



Empire State New Market Corporation

Request for Proposals

New Markets Tax Credit Accounting Services

Publication Date: July 23, 2012

Response Date: August 13, 2012

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I. Overview

The Empire State New Market Corporation (“ESNMC”) seeks an individual or an accounting firm (“Firm”) experienced with the federal New Markets Tax Credit (“NMTC”) program to provide accounting services to ESNMC relating to the operation of its NMTC program.

II. Background

ESNMC is a wholly-owned subsidiary of the New York State Urban Development Corporation d/b/a/ Empire State Development (“ESD”), a public benefit corporation which is New York State’s economic development agency. ESD’s President & CEO serves also as the Commissioner of the New York State Department of Economic Development (DED). Together, ESD and DED strive to create a healthy business environment and improve employment opportunities throughout New York State.

In May 2009, the Community Development Financial Institutions Fund awarded ESNMC a \$30 million allocation of NMTCs. In September 2011, ESNMC closed on its first NMTC transaction, an \$18MM allocation to Agro-Farma/Chobani Yogurt. ESNMC expects to deploy the remaining \$12 million of its \$30 million allocation within the next twelve months. ESNMC transactions involve leveraged loans with senior (“A”) notes and junior (“B”) notes. In some cases, a portion of the leverage will be provided by ESD.

III. Scope of Services

The Firm selected will provide the following accounting services to ESNMC:

1. Provide transactional accounting projections and related opinions.
2. For each transaction, prepare an annual audit and tax return for both the investment fund (“upper tier”) and the operating entity (“lower tier”) for fiscal years 2012, 2013, and 2014.
3. Provide NMTC compliance services and administer periodic testing and reporting on NMTC compliance.
4. Prepare an annual audit, tax return, and financial statements for ESNMC for fiscal years 2012, 2013, and 2014.

IV. Qualifications

The Firm is an accounting firm with extensive experience providing the services described above for other Community Development Entities (“CDEs”).

V. Submission Requirements

A. Content

The following information should be provided in each proposal, in the order listed below:

1. Identifying Information
 - a. Full legal name, address, and type of legal entity.
 - b. Federal Employer Identification Number.
 - c. Name, telephone number, and e-mail address of the representative who is authorized to discuss and/or negotiate the proposal.
2. Prior NMTC Experience
 - a. Narrative of experience.
 - b. List of CDE clients and services provided.
(Two pages maximum.)
3. Proposal for ESNMC, including:
 - a. Method for conducting each of the services enumerated above, under Scope of Services.
 - b. Staffing for each service above, including biographies.
 - c. Fee for each service above. If billing hourly, please provide billing rate ranges for individuals who will work on the account and an estimate as to the total cost for each service.
(Three pages maximum, plus biographies.)
4. Required Forms
 - a. Form W-9
 - b. Certification under State Tax Law § 5-a; or
 - c. Affidavit of Non-Applicability of State Tax Law § 5-a;
 - d. Form ST-220-CA;
 - e. Forms required under SFL §§139-j and 139-k;
 - f. New York State Vendor Responsibility Questionnaire For-Profit Business Entity; and
 - g. Forms OCSD-1, OCSD-2, and OCSD-3.

B. Requirements/ Questions

1. Submission
Your response marked "NMTC Accounting RFP Response" must be received no later than **12:00 PM on Monday, August 13, 2012** by:

Jonevan Hornsby
Empire State Development
633 Third Avenue
New York, NY 10017
jhornsby@esd.ny.gov

Your response must include **five (5) hard copies and one (1) electronic copy on computer disk** in Adobe Acrobat or Microsoft Word/Excel/PowerPoint.

2. Questions

Questions regarding this RFP, including any requests to receive a copy of ESNMC's 2011 NMTC allocation application, should be e-mailed to Jonevan Hornsby at the e-mail address above by Wednesday, August 1, 2012. Answers to all questions of a substantive nature will be e-mailed to all recipients of this RFP in the form of a formal addendum, and will be added to ESD's website at www.esd.ny.gov.

VI. Selection Criteria

The criteria upon which ESNMC will base its selection of the successful respondent, if any, may include the following:

- A. Experience providing NMTC accounting services to CDEs and other entities.
- B. Proposed method of providing services to ESNMC and proposed staffing.
- C. Proposed fee structure.
- D. Participation of Minority and Women-owned Business Enterprises.

VII. Timetable

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| RFP Publication: | July 23, 2012 |
| Deadline for Questions: | August 1, 2012 |
| Proposal Submission Deadline: | August 13, 2012 |
| Interviews:* | August 22-29, 2012 |
| Contract Award:** | September 4, 2012 |

*ESNMC may choose to interview some or all RFP respondents.

** Subject to approval by ESNMC Directors.

VIII. Conflicts of Interest

Please submit a statement describing whether the representation of ESNMC would create any potential conflict of interest, or appearance of impropriety, relating to other clients/customers of the respondent or former officers and employees of ESNMC or ESD. Indicate what procedures will be followed to direct, notify ESD of, and resolve any conflicts.

Identify any past, pending or threatened litigation or administrative or state ethics board or similar body proceedings to which you or any of your partners are a party and which would

either materially impair your ability to perform the services enumerated herein, or, if decided in an adverse manner, materially adversely affect the financial condition of your firm.

