



Request for Proposals ("RFP")

Loan Servicing Solution Software and Support

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Empire State Development
633 Third Avenue New York New York 10017 Tel 212 803 3100
Web Site: www.esd.ny.gov

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I. INTRODUCTION

A. Invitation to Submit Proposal

This Request for Proposals (“RFP”) is written with the intent to offer qualified software service providers (“Software Provider”) the opportunity to present New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) responses detailing a complete loan servicing software solution for the management of its Commercial Loan Portfolio. Responses must demonstrate sufficient satisfaction of the terms, conditions and requirements detailed in this RFP. Each responding entity will be expected to provide ESD with comprehensive service beginning with installation, conversion and training, and continuing with ongoing support and maintenance. Following a complete evaluation of each responding entity, and their respective abilities to meet the needs specified in this RFP, ESD will select one service provider to assist in the maintenance of its portfolio.

B. RFP Schedule

Issue RFP	Monday, August 18, 2014
Last Day for Respondents to Submit	
Questions (if any) via E-mail	Friday, September 5, 2014
Last Day for ESD to Post Addendum (if any) on Web Page	Wednesday, September 10, 2014
<u>RFP RESPONSES DUE</u> 3:00 PM	Monday, September 15, 2014
Shortlist interviews beginning	promptly after ESD review of responses
Consultant selected	promptly after conclusion of interviews

II. BACKGROUND

Empire State Development is New York’s chief economic development agency. The mission of Empire State Development is to promote a vigorous and growing economy, encourage the creation of new job and economic opportunities, increase revenues to the State and its municipalities, and achieve stable and diversified local economies. Through the use of loans, grants, tax credits and other forms of financial assistance, Empire State Development strives to enhance private business investment and growth to spur job creation and support prosperous communities across New York State.

ESD’s Portfolio Management Department administers and maintains loan projects issued by both the New York State Urban Development Corporation (“UDC”) and the New York State Job

Development Authority (“JDA”). The portfolio, which includes both UDC and JDA, currently consists of 175 loans divided amongst 40 active program funds. The majority of these loans have a fixed rate, variable rate, or convertible loan structure. Additionally, many of these loans follow a traditional amortization schedule; however, there are programs which are interest only for all or part of the term of the loan, and as such, will necessitate flexibility in software. Portions of the overall portfolio are grant recaptures resulting from compliance failure by one of ESD’s many grantees. At times, these projects can contain nonstandard structures that will require a certain level of customization within a loan servicing solution software.

ESD is seeking a comprehensive loan servicing software solution with modules that will provide sufficient flexibility to accommodate the structures of its current loan portfolio, and potential future loan structures.

III. SCOPE OF SERVICES

A. Overview

The Software Provider must offer a comprehensive loan servicing software that gives ESD the capability to manage and monitor all loans through satisfaction. The service must offer complete transactional functionality, billing, report generation and automated aging to ensure quality audit trails. The software and services shall be known as “loan servicing software” and shall include, but are not limited to, the following details.

B. Detailed Scope of Services

1. Initiation

a. Network Requirements

The Software Provider must clearly detail the hardware/software requirements necessary to run the proposed loan servicing software.

b. Implementation

Software Provider must detail the processes required for complete installation of the loan servicing software, including complete configuration to fit ESD’s specific needs and any available testing options.

Additionally, a key component of the implementation plan is conversion of all of ESD’s historical loan data from McCracken Financial Solutions’ Strategy software to the updated system. Proposals must supply a strategy for such a conversion.

All proposals must include a general time line for the completion of implementation.

c. Training

The Software Provider must include detailed options for training of all necessary ESD staff in order for ESD to operate the loan servicing solution independently. Such training must be comprehensive, and cover all essential software modules. Each proposal should include an in depth conceptual overview that highlights the relationships between each module.

Please include all costs associated with these training options.

