



**Empire State
Development**

REQUEST FOR PROPOSALS

CONSTRUCTION MANAGEMENT SERVICES TRANSFORMER BUILDING AND UTILITY RELOCATION JACOB K. JAVITS CONVENTION CENTER

April 4, 2016

**PROPOSAL DUE DATE AND TIME: April 25, 2016 - 12:00 PM (EST)
(Late proposals cannot be accepted)**

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I. INTRODUCTION

The New York Convention Center Development Corporation (NYCCDC or the Owner), a subsidiary of New York State Urban Development Corporation (d/b/a Empire State Development (ESD), seeks to retain the services of an Agent Construction Manager (the CM) to perform professional management services in connection with the Transformer Building and Utility Relocation (see site map attached) at the Jacob K. Javits Convention Center (“Convention Center”).

Architectural, engineering and other consultant services will be provided by a team of consultants headed by the firm JAVITS II ARCHITECTURE, LLC.

TIMELINE

Release:	April 4, 2016
Deadline to submit questions:	April 11, 2016 at 5:00 PM (EST)
Deadline for responses:	April 14, 2016
Deadline for proposal:	April 25, 2016 at 12:00 PM (EST)

II. PROJECT DESCRIPTION

The project consists of elevating a transformer yard, constructing a 3 story building and relocating various utilities. The transformer yard will be elevated out of the flood plain and electrical service will be provided to meet the increased electrical demand for the anticipated expansion of the Convention Center. All Convention Center electric services that run on West 39th Street will enter the anticipated expanded facility near 11th Avenue, and will be routed below-grade on-site to the proposed elevated transformer building.

The building will be 80'-0" wide by 170'-0" long consisting of three levels and a roof, occupying the space over the existing transformer yard and overlapping the existing vehicle access ramps for the existing Convention Center. It will be immediately adjacent to the proposed expansion, and will house programmatic elements of the same. It may be separated with expansion joints or tied into the expansion.

The building may also include approximately 20,000 square feet of space on the ground floor and mezzanine levels for the NYS Troopers. This space would be comprised of parking, offices and ancillary facilities.

The next level at elevation +32' will share a common elevation with the proposed Expo Hall (Expansion Level 3) and will contain restrooms for the Expo Hall at the east end and three (3) 3.5 Kw standby generators on the west end.

The third level at +50'-0" (Expansion Level 3 Mezzanine) will house the new transformers, switch gear, and emergency generator. This level will also house a bridge crane capable of moving transformers and other gear to the west end of the building for access through an overhead door or removable panel in the wall fronting 12th Ave.

The roofing system at +70'-6", will be a series of precast concrete planter troughs which will span over the utility area and have openings between precast planters. The precast planter troughs will be lined with a hot fluid applied reinforced membrane waterproofing. The planters will have sedum and plant vegetation.

The enclosure will be concrete masonry infill with a unitized stainless steel wall panel system with stiffeners but uninsulated; same size and textures as the Convention Center renovation project stainless steel wall panel system. Panels will be mounted on angle support frames in a varying pattern of undulation tied to structural "T"s. Ventilation areas with blank offs will be required for the electrical equipment and generators.

Structural – Transformer Building Structure

The Transformer Building structure consists of a structural steel frame with two supported levels. The lower floor (Level 3 at elevation +32') consists of a concrete slab on metal deck supported by steel beams with composite studs. The upper floor (Level 3M at elevation +50') consists of a concrete slab on metal deck, a waterproofing layer, and a structural concrete topping slab all supported by steel beams with composite studs. The structural frame consists of heavy wide flange steel columns at wide spacing at the perimeter with no interior columns. To accommodate the long spans and create the required headroom below the perimeter girders will be incorporated into one-story deep trusses between Levels 3 and 3M. The lateral load resisting system will consist of ordinary braced frames in the north-south direction at the ends of the building and moment frames in the east-west direction incorporating the deep trusses on the north and south facades. The foundation system is expected to consist of straight shaft drilled caissons extended into the underlying bedrock and sleeved to create a de-bonded zone to the depth of the influence zone of the adjacent tunnel tube. Caisson locations have been carefully determined to avoid underground utilities and the equipment of the existing transformer yard that will need to remain in operation during the construction of the new transformer building.

