

HARLEM COMMUNITY DEVELOPMENT CORPORATION

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a Empire State Development**

REQUEST FOR PROPOSALS (“RFP”)

**VICTORIA THEATER REDEVELOPMENT PROJECT – OPERATOR AND MANAGER
FOR THE CULTURAL ARTS COMPONENT**



Publication Date: Friday, January 16, 2015

Response Date: 3:00 PM Thursday, February 26, 2015

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I. Introduction

A. Invitation to Submit Proposal

Harlem Community Development Corporation (“Harlem CDC”) and its parent the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) hereby invite organizations with the appropriate experience, qualifications and capacity to submit proposals to operate and manage up to 25,000 square feet of cultural arts space (“Cultural Arts Space”) in the proposed development in the historic former Lowe’s Victoria Theater at 235 West 125th Street in Harlem. The selected operator/manager (the “Operator/Manager”) will enter into a lease with Harlem CDC and work with Harlem CDC, other stakeholders and involved parties to develop strategic revenue-generating partnerships to ensure the long-term stability and viability of the Cultural Arts Space.

Harlem CDC has undertaken an ambitious community revitalization project that will transform the long-vacant former Lowe’s Victoria Theater into a dynamic mixed-use facility that will generate jobs, add to the vitality of the 125th Street corridor, increase the availability of affordable housing and create a new cultural arts center that is anticipated to open in 2017. Harlem CDC and ESD intend to bring on board an entity with the experience, infrastructure and capacity to operate, manage, promote and maintain up to 25,000 square feet of Cultural Arts Space, including two theaters, rehearsal, backstage operating and office space for arts organizations, consistent with HCDC’s intent to launch a vibrant new cultural arts center on 125th Street – the Main Street of Harlem.

B. RFP SCHEDULE

RFP Release date	January 16, 2015
Pre-Bid Information Session	TBD
Last day for respondents to submit questions via email	February 12, 2015
Last day to post an addendum	February 19, 2015
<u>RFP Responses Due</u>	February 26, 2015
Shortlist interviews	TBD

Operator/Manager selected

TBD

II. Background

Harlem Community Development Corporation (“Harlem CDC”) is a subsidiary of the New York State Urban Development Corporation dba Empire State Development (“ESD”). It was created in 1995 to facilitate community and economic revitalization initiatives in Upper Manhattan from 96th Street to 178th Street, river to river and including the East Harlem, Central Harlem, West Harlem and Washington Heights neighborhoods.

The Victoria Theater is owned by Harlem CDC and is located at 235 West 125th Street, near the world famous Apollo Theatre. It was designed in 1917 by noted theatre architect Thomas Lamb. The theater has been vacant since 1997.

The Victoria Redevelopment Project (the “Project”)

The Project consists of the redevelopment of the Victoria Theatre, as a \$164 million, 27-story, approximately 385,000 square foot mixed-use facility with approximately: a 208 room select service hotel, 192 units of affordable and market-rate residential rental apartments; 25,000 square feet of retail space and 25,000 square feet of Cultural Arts Space. The development will be operated as a condominium with Harlem CDC as the owner of the Cultural Arts Space condominium unit and the Developer or related entities or designees being the initial owners of the remaining condominium units in the Project.

In 2012, Harlem CDC conditionally designated Danforth Development Partners, LLC (“Danforth”) as the developer (the “Developer”) for the Project. Danforth, pursuant to the modified General Project Plan (“MGPP) approved by Harlem CDC’s and Harlem CDC and ESD’s Board of Directors in July 2013, will undertake the project through 233 West 125th Street Danforth LLC, an affiliate of Danforth which includes Danforth, the Lam Group, Exact Capital Corporation and WISK LLC.

The MGPP calls for the Developer to build out approximately 25,000 square feet as the Cultural Arts Space for use as performance and administrative office space for cultural arts organizations. The Cultural Arts Space will feature a 199-seat black box theatre and a 99-seat flexible performance space, a box office, exhibit and rehearsal spaces, a public lobby/event space, scenery and costume shops, office suites, meeting and educational spaces, dressing rooms and other backstage spaces.

