



Broadband Program Office

New NY Broadband Program

Empire State Development

REQUEST FOR PROPOSALS

Support for Review of Applications to the New NY Broadband Program

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SECTION I – PURPOSE, BACKGROUND & SCOPE OF SERVICES

1.0 BACKGROUND

The State of New York authorized, through the 2015-16 State Budget, the award of five hundred (500) million dollars in funding as part of the New NY Broadband Program (the “Program”) to provide broadband Internet access to unserved and underserved communities throughout the State. The Program aims to deliver broadband Internet access at speeds of at least 100 Mbps (download) to most communities throughout the State, and speeds of at least 25 Mbps (download) to the most remote and difficult to serve communities in the State.

The Broadband Program Office (the “BPO”) of the New York State Urban Development Corporation, DBA Empire State Development (“ESD”), will award the Program’s funding through a series of competitive application solicitations, beginning in the Spring of 2016. Entities funded through the Program, which may include broadband service providers, units of local government, and tribal governments, among others, must complete their projects no later than December 31, 2018. Further information on the Program, as well as guidelines providing a complete description of Program eligibility requirements and conditions (the “Program Guidelines”) and the Program’s application questions (“Application Questions”), may be found at the BPO’s website (<http://nysbroadband.ny.gov/node/376>).

1.1 PURPOSE OF PROCUREMENT

Due to the technical complexities of proposals to construct broadband infrastructure and the expansive scope of the Program, ESD seeks the services of a contractor to evaluate each application for Program funding submitted to the BPO to determine that the application meets the eligibility requirements set forth in the Program Guidelines, to evaluate the reasonableness and technical efficacy of proposed broadband network designs, and to assist the BPO in the selection of applications for funding. ESD is seeking these services to support the Program’s first competitive application solicitation, to begin in the Spring of 2016, but may, at its discretion, extend the scope of the engagement to include future solicitations.

1.2 SCOPE OF SERVICES

The selected contractor (the “Successful Respondent”) shall review each application submitted to the BPO for conformity to the Program Guidelines, and also verify that all materials have been submitted in the form required by the application instructions. The metrics to be evaluated by the Successful Respondent include, but are not limited to: conformity of applications to service area requirements, delivery of minimum speed capabilities using approved technologies, and adequacy of applicants’ financial and management capabilities. Additionally, the review should include a technical evaluation of the reasonableness and efficacy of the network

design by personnel possessing relevant expertise in broadband technologies. The Successful Respondent shall also assist the BPO in the ranking and selection of applications for funding. Further information on these services is provided below.

A. Evaluating Completeness of Applications

Applications for Program funding must include responses to each of the application questions, and provide all attachments identified in the application materials. The materials required for an application to be deemed complete will vary based upon the identity of the applicant (*e.g.*, Internet service provider, unit of local government). The Successful Respondent will be required to determine whether each application submitted to the BPO includes answers to each of the questions therein and contains all applicable attachments.

B. Evaluating Conformity of Applications to Program Requirements

The Successful Respondent must advise the BPO as to whether each of the eligibility criteria enumerated in the Program Guidelines have been met for each application submitted to the BPO. These include conformity of applications to service area requirements, delivery of minimum speed capabilities using approved technologies, and adequacy of applicants' financial and management capabilities. The Successful Respondent must develop a methodology that will allow for consistent evaluations of each of these eligibility requirements. The Successful Applicant should review the Program Guidelines and Application Questions, and develop a proposal for confirming that an application meets each eligibility requirement articulated therein, including the following:

- Verification that an application meets all requirements concerning the required co-investment (as discussed in the Program Guidelines)
- Verification of the number of Units (pursuant to definition in the Program Guidelines) to be addressed by the application, by U.S. Census Block
- Verification of the Internet speeds delivered by a proposed project
- Confirmation that a proposed technology solution and network design conform to the requirements articulated in the Program Guidelines
- Confirmation that an applicant has submitted documentation demonstrating sufficient financial and management capabilities (as set forth in the Program Guidelines and Application Questions)
- Confirmation that applicant is in substantial compliance with all laws and does not have an existing NYS tax liability
- Review of the Project Budget proposal and verification that it meets the requirements of the Program Guidelines

C. Evaluation of Reasonableness and Efficacy of Network Design

The Successful Respondent must develop a methodology for evaluating the

reasonableness and efficacy of applicants' proposed network designs. This methodology must, at a minimum, take into account the technologies proposed in applications, the timeline for completion, and the scalability of the proposed network.

