



## Request for Proposals

888 Fountain Avenue, Brooklyn, New York

RELEASE DATE: June 5, 2013

SUBMISSION DATE: June 26, 2013

Empire State Development

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## **I. INTRODUCTION**

New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), the State’s economic development agency, is seeking proposals for a project (the “Project”) focusing on the development of two parcels of non-contiguous, vacant undeveloped land totaling 291,852 square feet within the Brooklyn Developmental Center (“BDC”) at 888 Fountain Avenue, Brooklyn, New York (the “Sites” or “Site A” and “Site B”).

ESD’s primary development goal for the Project and the Sites is for a high quality residential development with affordable and supportive housing components that include a set-aside of supportive housing units for people with intellectual and developmental disabilities who receive support and services funded or provided by the Office for People with Developmental Disabilities (“OPWDD”) (the “OPWDD Assisted Units”). Commercial uses may also be considered but must include the affordable and supportive housing components described above.

Each party submitting a response (“Proposal”) to this Request for Proposals (“RFP”) is referred to herein as a “Respondent” and the Respondent that is ultimately conditionally designated through this RFP process is referred to herein as the “Designated Developer.” The Designated Developer will plan, finance, build and develop the Sites.

## **II. SITE CONTEXT AND DESCRIPTION**

The Sites consist of two non-contiguous parcels. The Designated Developer will be responsible for subdividing and separating the Sites from the larger BDC property in coordination with OPWDD. Site A contains a total of 2 acres and is located on the northeast corner of Seaview Avenue and Erskine Street; Site B contains a total of 4.7 acres and is located along the south block-front of Vandalia Avenue between Erskine Street and Fountain Avenue in Brooklyn, New York.

### **Location and Transportation**

The Sites are located in the Spring Creek section of Brooklyn. The neighborhood forms a part of Community District Number 5. Boundaries of Community District 5 include the Jackie Robinson Parkway on the north, the Belt Parkway on the south, the Queens County Line on the east, and Van Sinderen and Louisiana Avenues on the west.

The BDC consists of six buildings totaling 512,000 square feet on a 35 acre lot owned by the State. The BDC provides residential care and treatment to around 250 individuals with intellectual and developmental disabilities for whom an appropriate residential opportunity in the community does not yet exist. In addition to the adjacent BDC, the Sites are located east of the Gateway Center shopping mall, which houses tenants including BJ’S Wholesale Club, Old Navy, Home Depot, Target, Olive Garden and Red Lobster. The Sites are located close to the Gateway Elton Street development, which will include affordable housing, community space, a supermarket, childcare center, and restaurants.

The Sites are served by three bus lines (Q8, B13, B83) and vehicular access along the Belt Parkway, which is situated a few hundred meters away. The nearest subway stop is nearly a mile and a half away at the Euclid Avenue A and C train stop.

### **Zoning**

Currently, both Sites are zoned R3-2, a general residence district that allows, among other uses, for one and two family residences, apartments, non-profit residences for the elderly, nursing homes and health related facilities. A proposal need not meet current zoning provided the Affordable Components described below are included.

### **Building and Site Data**

Both Sites A and B are currently unimproved, predominantly level and at grade, situated within the BDC. The Sites are partially paved for parking and interior roadways and are enclosed with a masonry fence which surrounds the entire BDC. The Sites are available in their as-is condition.

### **Ownership and Taxes**

The Sites are currently owned by the State of New York, and thus are exempt from current property tax assessments. Assuming a private use of the Site, property taxes would be assessed by the City of New York. More information on NYC property taxes and the NYC Department of Finance can be found at [www.nyc.gov/dof](http://www.nyc.gov/dof).

