

REQUEST FOR PROPOSALS



FOR THE PURCHASE AND ADAPTIVE RE-USE OF: BAYVIEW CORRECTIONAL FACILITY

550 W 20th St, New York, NY 10011

RFP RELEASE DATE:	December 23, 2013
SITE TOUR DATE:	January 17, 2014
DEADLINE FOR PROPOSALS:	February 12, 2014

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I. INTRODUCTION

New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”), is seeking proposals for the purchase and adaptive re-use (the “Project”) of an approximately 0.4 acre site located at 550 West 20th Street, New York, New York, previously known as Bayview Correctional Facility (“the Site”). The Site consists of two adjoining buildings, an eight-story building and a six-story annex, which are connected internally. Together, the buildings total approximately 108,000 gross square feet of floor area.

Located at the southeast corner of Eleventh Avenue and West 20th Street, the Site is located in West Chelsea, a neighborhood which features a notable mix of cultural and entertainment destinations, the High Line and Hudson River Parks, high-value luxury residential condominiums, premier commercial space, and some of New York City’s most architecturally distinctive buildings. The Site is adjacent to two of New York City’s most notable examples of contemporary architecture, as detailed in Figure 1 below.

Figure 1: Aerial Image of the Site



The Site was originally used as a YMCA but most recently served as a medium security correctional and work release facility for women. The Site was closed in October 2012 and is currently vacant.

Each party that submits a response (“Proposal”) to this Request for Proposals (“RFP”) is referred to herein as a “Respondent,” and the Respondent that is conditionally designated through this RFP process is referred to herein as the “Designated Developer.”

Respondents to this RFP may propose uses that will advance the Development Goals described in Section IV below. However, please note that Proposals for residential uses will not be considered. All Proposals must provide for the purchase and adaptive re-use of the entire Site, and alternative transaction structures, such as leases, will not be considered. Adaptive re-uses will include Proposals that maintain elements of the existing Site but also allow for practical and aesthetic architectural modifications and enhancements. Any Proposal featuring the full demolition of the Site will not be considered, and all Proposals should include some community facility component.

II. RFP TIMELINE

RFP release date:	December 23, 2013
Site tour:	January 17, 2014
Deadline to submit questions:	January 22, 2014, 11:59 PM EST
Deadline to submit Proposals:	February 12, 2014, 2:00 PM EST
Interviews:	To be announced as necessary

III. SITE DESCRIPTION

Site Summary

The Site’s main, eight-story building (“Building 1”) was constructed in 1931 as the Seamen's House YMCA, a place for merchant sailors to stay while their ships were docked in New York harbor. From 1967 through 1974, the facility was utilized as a residential treatment center operated by the Narcotic Addition Control Commission (NACC). In 1974, operation was transferred to the Department of Correctional Services and the facility was reclassified a correctional facility.

The annex (“Building 2) is a six-story structure that was built flush against the main building in 1950. Doorways were later created through the common wall to unify the two structures. The roof was used for outdoor recreation and related activities and is equipped with a wrap-around chain-link enclosure.

The entire Site is currently vacant and is maintained in a heated, “warm” state. It will be sold “AS IS” and “WHERE IS,” as described in greater detail in Section VII below. A map of the Site’s key plot plan, including the lot dimensions for Building 1 and Building 2, is included in the attached Site Field Guide.

Surrounding Land and Uses

The Site is located in the Manhattan neighborhood of West Chelsea and is part of Manhattan Community District 4. The Site is within walking distance from neighbors that include residential condominiums, art galleries, the Chelsea Piers Sports Center, the Chelsea Waterside Park, the Chelsea Dog Run Park, the Hudson River Park, and the High Line elevated linear park.

The Site is also close to commercial sites such as the New York City headquarters of Google (0.7 miles) as well as the international corporate headquarters of InterActiveCorp (one block south).

