

Request for Qualifications
INNER HARBOR DEVELOPMENT - PHASE 3A
Buffalo, New York

CANAL SIDE – PUBLIC CANAL ENVIRONMENTS
DESIGN SERVICES

Solicitation Issue Date: February 1, 2011
Qualifications Due Date: February 22, 2011

Issued by:

Erie Canal Harbor Development Corporation
A subsidiary of the New York State Urban Development Corporation d/b/a
Empire State Development Corporation

95 Perry Street- Suite 500
Buffalo, NY 14203-3030
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I. INVITATION TO SUBMIT QUALIFICATIONS

The Erie Canal Harbor Development Corporation (ECHDC), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation (ESDC), is seeking to retain a Design Team to design a year-round outdoor public environment in the City of Buffalo, New York (the "Project"). This project includes a series of public spaces and facilities related to Canal Side, a proposed mixed-use waterfront area on the site of the former Memorial Auditorium. The selected consultant team will include all design and administrative disciplines required to complete the Project. ECHDC has decided to go out in a traditional Design, Bid, and Build process in order to complete this aspect of the project.

The Public Canals scope includes: the Canal environments (west of Main Street); pedestrian bridges, special water features (and their integrated structures); and other public spaces. The minimum sustainability goal of the project is to attain LEED certification. The scope of this project is indicated on the attached drawings (see Exhibit B).

Teams should include but not be limited to capabilities in the following areas: All required Architectural services; Project Management; Codes; Mechanical, Electrical, Plumbing and Fire Protection; Structural Engineering; Civil Engineering; Cost Estimating, ADA Compliance; Environmental, Geotechnical, Lighting; Landscape; Environmental Graphics; Fire and Life Safety; Sustainability; Water Feature ; obtaining permits and associated efforts to meet requirements of all authorities having jurisdiction, and Construction Administration.

ECHDC has included a limited geotechnical report (Exhibit C) that had been performed for earlier phases of project in order to install a temporary engineered support system on the former Aud Block along with environmental analytical information that the design teams may use. The design team should evaluate this information to determine if additional information would be required and augment their group to include what is necessary. Also included is a reference drawing, prepared by C&S Engineers dated 4/16/2010, of the existing conditions and elevations that were completed during the Demo and Site Preparation Phase 2 which was recently completed by ECHDC (Exhibit D).

II. PROJECT BACKGROUND

This Project represents one part of a larger vision for the Canal Side Area. The larger vision includes various projects on nearby sites that will be designed and built by other teams.

A. Canal Side Area

The Erie Canal Harbor Development Corporation (ECHDC), created in 2005 to spearhead the waterfront development effort with a mission to revitalize Western New York's waterfront and restore economic growth to Buffalo based on the region's legacy of pride, urban significance and natural beauty, is currently leading Phase 3 of the Inner Harbor Development. Phase 3 centers around Canal Side - a mixed use, urban entertainment destination in the City of Buffalo, Erie County, New York.

In addition to ECHDC's and the City of Buffalo's public development roles, private participation in Canal Side currently includes the Benderson Development Company, Inc. The theme, design principles and Conceptual Design Phase have been completed by Ehrenkrantz Eckstut & Kuhn Architects (EE&K) of New York, New York. EE&K has assisted with the Project's environmental review and design guidelines, and will remain the "Master Architect" leading the Project design.

ECHDC has also retained The LiRo Group to assist with Construction monitoring of the project.

The Project has undergone an environmental review in accordance with New York's State Environmental Quality Review Act (SEQRA). The Project's Scoping Report was approved by ESDC on April 17, 2009. The Final Generic Environmental Impact Statement was approved by ESDC on January 21, 2010. The Modified General Project Plan was affirmed on December 16, 2010 by ESDC.

When fully built out, the entire Canal Side Area will consist of approximately 1,100,000 square feet of commercial (retail, restaurant, lodging, and office), cultural, and residential space on 23 development parcels within the entire area. The Area will be designed to emphasize downtown Buffalo's connection to the Lake Erie waterfront through the construction of canals that reflect the historical alignment of the Erie Canal, the Commercial Slip and the Prime Slip. The Area will provide urban amenities and various year-round offerings and experiences, including restaurants, entertainment venues, retail outlets, cultural attractions, public spaces, and increased access to the Buffalo River, appealing to a wide demographic of visitors and residents. The Area will include approximately 2,500 parking spaces.

