

MEMORANDUM

TO: Bayview Correctional Facility RFP Respondents
FROM: RFP Review Committee
DATE: Tuesday, June 10, 2014
RE: Responses to submitted questions

The following are a list of responses to questions submitted by prospective respondents (“Respondents”) to ESD’s Request for Proposals dated 5/19/2014 (“RFP”) for the purchase and/or long-term lease and adaptive re-use of the former Bayview Correctional Facility, located at 550 West 20th St., New York, NY 10011. A copy of the RFP is also available at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>. Of note, the RFP replaces the prior RFP dated 12/23/2013 for the purchase and adaptive re-use of the former Bayview Correctional Facility (the “Prior RFP”).

Questions listed in this document were received in writing between the release of the RFP on May 19, 2014 and June 5, 2014. Additionally, some questions that were submitted under the Prior RFP have also been re-addressed here to update or confirm ESD’s position on each question.

The deadline for final questions remains Wednesday, June 25, 2014. If ESD deems it necessary, ESD may post additional responses to questions submitted. ESD may continue to upload new documents to ESD’s website in conjunction with the RFP, and Respondents are encouraged to check back for more information.

I. PROPOSALS – SUBMISSION PROCESS

Q1: Do Respondents to the Prior RFP dated 12/23/2013 need to respond to the new RFP dated 5/19/2014 in order to remain in competitive consideration? What are the differences in submission requirements, if any?

A: Yes, Respondents to the Prior RFP are again required to respond to the RFP in order to remain in competitive consideration. However, if desired, instead of re-submitting ten new copies of their Proposals, Respondents to the Prior RFP who are also responding to the RFP can instead satisfy the submission requirements by completing the following: 1) submitting five extra copies of their Proposals, to equal the ten requested in the RFP; 2) submitting ten copies of an addendum to the prior Proposals. This addendum should request that ESD consider the initial Proposal to be part of the Respondent team’s new proposal, outline all changes and updates to the Proposal for

the RFP, and confirm all elements of the Proposal that should be considered unchanged. The addendum should also include new responses to any added RFP elements—for example, completing the expanded Project Information Supplement and providing terms for a long-term lease offer and/or combination purchase/long-term lease offer if appropriate.

Q2: Does ESD have a preference as to the proposed transaction structure—whether or not Respondents submit their offer in the form of a long-term lease, purchase offer, or a combination thereof?

A: ESD encourages all Respondents to articulate their Proposals for the Site’s adaptive re-use under multiple transaction structures. It is likely that the final preferred Proposal will be either a long-term lease or a combination of a purchase of some or all of the improvements paired with a long-term lease of the land and any remaining improvements. However, ESD is still evaluating this point and encourages all Respondents to propose multiple scenarios, including a straight unqualified purchase price, so that ESD may determine which transaction structure will be optimal. As noted in the RFP, “Although ESD is requesting Proposals for sale, lease, or a combination thereof for the Site (land and improvements), ESD reserves the right to request revised proposals that reflect a lease of the land only, or a sale or lease of all or a portion of the improvements, or a combination thereof. ESD reserves the right to make such requests to all Respondents or to a subset of all Respondents as set forth in Section V. Any such Respondents still under consideration shall be given the opportunity to revise their Proposals and any related provisions of the RFP will be amended or deemed amended as necessary.”

Q3: Where can I find an updated copy of ESD’s Schedule A?

A: ESD has updated its Schedule A. A new version can be found on ESD’s website at the bottom of the RFP web page or at the following direct link: http://www.esd.ny.gov/CorporateInformation/Data/ScheduleA_ConditionsApplicabletoCorporationAgreementsForMaterialServices_RevisedMay2014.pdf.

Q4: Will the prior tour sign-in sheets be made public?

A: Yes. ESD has now posted additional files, including the sign-in sheet for the 5/29/2014 tour. ESD previously posted the sign-in sheets for the three tours for the Prior RFP on its webpage. Both can be found on ESD’s RFP web page at: <http://esd.ny.gov/CorporateInformation/RFPs.html>.

Q5: Will ESD extend the deadline past July 1, 2014?

A: At this time, ESD has no plans to extend the deadline past July 1, 2014 at 2:00 PM.

Q6: Will ESD offer any additional tours prior to the Proposal deadline?