Architectural Context

As detailed above, the neighborhood surrounding the Site is one of architectural distinction. Immediately adjacent to the Site is 100 Eleventh Avenue, a luxury condominium building designed by French architect Jean Nouvel. The Frank Gehry-designed IAC Building is one block further, sitting at the Northeast corner of Eleventh Avenue and West 19th Street, and the High Line elevated linear park runs perpendicular to West 20th Street in between Tenth Avenue and Eleventh Avenue. See above and Exhibit 2 – Neighborhood Lot Map.

Zoning

The Site is located in the Special West Chelsea Zoning District. Further information on this unique zoning district is available in the City’s zoning resolution, available at: <http://www.nyc.gov/html/dcp/pdf/zone/art09c08.pdf>.

Of note, the Site is located in a High Risk Area AE flood zone, as designated by the U.S. Federal Emergency Management Agency. Respondents are encouraged to research this designation and the City of New York’s Flood Resilience Zoning Text Amendment, the latter of which is described in greater detail at: http://www.nyc.gov/html/dcp/html/flood_resiliency/index.shtml.

Respondents are strongly encouraged but not required to comply with current zoning requirements (though residential use will not be considered). Proposals should be compatible with and advance the Development Goals set forth in Section IV of this RFP. Any proposed overrides of zoning requirements and other municipal laws and regulations should be specifically identified in the Proposal.

Cultural and Historic Resources

The Site has been determined to be eligible for listing on the National Register of Historic Places. Any substantial changes to the building will require consultation with the State Historic Preservation Office (“SHPO”) of the New York State Office of Parks, Recreation and Historic Preservation in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law) in order to explore potential measures that would avoid, minimize or mitigate any Adverse Impacts or Adverse Effects to historic resources as guided by the Secretary of the Interior’s Standards for Rehabilitation. The Designated Developer will be responsible for any required mitigation of Adverse Impacts or Adverse Effects to historic resources. A copy of the Secretary of the Interior’s Standards for Rehabilitation can be seen at: <http://www.nps.gov/tps/standards/four-treatments/treatment-rehabilitation.htm>

The Site is eligible for the federal historic tax credit programs. More information about this program can be found at <http://www.nysparks.com/shpo/tax-credit-programs/>.

Transportation

The Site is served by several forms of public transportation, including several bus routes (M11, M14D, M23), the nearby A, C, E, L and 1 subway lines (0.7 miles), and Pennsylvania Station

(1.1 miles), a hub for intercity buses and subway, Amtrak, Long Island Rail Road, and New Jersey Transit rail travel. The Site is also directly along the West Side Highway, providing easy access to Manhattan's major tunnels and roads.

Water Service

The Site is served by a 4" buried cast iron water main that enters Building 2. The system includes standpipes and sprinkler heads at the compound that provide fire protection to the two adjoining buildings. Water is provided by the City of New York municipal water supply system.

Sanitary Sewer

The Site is served by underground sanitary sewer piping and manholes, as well as a 40-gallon grease trap. Sewage flows connect to the City of New York public sanitary sewer system.

Stormwater System

The Site is served by a stormwater collection system consisting of roof drains and an exterior basement access area drain at Building 1. The Site has not historically fallen under the regulatory requirements of the New York State Department of Environmental Conservation (NYS DEC) Municipal Separate Storm Sewer System (MS4) for stormwater management, but may be subject to such requirements under private party ownership.

Electrical Service

Electric service for the Site is provided by Consolidated Edison. Power delivered is 208 volt 3 phase power. The power enters the basement of Building 2 at the southeast side from West 20th street. The main disconnect is located in the basement of Building 2. Power is then distributed throughout Building 1 and Building 2. Emergency generator backup is provided by an on-site 500 KW natural gas-fired generator located on the roof of Building 2.

Emergency and Life Safety Systems

Emergency Life and Safety Systems include standpipes, fire alarm, emergency lighting, exit lights, and kitchen hood system. These systems will remain in all buildings but compliance with applicable law and regulation will be the responsibility of the Designated Developer.

Refrigeration Systems

Existing air conditioning and refrigeration systems at the facility are comprised of kitchen refrigeration, domestic type refrigeration, window AC units, and a central chiller system. All portable refrigeration units are expected to be removed from the Site for re-use at other State facilities prior to transfer to the Designated Developer.