D. Ranking of Program Applications

The Successful Respondent must develop a methodology for ranking applications to the New NY Broadband Program in accordance with the terms set forth in the Program Guidelines. As discussed further in those Guidelines, the Program has been structured as a "reverse-auction," where priority in the selection of grantees will be given to those applications requesting the lowest amount of State investment on a dollars-per-Unit served basis. The Respondent's methodology should conform to the framework articulated in the Guidelines, including its instructions for the calculation of eligible costs. Respondent's proposal should include any contemplated processes, software or analytical tools required to rank applications.

1.3 DELIVERABLES

A. General Requirements

The Successful Respondent shall submit such materials as are requested by the BPO in order for the BPO to make awards of Program funds. Such materials shall include, but are not limited to, memoranda evaluating each application submitted to the BPO for Program funding. Such memoranda shall include such information, and be submitted in such form, as shall be required by the BPO. At a minimum, memoranda must detail the conformity of each application with each of the application criteria enumerated in the Program Guidelines, summarize the methodology employed by the Successful Respondent in reaching its conclusions, provide quantitative and qualitative comparisons of each application to other applications submitted within the same New York State Economic Development Region, and recommend to the BPO whether each application should be accepted.

B. Schedule of Deliverables

Materials described in Paragraph A of this section shall be submitted to the BPO within thirty (30) days of the closing date for each round of applications for Program funding, provided that the BPO may agree to an extension of this deadline at its sole discretion, or upon other agreed deadlines. All other deadlines for deliverables shall be established to the mutual agreement of the BPO and the Successful Respondent.

1.4 MINIMUM QUALIFICATION REQUIREMENTS

Responses to this RFP must include information about Respondent's current capabilities, past experiences working with other states and large municipalities and

how those experiences may inform or impact work with New York State as it relates to operating models and leading practices.

- A. Prior to the proposal due date for this RFP, the Respondent must have been in business for a minimum of five (5) years, performing relevant quantitative analyses, such as those described in Section 1.2 (Scope of Services) of this RFP.
- B. The Respondent must provide the names and addresses of at least three (3) business references.
- C. Prospective Respondents must possess adequate financial resources and organizational capacity to perform the services described in this RFP in an efficient and effective manner, with financial resources to pay expenses in advance of receipt of payment from ESD. ESD prefers a letter from a Certified Public Accountant (CPA) indicating that the Respondent has sufficient working capital, positive net worth, and has or can obtain a line of credit. ESD will also accept a letter from a party other than a CPA (such as an attorney, bank officer, corporate attorney, parent holding company) familiar with and attesting to the financial condition of the Respondent.
- D. The Respondent must adopt strict privacy protections to adequately protect the confidentiality of all data. All data transmissions must be encrypted. Throughout the course of this project, the Respondent may have access to confidential company information. The Respondent selected for this project must agree to protect confidential information and to sign non-disclosure agreements prepared by ESD. All information provided to, collected or otherwise obtained by the Respondent, the Respondent's staff and all subcontractors is proprietary and may not be disclosed in perpetuity, to any party other than ESD itself without ESD's express written approval.
- E. This Section (1.4) of the RFP is not intended to itemize all requirements for an award of this project. See Section 4 of the RFP for additional information on proposal format and contents.

SECTION II - ADMINISTRATIVE INFORMATION

2.0 INQUIRIES

ESD will post on its website (<http://esd.ny.gov/CorporateInformation/RFPs.html>) the electronic version of this RFP and all changes, additions, or deletions thereto. Firms should frequently check ESD's website regarding this RFP. All questions should be submitted via email no later than [February 1, 2016], 2016 by 5:00 PM citing the particular proposal section and paragraph number. All questions must be sent to ESD's dedicated contact Edgar Camacho only by email at BroadbandReviewRFP@esd.ny.gov. ESD will post all of its responses to substantive questions only on ESD's website (<http://esd.ny.gov/CorporateInformation/RFPs.html>) by February 8, 2016, by 5:00pm.