### **Environmental Conditions**

The Designated Developer is responsible for conducting all due diligence investigations such as environmental site assessments, including sampling and testing of the soil, sediments and ground water (if any). No representation or warranty is made or shall be given by ESD or the State of New York or any other entity as to any environmental condition at, or under the Sites, all of which are offered as is, where is (see also Section VI below). The term “environmental condition” as used herein includes but is not limited to any hazardous and/or toxic substance as defined in any State or Federal law, rule or regulation, solid waste, petroleum and/or petroleum by-products or any other matter or site condition which may affect the development of the Sites.

## **III. DEVELOPMENT OBJECTIVES**

While ESD prefers proposals from a master developer for both Sites, it may consider proposals that address the development of only one of the Sites. The development of the Sites can be phased over an acceptable timeframe. ESD will only consider offers for acquisition of the fee simple title to the Sites.

ESD’s primary development goal for the Project and the Sites is for a high quality residential development with affordable and supportive housing. Respondents must make provision in their proposals for between 10 and 20 one- and/or two-bedroom residential units to be

OPWDD Assisted Units as described in the Introduction above, but in no event should those OPWDD Assisted Units constitute more than 20% of the Site's total residential housing. ESD's development goals for the Project will be effected through an ESD General Project Plan ("GPP") for the Sites and one or more declarations recorded in the *City Register* with respect to the Sites. It is intended that the GPP and the declarations would be inspired by the proposal(s) of the Designated Developer(s).

The following requirements (collectively the "Affordable Components") described below must be included in all proposals:

- OPWDD, in conjunction with the Designated Developer, will select the supportive services provider(s) for the OPWDD Assisted Units, referrals to which will be subject to the OPWDD referral process, including individuals who currently reside at the BDC.
- Respondents must include one or more office spaces for the selected service provider(s).
- Respondents must make, at its sole expense and in consultation with OPWDD, necessary modifications to the internal BDC campus roadway and masonry fence necessary to preserve access and security to the campus, and to replace parking spaces currently on the Sites.

Commercial uses may also be considered, but Respondents must also include the Affordable Components described above.

It is intended that the above items will be included in one or more development agreements (collectively the "Development Agreement") to be entered into among the Designated Developer and the State of New York acting through OPWDD and ESD.

#### **IV. TRANSACTION STRUCTURE AND CERTAIN COSTS**

Every submission must provide for acquisition (by quitclaim) from ESD of fee to the Site subject to a declaration regarding conformance to the 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.

As noted below in this RFP's Part VIII, 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, to the extent applicable; (iii) Public Authorities Law; (iv) State Finance Law; and (v) 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 Part 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 the designation by the ESD Directors as 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, costs and expenses of 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(s) (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 not be longer than 50 pages of text.

Respondent's financial offer for the Site should assume that it will be sold in as-is condition with the explicit understanding that the Respondent must, at its sole expense and in consultation with OPWDD, subdivide the Sites, make necessary modifications to the internal campus roadway and masonry fence necessary to preserve access and security of the BDC campus, and to replace parking spaces currently on the Sites. 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 XII, 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).
- 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 has been involved in any litigation or legal dispute regarding a real estate venture during the past five (5) 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 on Sites A and B. The description should include:

- The proposed uses for Sites A and B
- Type, bulk and size of each component of the development program (gross and net square footages).
- Description of each of the proposed uses, a list of potential tenants for any proposed community centers, nonprofit space, or commercial retail along with any letters of interest and/or intent from potential tenants and a description of how such tenants align with the Development Objectives set forth in Part III of this RFP.
- Description of the anticipated modifications of the internal roadway and fence with clear indications of where and how parking will be replaced.

## **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 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 costs in your 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 (or in the event that ESD has determined to accept an alternative lease based proposal, and amount equal to not less than 6.5% of the value of the lease as determined by ESD).

#### **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 (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 any 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 at the site 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 and operation of the improvements.

#### **6. Zoning Calculation**

Respondent must submit a preliminary zoning analysis showing all calculations, including proposed use groups, required and proposed parking. Respondent should identify all necessary or required permits, approvals, and authorizations.