Petroleum Bulk Storage

The Site has one (1) 7,500 gallon underground Petroleum Bulk Storage (PBS) Tank (ID #001) that is registered with the NYS DEC (Registration ID 2-399515). A State Office of General Services (OGS) project is underway to permanently close this tank in-place. Once the tank is permanently closed, it will be removed from the PBS registration and the facility will no longer have any registered tanks and, as such, no further PBS responsibilities at the facility. There are currently no open petroleum spills on file with NYSDEC.

Air Permitting and Emergency Generator

The Site operates a 500KW natural gas emergency generator. This emission source is registered with the DEC (Registration ID 2-6205-01643/00001) and certain regulatory requirements are mandated. The Site also includes four natural gas boilers / heaters.

Ownership and Taxes

The Site is currently owned by the New York State Urban Development Corporation, d/b/a Empire State Development, and is exempt from property taxes. Assuming a private re-use of the Site, property taxes would be assessed by the NYC Department of Finance. More information on NYC property taxes and the NYC Department of Finance can be found at www.nyc.gov/dof.

IV. DEVELOPMENT GOALS

ESD invites Respondents to submit Proposals that maximize the benefits to the New York State and New York City economies through adaptive re-use of the Site.

ESD is seeking Proposals that are responsive to, but are not limited to, the following development priorities:

1. Maximizing economic impact;
2. Providing opportunities for community facility use;
3. Preserving and/or adaptively reusing the Site to the extent practicable;
4. Achieving architectural distinction and design excellence in any proposed Site enhancements;
5. Featuring meaningful participation of New York State-certified Minority and Woman-Owned Business Enterprises (MWBES) in the Project Team; and
6. Incorporating sustainable building practices and appropriate levels of LEED or Energy Star Certification.

ESD will not consider any residential uses on the Site. For purposes of this RFP and the Project, residential uses are considered to include single-family housing, multi-family housing, senior housing, assisted living facilities, nursing homes, dormitories, hotels or any other housing-related uses.

As noted, Proposals are encouraged but not required to be compliant under existing zoning requirements, and Proposals should be compatible with the aforementioned Development Goals.

Transaction Structure and Certain Costs

Every Proposal must provide for the acquisition of the entire Site, subject to a declaration regarding conformance to the General Project Plan (“GPP”) of development at the Site. It is intended that the Site will be conveyed to the Designated Developer at closing, and that the Designated Developer will hold title during development of the Site. ESD will not consider alternative transactional structures such as long-term ground leases; the Site must be sold in its entirety.

ESD does not anticipate providing project financing or guarantees of third-party financing. However, Respondents are encouraged to browse related ESD programs at: <http://esd.ny.gov/BusinessPrograms.html>. City of New York incentives may also be available, with more information able to be found at: <http://www.nycedc.com/service/financing-incentives>.

As noted below in this RFP's Section VIII below, Disposition Process, in order to implement the Project and dispose of the Site, ESD, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements such as: (i) the State Environmental Quality Review Act and its implementing regulations ("SEQRA"); (ii) the State Historic Preservation Act; (iii) the State's Coastal Zone Management Policies; (iv) Public Authorities Law; (v) State Finance Law; and (vi) the New York State Urban Development Corporation Act (the "UDC Act"). Such compliance must be completed before disposition of the Site to the Designated Developer for the Project. Please also note that Section VIII of this RFP requires that the Designated Developer enter into agreements with ESD and the State that will require the Designated Developer to pay, from the date of its conditional designation:

1. A 10% security deposit against the purchase price upon designation by ESD of the Designated Developer; and
2. ESD's out-of-pocket costs and expenses incurred in connection with the Project and the disposition to the Designated Developer of the Site, including, without limitation, costs and expenses of ESD's consultants and legal counsel.

Also, at closing, in addition to the balance of the purchase price, the Designated Developer will be required to pay to ESD as an operations fee an amount equal to 6.5% of the purchase price.

V. PROPOSAL REQUIREMENTS

The following are the submission requirements for all Proposals responding to this RFP. ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals for any reason or for no reason, and to proceed (or not proceed) with the development of the Site (either by itself or in conjunction with one or more third-party(ies)) without completing this RFP process.