A: Currently, a second tour is planned for Wednesday June 18, 2014. Tours will be held at 10:00 AM, 11:00 AM, 12:00 PM and 1:00 PM. Respondents are asked to RSVP with a list of attendees and the time scheduled and are encouraged to submit copies of their

signed site waivers, attached to the RFP, in advance of the tour. Should tours be added, any additional tours will be announced via email to all parties who have previously expressed interest in the RFP.

Q7: Please clarify the electronic submission Proposal requirement in RFP Section IX.

A: In Section IX, the RFP states, "Ten (10) hard copies and one (1) electronic copy (in the form of a flash drive or CD-ROM) of the Proposal identified by "Bayview C.F. RFP" must be received by ESD by 2:00 PM on Tuesday, July 1, 2014." Respondents may email BayviewCF@esd.ny.gov a copy of their Proposal or a link to download files from an FTP site as a backup, but not as a primary means of transmission. As noted in Section V(10), Respondents are also required to submit a Project Information Supplement ("RFP Workbook") in the form of a completed Excel file, which can be downloaded at [http://www.esd.ny.gov/CorporateInformation/Data/RFPs/Bayview_CF/05192014 Project Information Supplement BayviewCF.xlsx](http://www.esd.ny.gov/CorporateInformation/Data/RFPs/Bayview_CF/05192014_Project_Information_Supplement_BayviewCF.xlsx).

Q8: With regards to last bullet point under RFP Section V. Proposal Requirements (1), on Page 12, what type of documentation is required as "Evidence of Designated Developer's commitment to pay...?" Is a short paragraph listing the costs and referencing the Respondent's financial statements acceptable?

A: For the commitments to pay under RFP Section V. Proposal Requirements (1), for purposes of submitting a Proposal, Respondents need only include a statement that Respondent recognizes and commits to pay such charges. In demonstrating a Respondent's ability finance the Project, Respondents may provide letters of interest and/or intent from equity sources and lenders.

Q9: Do the schedules/attachments to the Schedule A contract need to be completed at this time?

A: The forms required for the RFP are described in Section XI of the RFP and should be submitted with the RFP. Schedule A will be part of a contract to be signed only with the Designated Developer at a later time. As stated in Section XI of the RFP, "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"...Please note Respondents do not need to complete the entire Schedule A with the submission of their Proposal. However, Respondents should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as the Designated Developer will need to accept these terms prior to contract execution." Other forms that are required to be completed and submitted with the RFP are described in Section XI.

Q10: Under Section XI (4) "Non-Discrimination and Contactor & Supplier Diversity Requirements", it requires Respondents to fill out forms OSCD-1, OSCD-2, and OSCD-4. However, form OSCD 4 is labeled as "Utilization Plan" in the RFP and "Good Faith Efforts" on the ESD website. Was ESD referring to form OSCD-3 when referring to the Utilization Plan since Good Faith Efforts form is simply Informational?

A: Respondents are required to submit the Utilization Plan form included OSCD-4 in the RFP, available at:
http://www.esd.ny.gov/CorporateInformation/Data/RFPs/Bayview_CF/05192014_New_BayviewCF_RFP_5-19-2014_final.pdf. This form is labeled OCSD-4 in the RFP, is labeled OCSD-3 on the ESD website and is the form required for the RFP. The Good Faith Efforts form is an informational item and is not required to be submitted or returned.

II. BUILDING INFORMATION:

Q11: Will any CAD drawings, elevation reports, land surveys, architectural/structural drawings, environmental studies, foundation plans, utility reports, or any other additional Site information made available?

A: ESD is in the process of regularly posting new files on its website, and may post additional documents. To access these files, once posted, please download them from ESD's RFP page under the Bayview solicitation at: <http://esd.ny.gov/CorporateInformation/RFPs.html>.

Q12: There appear to be three open building violations with the New York City Department of Buildings for failure to benchmark the existing energy use. Will these violations be cleared prior to the sale of the Site?

A: As a New York State facility, the Site was exempt from this energy benchmarking requirement. No additional State actions with respect to the New York City Department of Buildings are anticipated.

Q13: To the best of ESD's knowledge, is the 550 West 20th Street property encumbered by any restrictive deeds, covenants, easements or other legal instruments that will impact the development of the site by the Designated Developer?

