



REQUEST FOR PROPOSALS

**ECONOMIC IMPACT ANALYSIS OF AT REST LEGISLATION
FOR NEW YORK STATE**

**ISSUED BY
EMPIRE STATE DEVELOPMENT**

JULY 15, 2013

Deadline for responses: 12:00 PM (EST) on August 12, 2013

SECTION I – ADMINISTRATIVE INFORMATION

1.0 Purpose

Empire State Development (hereafter referred to as “ESD”) has issued this Request for Proposal (RFP) to secure a qualified individual or firm (the “Contractor”) to design and execute an economic impact analysis with regards to the potential implementation of “At Rest” legislation in New York State.

1.1 Inquiries

Inquiries should be addressed to:

Samuel Filler, Director of Industry Development
Empire State Development
sfiller@esd.ny.gov

If you intend to submit a proposal, please provide notice of your intention to Mr. Filler so that you may receive all future notices for this solicitation.

All questions must be submitted in writing to Mr. Filler via e-mail. Please do not contact ESD by telephone. Questions must be received no later than July 29, 2013. All inquiries must cite the particular RFP section in the question, if applicable. **Addenda to this RFP, including responses to any questions** will be provided to all known recipients of the RFP and will be posted on the ESD web site: <http://esd.ny.gov/CorporateInformation/RFPs.html>

1.2 Schedule of Pertinent Dates

Release of RFP	July 15, 2013
Deadline for Receipt of Questions	July 29, 2013
Submission of Proposals	August 12, 2013

1.3 Submission of Proposals

Proposals must be received by ESD no later than **12:00 P.M. U.S. Eastern Standard Time, on August 12, 2013**. Submit five (5) print copies of the proposal to the following address:

**Samuel Filler
625 Broadway, 8th Floor
Albany, NY 12207
Attention: ESD At-Rest RFP**

In addition to print copies, **please submit an electronic copy of the proposal by email to sfiller@esd.ny.gov**. This will **NOT** be considered a substitute for a timely print copy submission.

It is the responsibility of each individual or firm to ensure timely submission of its proposal. Proposals received after the scheduled date and time cannot be accepted.

SECTION II – BACKGROUND AND SCOPE OF SERVICES

2.0 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.

At Rest legislation has been introduced in the New York State Legislature for several years. The proposed legislation would amend the Alcoholic Control Beverage Law in relation to the shipment of alcoholic beverages into the state. The term “At Rest” is used in the context of alcoholic beverages shipped into a state from an out-of-state supplier or licensed wholesaler. Some states require those out-of-state shipments be shipped to a licensed wholesaler within the state and maintained at a premises operated by such wholesaler for a minimum period of time. The minimum period of time required is known as the “at rest” period.

ESD is seeking a Contractor to perform an economic impact analysis. The Contractor is to prepare an evaluation of the potential economic development benefits and costs if New York State adopts “at rest” legislation. The purpose of the study is to determine the best course of action that New York State should take in regards to “at rest” legislation.

2.1 Scope of Services

The responsibilities of the Contractor shall include, but not be limited to the following:

1. A survey, by location and company name, of:
 - a. Alcoholic beverage wholesalers licensed by the New York State Liquor Authority (“SLA”) that store alcoholic beverages at a premises or warehouse owned, leased, rented or operated by the licensed wholesaler and located within New York State for delivery to New York licensed retailers. Survey should include the total number of jobs, type of jobs, and salaries at said premises or warehouse.
 - b. Alcoholic beverage wholesalers licensed by the SLA that store alcoholic beverages at a premises or warehouse owned, leased, rented or operated by the licensed wholesaler and not located within New York State but used by the licensed wholesaler for delivery to New York licensed retailers. Survey should include the total number of jobs, type of jobs, and salaries at said premises or warehouse.
 - c. Alcoholic beverage wholesalers licensed by the SLA that store alcoholic beverages at a premises or warehouse owned, leased, rented or operated by a third party and located within New York State, and used by the licensed wholesaler for delivery to

New York licensed retailers. Survey should include the total number of jobs, type of jobs, and salaries at said premises or warehouse.