Temporary access and egress stairs shall be constructed for use during construction and the time period between the Transformer Building's completion and the completion of the Javits Convention Center Expansion.

Electrical – Transformer Building Structure

The Convention Center Electrical Service comes from Consolidated Edison via 6 -13.2 KV services. Two (2) of the services come from 12th Avenue and the other four (4) come from 11th Avenue via a closed and decommissioned 39th Street. The services are run via underground concrete encased conduit duct banks and man holes from 11th and 12th Avenues to 3 man holes just north of the Transformer /Switchgear yard in 39th street. These manholes are located 20-30 feet north of the present Transformer Switchgear yard. From these manholes, the 6 feeders feed service

switchgear and distribution via 6 oil filled transformers in a one to one configuration. All of this equipment is fed via underground conduit within the confines of the transformer / Switchgear Yard. Distribution leaves the yard to distribution man holes and concrete encased duct banks leading to a vault room located adjacent to the electrical rooms located throughout the existing Convention Center complex.

These existing Con Edison feeders need to be relocated so that they are re-terminated into 3 new splice chambers. The concrete encased duct banks from 11th and 12th Avenues also need to be completely relocated to coordinate with the new Convention Center structure. The relocated feeders shall terminate in the 3 new splice chambers while maintaining service to the existing Convention Center electrical system. The new platform located on elevation ± 52.00 will support all the new line side and load side service switchgear will be supplied and installed per Con Edison's standards such as EO-2022, and others. The new switchgear, supply side and load side (distribution side) shall be NEMA 3R walk in environmentally controlled enclosures with draw out 15 KV metal clad type circuit breakers with relay protection required per Con Edison's latest standards. The enclosures will be provided with heat and air conditioning. The transformers shall be dry type cast coil transformers per approved Con Edison vendors list and latest standards. All existing medium voltage distribution cables from the building substation to the new service switchgear is to be replaced so that there are no splices between the interior substations and the outdoor distribution switchgear at the platform.

This work shall also need to be coordinated with the new generator plant that will be located in the level below the Transformer/Switchgear platform. Conduit will need to be at least 20 feet away from generator exhaust muffler and exhaust piping. Also the location of supply and exhaust pathways for these generators combustion and exhaust air will need to be coordinated and these areaways are not to be blocked in any way. The flue locations for the generators are to be also be coordinated and physical protection is to be provided so people are kept at least 10 feet away from this piping.

Utility Relocations

As part of the scope of work, several utility routes need to be relocated. These consist of a sewer main (DEP), a water main (DEP), telecommunication lines (ECS), electrical feeders (PANYNJ), and Con Ed service to the Convention Center.

Within 39th Street, an existing sewer main, a water main and the Con Ed service need to be relocated. The sewer main will be relocated and reconstructed within the footprint of the expansion building beginning just west of 11th Avenue and extending to 12th Avenue. The water main will be relocated to 40th Street. The Con Ed service will be relocated to new man holes just east of the expansion building on 39th Street with one man hole just west of the site on 12th Avenue. Telecommunication lines enter the site from the north tube of the Lincoln Tunnel and will have to be relocated along the line of 39th Street. Electrical feeders connect between the two tunnel vent buildings through the site and will need to be relocated. (See Site Map attached as Addenda)

Project Budget

The Project is fully funded and the proposed Project Budget is:

Hard Costs: \$ 70,000,000

Soft Costs: \$ 3,120,000

TOTAL \$ 73,120,000

Project Schedule

Foundation plans for the transformer platform are expected to be completed on 4/30/16. The balance of the design work will be packaged separately and completed by 5/30/16. It is anticipated that the bid and award of trade contracts associated with the foundation system will commence upon receipt of a signed CM Contract so that construction work can commence in July/August 2016. Long lead equipment will be purchased by the CM so that the project completion date is met. Completion of the entire project is projected for December 2018.

III. SCOPE OF WORK

The scope of construction management services shall include, but may not necessarily be limited to, the following:

During the Pre-Construction Period:

Attend all meeting related to the Project as reasonably directed by the Owner.

Review, analyze, evaluate and comment on design and construction documents during the development, and advise on the selection of materials, building systems and equipment, methods of project delivery, feasibility of construction and other factors.