Any firm selected pursuant to this RFP will be required to advise the Corporation of any developments during the term of this appointment with respect to existing and/or any new civil or criminal legal investigations, pertinent litigation and/or regulatory action involving the firm or its employees which could impact the firm's role or ability to fulfill their obligations.

IX. General Terms & Conditions

The issuance of this RFP and the submission of a response by any entity or the acceptance of such response by ESNMC does not obligate ESNMC in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by ESNMC and the entity/entities selected by ESNMC.

ESNMC 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, if ESNMC deems it in its best interest to do so. ESNMC 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 the responding party.

A respondent accepts all provisions of this RFP by submitting a proposal and is responsible for the accuracy of its submission.

ESNMC will not reimburse any expenses incurred in connection with this RFP including the costs of preparing the response and/or providing any additional information and travel expenses relating to an interview. All material submitted in response to this RFP will become the sole property of the ESNMC. The ESNMC expressly reserves the right to utilize any and all ideas submitted in the proposals received unless covered by legal patent or proprietary rights.

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

All respondents are required to include completed forms required by State Tax Law Section 5a and State Finance Law Section 139 J and K. These forms can be obtained from the web at <http://esd.ny.gov/CorporateInformation/RFPs.html> by going to the link on that page "Required forms for Vendors."

State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all respondents to this solicitation must include in their responses a properly completed Form ST-220-CA, a copy of which is accessible at the Required Forms for Vendors link at the ESD web site. (<http://esd.ny.gov/CorporateInformation/RFPs.html>)** Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST-220-CA, but Schedule A to Form ST-220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

Vendor Responsibility

ESD encourages vendors to register in the State's Vendor Responsibility System (VendRep System). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. 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 http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company’s trade industry.

It is the policy of the State of New York, and the ESNMC, 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, Minority Group Members, and women share in the economic opportunities generated by ESNMC’s participation in projects or initiatives, and/or the use of ESNMC funds.

X. Minority and Women-Owned Business Provisions

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this initiative. A copy of each respondent's Equal Employment Opportunity Policy Statement (FORM OCSD-1), Staffing Plan (FORM OCSD-2) of the anticipated workforce to be utilized and the M/WBE Utilization Plan (FORM OCSD-3) listing the certified M/WBE firms that the respondent intends to utilize, shall be included as part of the response to this RFP. Questions regarding the Minority and Women-Owned Business Enterprise ("M/WBE") participation requirements should be directed to the ESD's Office of Contractor & Supplier Diversity ("OCSD") at (212) 803-3244 or via email at OCSD@ESD.NY.GOV. M/WBEs are encouraged to respond.

New York State Law

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation to promote opportunities for maximum feasible participation of certified M/WBEs and the employment of minority group members and women in the performance of ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether M/WBEs had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of M/WBEs in state procurement contracting versus the number of M/WBEs that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the M/WBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establishes goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for M/WBEs

ESD has established an overall goal of 25% for M/WBE participation for the accounting services performed under contracts awarded pursuant to this RFP. No specific goals for Minority-Owned Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") participation shall be assigned to this project and the following contracts. The respondent may list in their M/WBE Utilization Plans any combination of certified M/WBEs to meet the above referenced participation requirement. OCSD encourages the respondents to identify and maximize the utilization of both MBE and WBE firms in their utilization plans.

Firms that are not M/WBEs responding to this RFP are strongly encouraged to consider partnering, or other joint venture arrangements, with other certified M/WBE accounting firms to achieve the prescribed goals and to give M/WBE accounting firms the opportunity to participate in the accounting services performed under contracts to be awarded to accountants by ESD. ESD also reserves the right to require firms selected as accountants to work as co-

contractors on specific transactions or matters with other firms and allocate work in a manner that ensures that M/WBE accounting firms are assigned to substantive tasks and receive appropriate credit and compensation for the services they provide.

Note that, under Executive Law Article 15-A, accounting firms must document Good Faith Efforts (as defined in 5 NYCRR §142.8, see OCSD-4) to provide meaningful participation by M/WBE accounting firms as co-contractors in the accounting services performed. Willful and/or intentional violation of this obligation may result in the imposition of liquidated damages or other appropriate sanctions, including, without limitation, suspension of any future contracts with ESD and monetary payments based on the M/WBE goal shortfall.

The directory of New York State Certified M/WBEs can be viewed at:

<http://www.esd.ny.gov/mwbe.html>

Further, the ESD's OCSD is available to assist respondents in identifying New York State certified M/WBEs that can provide accounting services in connection with this RFP. If you require listings of certified M/WBEs, please contact the OCSD at (212) 803-3244 or via email at OCSD@ESD.NY.GOV. Such a call will not be considered a prohibited lobbying contact.

XI. Insurance and Other Requirements

The selected contractor will need to provide evidence of the following insurance:

- Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate.
- Auto Liability insurance - \$1 million per occurrence / \$1 million aggregate
- Professional/ Errors & Omissions Liability insurance - \$1 million minimum
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits.
- Must show evidence of Disability insurance coverage at State statutory limits.
- The NYS Urban Development Corporation d/b/a Empire State Development must be named as an additional insured on a primary and non-contributory basis on **all** of the following policies: Commercial General Liability, Auto Liability, and Excess Liability policies
- All policies above should include a waiver of subrogation in favor of NYS UDC d/b/a ESD.