Cultural Partners

The Project's Cultural Arts Space was a significant factor in the decision made by Harlem CDC's Board of Directors to select and designate Danforth to redevelop the Victoria. The Cultural Arts Space will be an important contributor to the overall success, branding and image of the Project. Harlem CDC has been working with four Harlem-based cultural arts organizations as its initial cultural partners (the "Cultural Partners") for the Project. The Cultural Partners include the Classical Theater of Harlem, the Apollo Theater Foundation, The Harlem Arts Alliance and JazzMobile. In 2011, the Cultural Partners worked with Harlem CDC and consultants to review and refine the build program for the Cultural Arts Space and review options for the creation of an operating structure. The Cultural Partners will have the opportunity to be the initial resident organizations of the Cultural Arts Space. Use of the Cultural Arts Space will not be limited to the Cultural Partners. The criteria for evaluating responses to the RFP include a separate category for assessing how well a Respondent incorporates the Cultural Partners into the overall programmatic vision for the space.

III. Proposal Considerations

A. Lease Terms

The Cultural Arts Space of the Project will be a separate condominium unit owned by Harlem CDC and leased to the Operator/Manager. The terms of said lease will be negotiated with the selected Operator/Manager. It is anticipated that the initial lease will be for approximately ten to twenty years, however Respondents are encouraged to consider and present terms that best support their proposals and further support Harlem CDC's mission.

The Operator/Manager will work with Harlem CDC and the Cultural Partners to, among other things, finalize the design for the Cultural Arts Space, review the anticipated costs associated with its construction and FF&E, and develop its operating model, operating budget and governance structure. The Operator/Manager will be responsible for the operation, maintenance and management of the Cultural Arts Space, including all related costs. Harlem CDC and ESD will not provide additional financial support or subsidy to the Cultural Arts Space or for its operation.

B. Design and Construction

The proposed Cultural Arts Space will contain approximately 20,000 useable square feet of programmatic space, primarily on two contiguous floors. It features the performance

and rehearsal spaces, associated backstage/support spaces and approximately 7,500 square feet of office space for not-for-profit arts and cultural organizations. It is envisioned that the office space would be shared by multiple organizations. The ceiling height of the flexible performance and rehearsal spaces will be at least 20 feet.

The Developer is obligated to build out the Cultural Arts Space. The build out will include the completion of all interior construction and finishes, mechanical, engineering and plumbing (“MEP”) systems and furnishing and installation of specialty furniture, fixtures and equipment (“FF&E”) and controls required by the performance/rehearsal spaces, however designs are still underway. The Operator/Manager is expected to cover expenses not covered by the developer.

Expenses NOT Covered by Developer

- Wallpaper
- Lighting fixtures (except general space lighting in the form of recessed cans or 2x2 fluorescent grid)
- AV equipment
- Stage lighting and sound equipment including sound attenuation and supporting armatures
- Specialty windows and window treatments
- Artwork
- Office furniture
- Movable partitions
- All appliances
- Stage equipment
- Signage

C. Marketing

As part of the Project’s historic preservation approach, the marquee and blade sign of the former Lowe’s Victoria Theater will be recreated. The marquee will be digitized, providing a high-profile opportunity for marketing and promotion of programs and events. The theater’s former street level poster display cases may also be recreated as digital displays, providing further opportunities for marketing and promotion. The digitized marquee and other displays will not be for the sole use of the Cultural Arts Space. There will also be opportunities for the placement of logos and signage related to the cultural arts center on the 126th Street façade of the building.

Harlem CDC will cooperate in the implementation of marketing, promotion, development and other initiatives related to the Cultural Arts Spaces.