The Area will create a series of walkable "neighborhood districts" which will be defined by the existing street grid, public-access areas, and convenient, yet unobtrusive, vehicle

The initial phase of the Area development will be the build-out of the Aud, Donovan, Webster, and Commercial Slip blocks. It is anticipated that this phase will include:

- 1) On the Aud Block: construction of the public canal environment and associated facilities (the Project).
- 2) On the Donovan Block: renovation and/or new construction at the Donovan Building, the public environment, and retail/office structure (all by others).
- 3) The Webster Block the ground level retail, office, (by others)

B. The Project

The development blocks included in the Project are summarized below. The Project includes both the Public Canal Environments and Associated Facilities ("Public Canals"), as indicated in the attached drawings (Exhibit B). The Public Canals portion provides a new continuous canal environment of waterways and public spaces, including:

Canal Area:

- Historically aligned Canals
- Associated Tow Paths
- Bridges over the canals along with stairways and items necessary for ADA compliance
- Temporary improvements on the A2/A3 parcel in the form of landscaping and site lighting

Aud Block

This block, where the Memorial Auditorium once stood, is bounded by Lower Terrace, Pearl Street, Main Street and Scott Street. Approximately 1/3 of the area will include water features, hard scape, landscape, and other facilities. All work shall be constructed to avoid impacting operation and maintenance of the Hamburg Drain. It will be necessary to coordinate all design aspects with the Buffalo Sewer Authority.

Several private development parcels exist on the Aud Block (i.e., A1 and A2/A3). The canal environments will be designed to allow for future development at these sites.

C. Coordination Between the Project and Other Projects

The overall Canal Side Area will be designed based on a Conceptual Design provided by ECHDC. There will be several different design packages covering the various parcels identified in the Canal Side Master Plan. Please see Exhibit B – Phase 1 Design Packages for a diagram of these responsibilities.

D. Project Labor Agreement

It is anticipated that a PLA will be negotiated for this project.

E. Projects by others include:

The City Streets Package will implement the design of the Canal Side's streets, streetscapes, and right-of-way enhancements. The project goal is to provide an enhanced pedestrian and transit supportive environment along streets in the project area. The scope of work for the Streets project includes planning, design and construction of right-of-way improvements along Pearl Street, Scott Street, Main Street, Perry Boulevard, Lower Terrace and other pedestrian circulation areas.

Commercial Slip Parking Garage will include on-site grade treatment. The garage is currently envisioned as a 6 - level structure accommodating 1200 vehicles.

Several parcels have been identified for **Private Development**. Anticipated uses at these sites include retail, restaurants, residential, office, and hotel. Several parcels will be developed during the first phase of the project; others will be developed as market demand and other economic factors dictate.

As the client's representative, a Construction Monitoring (CM) team will be authorized to represent the ECHDC in executing the contract for the team selected by this RFQ process. The CM will be responsible for coordination of the final design and construction of the Project. In addition, the CM will also be responsible for coordinating construction activities, schedules, and constructability issues for the entire area (Private Development) and for coordinating with all stakeholder agencies

III. SCOPE OF SERVICES

A. Summary

The selected Designer will be required to provide the full range of architectural and engineering services necessary to design the Project in accordance with the Conceptual Documents (Drawings) that will be provided, for an amount that will be agreed upon, and completed no later than the respective completion dates that will be specified. The Designer will be required to provide all of the management, personnel, design services, labor, materials and equipment necessary to complete the project.

The Design team responsible for the Project will work closely with the Master Architect and CM to complete and implement the design as described in the conceptual documents continuing through, and including, construction. The Design team will also be responsible to incorporate mitigation measures and other findings into the design and/or construction as necessitated by SEQ. R.

The Design team responsible for the Project will work through ECHDC (and its Master Architect and CM) to coordinate utilities, construction phasing, and any other coordination issues with respect to the City Streets Package. Phase V-VI Package, Lower Main Street Package, as well as private development (Benderson Development Company, Inc.). The Design team responsible for the Project will also work with the University at Buffalo to update ECHDC's "Buffalo, New York - Harbor Simulation" with Canal Side Phase 3A development

B. Deliverables

The following is a general outline of the deliverables required under this Project:

General

- All certifications, permits, and other requirements necessary to meet ESDC requirements for completing the Project.