2. Support

In addition to the initial training necessary to assimilate ESD staff into the updated loan servicing software, the Software Provider must demonstrate the ability to support the system after the completion of implementation. All proposals must incorporate a detailed description of the support services offered by the Software Provider, as well as all costs to ESD associated with such ongoing technical support.

3. Disaster Recovery

ESD must be assured of the safety of its loan data. Each Software Provider must provide a detailed overview of its standard disaster recovery options.

4. Software Specifications

Proposed software solutions must address all of the following:

- a. All modules should be fully integrated. Further integration with other software, most importantly with Microsoft Office 365 and PeopleSoft, to allow for simple reporting, billing and General Ledger entry transference is a necessity. Such integration should be illustrated.
- b. A multi-user environment with security settings for various types of user base is required. This environment will have security settings assigned to unique usernames and passwords to grant/restrict users access to certain functions. With multiple accounts active, users must be able to navigate printer networks with ease.
- c. Software must run on Microsoft Windows platform, and must support future Microsoft platforms.

- d. Solutions must provide quality audit trails and logs.
- e. The software must present a wide array of reporting options. Users should have the option to select preconfigured reports derived from loan reporting best practices as well as the ability to easily customize unique reports.
- f. Automated bill and statement generation options must be described in detail.
- g. Loan count limits and any associated fees must be clearly defined.

C. Cost

All cost information must be presented in a clear and unambiguous fashion for any and all proposed elements of the solution. These costs may include, but are not limited to, the following:

- a. Software Costs
- b. License Fees
- c. Conversion Costs
- d. Training Costs
- e. Costs for Services Provided

Please provide one copy of applicable annual technical support/maintenance contract(s).

IV. SELECTION PROCESS

A. Evaluation Criteria

Proposals will undergo an evaluation process conducted by a committee of ESD staff members. The committee will evaluate the proposals based upon the following criteria:

1. Experience (25%)

Proposals should highlight experience relevant to this RFP with reference to items such as:

- Background.
- Current customers
- Similar projects; past and present.

2. Capability (25%)

Software Providers must demonstrate the ability to sufficiently satisfy the following:

- Software Provider provides a clear, detailed strategy for the installation and implementation of all software modules, as well as the conversion of all ESD's historical loan data.
- Loan servicing software's ability to support the loan structures in ESD's Portfolio. These include but are not limited to a variety of mortgages, subsidies, rent supplements and other debt instruments.
- Evidence to demonstrate that the Loan Servicing software has the qualifications and capacity to perform the Scope of Services described in this RFP.
- Financial Capability

3. Timeframe (25%)

The implementation of any new software is time sensitive. ESD requires a fast, efficient transition with regards to this RFP. A timeline for complete implementation of software must be provided.

4. Cost (25%)

All desired fees and costs associated with the software must be clear and unambiguous.

B. Compensation

A contract will be issued to the selected Software Provider upon approval by ESD Directors. All expenses not identified in the proposal and agreed to in the Contract will be the Software Provider's sole responsibility and not billed to ESD. Office, transportation and food expenses will not be reimbursable expenses.

C. Review Method

ESD reserves the right to act as the sole judge of the content of the proposals submitted, to negotiate an agreement with any or no Respondent, or to waive any informalities or irregularities. Issuance of this RFP and receipt and evaluation of responses do not obligate ESD to undertake any action. ESD will evaluate proposals and may interview one or more respondents. Key personnel and staff assigned to the engagement must be present at any interview. ESD reserves the right to interview some, none, or all Respondents as it deems appropriate. ESD's request for an interview shall not constitute acceptance of a proposal. ESD reserves the right to request "best and final offers" or to conduct other additional competitive

proceedings with respect to this RFP. ESD staff will recommend contract award to ESD Directors at a regularly scheduled Directors' meeting.

V. SUBMISSION REQUIREMENTS

A. Submission Procedures

Interested firms or individuals (each a "**Respondent**") are required to follow the guidelines and instructions contained in this RFP. In the event it becomes necessary to revise any part of this RFP, revisions will be provided by addenda posted on the ESD website (www.esd.ny.gov). It is the responsibility of all Respondents to check the ESD website for posting of clarifications, amendments, or addenda on an ongoing basis.

