease - Policy Limit

\$1,000,000 Bodily Injury by Disease - Each Employee

8.5 UMBRELLA/EXCESS LIABILITY. If applicable, see Appendix E.

8.6 PROFESSIONAL LIABILITY INSURANCE. If applicable, see Appendix E.

8.7 Certificates of Insurance for all of the aforementioned coverages shall be of form and substance acceptable to the Corporation and shall be provided to the Corporation prior to the commencement of work under this Agreement.

8.8 OTHER REQUIREMENTS.

- (a) The Corporation and, if different, the New York State Urban Development Corporation d/b/a Empire State Development Corporation, other additional insured as the Corporation may specify in writing attached hereto as Appendix G, and each of their directors, officers, employees, agents and representatives shall be named as an additional insureds.
- (b) As respects General Liability, additional insured endorsements shall be on a form at least as broad as ISO Forms CG 20 10 07 04 & CG 20 37 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which the above parties are required to be named as Additional Insureds.
- (c) Contractor shall, by specific endorsement to its primary commercial general liability policy and, if applicable, automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and non-contributory with any other valid and collectible insurance available to the Additional Insureds.
- (d) Acceptance and/or approval by the Corporation of any insurance does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities.
- (e) All required insurance shall be obtained at the Contractor's sole cost and expense; shall be primary and non-contributory to any insurance or self-insurance maintained by the Corporation; shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail.
- (f) All required insurance shall be maintained with insurance carriers licensed to do business in New York State, acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.
- (g) Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Corporation.
- (h) Contractor shall require that any of its subcontractors hired in connection with the services to be performed under this Agreement carry insurance of the same types and with the same limits and provisions provided herein and add the Corporation as additional insured on a form at least as broad as ISO Form CG 20 38 04 13.
- (i) The Contractor shall cause all insurance to be in full force and effect as of the commencement of this Agreement and to remain in full force and effect throughout its term

until conclusion of the services to be performed hereunder or earlier termination of this Agreement. Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

(j) Not less than thirty (30) days prior to the expiration or renewal date, the Contractor shall supply the Corporation with updated replacement Certificates of Insurance, and amendatory endorsements.

(k) The Contractor shall cause to be included in each of its policies a waiver of the insurer's right of subrogation against the Corporation or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the loss, the right of recovery against the Corporation or (ii) any other form of permission for the release of the Corporation.

APPENDIX A
TAX LAW SECTION 5-a
FORM ST-220-CA

See Section 5.5

APPENDIX B
STATE FINANCE LAW SECTION 139-j
OFFERER'S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

See Section 5.6

APPENDIX C
STATE FINANCE LAW SECTION 139-j
OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATION

See Section 5.6

APPENDIX D
RELEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby acknowledges that pursuant to an agreement dated the day of _____, 20 (the "Agreement"), pursuant to which the undersigned agreed to furnish to the Urban Development Corporation d/b/a Empire State Development Corporation or one of its subsidiaries (as the case may be, the "Corporation") all of the work necessary to complete the Agreement, and that the Corporation has paid or will pay the undersigned, or a person, firm or corporation claiming by or through the undersigned, the sum of:

(\$ _____ Dollars and up to _____ Dollars) Dollars in reimbursable expenses, in each case subject to the terms, covenants and conditions of the Agreement, said amounts being the full and entire sum due from the Corporation to the undersigned pursuant to the Agreement by reason of work, labor or materials furnished or performed by the undersigned, in connection with the Agreement. In consideration of such payment, the undersigned hereby releases and discharges the Corporation, its officers, agents, and employees, of and from all claims of liability for any payment, fee or expenses payable to the undersigned pursuant to the Agreement.

The undersigned further acknowledges that neither the aforesaid payment nor acceptance by the Corporation of the work covered by the Agreement, shall in any way or manner operate as or constitute a release or waiver of the undersigned's obligations, undertakings or liabilities under the Agreement or in any way affect or limit the same.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed and its seal to be hereunto affixed this ____ day of _____, 20.

Name of Firm

(Corporate Seal)

By: _____

APPENDIX E
ADDITIONAL INSURANCE

APPENDIX F
PROOF OF WORKERS' COMPENSATION AND DISABILITY BENEFITS INSURANCE

Insurance To comply, you must submit one of the following proofs:

Private Insurer	-	Form C-1 05.2
State Insurance Fund	-	Form U.26.3
Status as Self-Insured	-	Form SI-12
Status as Member of Group Self Insurance	-	Form GSI-1 05.2

(Please obtain the above forms from your insurance carrier, licensed insurance agent or self-insurance administrator.)