D. Community Expectations

- The Cultural Arts Space should be accessible to Harlem-based arts and culture organizations and is expected to serve emerging cultural arts groups, particularly those that preserve and advance the cultural history, heritage and legacy of Harlem and the Black community.
- The Cultural Arts Space will be designated for community facility use for the life of the Development.
- The Cultural Arts Space will also be accessible to and an asset for the arts and cultural community city-wide. It will be a place for new and innovative collaborations and available to be subleased by the operator for rehearsals and for varied public and private programs and events.
- The Cultural Partners will be given preference with respect to use and occupancy of the Cultural Arts Space. Their offices will likely be located in the Cultural Arts Space's shared arts incubator office space. The terms of their occupancy, including any options for renewal or default and cancellation clauses, are to be negotiated by the Operator/Manager and approved by Harlem CDC and ESD.
- The Cultural Partners and other Harlem-based cultural arts organizations will be entitled to lease the office, performance and rehearsal spaces at below-market rates and responsible for all other expenses associated with use and occupancy of the Cultural Arts Space. The below-market rents and other expenses should be sufficient to cover costs associated with the operation, management and maintenance of the Cultural Arts Space, including any necessary allocation for a reserve fund.
- The Operator/Manager shall produce and present or facilitate the production and presentation of content for the Cultural Arts Space, as needed, to help ensure that the Cultural Arts Space offers the public a full and continuous calendar of ongoing programs and events, minimizes periods of inactivity, and generates sufficient revenue to operate the Cultural Arts Space in a fiscally responsible manner.
- The Cultural Arts Space should also be available for use by other Harlem based cultural arts organizations and city-wide to cultural arts and other organizations and individuals for private events at negotiated rates.
- The Operator/Manager will work with the Cultural Partners and other stakeholders to establish the Cultural Arts Space as a vibrant destination in Harlem for – local and city-wide residents and visitors.

IV. Proposal Requirements

A. Each Response should contain the following:

- A detailed proposal demonstrating the Respondents understanding of the RFP, including Section III

- A detailed narrative of the Respondent’s approach to operating and managing the Cultural Arts Space, working with the Cultural Partners and engaging other local and city-wide cultural user groups
- Demonstration of Respondent’s compliance with the Desired Experience and Qualifications outlined in IV.B, below
- Comments on the conceptual design, including any suggested modifications

B. Desired Experience and Qualifications for Operator/Manager:

- At least 10 years of experience operating, maintaining and managing space of at least 20,000 SF for not-for-profit arts and cultural organizations in NYC, including facilities management, leasing, scheduling, developing operating budgets, etc.
- Strong financials
- Experience with the design and construction of cultural arts facilities, including evaluating their capital and FF&E budget requirements
- Extensive fund-raising and marketing experience, infrastructure and capacity
- Prior successful experience working with racially and ethnically-diverse cultural arts entities and in particular Harlem-based and Black cultural arts entities
- Knowledge of the NYC and Harlem’s cultural arts industry’s landscape and key players. Respect within NYC’s arts, culture and heritage sectors.
- Experience developing, curating and presenting cultural arts content
- Commitment to and experience with cultivating new and emerging arts, culture and heritage non-profit organizations

V. Selection Criteria

In evaluating qualifications submitted pursuant to this request, Harlem CDC places high value on the following factors, not necessarily in order of importance:

- A. Overall organization, completeness, and quality of proposal, including cohesiveness, clarity of response and demonstrated understanding the arts and cultural industry relevant to 125th Street, Greater Harlem and New York City.
- B. Relevant experience
 - 1. The general qualifications and experience of the proposed team
 - 2. Level of success attained with comparable projects
- C. Financial capacity
 - 1. Current financial health
 - 2. Demonstrated fundraising ability
- D. Organizational Capacity to operate a multi-use cultural center that encourages partnership between cultural partners and cultural arts entities city-wide

E. Programmatic Vision

1. Marketing Plan
2. Diversity and commitment to equal opportunity programs
3. Proposed lease terms that provide opportunities for Harlem CDC to further support the arts industry