Schematic Phase

- Allow for as many as Three (3) meetings with ECHDC's Historic committee to present schematic drawings and get necessary approval in order to begin the Design Development.
- Prepare preliminary estimate of cost for the construction of the Project

Design Development Phase

- Allow for as many as one (1) meeting with ECHDC's Historic committee to present design development drawings and get necessary approval in order to begin Construction Documents
- Prepare cost estimate of cost for the construction of the Project

Construction Document Phase

- 75% Construction Documents (drawings, specifications and cost estimate)
- 100% or Bid Construction Documents (Final Drawing Set, Specification Book and final Cost Estimate)
- LEED tracking on a monthly basis
- Hardcopy and electronic files of each submission
- Updated "Buffalo, New York - Harbor Simulation"

Construction Phase

- Complete construction of all project components; including, but not limited to, RFIs, approved submittal, and attendance at project meetings;
- Final as-built drawings;
- All testing and controlled inspections required for all project components;
- A complete Operations and Maintenance Manual for all project components;
- All work required to attain a minimum of LEED certification for all project components.

IV. SELECTION PROCESS & REQUIREMENTS

1. Qualifications Required

The selected design team should be proficient and have demonstrated project experience in:

- 1) High quality public exterior design and construction;
- 2) Complex public projects with multiple stakeholders;
- 3) Document Control and QA/QC standards and protocols;
- 4) Coordinating a large multi-disciplinary design team of architects, engineers and specialty consultants;
- 5) New construction on constricted urban sites;
- 6) Pertinent rules/regulations of Local, State, and Federal agencies;
- 7) Ability to show how they will interface with agencies having jurisdiction

2. Selection Process

Based on its review of the RFQ responses, ECHDC will select a short-list of responders to interview after receipt of responses. ECHDC will notify each responder in writing via fax, or e-mail, as to whether its submittal has been selected for short-list to receive the RFP.

After receiving the RFP, each team on the short-list will have the opportunity to develop a full proposal for the work. The short list of respondents will have the opportunity to make presentations to a selection committee made up of ECHDC, ESDC, and its representatives. Respondents should be prepared to respond to questions regarding their qualifications and general approach to the effort.

During the RFP selection process, the Selection Committee will select a respondent proposing best value, and rank each of the remaining short-listed respondents. A copy of Schedule A can be found at http://www.empire.state.ny.us/rfp/required_forms.htm. This schedule includes general applicable contract terms and conditions.

If ECHDC cannot come to successful terms with the selected firm/team on the contract, scope of work, and costs for the effort, ECHDC would disband negotiations and move to the next highest-ranked firm or team.

3. Submission Requirements

Firms and/or teams are required to submit one (1) signed original and five (5) copies and an electronic copy on a CD of materials that demonstrate the firm's capabilities and experience.

The RFQ submission shall be limited to no more than 50 double-sided pages (min. 12 pt. font) that shall be spiral bound. Three-ring binders will not be accepted.

Your submittal should follow the format outlined below and include, at a minimum, the following information:

Section I. Description of Firm

- A. Professional Capabilities
- B. Proof of New York State Professional Licensure *
- B. Staffing Level/Organization Chart
- C. Project Mix/Client Mix for most recent projects

4. Litigation (last five years) *

* Does not count toward page limit.

Section II. Project Team

- A. Services to be provided
- B. Sub-consultants required to perform work
- C. Team Organization, including project role/function chart
- D. Total relevant human resource availability throughout agreement, particularly for the project manager and key personnel

5. Design experience as a team and as individual firms.

Section III. Qualifications and Experience

A. Personnel

- Principal in Charge
- Project Manager, including relevant project management expertise, experience, credentials, and communication skills
- Key technical personnel, including available licensed engineers/architects
- Experience (as related to this project)

B. Technical Experience (Design)

Proposers shall demonstrate specific technical experience and competence in providing high quality public design for each of the following areas:

- Architecture
- Working with a Master Architect under separate contracts
- Sustainable design for LEED certification
- Project Management
- Codes
- MEP/FP Engineering
- Structural Engineering
- Civil Engineering
- Lighting
- Landscape
- Environmental Graphics
- Fire and Life Safety
- Water Feature and Aquarium Design
- Construction Phase

C. Technical Experience (Construction)

Proposers shall demonstrate all specific technical experience and competence required in designing high quality exterior public environments.