1. Respondents must submit one original, one electronic copy on a CD, and five (5) copies of the proposal. The length of proposal is limited to 25 pages, excluding the required forms and cover page, but including the cover letter and resumes.
2. The cover page of each proposal should state "Loan Servicing Software RFP" and the entire set of proposals should be contained in a sealed package clearly labeled "Loan Servicing Software RFP."
3. Sealed proposals must be delivered in hard copy by hand, regular mail or express mail. Proposals sent via facsimile or e-mail transmittal will not be accepted.
4. Proposals are due and must be received at the location designated below no later than **3:00 PM Monday, September 15, 2014**. Proposals received after the indicated date and hour and/or at a different location may not be considered at the discretion of ESD. It is the sole responsibility of each Respondent to ensure that its proposal is received before the submission deadline. Respondents shall bear the risk associated with delays in mail, courier services or hand delivery. If the proposal is to be delivered by messenger, please note that only individuals with valid photo identification will be permitted access to ESD's offices. Messengers without valid identification will be turned away and their packages not accepted.
5. Proposals must be submitted to:

**Loan Servicing Software RFP
Attn. Mr. Tim Anderson
Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017**

6. ESD reserves the right, at its discretion, to postpone the date for submission and opening of proposals. Any proposal submitted prior to notice of such postponement may be withdrawn without prejudice.
7. Please note that Respondents must respond to this RFP in order to be eligible to be considered for the award of the Contract for the Loan Servicing Software pursuant to this RFP.
8. ALL QUESTIONS, COMMENTS, REQUESTS FOR CLARIFICATION, AND OTHER COMMUNICATIONS REGARDING THIS RFP MUST BE DIRECTED IN WRITING VIA E-MAIL TO MR. TIM ANDERSON AT TANDERSON@ESD.NY.GOV. CONTACT WITH ANY OTHER PERSON REGARDING THIS SOLICITATION IS PROHIBITED BY LAW. All questions and requests for clarification will be responded to in writing and disseminated to all persons and organizations having expressed an interest in this solicitation.
9. Addenda to this RFP, including responses to any questions submitted in writing, will be posted on the ESD website as set forth above.

B. Proposal Content

Proposals should provide a straightforward, complete and concise description of Respondent's capabilities to satisfy the requirements of this RFP. Proposals must include the following, in the order set forth below:

1. Cover Letter. A cover letter on the Respondent's letterhead that is signed by an individual with authority to contractually bind the Respondent and that includes the following:
 - (a) The full legal name, address and type of legal entity, and jurisdiction in which the entity is formed (if applicable), telephone number and e-mail address of the representative who is authorized to discuss and/or negotiate the proposal.
 - (b) Federal Employee Identification Number or Social Security Number.
 - (c) Text explaining ownership (corporate and/or individual) of proposing entity and all subsidiaries or parent company, if applicable.
 - (d) A statement that Respondent is ready, willing and able to engage in the services set forth in the proposal upon execution of contract.
 - (e) A statement that Respondent accepts the Conflicts of Interest terms set forth in Section VII.D. of this RFP.

- (f) Indicate if Respondent is, or will partner or otherwise combine with, an MBE/WBE (Minority Business Enterprise or Women’s Business Enterprise) as certified by New York State for any portion of the services requested.

2. Firm Qualifications and Experience.

- (a) A history of Respondent’s experience providing loan servicing software solutions within the previous five (5) years. Such history should also detail any experience providing these services to economic development organizations, municipalities, other governmental entities, private developers, and not-for-profit and civic organizations.
- (b) Examples of up to three (3) projects that Respondent has completed in the area of loan servicing software solutions. Include the client, the name of a client contact person who is able to provide a reference, a description of the nature of the work, the size and complexity of the project, and the amount and the agreed fee arrangements.

