

# EMPIRE STATE DEVELOPMENT CORPORATION

## REQUEST FOR PROPOSAL

### I. INTRODUCTION

New York State Urban Development d/b/a Empire State Development (“ESDC” or the “Corporation”) hereby requests that financial institutions with experience issuing irrevocable letters of credit (“ILOCS”) submit quotations to work with New York State’s Bonding Guarantee Assistance Program (“BAP” or the “Program”). The Program is expected to run for five years. This Request for Proposals (“RFP”) will assist ESDC in selecting a bank that can best provide ILOCS on behalf of small, and minority and women-owned business contractors performing on New York State contracts to surety companies, backed by a 1:1 cash deposit from ESDC at the financial institution.

BAP is authorized by Section 16-f of the New York State Urban Development Act (see Attachment A) to provide up to \$10 million in credit support in form of ILOCS to eligible contractors seeking surety bonds. Contractors must meet the New York State definition of small business and must not be able to receive the bond without a guarantee. BAP will provide ILOCS to the surety bonding company in instances where the surety company is not willing to provide bonding at the full amount of the contract due to balance sheet, collateral, or other deficiencies. The small contractor must still meet substantial due diligence requirements, including an analysis of track record, cash flow, and a range of credit underwriting criteria to be specified in advance. Unlike many other guarantee programs that provide guarantees for the full amount of the surety bond, BAP will provide an ILOC for only the difference between the bonding needed and the bonding authority granted by the bonding company without enhancement.

To eliminate the credit risk of ILOCS bore by the issuing financial institution, ESDC will deposit cash collateral into a bank account of the selected financial institution. The ILOCS will be for up to 30% of the contract value on construction or transportation projects. However, an expected average of 25% of the contract value or approximately \$187,000 is expected. Each ILOC shall be issued for the term of the surety bond associated with the State procurement contract to be performed by the contractor. It is expected that when the Program is running at full speed, 50 ILOCS would be issued annually, and 250 ILOCS in total for the life of the Program.

### II. General Requirements and Guidelines

#### A. Eligible Applicants

- A financial institution authorized to do business in New York State; and

- that would work with eligible small business contractors statewide; and
- that is also a depository institution; and
- has a credit rating provided by S&P, Moody's, Fitch, other pay for ratings firms, Federal or State regulatory agencies that are at or above "investment grade", or equivalent; and acceptable to the participating surety companies in BAP; and that
- can comply with the collateralization of State deposits above FDIC insured amount of \$250,000. Amounts must be a minimum of 105% of the deposit at all times in excess of the FDIC insurance.
  - The process for pledging collateral to secure NYS bank deposits will require:
    - Any bonds and other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by the United States of America;
    - Any bonds and other obligations which as to principal and interest constitute direct obligations of the State or the Corporation or which are unconditionally guaranteed by the State as to payment of principal and interest;
    - Bonds and other obligations of governmental authorities, political subdivisions, Federal Agencies, Government Sponsored Enterprises (GSE's) or public authorities of the State or of the United States of America, which are securities in which the Corporation lawfully may invest pursuant to applicable statutes, regulations and bond resolutions including but not limited to Federal National Mortgage Association (FNMA), Federal Farm Credit Bank (FFCB), Federal Home Loan Bank (FHLB), Federal Home Loan Mortgage Corporation (FHLMC-"Freddie Mac"), and Student Loan Marketing Association (SLMA-"Sallie Mae").

**B. Fees**

ESDC will not be required to pay fees on deposits of cash collateral. All customary and usual ILOCS issuance fees and rates will apply and collected by ESDC on behalf of the financial institution from the contractors participating in BAP.