Section IV. Project Management Methodology

- A. Overall project management approach and methodology
- B. Schedule, quality, and cost control procedures
- C. Project tracking and performance monitoring procedures

6. Project progress reporting procedures

Section V. Technical Approach

Describe your approach to the Services that clearly demonstrates your understanding of the Scope of Services and your ability to manage and complete multiple projects in a timely and cost-efficient manner. The submittal must include a detailed statement of your approach and ability to provide the required Services and Work Product including, but not limited to a schedule for completing all aspects of the services.

Section VI. References

- A. List representative experiences for the past three years.
- B. List five (5) references to which you provided services of a similar nature. Indicate scope of work, total compensation paid, and term of contract.
- C. List any previous work experience for the ESDC as either a prime or subconsultant.
- D. Provide your information in the following format:
 - 1. Project name and description
 - 2. Your firm's scope of work or role on project
 - 3. Client name, address and telephone number
 - 4. Client contact (Full Name and Title)

Section VII. Cost Proposal

(not required at this time)

D. Other Certifications & Requirements

i. Non-Discrimination Policy.

It is the policy of the State of New York, ESDC, and ECHDC to comply with all federal, State and local laws, policy, 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 New York State Business Enterprises, Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ECHDC's participation in projects or initiatives, and/or the use of ESDC and ECHDC's funds. ECHDC's non-discrimination and affirmative action goals will apply to this initiative. The selected design-build team shall be required to use its best efforts to achieve M/WBE participation of not less than 25% (20%-MBE, 5%-WBE) of the total dollar value of the contract. **A copy of each respondent's Equal Employment Opportunity Policy Statement, anticipated Staffing Plan (Schedule A-1) and Schedule of Minority and Women Business Participation (Schedule A-2) shall be included as part of the response to this RFQ.**

The latter two forms can be found on the Required Forms for Vendors link at the ESDC website under "RFPs/RFQs". (http://www.empire.state.ny.us/rfp/required_forms.htm) Only the prime consultant completes the forms. In the forms, the firm is required to denote all the sub-consultants it proposes to use in achieving M/WBE participation. The ESDC Affirmative Action Unit ("AAU") is available to assist you in identifying New York State certified M/WBEs that can provide goods and services in connection with the contract. If you require M/WBE listings, please call the AAU at (212) 803-3224.

ii. 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 ESDC from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all respondents to this solicitation must include in their responses a properly completed Form ST-220-CA, a copy of which is accessible at the Required Forms for Vendors link at the ESDC web site.** (http://www.empire.state.ny.us/rfp/required_forms.htm) 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.

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

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFQ. These Procurement Requirements (1) govern permissible communications between potential respondents and ESDC or other involved governmental entities with respect to this RFQ; (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 RFQ. Compliance with the Procurement Requirements requires that (x) all communications regarding this RFQ, 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; (y) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and (z) periodic updating of such forms during the term of any contract resulting from this RFQ. **Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law as part of their submittal.**

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

For the purpose of compliance with State Finance Law Sections 139-j, contact with Mark Smith, ECHDC Director of Construction is considered permissible. Contact information for Mr. Smith is provided in Section VII.

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://www.empire.state.ny.us/rfp/required_forms.htm

(under "ESDC Policy Regarding Permissible Contacts under SFL 139")

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and the sub-consultants complete the forms required above.

iv. Insurance Requirements

Please note that **upon selection** for this Project, the Designer will be required to demonstrate/provide the insurance coverages indicated in Exhibit A.

V. PRE-SUBMITTAL CONFERENCE

ECHDC staff and ESDC's design/construction staff will be made available at a non-mandatory, pre-submittal conference on **Thursday, February 10, 2011 at 2:00 P.M. local time at ECHDC Office, 95 Perry Street, Buffalo, NY 14203, 5th Floor Conference Room.** At this meeting, respondents will have the opportunity to ask questions about submittal requirements of the RFQ.

VI. PROJECT COST AND SCHEDULE

The projected construction cost for the work of this contract is expected to be in the range of \$20-30 Million.