3. Proposed Approach

Each Respondent must describe in detail a strategy to address all components of the Scope of Services described in **Section III. B.** of this RFP. Respondents must detail the functions of their software that will best serve ESD needs. The implementation of an updated loan servicing solution is time sensitive, and all Respondents must provide a detailed timeline from installation and data conversion to completion.

4. Fee Proposal

Each Respondent must indicate all fees and costs of implementing their product. All figures shall be included in U.S. dollars, and these figures must be clear and unambiguous.

VI. NEW YORK STATE AFFIRMATIVE ACTION AND NON-DISCRIMINATION COMPLIANCE

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 an **overall MWBE Participation Goal of 23%** related to the total value of the contract.

A copy of Respondent's Equal Employment Opportunity Policy Statement (Form OCSD-1) and MWBE Utilization Goal Plan (Form OCSD-3) proposing specific certified firms to be utilized or industries where MWBE firms shall be sought are to be included as part of the response to this RFP.

Copies of these forms are available at:

Form OCSD-1

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEOPolicyStatement.pdf

Form OCSD-3

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_3MWBEUtilizationPlan.pdf

Form OCSD-4 – Information Only

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4GoodFaithEfforts.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. 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/>

Only the Respondent to the RFP shall complete these forms. In the Utilization Goal Plan (Form OCSD-3) the Respondent must list all of the sub-contractors and sub-consultants it proposes to use in achieving the MWBE goal requirement or propose the types of sub-contractors that the Respondent intends to solicit to achieve the aforementioned MWBE goal requirement. 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

VII. PROCUREMENT FORMS/INSURANCE REQUIREMENTS

A. Procurement

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. New York State Vendor Responsibility Questionnaire For-Profit Business Entity
3. Iran Divestment Act Statement
4. Encouraging the Use of NYS Businesses in Contract Performance Form
5. Certification Under State Tax Law Section 5-a
6. Schedule A (for review only—no separate form requirement)
7. Project Sunlight (for review only—no separate form requirement)

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/RFOs”); 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/Corporatelnformation/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 **TANDERSON@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

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 Designated Developer, if any, shall include clauses providing that the Designated Developer 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 (“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. Respondents are to file the required Vendor Responsibility Questionnaire online via the VendRep System or may choose to complete and submit a paper questionnaire. Please include a copy of your VendRep submission receipt with your proposal. If you submit a paper questionnaire please submit it using certified mail and provide a copy of the return receipt.

To enroll in and use the VendRep System, see the 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 Office of the

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

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company's trade industry. Per the website, respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)." For ESD RFPs concerning the purchase and redevelopment of real estate, it is most common for a Respondent to complete the form as a "Non-Construction" company. Unless the Respondent is primarily a Construction firm, the Respondent should thus fill out the Vendor Responsibility Questionnaire as a "Non-Construction" entity, either as a For-Profit or Not-For-Profit entity, depending on the Respondent organization type.

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. 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, included in the Appendix.

5. 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: labeled "Schedule A- Conditions Applicable to the Corporation's Agreements for Materials and Services (includes ST220 and all other required forms) at <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.

6. Schedule A"

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

http://esd.ny.gov/CorporateInformation/Data/ScheduleA_ConditionsApplicabletoCorporationAgreementsForMaterialServices_RevisedMay2014.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 the Designated Developer will need to accept these terms prior to contract execution.

7. 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.

B. Insurance

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

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- Commercial Automobile insurance with a limit of not less than \$1million;
- Professional Liability insurance of \$ 1million to \$2 million
- Cyber Liability insurance of \$ 1million to \$2 million
- Evidence of Workers Compensation/Employer's Liability insurance at State statutory limits
- Disability insurance coverage at State statutory limits
- NYS Urban Development Corporation (UDC) d/b/a Empire State Development (ESD) to be named as additional insured on a primary and non-contributory basis on the following policies: Commercial General Liability & Auto Liability. Waiver of subrogation in favor of NYS UDC d/b/a ESD applies.