- d. Alcoholic beverage wholesalers licensed by the SLA that store alcoholic beverages at a premises or warehouse owned, leased, rented or operated by a third party and not located within New York State for delivery to New York licensed retailers. Survey should include the total number of jobs, type of jobs, and salaries at said premises or warehouse.
 - e. Out-of-state alcoholic beverage wholesalers, importers or manufacturers that store alcoholic beverages at a premise or warehouse located within New York State for delivery to New York licensed wholesalers. Survey should include the total number of jobs, type of jobs, and salaries at said premises or warehouse.
 - f. Out-of-state alcoholic beverage wholesalers, importers or manufacturers that store alcoholic beverages at a premise or warehouse not located within New York State for delivery to New York licensed wholesalers. Survey should include the total number of jobs, type of jobs, and salaries at said premises or warehouse.
2. An analysis of the impact of an “at rest” requirement on
- a. The New York State alcoholic beverage wholesale industry and the impact associated with those New York licensed wholesalers that store alcoholic beverages at a premises or warehouse owned, leased, rented or operated by the licensed wholesaler that is located within New York State, the impact on licensed wholesalers that store alcoholic beverages at a premises or warehouse owned, leased, rented or operated by the licensed wholesaler that is located outside of New York State and used for delivery to a New York licensed retailer, the impact on licensed wholesalers that store alcoholic beverages at a premises or warehouse owned, leased, rented or operated by a third party located within New York State, and the impact on licensed wholesalers that store alcoholic beverages at a premises or warehouse owned, leased, rented or operated by a third party that is located outside of New York State.
 - b. Existing New York State statutes pertaining to the warehousing and distribution of alcoholic beverages within New York State.
 - c. Jobs, by category and profession, within the New York State alcoholic beverage wholesale industry including the impact of payroll tax revenue and other related tax revenue on the State and a comparison of total jobs associated with the premises or warehouses owned, leased or rented within New York State by New York licensed wholesalers to store alcoholic beverages prior to delivery to New York retailers and total jobs associated with the premises or warehouses not located within New York that are owned, leased or rented by licensed wholesalers to store alcoholic beverages prior to delivery to a licensed New York retailer.
 - d. Consumers of alcoholic beverages in New York State.

- e. Alcoholic beverage retailers in New York State.
 - f. New York State licensed producers of beer, wine, spirits, and cider.
3. A survey of other states that have enacted “at rest” legislation and the subsequent economic impact on the alcoholic beverage wholesale industry in those states.

2.2 Deliverables

The Contractor will also be responsible for providing:

- A preliminary draft within 30 days of contract award that shows progress on the points described in Section 2.1.
- Electronic copy of any datasets developed pertaining to points described in Section 2.1.
- Final report delivered to ESD within 90 days of contract award with complete analysis of points described in Section 2.1 and recommendations for course of action by New York State in regards to adoption of any “at rest” requirements.

2.3 Budget

The Contractor’s budget should reflect all costs for completing the Scope of Services including, but not limited to:

- Personnel costs, including the name, title and actual hourly labor rates of all staff working on the project, per each task in the Scope of Services.
- Reimbursable expenses, as an itemized list for out-of-pocket expenses and other direct costs including direct research and analysis expenses.

2.4 Qualification Requirements

Your proposal must demonstrate your ability to comply with each of the items identified below. Inability to demonstrate compliance with these qualifications will result in the disqualification of your proposal.

- a. Relevant and demonstrated experience in performing similar economic impact analyses on potential or enacted New York State legislation.
- b. The general qualifications and experience of the staff proposed to be assigned to the ESD engagement.

- c. Proposer must provide the name, address, phone number, contact name, title and email address of three business references that can substantiate that your company has successfully conducted similar projects in the past.

2.5 Selection Criteria/Evaluation

Proposals that meet all the mandatory qualifications as outlined in Section 2.4 above will be evaluated by ESD based on the Selection Criteria stated in this section. Proposals will be scored based on the following criteria:

1. Technical Evaluation:

a. Demonstrated Experience

Relevant economic impact analysis experience in performing services similar to those described in Sections 2.1 and 2.4 of this RFP for similar economic development and public policy clients with clear and demonstrated impact.

b. Quality of Approach & Performance Metrics

Thorough plan proposed to accomplish Scope of Services (Section 2.1) with demonstrated ability to execute said proposal in a timely fashion. Your proposal must address each item listed in Sections 2.1, 2.2, and 2.3 above and a timeline for executing the plan (See also Section 3.1).

c. Organizational Capability

Commitment, capability and expertise of the specific staff to be assigned to this study.