The major milestones on the project schedule are currently projected to be:

- | | |
|---|---------------------------------|
| 1. Advertise RFQ: | February 1, 2011 |
| 2. Non-mandatory Pre-submittal Conference: | February 10, 2011; 2:00 PM |
| 3. Qualification Packages Due: | February 22, 2011 |
| 4. RFP Issued to Most Highly Qualified Teams: | February 29, 2011 |
| 5. Proposals Due from Shortlisted Teams: | March 6, 2011 |
| 6. Interviews: | March 9 – March 10, 2011 |
| 7. Selection/Award of Design Team: | March 12, 2011 |
| 8. Award Design Contract: | March 13, 2011 |
| 9. Schematic Design complete: | April 14, 2011 |
| 10. Design development complete | June 1, 2011 |
| 11. 75% Construction Documents / Review: | August 1, 2011 |
| 12. Final Construction Documents / Review: | September 1, 2011 |
| 13. Bid and award | October 1, 2011 |
| 14. Construction: | November 2011 – August 31, 2012 |

VII. TIME AND PLACE OF SUBMISSION

Respondents will not receive compensation or reimbursement of any expenses associated with preparing and/or submitting the submittal.

Respondents are required to submit one (1) original and five (5) copies and an electronic copy on a CD of their submittal **prior to 3:00 P.M. EST on February 22, 2011.**

Responses shall be firmly sealed in an envelope or box, and contain the Respondent's name and return address.

Please be advised that under no circumstances will ECHDC obligate itself to consider a response which is received after the deadline or does not include the basic items described above.

Responses shall be delivered to:

**Thomas P. Dee, President
Erie Canal Harbor Development Corporation
95 Perry Street, Suite 500
Buffalo, NY 14203-3030**

ECHDC reserves the right to reject a submittal if any document or item listed in this RFQ is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a respondent without further consideration:

- Evidence of collusion among Respondents;
- Any attempt to improperly influence any member of the evaluation panel;
- Discovery that a Respondent purposely misled or knowingly provided false or inaccurate information in a submittal;
- A Respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Existence of any unresolved litigation or legal dispute between the Respondents and the City of Buffalo, ECHDC, ESDC, or the State of New York.

ECHDC reserves the right to reject any and all submittals and to waive any informalities or irregularities in procedure.

VIII. ADDITIONAL INFORMATION

Any all questions or requests for additional information or documents will be accepted no later than **4:00pm EST on February 17, 2011** to:

**Mark Smith, Director of Construction
Erie Canal Harbor Development Corporation
95 Perry Street, Suite 500
Buffalo, NY 14203
msmith@empire.state.ny.us**

Except as otherwise noted in this RFQ, all questions shall be **submitted in written form** and answers will be sent via e-mail and facsimile on **February 18, 2011**. Additional

information may become available and, along with the responses to all requests for deadline extensions, substantive questions and document requests may be made available at any point during this process.

IX. GENERAL TERMS AND CONDITIONS

ECHDC may at any time, and at its sole discretion, determine to modify the Project currently proposed or not to select a DB team, not to build, or to suspend any portion of the project.

In addition to the terms and conditions stated elsewhere in this RFQ, it is subject to the terms and conditions set forth in **Exhibit A** hereto.

X. ATTACHMENTS

Exhibit A – General Terms and Conditions
Exhibit B – Progress Drawings
Exhibit C – Geotechnical Report
Exhibit D – Reference Drawing, Demo and Site Preparation Ph2
Exhibit E – Aud Block Environmental Report

Exhibit A – General Terms & Conditions
GENERAL TERMS AND CONDITIONS

The acceptance of any Submittal shall be subject to, and contingent upon, the execution and delivery by ECHDC and/or ESDC of a contract for the services described herein, in form provided by ECHDC and/or ESDC.

- A. The contract shall contain, among other terms, certain provisions required by law or policies of the City and State, including, without limitation:

Provisions providing that the successful respondent:

- a. is an independent contractor;
- b. shall defend, indemnify and hold harmless the State, ECHDC, ESDC, City of Buffalo, the Buffalo Sewer Authority, EE&K and all associated consultants, and their respective officers, directors, employees and agents from and against any claims or damages relating to the respondent's acts and omissions;
- c. shall maintain financial and other records relating to the contract and make such records available for inspection and audit;
- d. have no conflicts of interest with, or outstanding financial obligations owing to, the State, ECHDC, or ESDC.
- e. maintains and provides the following insurance with insurers licensed to provide insurance in the State of New York: Commercial General Liability insurance of \$1 million per occurrence and \$2 million in the aggregate; Commercial Automobile Liability with a limit of \$5 million; Excess/Umbrella Liability of \$19 million; Professional Liability of \$5 million; Pollution Liability of \$5 million; and evidence of Workers Compensation/Employers' Liability insurance. Such policies of insurance shall be in a form acceptable to, and shall include any conditions reasonably required by ECHDC and/or ESDC and shall name the State, ECHDC, ESDC, City of Buffalo, the Buffalo Sewer Authority, EE&K and all associated consultants, and their respective officers, directors, employees and agents as additional insureds;
- f. is qualified to do business in the State of New York and is in receipt of all licenses, if any, required by applicable governmental entities; and
- g. shall represent and warrant that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services as set forth in the Contract. The successful respondent must further