2.1 SCHEDULE OF PERTINENT DATES

Release of RFP	January 22, 2016
Deadline for Receipt of Questions	February 01, 2016 by 5:00 PM EST
Responses to Questions Posted on	February 08, 2016 by 5:00PM EST
Submission of Proposals	February 12, 2016 by 3:00 PM EST Late proposals cannot be accepted.
Interviews	No later than February 29, 2016
Award of Contract	March 2016 (estimated)
Start of Contract	March 2016 (estimated)

2.2 SUBMISSION OF PROPOSALS

Respondents must submit their proposals no later than **3:00 P.M. U.S. Eastern Standard Time, on February 12, 2016**. Submit 5 Technical copies, 1 separately sealed Cost copy and 1 electronic copy on CD or Zip drive of the proposal to the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Edgar Camacho, Procurement Unit
RE: Broadband Application RFP

It is the responsibility of each Respondent to ensure timely submission of its proposal. Proposals received after the scheduled date and time will not be accepted.

Review this RFP carefully, including the selection criteria described in section 4.4, to insure that the proposal contains all required information.

2.3 CONDITIONS GOVERNING PROPOSALS

Only those Respondents that have supplied complete information will be considered. Respondents supplying incomplete responses will be deemed non-compliant.

Freedom of Information Law: 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 (see Section 2.4 below).

By submitting a proposal, the Respondent 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.

ESD reserves the following prerogatives:

- A. To accept or reject any or all proposals;
- B. To decline to award a contract resulting from this RFP;
- C. To require clarification from any Respondent for the purposes of assuring a full understanding of responsiveness to the requirements of the RFP;
- D. To disqualify proposals that fail to meet the mandatory qualifications;
- E. To waive or modify minor irregularities in proposals received;
- F. To eliminate requirements unmet by all Respondents;
- G. To negotiate with any or all Respondents within the proposal requirements, to best serve the interests of the State of New York;
- H. To amend the specifications contained in the RFP after its release, with due notice given to all potential Respondents known to ESD to reflect the changed specifications;
- I. To utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights and the Respondent has so advised ESD in statements contained in the Respondent's proposal and in a cover letter attached thereto;
- J. To award contract(s) for any or all parts of a proposal; and,
- K. To request information from any Respondent regarding potential conflicts-of-interest created by Respondent's existing contracts and to disqualify a Respondent based on ESD's determination of the existence of a potential or actual conflict.

2.4 FREEDOM OF INFORMATION LAW

ESD is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by ESD (See Public Officers Law, Sections 87 and 89).

Individuals or firms which submit proposals to ESD may request that ESD except all or part of such proposal from public disclosure, pursuant to Section 87(2)(d) of the

Public Officers Law, on the ground that the proposal contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the firm submitting the information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and should state the reasons for the requested exception. It must also specify the proposal or portions thereof for which the exception is requested.

ESD shall notify the Respondent of any requests for confidential or proprietary materials and whether those materials are exempt from FOIL.

2.5 NOTIFICATION OF AWARD

ESD will notify the Successful Respondent in writing. ESD will notify each Respondent whose proposal is not selected for the award of this project.

2.6 COST OF PROPOSAL

ESD is not liable for any and all costs incurred by any Respondent, including the Successful Respondent or any individual or firm associated with the Respondent, for work performed to prepare, explain and submit the Respondent's proposal. In addition, ESD is not liable for any and all costs incurred by the Respondent or any individual or firm associated with the Respondent to discuss, propose, negotiate or otherwise address in any way whatsoever, terms and conditions of any contract resulting from this RFP. Furthermore, ESD is not liable for any costs incurred until the contract has been executed by ESD.

2.7 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES ("MWBE") PARTICIPATION AND EQUAL EMPLOYMENT OPPORTUNITIES ("EEO")

A. General Obligations:

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of ESD contracts. The contract which ESD will prepare based on this RFP will contain provisions regarding the Respondent's obligations under Article 15-A of the Executive Law and its implementing regulations, the Respondent's obligations under Article 15 of the Executive Law, and clauses dealing with equal employment opportunities. Please refer to Section IV of this RFP for more information.