Prepare and update with increasing detail and refinement at appropriate project intervals estimates of construction cost, and as necessary advise on possible economies to maintain budget.

Assist in obtaining building and other permits.

Develop a site safety and security plan.

Develop a Minority/and Women-Owned Business Enterprise (MWBE) Participation Plan (Form OCS-4) for the Project designed to meet or exceed the Project goals of 30% for MWBE participation during preconstruction and construction.

Evaluate and recommend specific division of the Project into individual contracts for various trades and work, including the method for selecting contractors and awarding contracts.

Prepare a Project Schedule that provides for all components of work, including, but not limited to, phasing and sequencing of construction, times of commencement and completion for all contractors, and proper coordination between contractors.

Provide advice to Owner with regard to the bidding and award process for all contracts, including developing and encouraging bidders' interest in the Project, encouraging and facilitating the use of MWBEs, assisting in the preparation of all bid documents, preparing written estimates of the work required by the bid documents, assisting Owner with respect to scope review meetings with the contractors, reviewing bids, and negotiating the award of contracts.

During the Construction Period:

Manage, administer, direct, supervise and perform other related services to coordinate the activities and responsibilities of the contractors in accordance with the Project budget, Project schedule and contract documents. Evaluate and recommend courses of action when the requirements of a contract are not being fulfilled.

Update the Project schedule on a monthly basis, incorporating the activities of all contractors on the Project.

Evaluate, develop and implement procedures for the review, verification and processing of applications by contractors for progress and final payments and maintain accounting records for all Project expenditures.

Evaluate, monitor and coordinate the safety programs developed by each of the contractors.

Inspect and ensure that the work of all contractors is being performed in conformance with the requirement of all Project documents. Coordinate and Manage controlled inspections.

Maintain Project records and oversee and manage Project commissioning and close-out.

IV. FORM OF PROPOSAL

1.) Executive Summary

Please identify the most significant challenges of this Project and how your firm (or firms, if a joint venture) proposes to address and resolve them. Identify the key reasons why your firm is most qualified for this assignment.

2.) Firm Profile and Project Experience

Please provide a brief profile of your firm(s) including organizational history, size and dollar volume of work completed in the last five (5) years. Please provide examples of at least five (5) projects that best demonstrate your firm's experience,

particularly with projects of similar size and complexity with construction values in excess of \$50 million in comparable urban locations.

For all projects, please provide the name and location of the project, the owner of the project and his or her contact information, and a brief description of the project, including size, value and duration of construction, and any distinguishing characteristics of the project.

3.) Project Management Team

Please provide a Table of Organization for the proposed Project Management Team with resumes for all members of the Management Team. Please identify the proposed role and scope of responsibility for each Manager and the percentage of time dedicated to the Project. Please provide a description of the last three (3) projects each of these individuals worked on, identifying the role (title, scope of responsibility, reporting structure) each individual played and what firm they were affiliated with. If your firm is selected, there will be no substitution of the proposed Project Management Team without the permission of the Owner. If this is a Joint Venture Management Team, please address how the joint venture is structured, how the Firms intend to coordinate their efforts, what role each Firm expects to play on the Project, and why a joint venture is proposed.

4.) Diversity Practices

Respondents to the RFP will be evaluated for Diversity Practices using the attached Diversity Practices Scoring Matrix (See Addendum attached). Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire and the Scoring Matrix (See Addendum attached) submitted by each Respondent to the RFP.

V FORM OF FEE PROPOSAL

The Fee Proposal should be submitted in the following format. Please do not deviate from this format.

Construction Fee: _____% of the Cost of Work

The "Cost of Work" is defined as all Trade Costs and the CM's General Condition Costs.

Hourly Rate Sheets

Please provide Hourly Rate Sheets for all personnel assigned to the Project and for all categories of personnel expected to be assigned to the project.

General Conditions Cost Breakdown

Separate Breakdown for PreConstruction and Construction. Breakdown should include Construction Management Staff and General Expenses itemized.

VI. QUESTIONS

All questions, comments, requests for clarification or any other communication regarding this RFP must be submitted in writing no later than 5:00 PM (EST) on April, 11, 2016 by e-mail to:

UtilityRelocateRFP@esd.ny.gov

Answers will be posted no later than April 14, 2016.