#### **7. Development Timeframe**

Respondent must submit an overview of the development timeframe (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; and operational stabilization for each component of the development program.

Any contingencies that may affect this time line should be identified.

#### **8. Purchase Price**

The purchase price must be expressed in a fixed, non-contingent dollar amount. The Designated Developer will be required to enter into the 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, OPWDD and other State officials. The sale of the Sites is subject to 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.

1. The proposed development concept's quality, design, uses, coherence and conformity to the Development Objectives described in Part III of this RFP.
2. Experience, financial capabilities and qualifications of the ownership entity in developing, financing, leasing, operating and managing projects of similar size and nature.

3. Established partnerships with community lending organizations with experience in financing special needs housing.
4. Demonstrated experience of the development team members in the design, engineering, construction, management of projects similar in size, complexity, and quality level.
5. The speed and efficiency with which the Respondent will be able to complete development, financing, construction and lease up of the Project. This includes the ability of the Respondent to obtain commitments from tenants.
6. The proposed financial terms and financial benefits to New York State, as well as the financial feasibility of the Project.
7. The incorporation of sustainable building practices and the degree of LEED or Energy Star Certification.
8. The quality, design and number of OPWDD Assisted Units and appurtenant spaces in the Project.
9. A commitment from one or more qualified supportive service providers for support and services to people with developmental disabilities. The service providers' proposal(s) should specify whether there is an expectation of new funding from OPWDD for support, services and necessary rental subsidies for the OPWDD Assisted Units.

## **VII. DEVELOPER DUE DILIGENCE**

### **"As-Is" Condition**

Respondents should assume that the Sites, including any and all infrastructure, will be sold "AS IS" and "WHERE IS", subject to the Declaration defined below, 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.

ESD will post information regarding the RFP on the ESD website at <http://www.esd.ny.gov/corporateinformation/rfps.html>. 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.

Respondents must rely solely on their own independent investigation, inspection, research, analysis and conclusions for all development, financing, construction and renovation costs and all other matters and shall not rely on the information provided in connection with this RFP.

## **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 respondent as the Designated Developer for both Sites or one respondent as the Designated Developer for Site A and/or one Designated Developer for Site B. Each 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 costs and expenses as described at the end of this Part. In implementing the Project, including the disposition process, ESD intends to:

- i. conduct a SEQRA compliant environmental review of the Project, including any applicable Historic Preservation requirements;
- ii. prepare, in accordance with the UDC Act and in consultation with each Designated Developer, a proposed GPP for the Project that is inspired by the Designated Developer’s Proposal;
- iii. present to ESD Directors for adoption for purposes of a public hearing the draft environmental review, the draft GPP, essential transaction contract terms, any required Public Authorities Law findings,, and any other applicable statutory or regulatory requirements;
- iv. give prior notice of and conduct a public hearing in order to receive comments on the proposed GPP and essential contract terms (including the draft environmental review);
- v. review such comments, and either affirm or modify the proposed GPP as a final GPP and authorize proposed transaction;
- vi. present the Project to the Public Authorities Control Board for its approval review;
- vii. prepare, in consultation with the Designated Developer, and record for each Site in the *City Register* a declaration (the “Declaration”) regarding conformance to the GPP, including the Affordable Components, of the Project’s development at the Site; and
- viii. deliver to each Designated Developer, at closing, a quitclaim deed without covenants for the respective Site that is subject to the Declaration with respect to such Site.

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

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

Each Respondent identified to become the Designated Developer for a Site or both Sites as the case may be 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 or Sites and the Project. If two Designated Developers are chosen (one for each Site), then they shall pay a pro-rata share of ESD's costs and expenses based on the proportion that each Site's area represents of the total area of both Sites. At the time of and as a pre-requisite to its Designation, a 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 each Site, in addition to the full purchase price for the Site less the security deposit, the Designated Developer shall pay to ESD an operations fee in an amount equal to 6.5% of such purchase price.