F. Incorporation of Cultural Partners

VI. General Terms and Conditions

- A. The issuance of this RFP and the submission of a response by a firm or the acceptance of such a response by Harlem CDC and ESD do not obligate Harlem CDC or ESD in any manner. Harlem CDC and ESD reserve the right to:
1. amend, modify or withdraw this RFP;
 2. revise any requirement of this RFP;
 3. require supplemental statements or information from any responsible party;
 4. accept or reject any or all responses hereto;
 5. extend the deadline for submission of responses hereto;
 6. negotiate or hold discussions with any firm and to correct deficient responses which do not conform to the instructions contained herein;
 7. cancel, or reissue in whole or in part, this RFP, if Harlem CDC and ESD determine in their sole discretion that it is its best interest to do so; and
 8. extend the term of any agreement on terms consistent with this RFP.
- B. Harlem CDC and ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the responding firm.
- C. 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 Harlem CDC and ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, all Proposals may be discussed at meetings of the Harlem CDC and ESD Directors, which meetings are subject to the Open Meetings Law.
- D. No Respondent to this RFP will be selected if an individual who is an owner, shareholder, member, partner, officer or director, or otherwise a principal and/or its management team is determined, in Harlem CDC and ESD's sole discretion, to have been convicted of a felony or a crime involving moral turpitude, to be an organized crime figure, to be under indictment or criminal investigation, to be in arrears or in

default of any debt, contract or obligation to or with the City or State of New York, or any other of their instrumentalities or otherwise to be a prohibited person as defined by Harlem CDC and ESD. The selected Respondent and all principals thereof, if applicable, and/or owners, shareholders, members, partners, officers or directors of Respondent's team must complete a background questionnaire and are subject to investigation by Harlem CDC and ESD. The selection of a Respondent may be revoked in the event that any derogatory information is revealed by such investigations.

- E. Neither the State nor any agency thereof, including Harlem CDC and ESD, shall be liable for any cost incurred by Respondent in the preparation of its proposal to this RFP or, with respect to Respondent, for any work performed prior to the execution and delivery of the Contract. All material submitted in response to this RFP will become the sole property of Harlem CDC and ESD shall be the sole judge of each Respondent's conformity with the requirements of this RFP and of the merits of the proposal. Harlem CDC and ESD reserve the right, in its sole discretion and subject to applicable law, to: amend, modify or withdraw this RFP; modify the requirements set forth herein; expand, limit or otherwise alter the scope of the requested services; waive any requirements or conditions or modify any provisions of this RFP with respect to one or more Respondents; require supplemental statements and information from any Respondent to this RFP; award a contract to as many or as few or none of the Respondents as Harlem CDC and ESD may select; award a contract to entities that have not responded to this RFP; extend the deadline for submission of proposals; negotiate or hold discussion with one or more Respondent; correct deficient proposals that do not completely conform to this RFP; and reject any or all proposals and to cancel this RFP, in whole or in part, for any reason or no reason. Harlem CDC and ESD may exercise any such rights at any time, without notice or liability to any Respondent or other parties for costs, expenses, or other obligations incurred in preparation of a proposal or otherwise.
- F. This RFP and any contract or agreements resulting herein are subject to all applicable Federal, state and local laws, rules, regulations and executive orders.
- G. Any waiver or modifications to this RFP must be issued in writing by Harlem CDC and ESD. Nothing stated at any time by any representative of Harlem CDC and ESD, the State, and the City or of any other entity shall effect a change in, or constitute a modification to this RFP unless confirmed in writing by Harlem CDC or ESD. Respondents may request clarification by e-mail to Harlem CDC or ESD prior to the submission deadline. Any such clarification from Harlem CDC or ESD must be in writing in order to be binding on Harlem CDC and ESD.