Statement that Applicant Is Not Required to Carry New York State Worker's Compensation Insurance	-	Form WC/DB-100 OR Form WC/DB-101
--	---	--

Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at www.web.state.ny.us.

If you have questions regarding workers' compensation insurance coverage requirements, please contact the Bureau of Compliance at **1-800-298-7830**.

DISABILITY BENEFITS INSURANCE

Section 220 of the New York State Workers' Compensation Law requires that before any permit, license or contract is issued by any municipal, county or state government entity, the applicant must submit proof of compliance with NYS disability benefits coverage requirements.

To comply, you must submit one of the following proofs:

All Insurance Carriers	-	Form DB-1 20.1 or DB-820/829
Status as Self-Insured	-	Form DB-155

(Please obtain the above forms from your insurance carrier or self-insurance administrator.)

Statement that Applicant Is Not Required to Carry New York State Disability Insurance	-	Form WC/DB-100 OR Form WC/DB-101
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Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at www.wcb.state.ny.us.

If you have questions regarding disability benefits insurance coverage requirements, please contact the Disability Benefits Office at **1800-353-3092**.

APPENDIX G
ADDITIONAL INSUREDS

Exhibit A

General Terms and Conditions (including Schedule A)

Exhibit B
Required Forms

Erie Canal Harbor Development Corporation

Request for Proposals Checklist

I _____, a principal of the firm _____ certify that the following information has been submitted as part of the response to this Request for Proposals.

- Submitted all required information with respect to the Proposal, including but not limited to information specifically outlined in Section V.C
- Submitted hard copy and electronic copies of the proposal (Section VIII)
- Completed and submitted State Finance Law Sections 139-j and 139-k forms (Section V.D)
- Completed and submitted ST-220-CA Form or affidavit (Section V.D)
- Copy of VendRep receipt (Section V.D)
- Completed and Equal Employment Opportunity Policy Statement (Form OCSD-1, Section V.D)
- Completed and submitted Iran Divestment Act Statement (Section V.D)
- Completed and submitted Use of NYS Business Form (Section V.D)
- Diversity Practices Questionnaire (Section V.D)

Note: Incomplete responses may not be considered by Erie Canal Harbor Development Corporation

Signed: _____

Name: _____

Date: _____

Phone: _____

E-mail: _____

I, _____ (CONTRACTOR REPRESENTATIVE), the _____ (AWARDEE/CONTRACTOR) agree to adopt the following policies with respect to the project being developed or services rendered at _____.

M/WBE PARTICIPATION (M/WBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EQUAL EMPLOYMENT OPPORTUNITY POLICY (EEO)

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color,

national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.

- (d) This organization will include the provisions of sections (a) through (c) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed on this _____ day of _____, 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____

Minority Business Enterprise Liaison

_____ (Name of Designated Liaison) is designated as the Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____ % Minority Business Enterprise Participation

_____ % Women’s Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

_____ % Female Labor Force Participation

(Authorized Representative)

Print Name: _____

Title: _____

Date: _____

Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:	Reporting Entity:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor Subcontractor's Name: _____
Offeror's Name:		
Offeror's Address:		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male (M)	Total Female (F)	White		Black		Hispanic		Asian		Native American		Disabled		Veteran	
				(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

PREPARED BY (Signature):	NAME: _____ TITLE: _____ DATE: _____	TELEPHONE NO.: _____ ALTERNATE TEL: _____ EMAIL: _____
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Submit completed with bid or proposal M/WBE 101 (Rev 04/2012)

General Instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OM/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES:

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Federal Employer Identification No. (FEIN): _____

Offeror's Name: _____

Offeror's Address: _____

City, State, Zip Code: _____

Telephone No.: _____

Region/Location of Work: _____

Solicitation No.: _____

Project No.: _____

M/WBE Goals in the Contract: MBE - _____% WBE - _____%

1. Certified M/WBE Subcontractors/Suppliers Federal Employer Identification Number (FEIN), Name, Address, Phone, Fax and Email Address.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies / Services and intended performance dates of each component of the contract.
A.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

6. If unable to fully meet the M/WBE goals set forth in the contract, the Offeror must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at OCSD@ESD.NY.GOV.