## **IX. PROPOSAL PROCEDURE**

Five (5) hard copies and one (1) electronic version of the Proposal labeled "Fountain Avenue" on the envelope must be submitted and received by ESD by June 26, 2013 at 2:00 p.m. Such Proposals must be delivered to the following address:

Empire State Development  
633 Third Avenue, 37<sup>th</sup> Floor  
New York, NY 10017

Attn: Alexis Offen, Vice President, Real Estate Development

### **Project Inquiries**

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

FountainAve@esd.ny.gov

Written questions must include the requestor's name, e-mail address, and the Respondent represented. All written questions must be received by June 18, 2013. A response to all

appropriate questions will be posted on the ESD website:  
<http://www.esd.ny.gov/CorporateInformation/RFPs.html>

### Site Visits

Potential Respondents may attend a site tour and Q & A session on Monday, June 17, 2013 with OPWDD and ESD at 11:15 a.m. Please email FountainAve@esd.ny.gov by Friday, June 14, 2013, if you plan on participating in the site tour and Q&A session.

## X. PROJECT TIMELINE

RFP Release:	June 5, 2013
Site Tour and Q&A Session:	June 17, 2013
Final Question Due Date:	June 18, 2013
ESD Responds to Questions:	June 24, 2013
RFP Proposals Due by 2:00 pm:	June 26, 2013

Upon conditionally designating the Designated Developer, ESD and the Designated Developer will have a 45-day exclusivity period within which to negotiate the terms of a Developer's Agreement consistent with the terms of this RFP. **ESD may agree to extend this exclusivity period at its sole and absolute discretion.** Upon the completion of the Developer's Agreement, the Designated Developer will have 60 days to negotiate the terms of and execute the Agreement of Sale.

## XI. STATEMENT OF LIMITATIONS

1. ESD represents that 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 the 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.

## **XII. 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; and
4. Equal Employment Opportunity Policy Statement and MWBE forms

In addition, Responses will be subject to 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](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 bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

**The designated contact person for this solicitation is Alexis Offen, Vice President, Real Estate Development, ESD, 633 Third Avenue, New York, NY 10017-8109. All comments and questions must be sent to her by email at [FountainAve@esd.ny.gov](mailto:FountainAve@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 the sub-consultants complete the forms required above.

## **2. Vendor Responsibility**

All Respondents to this RFP must be “responsible,” which in this context means that it 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 to this RFP, 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 Respondents 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 respondents. Respondents are invited 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](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the 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 VendRep website [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company’s trade industry.

## **3. Iran Divestment Act**

Every bid or 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 bid that fails to certify compliance with this requirement may be accepted as responsive.

#### **4.MWBE Goals**

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- and women-owned business enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

It is the policy of the State of New York and ESD to comply with all Federal, State and Local laws, policy, orders, rules and regulations which prohibit unlawful discrimination based on 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 New York State 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.

In the event ESD elects to sell the development site, the Designated Developer shall commit to ESD’s policy of Non-Discrimination and is encouraged to meet the following MWBE project goals:

- Participation of certified Minority Business Enterprises totaling 13%
- Participation of certified Women Business Enterprises totaling 10% of the total value of the project
- An overall goal for the project of no less than 23% of the total value of the project

Favorable consideration shall be given to proposals that include plans to achieve the above-mentioned MWBE participation goals in the development of project sites.

#### **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.

### **XIII. INSURANCE REQUIREMENTS**

The Designated Developer will be expected to comply with ESD’s insurance requirements, as listed below.

- A. Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate
- B. Auto Liability insurance - \$2 million per occurrence / \$2 million aggregate
- C. Excess Umbrella Liability insurance - \$5 million per occurrence / \$ 5 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
- G. The NYS Urban Development Corporation d/b/a Empire State Development must be named as a Certificate Holder on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Liability policies
- H. All policies above should include a waiver of subrogation in favor of the NYS UDC d/b/a ESD