SECTION III - CONTRACTUAL INFORMATION

3.0 INTELLECTUAL PROPERTY/PERSONAL PROPERTY RIGHTS IN DATA, COMPUTER SOFTWARE & OTHER INTELLECTUAL PROPERTY

3.0.1. Rights in Data:

All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including, without limitation, cards, tapes, discs, and other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials, prepared for and delivered to ESD in the course of performance of any contract resulting from this RFP ("Agreement"), (hereinafter referred to as "Data"), shall be deemed to be "work made for hire" (as defined in Section 101 of Title 17 of the United States Code), and shall be provided to and become the exclusive property of ESD. Data shall be deemed and determined to not include computer software and related documentation. If it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Respondent hereby covenants and agrees to transfer all right, title and interest in any such Data to ESD, and cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

3.0.2. Rights in COTS Computer Software:

Any commercial off-the-shelf ("COTS") computer software and its related documentation and licenses which were purchased by the Respondent to perform data collection, data dissemination and marketing in satisfaction of an Agreement shall be transferred to ESD to the extent permissible by the original license. The transfer of such COTS software shall be accomplished at no additional cost to ESD.

3.0.3. Rights to Respondent-Owned Pre-Existing Computer Software/Documentation:

All computer software and related documentation, together with any versions of same or other intermediate components thereof, which may or may not be either confidential or proprietary, which was owned by the Respondent and existing at the time of the effective date of an Agreement and which, during the term of such Agreement is used by the Respondent in the conduct of the performance of the Agreement in such a fashion as to render such preexisting software to the state of being an integral and necessary operating component of the Respondent-Developed Computer Software developed under the Agreement (hereinafter referred to as "Respondent-Owned Pre-Existing Computer Software/Documentation"), shall be deemed to remain the property of the Respondent and all right, title and interest

therein to the same shall continue to vest in the Respondent, with the express understanding that the Respondent hereby licenses ESD to use such Respondent-Owned Pre-Existing Computer Software/Documentation as provided for in subparagraph 3.0.5 herein below.

3.0.4. Rights to Contractor-Developed Computer Software and Software Documentation:

The Respondent will design, develop and install computer software as may be required for ESD. ESD will have exclusive ownership of the software including all documentation, source and executable code. All computer software and related documentation, together with any versions of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed by the Respondent in the direct course of performance of an Agreement (hereinafter "Respondent-Developed Computer Software and Software Documentation"), shall be deemed to be the property of ESD and all right, title and interest therein to the same shall vest in ESD.

3.0.5. For Software License Agreements

For software license agreements regarding any and all pre-existing computer Software and Documentation including Software/Documentation developed by the Respondent or purchased from outside sources in the course of performance on an Agreement, the Respondent hereby grants to ESD a nonexclusive, royalty-free, irrevocable, license to ESD, for:

3.0.5.1. All Software and Software Documentation (as herein above defined) developed or purchased in the course of performance of an Agreement; and

3.0.5.2. Only that Contractor-Owned Pre-Existing Computer Software/Documentation (as herein above defined) which forms an integral and necessary operating component of the Respondent-Developed Computer Software created under an Agreement;

3.0.5.3. This license shall include the right to reproduce for archival purposes only, and to use and make and permit others to use and make any modifications necessary to the Respondent-Developed Computer Software and Software Documentation, and the Respondent-Owned Pre-Existing Software/Documentation;

3.0.5.4. The rights granted by this license do not include any rights to derivative works, modifications, revisions, and upgrades to the Respondent-Developed Computer Software and Software Documentation which are developed by the Respondent after the term of an Agreement, or any extensions thereto, expires or is terminated.