A: ESD is unaware of any restrictive deeds, covenants, easements, or other legal instruments that will impact the development of the site by the Designated Developer, with exception of historic preservation and other items previously outlined in the RFP. ESD does not represent that there are no encumbrances that that will impact any Proposal. Respondents may, and ESD anticipates, that the Designated Developer will perform any and all requisite due diligence to determine the existence of any encumbrances to the Site.

Q14: What is the capacity of the existing commercial kitchen?

A: With respect to the kitchen, please note that most cooking equipment has now been removed. As such, the commercial capacity of the kitchen for the Designated Developer would primarily depend on the new equipment introduced. In terms of remaining equipment, there are walk-in coolers and freezers (cited on the Site Field Guide's floor plans) and a small dishwasher, though its operational status is uncertain.

Q15: With regards to building square footage, are you using usable or rentable (and if so, what is the loss factor)? Does it include the basement?

A: The floor-by-floor totals in the RFP assume usable square footage.

Q16: What are the heights of Building 1 and Building 2?

A: Building 1: 97'-6" to roof slab. Building 2: 85'-4" to roof slab. (On the top of this roof is the generator enclosure which is not included in this total height.) This is according to drawing #21273A-18, and drawing # 21273A -021 Elevations, which have been added to ESD's website.

Q17: Can you please confirm the combined lot size for Buildings 1 and 2?

A: The correct lot size number for the Site is 15,800 sq. ft.

Q18: What is currently known about possible hazardous materials on site? Will any of these (e.g., asbestos) be addressed prior to purchase?

A: A Phase I Environmental Site Assessment and a Report on Indoor Air Quality have been added to the RFP files on ESD's website. There may be asbestos-containing materials. ESD continues to seek out and review additional files and may post additional documents with respect to this subject. It is not anticipated that environmental remediation work will be performed by New York State prior to disposition.

Q19: Please confirm the capacity of the existing natural gas generator and note the year in which the existing natural-gas generator was installed.

A: 500kW, model year is 2006.

Q20: The Bayview RFP describes the existing natural-gas generator as supporting emergency loads. Section 2702 of the New York City Building Code requires on-site fuel source except for Occupancy R-2 and voluntarily installed emergency power systems. Is the current occupancy of the building R-2? Was the existing generator installed voluntarily? If neither of these exceptions applied, was there a code modification approved by NYC Department of Buildings for this generator to use natural gas instead of an on-site fuel source?

A: New York State Department of Corrections policy is to have all correctional institutions to be at least 100% emergency powered. As noted above, local rules and regulations do not apply to a State facility.

Q21: Where in the building is the electric meter, and what electricity information is available with respect to the Site? The information supplied in the Site survey seems incorrect.

A: The electric meter is located in the basement. Site service is 208 volt 3 phase, main breaker 3000 amps.

III. SITE ZONING AND ALLOWABLE USES

Q22: Are Building 1 and Building 2 both located within Sub-area D of the Special West Chelsea Zoning District?

A: The vast majority of the Site is located in Sub-area D, but a small portion of the Site is located in Sub-area E. Based on the limited share of the Site in Sub-area E, however, and preliminary conversations with the NYC Department of Planning, for purposes of this RFP, Respondents should assume in their Proposals that the entire Site is one lot governed by Sub-area D.

Q23: What is the maximum allowable floor area allowed for the Site?

A: Sub-area D of the Special West Chelsea Zoning District provides for a base maximum floor area ratio ("Base FAR") of 5.0. However, it also allows a structure to increase its floor area up to a total maximum allowable FAR ("Max FAR") of 7.5 by purchasing High Line Transfer Corridor development rights, among other means. Currently, the Site is believed to be overbuilt for its Base FAR but is underbuilt relative to its Max FAR. So long as they satisfy all other elements of Sub-area D zoning, Proposals are allowed to propose floor area up to the Max FAR without being required to externally purchase additional development rights. Of note, it is anticipated that any development rights requested in a Proposal to reach this Max FAR and increase the building's existing floor area would be reflected in a Respondent's commensurately higher purchase price or long-term lease offer. It is also anticipated that requests for additional development rights would be for a use consistent with the Development Goals set forth in the RFP.

Q24: What, if any, zoning overrides will ESD consider granting with respect to any building modifications?

A: Through the powers granted to it by the State of New York, ESD possesses the statutory power to override local zoning. As stated in RFP Section III, under "Zoning", "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."