2. Resources

Evaluation of the adequacy, appropriateness, effectiveness, and reasonableness of the resources proposed by the firm to accomplish the scope of services and tasks set forth in Section 2.1 – Scope of Services.

3. Cost Evaluation

Evaluation of the total cost proposed in the Pricing and Compensation Proposal as set forth in Section 3.1.

ESD anticipates that a single Proposer will be conditionally designated based upon ESD's determination of the best value.

SECTION III – PROPOSAL CONTENT AND CONDITIONS

3.0 General Information

In preparing proposals, individuals and firms should follow the guidelines within this RFP.

3.1 Proposal Instructions

Each participating Proposer must submit a complete proposal with each element of Sections 2.1, 2.2, and 2.3 addressed. In addition, all proposals must include the following information. Proposers supplying incomplete responses may be deemed non-compliant. Please follow the format listed below:

Title page, indicating name, address (both mail and email) phone & fax number, contact person, and federal ID number (if any). It must also include a signed statement that the offer shall be firm and not revocable for a period of 60 days unless withdrawn in writing.

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Technical Proposal

A. Experience

Provide background information on your company, including: history, years in business, and experience in the past 5 years, company size, number of employees, types of services provided, locations, parent company, and/or affiliate information, type of company, etc. Also include a discussion on how your company meets the experience, knowledge and accomplishment requirements in Section 2.4 of this RFP.

Specify the accreditations your company has acquired since its inception, and give details of any company membership of professional or trade organization affiliations.

Attach a listing of at least three (3) relevant business references, including the name of the reference entity, a brief statement describing the relationship between the Proposer and the reference entity, and the name, title and telephone number of a contact person at the reference entity.

Attach a current client list.

B. Proposed Approach

Describe in detail how your company will provide the Scope of Services and Deliverables described in Section 2.1 and 2.2 of this RFP within the Budget set forth at Section 2.3.

C. Organizational Capability

Demonstrate the company's organizational capability to provide the Scope of Services and Deliverables described in Sections 2.1 and 2.2.

Specify who would be the primary contacts and dedicated staff on the ESD account. Include resumes identifying their experience working on economic impact analysis in addition to, knowledge of/experience with New York State. Identify how much time each staff person would devote to this account.

D. Pricing and Compensation Proposal

A Pricing and Compensation Proposal must be completed and submitted as part of your proposal. Each Proposer must demonstrate how it will complete the Scope of Services within a reasonable budget. If any of the personnel duties will be filled with subcontractors, please identify any such subcontractor and separately include their costs in the proposal. All figures shall be included in U.S. dollars. Describe your approach to optimizing the budget to ensure ESD achieves maximum impact.

3.2 Proposal Conditions

Only those individuals or firms who have supplied complete information will be considered. Any patented or proprietary information included in the proposal must be clearly identified in the proposal and in a cover letter submitted with the proposal.

ESD reserves the following rights:

- to accept or reject any or all proposals;
- to waive or modify minor irregularities in proposals received;
- to eliminate qualification requirements unmet by all Proposers;
- to disqualify proposals that fail to meet the qualification requirements;
- to require clarification from any Proposer for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- to negotiate with any or all Proposers, within the proposal requirements, to best serve the interests of ESD;
- to amend the scope after release of this RFP, with due notice given to all those solicited to modify their proposals to reflect the changed scope;
- to award contract(s) for any or all parts of a proposal; and
- to elect to award contract(s) to one or more responsive and responsible Proposers, provided that the basis for the election among multiple contracts at the time of award shall be the most practical and economical alternative and shall be in the best interest of ESD.

By submitting a proposal, an individual or firm agrees that it will not make any claim for or have any right to damages because of any lack of information or misinterpretation of the information provided in this RFP.

SECTION IV – 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 20%** related to the total value of ESD's funding.

A copy of Respondent's Equal Employment Opportunity Policy Statement (Form OCSD-1), Staffing Plan (Form OCSD-2) of the anticipated workforce to be utilized, 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-2

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf

Form OCSD-3

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

Form OCSD-4

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.