3.0.6. Other Intellectual Property Rights:

Except for those intellectual property rights otherwise addressed in sections 3.0.1. through 3.0.5. above, the Respondent agrees that all other patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, an Agreement rendered to ESD by the Respondent or any of its employees or subcontractors during the term of an Agreement (hereinafter "Items") shall be deemed to be a "work made for hire"(as herein above defined), and shall be provided to and become the exclusive property of ESD. If it is determined that any Items encompassed above do not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Respondent hereby covenants and agrees to transfer all right, title and interest in any such Items to ESD, and will cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest. Respondent hereby assigns all rights in such intellectual property to ESD, and will ensure that its employees and subcontractors shall, supply all assistance reasonably requested in securing for ESD's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, and will provide full information in regards to any such Item and execute all appropriate documentation prepared by ESD in applying or otherwise registering, in ESD's name, all rights to any such Items. ESD has the right to grant licenses to make, use, buy or sell any Items derived from the services performed under an Agreement. Provided however, upon mutual agreement of the Respondent and ESD, ESD may waive its property rights, in writing, to any and all patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, developed as a result of, or in the course of, an Agreement.

SECTION IV - PROPOSAL FORMAT AND CONTENTS

4.0 **GENERAL INFORMATION**

In preparing proposals, Respondents must follow the guidelines and instructions within this RFP. A Respondent should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformity to the RFP instructions and requirements, as well as completeness and clarity in the proposal response. The Respondent is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process, or may be deemed non-responsive. A proposal that does not provide all the information requested below may be subject to rejection. The State does not require, nor desire, any promotional material which does not specifically address the response requirements of this RFP.

4.1 **COMPLETE TECHNICAL PROPOSAL**

The purpose of the Technical Proposal is to provide firms with an opportunity to demonstrate their qualifications, competencies, and capacity to undertake the engagement described herein. Below is a listing of the technical information to be provided by the Respondent. The Technical Proposal should contain sufficient information to assure ESD of its completeness. ESD requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below. **Respondents must not include cost in their Technical Proposals.**

A. **Title Page** - Indicate name, address, phone & fax number, contact person, and federal ID number (if applicable). It must also include a statement that the offer shall be firm and not revocable for a period of ninety (90) days.

B. **Table of Contents**

C. **Work plan**

Proposals must include a work plan detailing the processes it will employ to provide the services described in Section I of this RFP, including, but not limited to, its methodology for evaluating whether Program applications satisfy the criteria in the Program Guidelines, activities the Respondent would engage in to provide the services in question, a description of how the Respondent will leverage its technical expertise in evaluating the management and fiscal capabilities of entities and the broadband internet industry to meet the needs of the BPO, and a description of the capabilities and role of any subcontractors the Respondent would utilize if awarded the contract.

D. Respondent Experience and Qualifications

In this section of the Technical Proposal, Respondents should demonstrate relevant experience by providing the following:

1. A summary of the Respondent's technical expertise that describes the unique capabilities of the Respondent. This narrative should highlight the Respondent's successful prior experience providing support to a governmental entity in evaluating applications by business entities and units of government for funding, with particular emphasis on experiences evidencing the Respondent's ability to manage and implement a statewide initiative.

The summary shall also describe the Respondent's ability to evaluate the management and fiscal capabilities of applicants, including their ability to perform review and analysis of company financial statements, tax returns, and other financial documents.

Additionally, the summary shall describe the Respondent's technical capabilities in evaluating technologies and business practices in the Broadband industry, though those capabilities need not have been utilized in performance of prior work involving the award of public funding to grantees. Respondents must demonstrate familiarity with a variety of broadband technologies, and the ability to understand the technical aspects of construction and deployment of broadband-related infrastructure, equipment, instrumentation, network design and capability, hardware and software, and network technology.

2. Firm References

The Respondent is asked to supply ESD with the names and contact information for two individuals (one primary and one alternate contact person) that ESD may contact as a reference for each engagement referred to in its narrative of prior experiences.

ESD may seek information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Respondent to the client during the engagement.

Information provided by references may be used by ESD for proposal evaluation purposes. ESD is not responsible for the lack of responsiveness of the references listed by Respondents, and the State is not required to alert Respondents of a reference's unresponsiveness during the proposal evaluation period. Inability to contact a reference will not be looked upon favorably.

3. Disclosure of Conflicts-of-Interest

The Respondent should disclose their engagement on any existing contracts that may present an actual or potential conflict-of-interest for participation in the engagement described herein. Respondent should describe the nature of any contract identified in response to this request.