In evaluating the capabilities of the Respondent, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP.

The initial Proposals should be not longer than 100 pages of text.

Respondent's financial offer for the Site should assume that it will be transferred in "AS IS" and "WHERE IS" condition. Each complete Proposal for the redeveloped Site must contain the following elements:

1. Respondent Description

Each entity submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which is described in Part XI, Procurement Requirements.

Each Proposal must include a description of the ownership entity or the development team, including:

- The intended form and structure of the ownership entity and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the ownership entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email and of each member of the ownership entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Background information of the ownership entity, including resumes describing the relevant experience of all principal members. This information must be submitted for every participant in a joint venture and should highlight similar projects (including a project description and approximate dollar value for each).
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the ownership entity.
- Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five years.
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.

2. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and any plans/timing of phasing of the development. The description should include:

- The proposed use(s).
- Type, bulk and size of each component of the development program (gross and net square footages).
- Description of the proposed uses, a list of potential tenants and any letters of interest and/or intent from potential tenants and a description of how such tenants align with the Development Goals set forth in Part IV of this RFP.
- The description should address how this project will advance the Development Goals set forth in Section IV above.

3. Financial Information

Respondent must submit the following:

- Pro forma cash flows, in hard copy and in Excel format on computer disk for the

development and Project operation periods, including details of any as-of-right or discretionary real estate tax, other tax, energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should extend out to twenty (20) years of operations from stabilization and include all necessary capital investments over time and reserves and debt service payments associated with the financings.

- Construction/renovation sources, budget, and uses of funds, including details of equity and financing sources and a break out of all soft and hard costs and development and financing fees. Indicate escalation rates to account for any increases in construction/renovation costs in the budget or contingences.
- Permanent sources and uses of funds, including details of equity and financing sources and all development fees and financing fees to be paid.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
- Evidence of Designated Developer's commitment to pay, from the date of its conditional designation: (i) the security deposit; and (ii) ESD's out-of-pocket costs and expenses incurred in connection with the Project and the disposition to the Designated Developer of the Site, including, without limitation, costs and expenses of consultants and legal counsel.
- Evidence of Designated Developer's commitment to pay, at closing on the Site, in addition to the full purchase price for the Site, to ESD an ESD operations fee in amount equal to 6.5% of the Site purchase price.

4. Team Member Qualifications

- Identification and qualifications of each member of the development team, including all persons or entities that will design, develop, or operate the Project, as well as the attorney, engineer, general contractor and other professionals, as appropriate, including leasing and management, who will be involved with this Project.
- A description of similar projects undertaken by the members of the Respondent's team, particularly preservation and adaptive re-use projects and experiences in consulting with SHPO (including a statement of the dollar value of such projects, the project manager's name and key partners, where applicable).
- A summary of the availability of each of the principal members of each firm and their availability for commitment to the Project.
- Documentation addressing whether any participating team members have been involved in litigation or legal dispute regarding a real estate venture during the past five years.

5. Site Plan and Architectural Design

- A summary of the proposed building program for the Project with square footages for each use.
- At a minimum, a set of concept sketches on 8.5" x 11" paper, showing the proposed Project and a set of schematic renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape

and landscape plans, entry feature and signage.

- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building practices that will be incorporated into the project during construction/renovation and operation of the improvements.
- A description of specific noteworthy features that will be preserved, as well as any significant proposed building modifications or enhancements.
- A description of the preservation plan. Identify preservation consultants and include narrative description of design approach. If proposal involves partial demolition, describe program design and economic rationale for doing so as well as proposed measures or design concepts to address the historic nature and significance of the building and its significant features.

6. Zoning Calculation

Respondent must submit a floor area ratio (“FAR”) analysis showing all calculations, including proposed use groups and any proposed parking. Respondent should specifically identify any requested overrides of existing as of right zoning and other municipal laws and regulations.

7. Development Timeframe

Respondent must submit development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization for each component of the development program. Any contingencies that may affect this time line should be identified.

