



**Empire State  
New Market  
Corporation**

## Request for Proposals

# New Markets Tax Credit Accounting Services

Publication Date: Monday, June 1, 2015

Response Date: 12:00 PM Friday, June 26, 2015

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## **I. Overview**

Empire State New Market Corporation (“ESNMC”) seeks an individual or an accounting firm (“Entity”) experienced with the federal New Markets Tax Credit (“NMTC”) program to provide accounting services to ESNMC relating to the operation of its NMTC program.

## **II. Background**

ESNMC is a wholly-owned subsidiary of the New York State Urban Development Corporation d/b/a/ Empire State Development (“ESD”), a public benefit corporation which is New York State’s economic development agency. ESD’s President & CEO serves also as the Commissioner of the New York State Department of Economic Development (DED). Together, ESD and DED strive to create a healthy business environment and improve employment opportunities throughout New York State.

In May 2009, the Community Development Financial Institutions Fund (“CDFI Fund”) awarded ESNMC a \$30 million allocation of NMTCs. In September 2011, ESNMC closed its first NMTC transaction, an \$18 million allocation to Agro-Farma/Chobani Yogurt; and in September 2012, ESNMC closed its second NMTC transaction, a \$12 million allocation to the Brooklyn Navy Yard Green Manufacturing Center. In October 2014, ESNMC applied for additional NMTCs, and, if awarded, would expect to deploy its new allocation within twenty four months. ESNMC transactions involve leveraged loans with senior (“A”) notes and junior (“B”) notes. In some cases, a portion of the leverage will be provided by ESD.

## **III. Scope of Services**

The respondent (“Respondent”) selected will provide the following accounting services to ESNMC:

1. Provide transactional accounting projections and related opinions.
2. For each transaction, prepare an annual audit and tax return for both the investment fund (“upper tier”) and the operating entity (“lower tier”) for fiscal years 2016, 2017, and 2018.
3. Provide NMTC compliance services and administer periodic testing and reporting on NMTC compliance.
4. Prepare an annual audit, tax return, and financial statements for ESNMC for fiscal years 2016, 2017, and 2018.

## **IV. Qualifications**

The Respondent must have extensive experience providing the services described above for other Community Development Entities (“CDEs”).

## **V. Submission Requirements**

### **A. Content**

The following information should be provided in each proposal, in the order listed below:

1. Identifying Information
  - a. Full legal name, address, and type of legal entity.
  - b. Federal Employer Identification Number.
  - c. Name, telephone number, and e-mail address of the representative who is authorized to discuss and/or negotiate the proposal.
2. Prior NMTC Experience
  - a. Narrative of experience, including the number of allocations awarded, years awarded, and corresponding award amounts.
  - b. List of CDE clients and services provided.  
(Two pages maximum.)
3. Proposal for ESNMC, including:
  - a. Method for conducting each of the services enumerated above, under Scope of Services.
  - b. Staffing for each service above, including biographies.
  - c. Fee for each service above. If billing hourly, please provide billing rate ranges for individuals who will work on the account and an estimate as to the total cost for each service.  
(Three pages maximum, plus biographies.)
4. Required Forms (see Section X, Procurement Forms and Requirements)

## B. Requirements / Questions

### 1. Submission

Your response marked “NMTC Accounting RFP Response” must be received by ESNMC no later than **12:00 PM EST on Friday, June 26, 2015** at the following address:

Empire State New Market Corporation  
633 Third Avenue  
New York, NY 10017  
Attn: Edgar Camacho  
Re: NMTC Accounting RFP Response

Your response must include **five (5) hard copies and one (1) electronic copy (in the form of a flash drive or CD-ROM)** in Adobe Acrobat or Microsoft Word/Excel/PowerPoint.