E. Staff Experience and Qualifications

In this section of the Technical Proposal, Respondents should demonstrate that the staff proposed have the knowledge and ability to perform the services described in the RFP, and identify staff with particular expertise relevant to Section 1.2 - the Scope of Services. Respondents must include the following:

1. A project management and staffing plan that describes the unique capabilities of the individuals assigned. Include a narrative description of the specific function/role that each staff member would perform and their specific qualifications for their proposed role in this engagement. Lead staff should be identified. Respondents should submit resumes for all members of the proposed team, including any subcontract personnel who may work on the engagement.
2. State all relevant information regarding the number, qualifications and experience of the staff to be specifically assigned to this engagement. Indicate how the staff competency level over the term of the contract will be assured.

F. Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (*See Appendix B*).

4.2 Complete Cost Proposal

All Respondents must complete and submit, with their proposal, the budget which appears in this RFP as Appendix A. The Budget should assume that the Respondent will support the review of thirty-five (35) applications for Program funding.

The proposal must include a description of each of the following:

- *Staff Fees* including the title of each individual assigned to the project; hourly rate per individual assigned to the project; and estimated number of hours for each individual assigned to the project.

- *Administrative Expenses* including costs related to such items as photocopying, telecommunications, travel, data analysis, interviewing, etc. (See Appendix A - Budget).
- *Other Expenses* identifying any other expenses (*i.e.*, subcontracted services) by type and dollar amount. For subcontracted services itemized by subcontract name, job title, hours, hourly rate and total.

Respondents may not substitute their own budget in place of Appendix A. Proposals received that do not include a budget in the form of Appendix A will be deemed noncompliant and will not be considered for the award of this project. The budget shall include the cost of performing the tasks outlined herein. The budget shall be separate from their technical proposal.

4.3 Complete Administrative Proposal

The Successful Respondent must also complete the following:

A. Non-Discrimination and Contractor and Supplier Diversity Requirements

It is the policy of the State of New York and 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 exhibit OCSD-4) to achieve an **overall MWBE Participation Goal of 30%** related to the total value of ESD's funding.

A copy of each Respondent's Equal Employment Opportunity Policy Statement (Form OCSD-1) and MWBE Utilization Goal Plan (Form OCSD-3) are to be included as part of the response to any RFP.

The Successful Respondent will be required, on a quarterly basis during the term of the contract, to report on the composition of the workforce utilized in performance of the contract using a Workforce Utilization Report.

Copies of these forms are available at:

Form OCSD-1

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEOPolicyStatement.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 Respondents to the RFP shall complete these forms. In the MWBE Utilization Goal Plan (Form OCSD-3) the Respondent must list all of the subcontractors and sub-consultants it proposes to use in achieving the MWBE goal requirement or propose the types of subcontractors 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 Respondents in identifying New York State certified MWBEs that can provide goods and services in connection with this contract. If Respondents require listings of certified MWBE firms or have other questions relating to the requirements herein, they should contact OCSD with their inquiries and comments. Such Respondents should be sure to include all relevant contact information for their company and details pertaining to this RFP.

B. Procurement Forms and Requirements

Additional requirements for this RFP are described below. Relevant forms, where required to be submitted, must be executed and included in the submission in the same order as listed below:

1. State Finance Law §§139-j and 139-k forms
2. Vendor Responsibility Questionnaire
3. Iran Divestment Act Statement
4. Encouraging the Use of NYS Businesses in Contract Performance Form

5. Certification under State Tax Law Section 5-a
6. Schedule A (for review only—no separate form requirement)
7. Project Sunlight (for review only—no separate form requirement)
8. Insurance Requirements

1. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed below; the completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under “RFPs/RFQs”); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

[http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF Law139 JK.pdf](http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF%20Law139%20JK.pdf).

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a prospective respondent is found to have knowingly and willfully violated the State Finance Law provisions, that prospective respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is BroadbandReviewRFP@esd.ny.gov.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

2. Vendor Responsibility Questionnaire

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all respondents to this RFP register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep 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. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute

accordingly pertaining to the company's trade industry. Per the website, respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

3. Iran Divestment Act

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

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to:

<http://www.ogs.ny.gov/about/regs/ida.asp>

4. Encouraging the Use of NYS Businesses in Contract Performance Form

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 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. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

5. Certification under 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 Proposals a properly completed Form ST-220-CA

(http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf),
or an affidavit

(http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. 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.

6. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with "Schedule A," which can be found at:

http://esd.ny.gov/CorporateInformation/Data/ScheduleA_ConditionsApplicabletoCorporationAgreementsForMaterialServices_RevisedAug2014.pdf

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 Respondents will need to accept these terms prior to contract execution.

7. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract for real property (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

8. Insurance Requirements

The selected Respondent 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;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Excess/Umbrella Liability of \$1 million;
- Professional Liability (Errors & Omissions) \$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;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Excess/Umbrella and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

4.4 Evaluation Process

A. General Information

ESD will evaluate each proposal based on "Best Value." This means that the proposal that "optimizes quality, cost, and efficiency among responsive and responsible [Respondents]" shall be selected for award (State Finance Law, Article 11, § 163).

ESD, at its sole discretion, will determine which proposal best satisfies its requirements. ESD reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. Qualified staff/individuals will evaluate all submitted proposals. ESD may request clarification of a proposal. The evaluation process will include separate technical and cost evaluations and will be conducted as set forth herein.

Upon review of proposals submitted by Respondents, ESD may, at its discretion, submit to Respondents written questions and requests for clarification relating to their Technical, Administrative, and/or Cost Proposals. Respondents will be provided a reasonable period of time in which to submit written responses to ESD's requests for clarification.

B. Submission Review

ESD will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in

Section 4 of this RFP. Proposals that are materially deficient in meeting the submission requirements (as determined by ESD) or that have omitted material documents (as determined by ESD) may be rejected at the sole discretion of ESD. All proposals passing the Submission Review will be evaluated.

C. Scoring of Applications

i. Technical Evaluation (72 Points)

An evaluation panel will independently score each Technical Proposal that meets the submission requirements of this RFP. Evaluation panel members will score Technical Proposals to identify Respondents the members deem most likely to provide the services described in Section 1 of this RFP in a satisfactory manner. Individual Panel member scores will be averaged to calculate a technical score for each responsive Respondent. Up to 72 points will be awarded based upon ESD's evaluation of the Respondent's:

- Capability to Manage and Implement Statewide Projects (15 Points)
- Experience on Broadband and Telecommunications Projects (15 Points)
- Capability to Perform Financial Analysis (15 Points)
- Capability to Perform Technical Analysis of Broadband and Telecommunications Networks, including Evaluation of Network Designs (15 Points)
- Methodology and Work Plan (12 Points)

Evaluations will be based on the Respondent's demonstration of its ability to provide the services required through its Technical Proposal. Considering the above criteria, ESD may review and check references. Evaluation panel members may re-evaluate any technical scores as a result of these reference checks. The inability to contact a reference provided by a Respondent will not be looked upon favorably.

During the evaluation process, ESD may require clarifying information from a Respondent. If specific sections of the written proposal require clarification, ESD will identify the section(s) and information requested in writing. The Respondent shall respond by the deadline stated in the correspondence. In addition, ESD may use the proposal, information obtained through any interviews, and ESD's own investigation of a Respondent's qualifications, experience, ability or financial standing, and any other material or information submitted by the Respondent in the course of evaluation and selection under this RFP. The State reserves the right to contact other sources not necessarily identified in the proposal to obtain information.

ii. Diversity Practices (8 Points)

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using the attached Diversity Practices Scoring Matrix (Attachment B). Up to 8 points will be awarded based upon the contents of the Diversity Practices Questionnaire (Attachment C) submitted by each Respondent to the RFP.

iii. Cost Evaluation (20 Points)

ESD's Finance Office will review the proposal documents for responsiveness to cost requirements. If a cost proposal is found to be non-responsive, that proposal will be eliminated from consideration. All complete, responsive proposals will receive a cost score.

The maximum score (20 points) will be allocated to the proposal with the lowest blended hourly rate. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following formula:

$$\text{Cost points awarded} = (20 \text{ potential points}) \times (\text{Low Bid} / \text{Respondent's Bid})$$

iv. Final Composite Score

The final composite score will be the sum of the final technical, diversity practices, and cost scores for each Respondent. The Respondent with the highest final composite score will be selected for award.