8. Mechanicals, Equipment, Infrastructure

Respondent shall provide an overview of how the principal spaces, systems and building elements would be modified or re-used or demolished. Proposal should outline all necessary development, including modifications from current “as-is” condition, and include an estimated schedule, budget and funding sources.

9. Flood Zones

Proposals should identify any flood zone and note how Respondent will meet Federal Emergency Management Agency guidelines as necessary.

10. Purchase Price

The purchase price must be expressed in a fixed, non-contingent dollar amount. The Designated Developer will be required to enter into a Development Agreement that provides the terms of any phasing of the Project and agreements to develop the Site in compliance with the proposed development plan. The purchase price will be paid in full at closing. Transfer of title will be by quit-claim deed (without any representations or warranties) at the closing.

VI. SELECTION CRITERIA

When evaluating proposals, the following selection criteria may be considered in no order of priority. Proposals may be reviewed by ESD and other State officials. The sale of the Site is subject to approval, as required under applicable law and regulation, which may include approval of the ESD Directors, the Commissioner of General Services, the Public Authorities Control Board, the Comptroller of the State of New York, and the New York State Attorney General.

- *Consistency with Development Goals:* Thoughtful and innovative approach to addressing the Development Goals articulated in RFP's Section IV.
- *Financial Feasibility:* Respondent's demonstrated financial condition to complete the Project; availability of identifiable funding sources to finance the Project; sufficient revenue to support operating revenues, scheduled payments related to capital costs, reserve fund contributors and debt service.
- *Employment Impact:* Creation of construction and permanent on-site jobs and payroll.
- *Economic Impact:* Projected expenditures, construction costs, annual operating costs and other direct spending that will help spur economic activity. ESD will also consider the impact that indirect spending that the Project will generate and any applicable tax revenue.
- *Purchase Price:* Provision of a competitive price for the purchase of the Site.
- *Development Team Qualifications:* Experience, development skills, and financial resources necessary to complete a high-quality Project on time and within budget.
- *Schedule and Timing:* Proven ability to complete the Project in a timely manner.

VII. DEVELOPER DUE DILIGENCE

"As Is, Where Is" Condition

Respondents should assume that the Site, including supporting building infrastructure, will be sold "AS IS" and "WHERE IS" without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent's purpose (e.g., conveyed by quitclaim).

ESD will post information regarding the RFP on the RFP website (<http://www.esd.ny.gov/CorporateInformation/RFPs.html>); Respondents are encouraged to check back for updates. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this solicitation by sending an email to BayviewCF@esd.ny.gov.

Respondents must rely on their own research and investigations for all matters, including, costs, title, survey, development, financing, construction, remediation, and renovation.

VIII. DISPOSITION PROCESS

The following is a summary description of the disposition process. After a review of the Proposals, ESD intends to conditionally designate one of the Respondents as the Designated

Developer. The Designated Developer will enter into a Memorandum of Understanding (“MOU”) with ESD regarding the disposition of the Site and the Project and separate agreements with each of ESD and the State regarding payment by the Designated Developer of expenses as described at the end of this section. In implementing the Project, including the disposition process, ESD intends to:

1. conduct a SEQRA compliant environmental review of the Project;
2. prepare, in accordance with the UDC Act and in consultation with the Designated Developer, if necessary, a proposed GPP for the Project reflective of the Designated Developer’s Proposal, which will be expected to comply with all building, fire, and other applicable codes and regulations, as enforced by the City of New York and State of New York;
3. present to ESD Directors for adoption for purposes of a public hearing any requisite draft environmental review, any draft GPP, essential transaction contract terms, any required Public Authorities Law findings, any municipal law and regulation overrides, and any other applicable statutory or regulatory requirements;
4. give prior notice of and conduct a public hearing in order to receive comments on any proposed GPP and essential contract terms (including any requisite draft environmental review);
5. review such comments, and either affirm or modify any proposed GPP as a final GPP and authorize proposed transaction;
6. present the Project to the Public Authorities Control Board (PACB) for its approval review;
7. prepare, in consultation with the Designated Developer, and record, a declaration for the Site in the *City Register* (the “Declaration”) regarding conformance to any GPP of the Project’s development at the Site, including, as may be applicable, overrides of municipal laws and regulations, permitted uses, bulk and height limits, and similar matters; and
8. deliver to the Designated Developer, *at closing*, a quitclaim deed for the Site that is subject to the Declaration.