- H. Harlem CDC and ESD are not obligated to pay any costs, expenses, damages or losses incurred by any Respondent at any time unless Harlem CDC and ESD has first expressly agreed to do so in writing. Harlem CDC and ESD shall not be obligated to pay any fee, cost, or expense for brokerage commissions or finder's fees with respect to the execution of the Contract. It shall be a condition of any contract that Respondent agree to pay the commission or other compensation due to any broker or finder in connection with the transaction, and to indemnify and hold harmless the State and Harlem CDC and ESD from any obligation, liability, cost or expense incurred by it or them as a result of any claim for commission or compensation brought by any broker or finder by reason of the transaction.

VII. Submission Requirements

A. Submission Procedures

Interested firms or individuals (each a "Respondent") are required to follow the guidelines and instructions contained in this RFP. In the event it becomes necessary to revise any part of this RFP, revisions will be provided by addenda posted on the NYS Contract Reporter website (<http://www.nyscr.ny.gov>), ESD website (<http://esd.ny.gov/CorporateInformation/RFPs.html>) and the Harlem CDC website (<http://harlemcdc.org/news-events/publicNotices.html>)

1. Respondents must submit one (1) signed original, three (3) copies of the Proposal, and one (1) electronic copy (cd or USB flash drive) including any and all forms and attachments.
2. The cover page of each proposal should state "Victoria Redevelopment Project Operator/Manager" and the entire set of proposals should be contained in a sealed package clearly labeled "Victoria Redevelopment Project Operator/Manager."
3. Sealed proposals must be delivered in hard copy by hand, regular mail or express mail. Proposals sent via facsimile or e-mail transmittal without a hard copy will not be accepted.
4. Proposals are due and must be received at the location designated below no later than 3:00 PM Thursday, February 26, 2015. Proposals received after the indicated date and hour and/or at a different location may not be considered at the discretion of Harlem CDC and ESD. It is the sole responsibility of each Respondent to ensure that its proposal is received before the submission deadline. Respondents shall bear the risk associated with delays in mail, courier services or hand delivery. If the proposal is to be delivered by

messenger, please note that only individuals with valid photo identification will be permitted access to ESD's offices. Messengers without valid identification will be turned away and their packages not accepted.

5. Proposals must be submitted to:
RFP - Victoria Redevelopment Project Operator/Manager
ATTN: Edgar Camacho
Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017-6754
6. ESD reserves the right, at its discretion, to postpone the date for submission and opening of proposals. Any proposal submitted prior to notice of such postponement may be withdrawn without prejudice.
7. Please note that Respondents must respond to this RFP in order to be eligible to be considered for selection as the Operator/Manager pursuant to this RFP.
8. ALL QUESTIONS, COMMENTS, REQUESTS FOR CLARIFICATION, AND OTHER COMMUNICATIONS REGARDING THIS RFP MUST BE DIRECTED IN WRITING VIA E-MAIL TO VICTORIATHEATERCSO@ESD.NY.GOV. CONTACT WITH ANY OTHER PERSON REGARDING THIS SOLICITATION IS PROHIBITED BY LAW. All questions and requests for clarification will be responded to in writing and disseminated to all persons and organizations having expressed an interest in this solicitation.
9. Addenda to this RFP, including responses to any questions submitted in writing, will be posted on the Harlem CDC and ESD websites as set forth above.

B. Proposal Content

Proposals should provide a straightforward, complete and concise description of Respondent's capabilities to satisfy the requirements of this RFP. Proposals must include the following, in the order set forth below:

1. Cover Letter. A cover letter on the Respondent's letterhead that is signed by an individual with authority to contractually bind the Respondent and that includes the following:
 - (a) The full legal name, address and type of legal entity, and jurisdiction in which the entity is formed (if applicable), telephone number and e-mail address of the representative who is authorized to discuss and/or negotiate the proposal.