VIII. CONFLICT OF INTEREST

A. General Conflict of Interest

If the Proposer (or if the Proposer is a joint venture, any participant) or any employee, agent or subcontractor of the Proposer (or any joint venture participant) may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict and submit a mitigation plan addressing said conflict.

If in the sole discretion of ESD, ESD believes that the Proposer (or any joint venture participant) performing in any capacity for ESD has a conflict (or potential conflict) of interest, ESD may reject or decline to review the Proposal. However, a Proposer who believes that it can provide a mitigation plan that would address the conflict (or potential conflict) of interest shall submit to ESD, with the Proposal, such mitigation plan for evaluation by ESD.

It is recommended that the following items/concepts be addressed in a proposed mitigation plan where a conflict or the appearance of a conflict of interest may exist, or may exist in the future:

1. A proposed organizational chart/structure/firewall designed to keep separate, as specific by project, and to allow for no overlap between team members and resources including, but not limited to: equipment, materials, staffing, laydown areas, and office facilities on said projects.

2. Specific plan(s) intended to maintain the separation and integrity, as specific by project, of the following to include, but not limited to: confidential and/or privileged information, documents, plans, drawings, estimates and other financial data.
3. Specific plan to maintain proper and independent billing procedure(s) designed to address the avoidance of double and improper billings.
4. Specific plan to educate employees, on all levels, of the importance of said mitigation plan to promote the awareness and importance of mitigation and its role in preventing fraud, waste, and abuse, and verification of such education/training and individual understanding.
5. Specific plan to internally oversee and/or audit the above-listed plans and procedures to ensure compliance.
6. Specific contingency plan, notification, and approval process for where there is a necessary, reasonable, and business related purpose for overlap in and/or sharing of staff members and/or resources.
7. Specific contingency plan in addressing a direct or suspected violation of said mitigation plan. All violations must be reported to ESD.
8. The Proposer (or if the Proposer is a joint venture, each participant) shall ensure that all employees, contractors, consultants, sub-consultants, subcontractor or other person or entities identified with respect to each such conflict of potential conflict must cooperate with ESD in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees and affiliated persons.

ESD reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. ESD's determination regarding any questions of conflict of interest will be final.

B. Organizational Conflict of Interest

The Agreement may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the Agreement may, without some form of restriction on future activities result in an unfair competitive advantage to the Proposer.

1. If the Proposer is awarded the work (*i.e.*, becomes the "Integrity Monitor" pursuant to the Agreement), the Proposer will have access to confidential and/or sensitive ESD and

Project information in the course of Agreement performance. Additionally, the Proposer may be provided access to proprietary information obtained from other contracted entities during Agreement performance. The Proposer agrees to protect all such information from disclosure unless so authorized, in writing, by ESD and to refrain from using such information for any purpose other than that for which it was furnished.

2. If the Proposer is awarded the work (*i.e.*, becomes the “Integrity Monitor” pursuant to the Agreement), then to the extent that the Proposer either (i) uses confidential and/or sensitive ESD or Project information or proprietary information obtained from other ESD or Project contractors to develop any form of document, report, or plan that is determined by ESD to be the basis, in whole or in part, of any subsequent solicitation issued by ESD or (ii) develops written specifications that are used in any subsequent solicitation issued by ESD, the Proposer agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless ESD provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Proposer was ineligible to complete.

The Proposer, by submitting its proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the Agreement and, in doing so, not to enter into contractual agreements with ESD prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest. If ESD determines that the Proposer has violated any term of this clause entitled “Organizational Conflict of Interest”, ESD may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Proposer to terminate any affiliation or contractual arrangement with a ESD prime contractor or first-tier subcontractor at no cost to ESD, determining the Proposer ineligible to compete for or be awarded any subsequent or “follow-on” contracts that may be based upon the Proposer’s actions under the Agreement or violations of this clause, or terminating the Agreement, in whole or in part.