This process may take approximately twelve months from the commencement of the environmental review, however depending upon the complexity of the Project the duration of that process may vary.

Upon designation by ESD, the Designated Developer shall pay to ESD a security deposit in the amount equal to 10% of the purchase price for the Site, which will be credited toward the purchase price at closing.

The Designated Developer shall pay all of ESD’s out-of-pocket costs and expenses (including, without limitation, costs and expenses of consultants, legal counsel, and appraisers) related to the

disposition of the Site and the Project. At the time of and as a pre-requisite to its designation, such Respondent and ESD shall enter into an agreement pursuant to which, among other things: (i) the Respondent shall deposit into an ESD imprest account funds (in an amount that shall be satisfactory to ESD) that shall be held by ESD and used by ESD for payment of such out-of-pocket costs and expenses; (ii) each time that the balance in the imprest account falls below 50% of the original amount required to be deposited into the account, the Respondent shall promptly make an additional payment into the ESD imprest account so that balance in the account shall be returned to such original amount; and (iii) the amount remaining in the imprest account after all such costs and expenses are paid will be returned to the Respondent.

At closing on the Site, in addition to the full purchase price for the Site less the security deposit, the Designated Developer shall pay to ESD an administrative fee in an amount equal to 6.5% of such purchase price.

IX. SUBMISSIONS

Five (5) hard copies and one (1) electronic copy of the Proposal identified by “Bayview C.F. RFP” must be received by ESD by 2:00 PM on Wednesday, February 12, 2014 at the following addresses:

Empire State Development
633 Third Avenue, 37th Floor
New York, NY 10017
Attn: Kevin Hansen, Director, Real Estate Development

RFP Inquiries

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

BayviewCF@esd.ny.gov

Written questions must include the requestor’s name, e-mail address and the Respondent represented and should be received by 11:59 PM on January 22, 2014. Responses to all timely and appropriate questions will be posted on ESD’s website at:
<http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

No contact related to this solicitation with ESD Board members, staff or consultants, other than as specified in this RFP will be allowed during the procurement period of this RFP. Any such contact by a Proposer will be grounds for disqualification.

Site Tour

Potential Respondents may also attend a site tour with ESD staff that is anticipated to be scheduled on or around the morning of Friday, January 17, 2014. Please email BayviewCF@esd.ny.gov by Wednesday, January 15, 2014, if you plan on participating in the site tour. If tour interest is sufficiently high so as to limit tour capacity, ESD may choose to offer one or more additional tour(s) at its discretion.

ESD reserves the right to modify this RFP schedule at its discretion. Notification of changes in connection with this RFP will be made available to all interested parties by e-mail and via ESD's website: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

X. STATEMENT OF LIMITATIONS

1. This RFP, submissions from Respondents to this RFP, and any relationship between ESD and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts ESD's rights as set forth in the RFP, including this Statement of Limitations.
2. The issuance of this RFP and the submission of a response by any firm or the acceptance of such response by ESD does not obligate ESD in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by ESD and the firm(s) selected by ESD.

ESD reserves the right: (i) to amend, modify, or withdraw this RFP; (ii) to revise any requirements of this RFP; (iii) to require supplemental statements or information from any responding party; (iv) to accept or reject any or all responses thereto; (v) to extend the deadline for submission of responses thereto; (vi) to negotiate or hold discussions with any respondent and to correct deficient responses which do not completely conform to the instructions contained herein; and (vii) to cancel, in whole or part, this RFP, for any reason or for no reason. ESD 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 the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.