VII. EVALUATION AND SELECTION PROCESS

Proposals will be ranked based upon the qualification of the Firm or Firms experience on projects of similar size and complexity (35 points), project management team experience (35 points), Fee Proposal (20 points) and Diversity Practices (10 points). The Owner reserves the right to negotiate a fee with the highest ranked Proposer and in the event an agreement cannot be reached on the Fee with the highest ranked Proposer, the Owner will negotiate a Fee with the next highest ranked Proposer, and will continue that process until an agreement is reached.

VIII. SUBMISSION REQUIREMENTS

All Proposals must be delivered to the below address by no later than 12:00 PM (EST) on April 25, 2016. Please provide eight (8) hard copies and one electronic copy (USB or Flash Drive) of your Proposal.

Empire State Development
633 Third Avenue 35th Floor
New York, New York 10017-8167
Attention: Edgar Camacho
RFP: Transformer Building and Utility Relocation

IX. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a firm or the acceptance of such a response by ESD do not obligate ESD in any manner. ESD reserves 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 potential contract terms with any respondent to this RFP;
7. engage in discussions with any respondent to this RFP to correct and/or clarify responses that do not conform to the instructions contained herein;

8. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
9. extend the term of any agreement on terms consistent with this RFP.

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.

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 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 ESD Directors, which meetings are subject to the Open Meetings Law.

X. 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. Non-Discrimination and Contractor & Supplier Diversity Requirements
5. Encouraging the Use of NYS Businesses in Contract Performance Form
6. Certification under State Tax Law Section 5-a
7. Schedule A (for review only—no separate form requirement)
8. Project Sunlight (for review only—no separate form requirement)
9. 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.

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 UtilityRelocateRFP@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. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145 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's contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises 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 minority-and women-owned business enterprises in state

procurement contracting versus the number of minority- and women-owned business enterprises 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 statewide certified minority- and women-owned business enterprises 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 MWBEs and the employment of minority group members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises (“MBE”) participation and 15% for New York State certified women-owned business enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that ESD may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and ESD may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting ESD’s Office of Contractor and Supplier Diversity (OCSD) at OCSD@ESD.NY.GOV. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

Additionally, a Bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD.

ESD will review the submitted MWBE Utilization Plan and advise the Bidder of ESD's acceptance or issue a notice of deficiency within 30 days of receipt.

B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to ESD, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If ESD determines that the Bidder has failed to document good faith efforts.

The Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not

apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Form OCSD-1, to ESD with their bid or proposal.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Form OCSD-2) identifying the anticipated work force to be utilized on the Contract. If awarded a Contract, Bidder shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a quarterly basis during the term of the contract.

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.

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.

Form OCSD-1

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

Form OCSD-2

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

Form OCSD-4

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4MWBEUtilizationPlan.pdf

In the event that the above links are unavailable or inactive, the forms may also be requested from ESD's Office of Contractor & Supplier Diversity ("OCSD") at OCSD@ESD.NY.GOV.

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.

Service-Disabled Veteran-Owned Businesses

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and

the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, respondents for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf.

Respondents need to be aware that they will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, Respondents are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

For purposes of the RFP, ESD hereby establishes a goal of 3% for SDVOBs, based on the current availability of qualified SDVOBs. The Contractor must document Good Faith Efforts to provide meaningful participation by SDVOBs in the performance of the Contract.

A copy of each Respondent's SDVOB Contract Performance Use form proposing specific certified firms to be utilized or industries where SDVOB firms shall be sought is to be included as part of the response to this RFP. A copy of the form is available at: <http://esd.ny.gov/CorporateInformation/Data/RFPs/SDVOBContractPerformanceUse.pdf>

General inquiries or questions relating to aforementioned policies, MWBE and SDVOB participation and the goals specified herein may be addressed to OCSD at OCSD@ESD.NY.GOV.

5. 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>.

6. 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.

7. 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:

(For Consultants)

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.

8. 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.