### 2. Questions

ESNMC will accept written questions via email from prospective Respondents regarding the RFP. Please submit questions to:

[ESNMC.RFP@esd.ny.gov](mailto:ESNMC.RFP@esd.ny.gov)

Written questions must include the requester’s name, e-mail address and the Respondent represented, and should be received by 11:59 PM EST on Monday, June 8, 2015. Responses to all timely and appropriate questions will be posted on ESD’s Website at:

<http://esd.ny.gov/CorporateInformation/RFPs.html>

**No contact related to this solicitation with ESD Board members, staff or consultants, other than emails to the designated email account for the solicitation, [ESNMC.RFP@esd.ny.gov](mailto:ESNMC.RFP@esd.ny.gov), will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of the RFP. Any such contact by a Respondent or potential Respondent will be grounds for disqualification.**

## VI. Selection Criteria

The criteria upon which ESNMC will base its selection of the successful respondent, if any, may include the following:

- A. Experience providing NMTC accounting services to CDEs and other entities.
- B. Proposed method of providing services to ESNMC and proposed staffing.
- C. Proposed fee structure.
- D. Participation of Minority and Women-owned Business Enterprises.

## VII. Timetable

|                                      |                          |
|--------------------------------------|--------------------------|
| Release of RFP                       | June 1, 2015             |
| Deadline for Submission of Questions | June 8, 2015             |
| Submission of Proposals              | June 26, 2015 (12:00 PM) |
| Interviews (if necessary)*           | July 6 – July 13, 2015   |
| Announcement of Successful Bidder**  | TBD                      |
| Anticipated Contract Start Date      | TBD                      |

\*ESNMC may choose to interview some or all RFP respondents.

\*\* Subject to approval by ESNMC Directors.

## VIII. Conflicts of Interest

Please submit a statement describing whether the representation of ESNMC would create any potential conflict of interest, or appearance of impropriety, relating to other clients/customers of the respondent or former officers and employees of ESNMC or ESD. Indicate what procedures will be followed to direct, notify ESD of, and resolve any conflicts.

Identify any past, pending or threatened litigation or administrative or state ethics board or similar body proceedings to which you or any of your partners are a party and which would either materially impair your ability to perform the services enumerated herein, or, if decided in an adverse manner, materially adversely affect the financial condition of your firm.

Any individual or firm selected pursuant to this RFP will be required to advise the Corporation of any developments during the term of this appointment with respect to existing and/or any new civil or criminal legal investigations, pertinent litigation and/or regulatory action involving the firm or its employees which could impact the firm's role or ability to fulfill their obligations.

## XI. General Provisions

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

1. amend, modify or withdraw this RFP;
2. revise any requirement of this RFP;
3. require supplemental statements or information from any responsible party;
4. accept or reject any or all responses hereto;
5. extend the deadline for submission of responses hereto;
6. negotiate potential contract terms with any respondent to this RFP;
7. have discussions with any respondent to this RFP to correct and/or clarify responses which do not conform to the instructions contained herein;

8. cancel, or reissue in whole or in part, this RFP, if ESNMC determines in its sole discretion that it is its best interest to do so; and
9. extend the term of any agreement on terms consistent with this RFP.

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

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

## **X. Procurement Forms and Requirements**

Additional requirements for this RFP are described below. Relevant forms, where required to be submitted, must be executed and included in the submission in the same order as listed below:

1. State Finance Law §§139-j and 139-k forms
2. Vendor Responsibility Questionnaire
3. Iran Divestment Act Statement
4. Non-Discrimination and Contractor & Supplier Diversity Requirements
5. Encouraging the Use of NYS Businesses in Contract Performance Form
6. Certification under State Tax Law Section 5-a
7. Schedule A (for review only—no separate form requirement)
8. Project Sunlight (for review only—no separate form requirement)
9. Insurance Requirements

### **1. State Finance Law Sections 139-j and 139-k forms**

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed below; the

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

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

[http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a prospective respondent is found to have knowingly and willfully violated the State Finance Law provisions, that prospective respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is [ESNMC.RFP@esd.ny.gov](mailto:ESNMC.RFP@esd.ny.gov).

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 "ESDC 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 any sub-consultants complete the forms required above.