3. 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. If any Respondent wishes to claim that any information submitted in its response to this RFP constitutes a Trade Secret or is otherwise exempt from disclosure under FOIL, such claim must be made at the time of the response, and must be in writing supported by relevant and material arguments.
4. ESD reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP responses, including late responses, in its planning efforts. ESD reserves the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFP (collectively, the "Response Information"), and each Respondent must grant an unconditional and perpetual license without charge to ESD to use any copyright or other legally protected rights in and to the Response Information.
5. This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the RFP. ESD will not be responsible for any costs

incurred by Respondents related to preparing and submitting a response to this RFP, attending oral presentations, or for any other associated costs.

6. To the best of ESD's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of responses.

XI. PROCUREMENT REQUIREMENTS

Required forms for this RFP are described below. Relevant forms 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. Equal Employment Opportunity Policy Statement and MWBE forms
5. Schedule A
6. Tax Law Requirements
7. Project Sunlight

In addition, Responses will be subject to item seven, Project Sunlight, as described below.

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.

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 BayviewCF@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 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. Respondents are to file the required Vendor Responsibility Questionnaire online via the VendRep System or may choose to complete and submit a paper questionnaire. 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.

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

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

The Designated Developer shall commit to ESD's policy of Non-Discrimination and is encouraged to include substantive and meaningful MWBE Participation in the project. Favorable consideration shall be given to Proposals that include plans to achieve ESD's annual MWBE participation goal of 23% of total project cost.

A copy of each Respondent's completed Equal Employment Opportunity Policy Statement (Form OCSD-1) shall be included as part of the response to this RFP. If not included herewith, the forms may also be requested from ESD's Office of Contractor & Supplier Diversity ("OCSD") at OCSD@ESD.NY.GOV.

5. "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/RFPs/ScheduleA_May2012.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: 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.

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 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.

XII. INSURANCE REQUIREMENTS

The Designated Developer will be expected to show evidence of the following insurance requirements, as listed below:

- A. Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate.
- B. Auto Liability insurance - \$1 million per occurrence / \$1 million aggregate
- C. Excess Umbrella Liability insurance - \$10 million per occurrence / \$10 million aggregate minimum
- D. Professional Liability insurance - \$1 million minimum (preferably \$5 million)
- E. Worker’s Compensation & Employer’s Liability insurance at State statutory limits.
- F. Disability insurance coverage at State statutory limits.

The NYS Urban Development Corporation d/b/a Empire State Development 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 Umbrella Liability policies. All policies above should include a waiver of subrogation in favor of the NYS UDC d/b/a ESD and the People of the State of New York.

EXHIBIT 1 – SURROUNDING AREA MAP



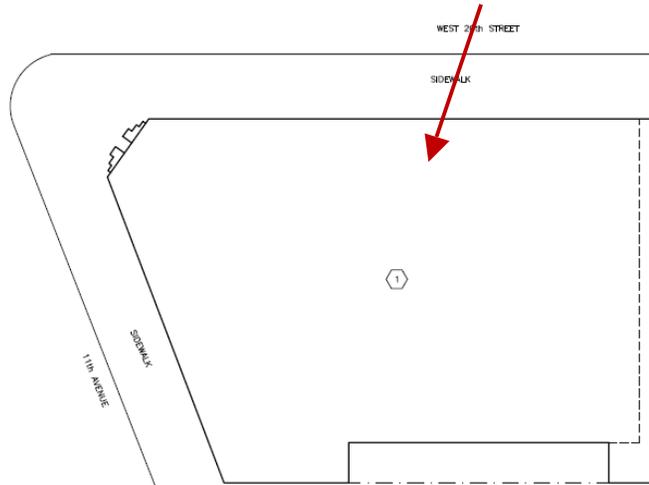
EXHIBIT 2 – NEIGHBORHOOD LOT MAP



EXHIBIT 3 – BUILDING 1: MAIN BUILDING

Description of Previous Site Uses and Infrastructure

(Site will be sold “AS IS” and “WHERE IS”; all equipment that remains at the Site will be included in final disposition to Designated Developer)



Size: 72,509 Gross square feet, 8 floors with basement and roof.

Prior Uses: Housing, Dining Area, Security Offices, Gym, and Administration.

Heating: Three natural gas fired boilers feed hot water and steam from the boiler room located in the Building 2 basement. A fourth boiler is currently out of service. Hot water and steam have been distributed through the building to unit heaters, making up air coil and radiation.