<p>PREPARED BY (Signature): _____</p> <p>DATE: _____</p> <p>Preparer's Name (Print or Type): _____</p> <p>Preparer's Title: _____</p> <p>Date: _____</p> <p style="margin-top: 20px;">SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">TELEPHONE NO.:</td> <td style="width: 50%; padding: 2px;">EMAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 5px;">** FOR OCSD-M/WBE USE ONLY **</td> </tr> <tr> <td style="padding: 2px;">REVIEWED BY:</td> <td style="padding: 2px;">DATE:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work:</p> <p>_____</p> <p>_____</p> <p>_____</p> </td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p>NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> </td> </tr> </table>	TELEPHONE NO.:	EMAIL ADDRESS:	** FOR OCSD-M/WBE USE ONLY **		REVIEWED BY:	DATE:	<p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work:</p> <p>_____</p> <p>_____</p> <p>_____</p>		<p>NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p>NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p>	
TELEPHONE NO.:	EMAIL ADDRESS:										
** FOR OCSD-M/WBE USE ONLY **											
REVIEWED BY:	DATE:										
<p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p>Contract No.: _____</p> <p>Project No. (if applicable): _____</p> <p>Contract Award Date: _____</p> <p>Estimated Date of Completion: _____</p> <p>Amount Obligated Under the Contract: _____</p> <p>Description of Work:</p> <p>_____</p> <p>_____</p> <p>_____</p>											
<p>NOTICE OF DEFICIENCY ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p> <p>NOTICE OF ACCEPTANCE ISSUED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO Date of Issue: _____</p>											

5 NYCRR §142.8 - Contractor's Good Faith Efforts

- (a) The contractor must document its good faith efforts toward meeting certified minority and women-owned business enterprise utilization plans by providing, at a minimum:
 - (1) Copies of its solicitations of certified minority and women-owned business enterprises and any responses thereto;
 - (2) If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
 - (3) Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
 - (4) Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses;
 - (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
 - (6) 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 minority and women-owned business enterprises.

- (b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
 - (1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
 - (2) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
 - (3) The actions taken by the contractor to contact and assess the ability of certified minority and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
 - (4) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
 - (5) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions



Contractor Certification to Covered Agency

ST-220-CA

(6/06)

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		<i>For covered agency use only</i>	
Contractor's principal place of business		City	State
Contractor's mailing address (if different than above)		ZIP code	<i>Contract number or description</i>
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)	
Contractor's telephone number		Covered agency name	
Covered agency address		Covered agency telephone number	
		Estimated contract value over the full term of contract (but not including renewals)	
		\$	

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law § 139-k is complete, true and accurate.

By: _____ Date: _____
Signature

Name: _____

Title: _____

Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Background:

State Finance Law § 139j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§ 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

Signed: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

New York State Diversity Practices Scoring Matrix

Questions

Q1 - CDO or other person tasked with function					Yes	No	Total
					5 pts	0 pts	
Q2 - Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	20 pts	14 pts	10 pts	6 pts	2 pts	0pts	
Q3 - Percentage of overhead expenses paid to M/WBEs	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	16 pts	10 pts	7 pts	4 pts	1 pts	0pts	
Q4 - M/WBE Training			Robust	Moderate	Minimum	None	
			16 pts	8 pts	4 pts	0 pts	
Q5 - M/WBE Mentoring			Robust	Moderate	Minimum	None	
			12 pts	8 pts	4 pts	0 pts	
Q6 - Written M/WBE goals included in the Company's procurements			Robust	Moderate	Minimum	No	
			20 pts	12 pts	6 pts	0 pts	
Q7 - Formal Supplier Diversity Program			Robust	Moderate	Minimum	No	
			6 pts	4 pts	2 pts	0 pts	

New York State Diversity Practices Scoring Matrix

Q8 - Utilization Plan			Robust	Moderate	Minimum	No	
			5 pts	3 pts	1 pts	0 pts	
Total Diversity Score (Max 100 pts)							
Weighted Score							



ADDENDUM
DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

¹ Do not include onsite project overhead.



4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.



If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan



All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official

Printed Name of
Signatory

Title

Name of Business

Address

City, State, Zip



STATE OF _____

COUNTY OF _____) ss:

On the ____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public