To elaborate, while ESD may consider the granting of minor zoning overrides to accommodate Proposals with unique needs and special potential for satisfying the Development Goals, ESD does not expect to override any City of New York building, fire, or other related codes beyond, as necessary, overrides to reach the Max FAR, as outlined in the previous question response. As stated earlier, Respondents should assume that their Proposal is subject to Special West Chelsea District Sub-area D zoning.

Should a Respondent seek zoning overrides of any kind beyond reaching the aforementioned Max FAR of 7.5 (which will not require an addendum), it must submit: 1) A standard Proposal, including all such components described as being required in the RFP, with no other zoning overrides requested; and 2) An addendum outlining a second scenario that assumes additional zoning overrides (other than to Max FAR) would be

allowed. This addendum, as necessary should: a) identify and confirm all Proposal components (e.g., the Project Team) that would remain unchanged; b) include modified Proposal components (e.g., new purchase price, site layout, zoning calculations, etc.; components outlined in RFP Section V, 1-10, e.g.) for all elements of the Proposal that would be changed in the second scenario in which additional zoning overrides are proposed. Additionally, Respondents should provide a rationale upon which ESD should allow additional overrides, and how any additional overrides would be compatible with the Development Goals.

Q25: Can residential FAR be built as an addition atop the existing Bayview facility?

A: No. Residential uses are not allowed on the Site. As noted in the RFP, “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.”

Q26: Does the restriction on residential uses also restrict any proposals for shelters, community correctional/halfway homes and immigration detention centers?

A: Correct. These uses are also not allowed.

IV. HISTORIC PRESERVATION

Q27: With respect to historic preservation, what is required?

A: All Proposals are encouraged to preserve the significant features of the Site to the maximum extent practicable in the context of their Proposal's needs and the RFP's Development Goals. All modifications to the Site will ultimately need to be reviewed in consultation with SHPO and should be consistent with the "Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", which may be read at http://www.nps.gov/hps/tps/standguide/rehab/rehab_standards.htm.

Q28: Can you describe the SHPO consultation process?

As stated in the RFP, the Bayview Correctional Facility has been determined by SHPO to be eligible for listing on the National Register of Historic Places, and as such will require consultation with SHPO in accordance with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. The consultation process will be initiated by the Agency Preservation Officer of ESD in coordination with the Designated Developer early in the planning process. The consultation process will involve review by the staff of SHPO's Technical Services Unit to determine whether or not the proposed project will have an impact/effect on the qualities of the property that make it eligible. SHPO's role in the review process is to ensure that effects or impacts on eligible or listed properties are considered and avoided or mitigated during the project planning process. ESD will work with the Designated Developer and SHPO to ensure that the project preserves the significant features of the building to the maximum extent practicable while meeting the project's needs and development goals.

Q29: What is SHPO's definition of "substantial changes to the building"? Is the Designated Developer required to consult with SHPO about interior changes to the existing structure?

A: The determination of what constitutes "substantial changes to the building" would be made during the SHPO consultation process. In general, the removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize the building should be avoided. Please consult the "Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" for further guidance.

Yes. The Designated Developer will be required to consult with SHPO regarding any proposed interior changes to the structure.

Q30: Does ESD have override authority over SHPO?

A: No. ESD, as with other State agencies, must comply with the New York State Historic Preservation Act of 1980, which requires State agencies to consult with SHPO if it appears that any project which is being planned may or will cause any change in the quality of any historic, architectural, archaeological or cultural property that is listed on or eligible for listing on the National Register of Historic Places. In certain cases, ESD will work with the Designated Developer to meet such requirements, which may include the

preservation of certain features or the historical documentation of certain features prior to their modification or removal.

Q31: What is the status of the Site with regards to the NYC Landmarks Preservation Commission?

A: The Site is not currently on the calendar of properties to be considered by New York City's Landmarks Preservation Commission.

V. PROPOSALS – EVALUATION

Q32: How will the selection criteria be weighted?

A: Each of the selection criteria will be weighted equally and aggregated for an overall Proposal score.

Q33: How will a Proposal be evaluated with respect to Development Goal 6: “Incorporating sustainable building practices and appropriate levels of LEED or Energy Star Certification”?