9. Insurance Requirements

A. The CM shall provide insurance as follows:

CM specifically agrees to maintain the following insurance coverages in the limits provided below:

(1) Workers' Compensation Insurance

(a) Workers' Compensation - Statutory Limits; Employer's Liability

- (b) Employer Liability Limits:
 - \$1,000,000 Bodily Injury each Accident
 - \$1,000,000 Bodily Injury by Disease – Policy Limit
 - \$1,000,000 Bodily Injury by Disease – Each Employee

(2) **Commercial General Liability Insurance**

(a) Limits of Liability

- \$2,000,000 Each Occurrence
- \$4,000,000 General Aggregate
- \$4,000,000 Products/Completed Operations Aggregate
- \$ 5,000 Medical Expense Limit (any one person)
- \$ 50,000 Fire Damage Legal liability (any one fire)

(b) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.

1. Limits shall apply on a “per project” basis.
2. Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
3. Contractual Liability and Additional Insured Coverage shall not include any limitations for injuries to your own employees.
4. Products and Completed Operations Liability shall be maintained for six (6) years beyond completion and acceptance of the Project.
5. There shall be no XCU exclusion (Explosion, Collapse or Underground),
6. There shall be no “Labor Law” or other gravity related injuries exclusion.
7. Shall include coverage for Independent Contractors
8. Shall include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the Project
9. There shall be no contractual exclusion, or any other policy exclusions, for work done within 50 Feet of a Railroad, Light Rail, Subway or similar tracked conveyance or provide endorsement # CG2417-Contractual Liability - Railroads

(3) **Automobile Liability Insurance**

- (a) \$1,000,000 Bodily Injury/Property Damage Combined Single Limit

- (b) Commercial Automobile Liability Insurance to cover all vehicles including owned, non-owned and hired.
- (4) **Excess Liability**
Limits of Liability: \$10,000,000
Coverage should be at least as broad as and follow form of Employer's Liability, General Liability, and Auto Liability. Policy to include a drop down provision over primary policies.
- (5) **Professional Liability**
Minimum Limits of Liability: \$2,000,000 claim / aggregate
- Shall be maintained in effect for an additional 3 years following completion of the project
- (6) **CMs' Pollution Liability**
- (a) Limits of Liability: \$ 5,000,000 per occurrence
\$ 5,000,000 annual aggregate
 - (b) Coverage:
For losses caused by pollution conditions that arise from the operations of the CM, or their sub-contractors, described under the scope of services in the contract.
 - (c) Coverage Extensions:
 1. Bodily injury, sickness, disease, mental anguish or shock sustained by any person, or death.
 2. Property damage, including physical injury to or destruction or tangible property, including the resulting loss of use thereof, clean-up costs and the loss of use of tangible property that has not been physically damaged or destroyed.
 3. Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for damages.
 - (d) If disposal of materials from the job site is undertaken: evidence of pollution legal liability insurance in the amount of \$5,000,000 maintained by the disposal site operator for losses arising from the disposal site accepting waste must be provided.
 - (e) If autos are used for transporting hazardous materials: Pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90
 - (f) If any coverage required in this Contract is written on a claims-made coverage form

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (6) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the CM must purchase extended reporting period coverage for a minimum of five (6) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the OWNER for review

The limits of liability shown for each type of insurance coverage to be provided by the CM and any subcontractors pursuant hereto shall not be deemed to constitute a limitation of the CM's liability for claims hereunder or otherwise.

As respects General Liability, the additional insured endorsements shall be on a form at least as broad as ISO Forms CG2010 07 04 & CG2037 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which the above parties are required to be named as Additional Insureds. The additional insured coverage shall include completed operations coverage for the Additional Insureds for a period of not less than 36 months after completion of the project.

(a) CM shall, by specific endorsement to its primary commercial general liability policy, pollution and automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and non-contributory with any other valid and collectible insurance available to the Additional Insureds.

(b) CM shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds as set forth in paragraph (f) above and non-contributory with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis.

(c) CM shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements set forth in this contract and any Addendum thereto;

(d) CM shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include products liability and completed operations, with the provision that coverage shall extended for a period of at least 36 months after completion of the project;

(e) CM shall, by specific endorsement to its primary and umbrella/excess liability policies, provide that defense costs are not be considered as damages so as to erode the policy limits required under sections 1 – 5 above.

(f) CM shall evidence that its primary and umbrella/excess liability policies do not include any residential exclusions.

(g) All policies shall contain a waiver of subrogation in favor of the Owner and Additional Insureds and all others as required by contract.