SECTION V – PROCUREMENT REQUIREMENTS

A. Insurance

The selected Contractor 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 \$1 million.
- Professional Liability insurance of \$1 million 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. In addition, all policies listed above should include a waiver of subrogation in favor of NYS UDC d/b/a ESD.

B. Vendor Responsibility Questionnaire

ESD encourages vendors to register in New York State's Vendor Responsibility System (“VendRep System”). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database.

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company's trade industry.

C. Integrity Certification

If Proposer is designated and selected for performance of the subject services, the Proposer (or if the Proposer is a joint venture, each participant in the joint venture) will be asked to sign a certification (the "Certification Statement") certifying the Proposer's (or if the Proposer is a joint venture, each participant's) compliance with the integrity provisions set forth in the Agreement. By submitting the Proposal, the Proposer (or if the Proposer is a joint venture, each participant) shall be deemed to have made the certifications contained therein unless said Proposer submits a statement with its Proposal explaining the inability to make such certification(s). Such statement shall be submitted in a separate envelope along with your proposal, clearly marked "CERTIFICATION STATEMENT".

D. 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.

E. 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.

F. Non-Collusive Bidding Certification

Proposer (and if the Proposer is a joint venture, each participant) shall submit a properly subscribed and affirmed Non-Collusive Bidding Certification, and Proposer’s failure to include it may result in ESD rejection of the Proposal; provided, however, that if the Proposer (or any joint venture participant) cannot make such certification, it shall so state and shall submit with the Proposal a signed statement which sets forth in detail the reasons therefore. In the event that such statement is submitted in lieu of the Non-Collusive Bidding Certification, the bid shall not be considered unless ESD determines that disclosure was not made for the purpose of restricting competition.

G. New York State Finance Law Sections 139-j and 139-k

State Finance Law Sections 139-j and 139-k (collectively, the “Section 139 Requirements”) apply to this solicitation. These requirements (1) govern permissible communications between potential Proposers and ESD or other involved governmental entities with respect to this solicitation during the procurement process; and (2) establish sanctions for knowing and willful violations of the provisions of the requirements, including disqualification from eligibility for an award of any contract pursuant to this solicitation.

In order to comply with the Section 139 Requirements: (i) all communications regarding this solicitation, from the issuance of this solicitation through award and final approvals of any resulting contract (the “Restricted Period”), must be conducted only with the ESD contact person listed in this solicitation; (ii) the completion by Proposers of the Offerer Disclosure of Prior Non-Responsibility Determinations and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law, copies of which are available at www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf; and (iii) periodic updating of such forms during the term of any contract resulting from this solicitation. Proposers must submit both of these forms, properly completed, as part of their Proposals.

The Section 139 Requirements also require ESD and ESD employees to obtain and report certain information when contacted by a prospective Proposer during the Restricted Period, make a determination of the responsibility of the Proposer, and make all such information publicly available in accordance with applicable law. If a prospective Proposer is found to have knowingly and willfully violated the Section 139 Requirements, that prospective Proposer and its subsidiaries, and related and successor entities will be determined to be a non-responsible Proposer and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

A copy of the Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k, which is applicable to all ESD subsidiaries, including ESD, can be found at www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. Neither this summary nor the referenced Policy is a complete presentation of the provisions of the Section 139 Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at <http://www.ogs.state.ny.us>. All potential Proposers are solely responsible for full compliance with the Section 139 Requirements.

H. New York 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 or subcontractors make sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the immediately preceding consecutive four sales tax quarters and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Proposers must include in their Proposals a properly completed Form ST-220-CA, (a copy of the form is available at www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) *or* a satisfactory affidavit that the entity is not required to register (a copy of the affidavit form is available at www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf). Proposers must submit a properly completed ST-220-CA *or* an Affidavit of Non-Applicability as part of their Proposals.

I. Iran Divestment Act

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

"By submission of this bid, each Proposer and each person signing on behalf of any Proposer 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 Proposer 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.

J. 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 services 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, Proposers and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

K. Contract Terms

The selected contractor must execute an ESD standard form contract which will include, without limitation, the terms set forth in Schedule A, a copy of which is available on the ESD website: http://www.esd.ny.gov/CorporateInformation/Data/RFPs/ScheduleA_May2012.pdf