**III. Requirements**

1. Describe your institution's experience and terms for issuing ILOCS.

2. Describe the standard options ESDC could have for its deposits, and their returns.
3. Please indicate your fee and rate structure for the following:
  - a. ILOC fees: Fees upon the issuance of each Letter of Credit.
  - b. The rate charged on the ILOC for the duration of a procurement contract.
  - c. Fees upon the occurrence of any other activity with respect to any Letter of Credit (including the limitation, the transfer, the amendment of any Letter of Credit).
  - d. Wire transfer charge
  - e. Other fees (details please)
4. List all documents and steps required to be taken by the financial institution related to the issuance of the ILOC and delivery of the security document to the surety company, and provide an estimated timeline for ILOC issuance.
5. Provide FY 2010 and FY2011 Certified Financial Reports.

#### **IV. Selection Criteria**

In the evaluation of proposals submitted pursuant to this request, ESDC places high value on the following factors:

1. Demonstrated capacity to perform the types of services that have been described above.
2. Anticipated cost of services and willingness to work with ESDC to minimize costs and maximize returns on deposit. The services will be for up to five years, with annual review and evaluation of services rendered.
3. Demonstrated commitment to diversity inclusion and expertise to guide M/WBE businesses

#### **V. Conflicts of Interest**

Each financial institution must certify in writing that acting on behalf of ESDC in any capacity in this RFP will not create a conflict of interest. If your financial institution believes that a conflict of interest may arise, the nature of the conflict should be described.

#### **VI. Other Considerations**

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this solicitation. These procurement requirements are (1) govern permissible communications between potential respondents and the Corporation; and (2) 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 solicitation.

Compliance with the Procurement Requirements requires that (1) all communications regarding this solicitation, from the issuance of this solicitation through final award and approval of any resulting contract (the "Restricted Period"), be conducted only with the **contact person listed below**; (2) the completion by respondents of the Offered Disclosure of Prior Non-Responsibility Determinations and the Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law, copies of which are attached to this solicitation as Attachments B and C, respectively; and (3) periodic updating of such forms during the term of any contract resulting from this solicitation. Respondents must submit both of these forms, properly completed, as part of their proposals. The Procurement Requirements also require the Corporation employees 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.

A copy of the Corporation's Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k is attached to this solicitation as Attachment D. Neither this summary nor the referenced Policy is a complete presentation of the provisions of the Procurement Requirements. A copy of Executive Order 127 can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/defaultProcurement.html> and State Finance Law Sections 139-j and 139-k can be found at <http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>. All potential Respondents are solely responsible for full compliance with the Procurement Requirements.

New York State procurement laws and guidelines require State contracting entities to conduct a vendor responsibility review of each vendor with which they propose to contract. This review requires State contracting entities to obtain self-disclosure from the proposed contract. ESD encourages 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 invited 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](http://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](mailto: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](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry.

For more guidance on this requirement, visit the New York State VendRep website and the Comptroller's Bulletin G-221 at <http://www.osc.state.ny.us/vendrep/index.htm>.

Respondent must also complete the Standard Form Contract attached to this solicitation as Attachment E, as well as review the Conditions Applicable to the Corporations Agreements for Materials/Services, provided as Attachment F.

## **VII. Submission of Proposal**

Five copies (5) of your proposal and one (1) electronic copy on CD, in a sealed envelope, must be received by ESDC no later than January 31, 2012 at 2:00 PM. Responses should not exceed 3 pages of text. Proposals should be directed to:

Ms. Huey-Min Chuang  
Sr. Director of Business and Economic Development  
Empire State Development Corporation  
633 Third Avenue, 33<sup>rd</sup> Floor  
New York, NY 10017  
BAP@esd.ny.gov

All questions, comments, requests for clarification and other communications regarding this solicitation must be submitted to [BAP@esd.ny.gov](mailto:BAP@esd.ny.gov). Answers to questions will be posted regularly at: <http://www.esd.ny.gov/BusinessPrograms/BondingAssistance.html>

### **Attachments:**

- Attachment A: NYS Bonding Guarantee Assistance Program Legislation
- Attachment B: Offerer Disclosure of Prior Non-Responsibility Determinations
- Attachment C: Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law 139-j (3) and 139-j (6)
- Attachment D: Corporation's Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k
- Attachment E: ESDC's Standard Form Contract
- Attachment F: Schedule A: Conditions Applicable to the Corporations Agreements for Materials/Services