- (b) Federal Employee Identification Number or Social Security Number.
 - (c) Text explaining ownership (corporate and/or individual) of proposing entity and all subsidiaries or parent company, if applicable.
 - (d) A statement that Respondent is ready, willing and able to engage in the services set forth in the proposal upon execution of contract.
2. Each narrative response must be accompanied by:
- (a) Three most recent years of the Respondent's audited financial statements
 - (b) A list of References
 - (c) A list of similar projects operated or managed by the Respondent, in particular projects that include public/private partnerships and projects that include multiple cultural arts users.

C. Additional Proposal Requirements and Certifications

1. NON-DISCRIMINATION / CONTRACTOR AND SUPPLIER DIVERSITY GOALS

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 Harlem CDC and ESD's participation in projects or initiatives, and/or the use of Harlem CDC and 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 30%** related to the total value of Harlem CDC and ESD's funding. The aforementioned goal shall include *Minority Business Enterprise ("MBE") Participation and Women-Owned Business Enterprise ("WBE") participation totaling 22% and 8%, respectively.*

In addition, the Respondent shall be required to utilize Minorities and Women in its overall workforce totaling no less than 20% and 10%, respectively.

A copy of each Respondent's Equal Employment Opportunity Policy Statement (Form OCSD-1) shall be in sought are to be included as part of the response to any RFP.

Form OCSD-1 may be found at:

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf

In the event that the above link is inactive, the form may be requested from the Office of Contractor & Supplier Diversity at OCSD@ESD.NY.GOV.

For guidance on how Harlem CDC and ESD will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

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/>

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.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required contract language and forms referenced in this Section VI are contained in Appendix F.

2. STATE TAX AND FINANCE LAW AND OTHER REQUIRMENTS

a. 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 Harlem CDC and 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.**

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.

b. State Finance Law Sections 139-j and 139-k

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 Harlem CDC 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: (1) 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; (2) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the Harlem CDC and ESD web sites under “RFPs/RFQs”); and (3) 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 of and Agreement pursuant to State Finance Law, as part of their submittal.**

The Procurement Requirements also require Harlem CDC and ESD staff to obtain and report certain information when contacted by prospective bidders 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.

For the purpose of compliance with State Finance Law Sections 139-j, contact VictoriatheaterCSO@esd.ny.gov is considered permissible.

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 “ESD 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.

3. 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.

4. Compliance with the Iran Divestment Act

As part of Harlem CDC and ESD procurement guidelines, upon submission of proposal, the consultant shall comply with the Iran Divestment Act. The following language shall be submitted on company letterhead and signed by the consultant:

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.

5. 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 Harlem CDC and 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 Harlem CDC and 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.

6. Encouraging the Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this Harlem CDC and ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as sub-contractors, suppliers, protégés or other supporting roles (herein collectively called "Subcontractors").

Bidders/proposers need to be aware that, if selected through this Harlem CDC and ESD solicitation, they will strongly encouraged, to the maximum extent practical and consistent with

legal requirements, to use responsible and responsive New York State businesses in performing the contract, including without limitation: (i) purchasing commodities that are of equal quality and functionality; and (ii) in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

In furtherance of this goal, bidders are required to complete and return with their bids the form titled "Encouraging Use of New York State Businesses in Contract Performance".

7. Insurance Requirements

The Respondent will be expected to show evidence of the following insurance requirements, (at a minimum and to the extent applicable) as listed below:

- A. Commercial General Liability insurance - \$1 million per occurrence / \$2 million aggregate
- B. Auto Liability insurance - \$1 million per occurrence
- C. Excess Umbrella Liability insurance - \$5 million per occurrence / \$5 million aggregate minimum
- D. Worker's Compensation & Employer's Liability insurance at NYS statutory limits
- E. Disability insurance coverage at NYS statutory limits
- F. The NYS Urban Development Corporation (d/b/a Empire State Development) and the People of the State of New York, as their interests may appear, 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.
- G. All policies above should include a waiver of subrogation in favor of the NYS UDC (d/b/a ESD) and the People of the State of New York.