agree that in the performance of the services no person having such a conflict of interest shall be employed by it.

- B. News Release – Recipients of this RFQ shall make no news/press release pertaining to this RFQ or anything contained or referenced herein without prior written approval from ECHDC and/or ESDC. Any news release pertaining to this RFQ may only be made in coordination with ECHDC and/or ESDC.
- C. Prohibited Persons – No respondent to this RFQ will be selected if an individual who is an owner, shareholder, member, partner, officer or director, or otherwise a principal and/or its management team is determined, in ECHDC's and/or ESDC's sole discretion, to have been convicted of a felony or a crime involving moral turpitude, to be an organized crime figure, to be under indictment or criminal investigation, to be in arrears or in default of any debt, contract or obligation to or with the City or State of New York, or any other of their instrumentalities or otherwise to be a prohibited person as defined by ECHDC and/or ESDC. The selected respondent and all principals thereof, if applicable, and/or owners, shareholders, members, partners, officers or directors of the respondent's team are subject to investigation by ECHDC and/or ESDC. The selection of a respondent may be revoked in the event that any derogatory information is revealed by such investigations.
- D. Submittal Costs – ECHDC and/or ESDC shall not be liable for any cost incurred by the respondent in the preparation of its submittal to this RFQ or, with respect to the respondent, for any work performed prior to the execution and delivery of the contract.
- E. ECHDC and/or ESDC shall be the sole judge of each respondent's conformity with the requirements of this RFQ and the merits of the submittal. ECHDC and/or ESDC reserves the right, in its sole discretion to: amend, modify or withdraw this RFQ; waive any requirements or conditions or modify any provisions of this RFQ with respect to one or more respondents; require supplemental statements and information from any respondents to this RFQ; to award a contract to as many or as few or none of the respondents as ESDC may select; award a contract to entities who have not responded to this RFQ; accept or reject any or all submittals received in response to this RFQ; extend the deadline for submission of submittals; negotiate or hold discussion with one or more of the respondents; correct deficient submittals that do not completely conform with this RFQ; reject any and all submittals and to cancel this RFQ, in whole or in part, for any reason or no reason. ECHDC and/or ESDC may exercise any such rights at any time, without notice or liability to any respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a submittal or otherwise.
- F. This RFQ and any contract or agreements resulting herein are subject to all applicable Federal, State and local laws, rules, regulations and executive orders.

- G. Any modifications to this RFQ shall be issued in writing by ECHDC and/or ESDC and posted on the ECHDC website. Nothing stated at any time by any representative of ECHDC, ESDC, the State, or of any other entity shall effect a change in, or constitute a modification to this RFQ unless confirmed in writing by ECHDC and/or ESDC. Respondents may request clarification from ESDC prior to the submission deadline. Any such clarification from ECHDC and/or ESDC must be in writing in order to be binding on ECHDC or ESDC.
- H. ECHDC and/or ESDC is not obligated to pay any costs, expenses, damages or losses incurred by any respondent at any time unless ECHDC and/or ESDC has expressly agreed to do so in writing.
- I. ECHDC and/or ESDC shall not be obligated to pay any fee, cost or expense for brokerage commissions or finder's fees with respect to the execution of the contract. It shall be a condition of any contract that the respondent agree to pay the commission or other compensation due to any broker or finder in connection with the transaction, and to indemnify and hold harmless the State, the City, ECHDC and/or ESDC from any obligation, liability, cost or expense incurred by it as a result of any claim for commission or compensation brought by any broker or finder by reason of the transaction.
- J. ECHDC and ESDC reserve the right to modify the requirements set forth herein and to expand, limit or otherwise alter the scope of requested services.