(h) All policies required under this Contract shall be provided by carriers licensed and authorized to do business in the State of New York carrying minimum A.M. Best ratings of A, XII. Policies written on a surplus lines or non-admitted basis are subject to approval by the OWNER.

(i) Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by the OWNER .

(j) CM shall require all subcontractors to include Additional Insured endorsement CG 2038 04 13 and CG 20 37 07 04 with respect to General Liability.

(k) Certificates evidencing the foregoing insurance coverages must be furnished by CM to, and be approved by Owner, before CM will be permitted to do any work under this Subcontract. Certificates, Notices of Cancellation, or changes, etc., are to be sent by CM, directly to Owner at 633 Third Avenue, New York, New York 10017. CM, CM's agent and CM's insurance carrier(s) must reconcile all policy requirements to the satisfaction of Owner. CM shall provide certified copies of all policies required under this CM within 15 days after receipt of request by the Contactor for such information.

If CM fails to purchase, or fails to continue in force until completion of the Work, insurance in the amounts indicated above, The Owner may purchase such insurance and the cost thereof shall be borne by the CM and may be deducted from any amounts owed by the Owner to that CM.

Additional Insured – The following entities shall be named as ADDITIONAL INSURED by CM and all subcontractors and/or subconsultants on **Commercial General Liability Insurance, Automobile Liability, Excess Liability and Pollution Liability** policies:

Convention Center Development Corporation
New York Urban Development Corporation d/b/a Empire State Development

Subcontractors and subconsultants - If CM hires subcontractors and/or subconsultants:

CM shall require all subcontractors, subconsultants involved in **crane operation, demolition, excavation, foundation, site utilities, steel erection and hoisting (including elevators)**

to comply with the requirements noted above and provide the following coverage limits stated below:

(1) Workers' Compensation Insurance

- (c) Workers' Compensation - Statutory Limits; Employer's Liability
- (d) Employer Liability Limits:
 - \$1,000,000 Bodily Injury each Accident
 - \$1,000,000 Bodily Injury by Disease – Policy Limit
 - \$1,000,000 Bodily Injury by Disease – Each Employee

(2) Commercial General Liability Insurance

(b) Limits of Liability

- \$2,000,000 Each Occurrence
- \$4,000,000 General Aggregate
- \$4,000,000 Products/Completed Operations Aggregate
- \$ 5,000 Medical Expense Limit (any one person)
- \$ 50,000 Fire Damage Legal liability (any one fire)

(c) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.

9. These limits shall apply on a “per project” basis.

10. Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.

11. Contractual Liability and Additional Insured Coverage shall not include any limitations for injuries to your own employees.

12. Products and Completed Operations Liability shall be maintained for six (6) years beyond completion and acceptance of the Project.

13. There shall be no XCU exclusion (Explosion, Collapse or Underground),

14. There shall be no “Labor Law” or other gravity related injuries exclusion.

15. Shall include coverage for Independent Contractors

16. Shall include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the Project:

17. There shall be no contractual exclusion, or any other policy exclusions, for work done within 50 Feet of a Railroad, Light Rail, Subway or similar tracked conveyance or provide endorsement # CG2417-Contractual Liability-Railroads

(3) **Automobile Liability Insurance**

- (a) \$1,000,000 Bodily Injury/Property Damage Combined Single Limit
- (b) Commercial Automobile Liability Insurance to cover all vehicles including owned, non-owned and hired.

(4) **Excess Liability**

Limits of Liability: \$10,000,000
Coverage should be at least as broad as and follow form of Employer's Liability, General Liability, and Auto Liability. Policy to include a drop down provision over primary policies.

(5) **Professional Liability**

Minimum Limits of Liability: \$2,000,000 claim / aggregate

Shall be maintained in effect for an additional 3 years following completion of the project

(6) **Contractor's Pollution Liability As Required**

- (d) Limits of Liability: \$ 5,000,000 per occurrence
\$ 5,000,000 annual aggregate

CM shall require all subcontractors, subconsultants involved in **masonry, drywall, concrete, plumbing, electrical, HVAC and all other trades** to comply with the requirements noted above and provide the following coverage limits stated below for:

(1) **Workers' Compensation Insurance**

- (e) Workers' Compensation - Statutory Limits; Employer's Liability
- (f) Employer Liability Limits:
 - \$1,000,000 Bodily Injury each Accident
 - \$1,000,000 Bodily Injury by Disease – Policy Limit
 - \$1,000,000 Bodily Injury by Disease – Each Employee

(2) **Commercial General Liability Insurance**

- (c) Limits of Liability
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate

- \$ 5,000 Medical Expense Limit (any one person)
- \$ 50,000 Fire Damage Legal liability (any one fire)

(d) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.