Domestic Hot Water: Domestic hot water produced in basement utilizing steam-fired water heaters located in the Building 2 basement.

Water: Underground from municipal system.

Sanitary: Discharged to municipal system.

Electrical: Fed from facility electrical system, with backup generation from facility main generator.

Ventilation: Natural through windows and chases. Wall mounted exhaust fans. Make up air unit for 6 air handling units.

Fire systems: Centralized alarm system.

Refrigeration: Two roof mounted chillers/four compressors serving entire building. There are 71 pounds of refrigerant in each compressor. Refrigerated cooler and freezer in kitchen

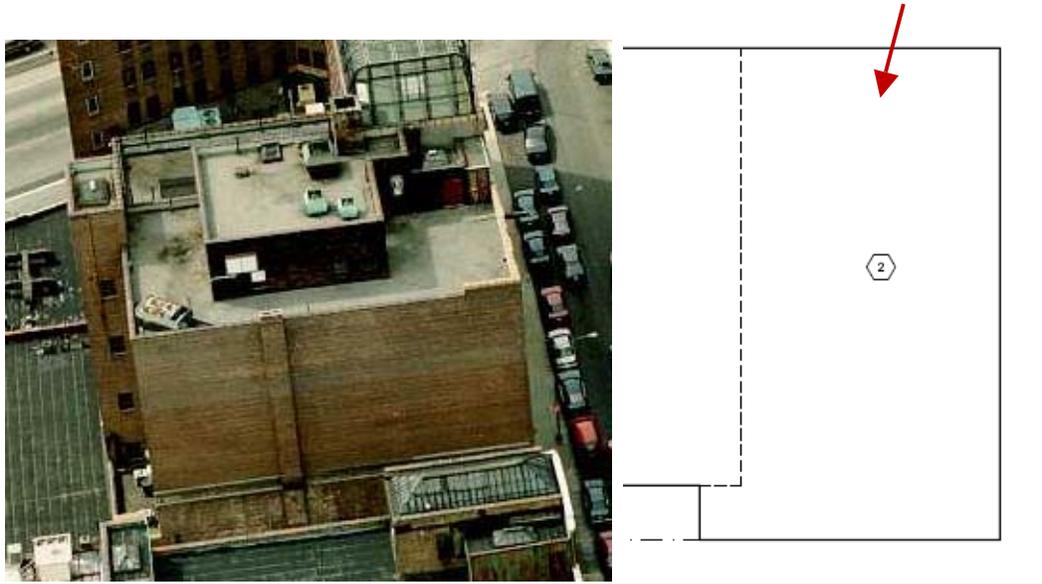
Emergency Systems: Centralized alarm system. Supervisory station for the building.

Phone/Data: Central phone room.

EXHIBIT 4 – BUILDING 2: ANNEX

Description of Previous Site Uses and Infrastructure

(Site will be sold “AS IS” and “WHERE IS”; all equipment that remains at the Site will be included in final disposition to Designated Developer)



Size: 35,345 Gross square feet, 7 floors with basement and roof.

Prior Uses: Housing, Offices, Administration.

Heating: Three natural gas fired boilers feed hot water and steam from the boiler room located in the Building 2 basement. A fourth boiler is currently out of service. Hot water and steam have been distributed through the building to unit heaters, making up air coil and radiation.

Hot Water: Domestic hot water is produced in basement utilizing steam fired hot water heaters in the Building 2 basement.

Water: Underground from municipal system.

Sanitary: Discharged to municipal system.

Electrical: Fed from facility electrical system, with backup generation from facility main generator.

Ventilation: Natural through windows and chases. Wall mounted exhaust fans. Make up air unit for 6 air handling units.

Fire systems: Centralized alarm system.

Refrigeration: Two roof mounted chillers/four compressors serving entire building, 71 pounds of refrigerant in each compressor. Refrigerated cooler and freezer in kitchen

Emergency Systems: Centralized alarm system. Supervisory station for the building.

Phone/Data: Central phone room.