## **2. Vendor Responsibility Questionnaire**

All Respondents to this RFP must be "responsible," which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain "responsible" throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

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

To enroll in and use the Vend-Rep System, see the System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website ([http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)) and execute accordingly pertaining to the company's trade industry. Per the website, respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

### **3. Iran Divestment Act**

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

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

The list in question is maintained by the Office of General Services. No Response that fails to certify compliance with this requirement may be accepted as responsive.

### **4. Non-Discrimination and Contractor & Supplier Diversity Requirements**

It is the policy of the State of New York and Empire State Development (ESD) to comply with all federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that Minority and Women-owned Business Enterprises (MWBES), Minority Group Members and Women share in the economic opportunities generated by ESD's participation in

projects or initiatives, and/or the use of ESD funds. MWBE firms currently certified by New York State's Department of Economic Development are encouraged to respond to this RFP.

ESD's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this initiative. The Respondent shall be required to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8, see attached exhibit OCSD-4) to achieve Minority-owned Business Enterprise (MBE) participation of 15% and Women-owned Business Enterprise (WBE) participation of 15%, for a **combined overall MWBE Participation Goal of 30%** related to the total value of ESD's funding.

A copy of each Respondent's Equal Employment Opportunity Policy Statement (Form OCSD-1) and MWBE Participation Plan proposing specific certified firms to be utilized or industries where MWBE firms shall be in sought are to be included as part of the response to any RFP.

The form is available at the link below:

**Non-Discrimination & Contractor Diversity Agreement**

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_1MWBEEOPolicyStatement.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEOPolicyStatement.pdf)

In the event that the above links are unavailable or inactive, the forms may also be requested from the Office of Contractor & Supplier Diversity at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).

For purposes of providing meaningful participation by MWBEs on the project and achieving the project goals established herein, Respondent should reference the directory of New York State Certified MWBEs found at the following internet address:

<https://ny.newnycontracts.com/>

The Respondent may use the aforementioned directory of Certified MWBEs to identify firms that it proposes to utilize. OCSD is also available to assist you in identifying New York State certified MWBEs that can provide goods and services in connection with this contract. If you require listings of certified MWBE firms or have other questions relating to the requirements herein, please contact OCSD with your inquiries and comments. Be sure to include all relevant contact information for your company and details pertaining to this RFP.

General inquiries or questions relating to aforementioned policies, MWBE participation and the goals specified herein may be addressed to OCSD at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).

**5. Encouraging the Use of NYS Businesses in Contract Performance Form**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, 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. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

#### **6. Certification under State Tax Law Section 5-a**

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA, or an affidavit that the Respondent is not required to be registered with the State Department of Taxation and Finance. A copy of the ST-220-CA form and affidavit 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.

#### **7. Schedule A**

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with "Schedule A," which can be found at:

[http://esd.ny.gov/CorporateInformation/Data/ScheduleA\\_ConditionsApplicabletoCorporationAgreementsForMaterialServices\\_RevisedAug2014.pdf](http://esd.ny.gov/CorporateInformation/Data/ScheduleA_ConditionsApplicabletoCorporationAgreementsForMaterialServices_RevisedAug2014.pdf)

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

#### **8. Project Sunlight**

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the

purposes of procuring a state contract for real property (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

## **9. Insurance Requirements**

The selected consultant will need to provide evidence of the following insurance (at a minimum and to the extent applicable):

- Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate.
- Auto Liability insurance - \$1 million per occurrence / \$1 million aggregate
- Excess Umbrella Liability insurance - \$1-\$5 million per occurrence/\$1-\$5 million aggregate
- Professional/ Errors & Omissions Liability insurance - \$1 million minimum
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits.
- Must show evidence of Disability insurance coverage at State statutory limits.
- The NYS Urban Development Corporation d/b/a Empire State Development and the Empire State New Market Corporation must be named as an additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Liability policies

All policies above should include a waiver of subrogation in favor of ESD and ESNMC.