A: ESD will evaluate each Proposal’s overall and relative consistency with respect to the Development Goals, including this goal. A Proposal’s overall score on meeting the Development Goals will be factored a Proposal’s score on the Selection Criteria, as noted in RFP Section VI.

Q34: How will a Proposal be evaluated with respect to Development Goal 2: “Providing opportunities for community facility use”? Does ESD have anything specific in mind?

A: As stated in RFP Section I, all Proposals should include some community facility component. ESD has no specific requirements or expectation for what this use would include, and anticipates that the type of community facility uses proposed will vary based on the type of Proposal being submitted and its compatibility with different uses. Instead, ESD will evaluate each Proposal’s overall and relative consistency with respect to the Development Goals, including this goal. A Proposal’s overall score on meeting the Development Goals will be factored into a Proposal’s final score on the Selection Criteria. In short, the more substantive and valued the opportunities for community facility use, the higher Proposals will be evaluated with respect to this goal.

Q35: After ESD receives the Proposals, what happens next? Will the Respondent have an opportunity to negotiate on price? How long will it take until ESD announces which Proposal it selects?

A: The process and time for selecting a Designated Developer varies based on how many Proposals are received and the selection steps that ESD ultimately decides to perform before making a decision. Common selection steps include: ESD responding to Proposals with written questions; ESD inviting some or all Respondents to deliver an in-person presentation and participate in a brief Q&A regarding their Proposal; and final negotiations with some or all of the Respondents. Respondents are advised to submit a strong offer for the Site in their original Proposal—with the strength judged not just by purchase or lease price, but by all of the selection criteria—in order to remain in competitive consideration. After submitting a Proposal, Respondents can expect to be invited to an interview to occur on July 15 or, if necessary, July 16, if they are invited to advance to the next stage of the competitive process.

Q36: Does ESD have a ballpark figure of what it expects the Site to sell or lease for? Will the price be different for different users?

A: Respondents are advised to propose the most competitive purchase and/or lease price possible in their original Proposal, consistent with the Development Goals. As noted, offer price is one of the selection criteria by which Proposals will be judged.

VI. POST-SELECTION

Q37: What level of Project support is ESD able to provide following the selection of a Designated Developer? For example, would ESD actively support the Designated Developer in negotiations with the City of New York in reference to obtaining an additional curb cut on 20th Street for a new loading dock? Would ESD provide written correspondence and appear with the Designated Developer at public hearings (e.g., before the local Community Board 4)?

A: ESD has a vested interest in supporting its Designated Developer to turn the selected Project into a reality. However, the nature, extent and frequency of ESD's support provided would be determined in later discussions as the selection process advances.

Q38: Will the New York City Department of Buildings or the New York City Department of Small Business Services be reviewing drawings?

A: The Designated Developer will be required to comply with all applicable permits and approvals, including the New York City Department of Buildings as it relates to the review and approval of building plans. The extent to which the Designated Developer would be required to work with other agencies, including the Department of Small Business Services, will be determined by standard municipal regulations. Zoning matters are discussed in greater detail in the RFP and in responses to questions contained within this document.

Q39: Can ESD provide a ballpark range of transaction costs to be borne by ESD and requested for reimbursement by the Designated Developer?

A: The total amount of transaction costs will include standard services such as title reports, appraisals, and other consulting services deemed necessary by ESD to complete the transaction, including legal, environmental and historic preservation review services. The ultimate amount of services required will depend upon the nature of the Designated Developer's selected Project, and the Designated Developer and ESD will enter into a written agreement that delineates the types of costs expected and, wherever possible, cost estimates and/or hourly rates for such services.

VII. GENERAL QUESTIONS

Q40: Why does the RFP prohibit residential (including hotel) uses? Why does the State impose restrictions on the uses of properties like Bayview in executing their sale?

A: In certain circumstances, as the State of New York's chief economic development agency, ESD may determine that certain restrictions in an RFP will result in Proposals that better promote the general welfare of the community and the State of New York. In order to address such situations, ESD may then apply certain rules with respect to a site's sale in order to promote Proposal elements that would produce positive externalities and meet community needs, or prohibit Proposal elements deemed to produce negative externalities or other issues that would not meet local community needs. In this case, based on a review of the Site and of the community's needs, ESD determined that the best overall use of the Site would be one that does not include certain uses.

Thank you for your interest in ESD.