- 17. These limits shall apply on a “per project” basis.
- 18. Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
- 19. Contractual Liability and Additional Insured Coverage shall not include any limitations for injuries to your own employees.
- 20. Products and Completed Operations Liability shall be maintained for six (6) years beyond completion and acceptance of the Project.
- 21. There shall be no XCU exclusion (Explosion, Collapse or Underground),
- 22. There shall be no “Labor Law” or other gravity related injuries exclusion.
- 23. Shall include coverage for Independent Contractors
- 24. Shall include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the Project:
- 25. There shall be no contractual exclusion, or any other policy exclusions, for work done within 50 Feet of a Railroad, Light Rail, Subway or similar tracked conveyance or provide endorsement # CG2417-Contractual Liability-Railroads

(3) **Automobile Liability Insurance**

- (a) \$1,000,000 Bodily Injury/Property Damage Combined Single Limit
- (b) Commercial Automobile Liability Insurance to cover all vehicles including owned, non-owned and hired.

(4) **Excess Liability**

Limits of Liability: \$5,000,000
Coverage should be at least as broad as and follow form of Employer’s Liability, General Liability, and Auto Liability. Policy to include a drop down provision over primary policies.

(5) **Contractor’s Pollution Liability As Required**

- (e) Limits of Liability: \$ 5,000,000 per occurrence
\$ 5,000,000 annual aggregate

Certificates of Insurance - Certificates of insurance reasonably acceptable to the Owner shall be filed with the Owner within ten (10) days after award of the contract to the CM and prior to commencement of the Work. All required insurance shall be maintained without interruption from the date of commencement of the Work until the date of the final payment and for a minimum of six (6) years following for products / completed operations. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be materially modified, cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, with a copy to the Construction Manager (if applicable). The provisions of this Section shall apply to all policies of insurance required to be maintained by the CM pursuant to the Contract Documents.

Certified Copies of Policies - Upon request, CM shall furnish the Owner or the Owner's Representative with a certified copy of each policy.

Other Insurance - Any type of insurance or any increase of limits of liability not described in this section which the CM requires for their own protection or on account of any statute shall be their own responsibility and at their own expense.

No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.

B. All insurance required to be procured and maintained must be procured from insurance companies rated at least A- by A.M. Best and Company, or meet such other requirements as are acceptable to the OWNER.

C. Should the CM fail to provide or maintain any insurance required by this contract, the OWNER may, after providing written notice to the CM, purchase insurance complying with the requirements of this Article and charge back such purchase to the CM.

D. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the CM shall immediately cease work on the Project. The CM shall not resume work on the Project until authorized to do so by the OWNER. Any delay or time lost as a result of the CM not having insurance required by this Article shall not give rise to a delay claim or any other claim against the OWNER or the Client.

E. Notwithstanding any other provision in this Article, the OWNER may require the CM to provide, at the expense of the OWNER, any other form or limit of insurance necessary to secure the interests of the OWNER.

F. The CM shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the CM. The requirement to secure and maintain such insurance is solely for the benefit of the CM. Failure of the CM to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and

employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

G. Neither the procurement nor the maintenance of any type of insurance by the OWNER or the CM shall in any way be construed or deemed to limit, discharge, waive or release the CM from any of the obligations or risks accepted by the CM or to be a limitation on the nature or extent of said obligations and risks of the CM.

H. The Contract may, at the sole option of the OWNER, be declared void and of no effect if the CM fails to comply with the provisions of this Article.

I. The CM and its Trade Contractors shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the OWNER and of the insurance companies issuing such policies.

ADDENDUM:

1.



RFP-DP_Scoring-Matrix.pdf

2.



Diversity_Practices_Questionnairev4.docx

3.



Transformer Platform_Diagram.pdf