



Bethlehem Steel Redevelopment Area



Request for Expression of Interest For Selection of Co-developer/Investor for the Construction of a Net Zero Energy Building

Light Manufacturing and Commercial Office Facility

This Request for Expression of Interest (RFEI) is to establish interest from potential investors willing to consider collaborating with the Buffalo and Erie County Industrial Land Development Corporation (ILDC) on the construction of a state-of-the-art commercial building for the purpose of advancing renewable energy construction throughout the region and the state. The ILDC is seeking to collaborate with a capable partner as Co-Developer/investor to participate with the ILDC in the project as co-owner. Final selection of the co-developer for the joint venture will be based on several factors, including exposure in handling projects of similar nature and financial strength of the developer.

RFEI Issued
August 2, 2019

Responses Due
August 16, 2019

Email Proposals/Questions
Grant Lesswing
Business Development
glesswing@ecidany.com
716-362-8371

Z7+ Background

The ILDC, working closely with its affiliate the Erie County Industrial Development Agency (ECIDA), is in the process of designing a 90,000 + gross square foot Net Zero Energy (NZE) flex-manufacturing building. The facility will be powered by solar, geothermal and wind energy to produce as much energy as it consumes on an annual basis. The proposed showcase facility will contain approximately 44,132 SF of leasable flex-manufacturing space, 32,000 SF of leasable commercial office space, and 14,049 SF of common area/maintenance space. Construction of the NZE building is estimated at **\$27.5 million**.



A detailed **Feasibility Report** including schematic design, sustainability, probable costs, draft schedule, site recommendations and more was prepared in May 2016 with assistance from the NZE project team, made up of regional stakeholders (Erie County Sustainability Coordinator, City of Lackawanna, Buffalo Urban Development Corporation, Western New York Sustainable Business Roundtable, and University at Buffalo). Project milestones include:

- **June 2016:** RFQ for Design Team – Award HGA Architecture and Engineering PC the contract for engineering and design. Design development is near completion.
- **November 2016:** RFQ for Construction Management Services – award Turner Construction contract for construction management and guaranteed maximum pricing. Preparation of construction documents is currently underway and expected to be completed in 2018.
- **October 2017:** ILDC completed the purchase of the 15-acre Net Zero location with DEC remedial cover (NZE Parcel).
- **December 2017:** New York State Department of Environmental Conservation (DEC) issued a New York State Brownfield Cleanup Program (BCP) Certificate of Completion for the NZE Parcel, making the NZE Parcel eligible for Generation 1.0 BCP tax credits, including the refundable Brownfield Redevelopment Tax Credit (BRTC) and refundable Tax Credit for Remediated Brownfields (TCRB).
- **July 2018:** The Secretary of Treasury designates census tract 174, containing the NZE Parcel as a federal Qualified Opportunity Zone.
- **March 2019:** ILDC awarded \$1,750,000 from NYSEDA's Net Zero Energy for Economic Development Program to support construction costs associated with efficiency and renewable technologies.

Location

The Z7+ building will be constructed on a 15-acre portion of the former Bethlehem Steel site known as the Bethlehem Steel Redevelopment Area (BSRA), a large brownfield site in Lackawanna, New York. The site is also located in a designated federal Qualified Opportunity Zone. The former Bethlehem Steel site has unique assets,

including rail facilities that connect to national and international rail carriers and deep-water ports that accept both national and international shipping vessels for loading and unloading cargo. The site is also located within three miles of Interstate 90 and within 10 miles of the international crossing into Canada.

The project is in a **Qualified Opportunity Zone** (Census Tract 174), established by the U S Congress in the Tax Cuts and Jobs Act of 2017 to encourage long-term investments in low-income communities. To benefit from the program, the investor must invest in a Qualified O-Fund within 180 days after the sale or exchange of the capital asset. The Opportunity Zones program offers investors the following incentives for putting investment capital to work in low-income communities:

- A **temporary tax deferral** for capital gains reinvested in an Opportunity Fund. The deferred gain must be recognized on the earlier of the date on which the opportunity zone investment is sold or December 31, 2026.
- A **step-up in basis** for capital gains reinvested in an Opportunity Fund. The basis of the original investment is increased by 10% if the investment in the qualified opportunity zone fund is held by the taxpayer for at least 5 years, and by an additional 5% if held for at least 7 years, excluding up to 15% of the original gain from taxation.
- A **permanent exclusion from taxable income of capital gains** from the sale or exchange of an investment in a qualified opportunity zone fund, if the investment is held for at least 10 years. (Note: this exclusion applies to the gains accrued from an investment in an Opportunity Fund, not the original gains).

**Respondents to this RFEI should consult with legal/accounting professional to determine specific project eligibility.*

Site Development Vision & Intent

The ILDC is preparing to construct one of the first **Net-Zero energy (NZE)** light manufacturing buildings in New York State, which will act as a model facility to showcase new advances in renewable energy construction, encourage replication throughout the state, and serve as a catalyst for economic revitalization in Western New York.

As one of the first certified zero-net energy light manufacturing buildings of its size, this project will result in a state-of-the-art, dynamic facility that will showcase new advances in renewable energy construction. The NZE building will serve as a valuable hub for construction/building performance testing, energy management and potential workforce training. The goal is to create a building that produces as much energy as it consumes in a cost-efficient manner to encourage duplication of design; thereby helping to change the perception that net zero and LEED construction are cost prohibitive for new-build projects.

This project is pursuing the **Living Building Challenge** by applying principles called “Zero Plus.” These principles are a new way of thinking and an inventive approach to high performance sustainable design. Zero-Plus principles fit well with the desire to do something unique and enhance the world-class reputation of the Buffalo-Niagara area.

Site Energy Objectives & Priorities

A central component of the vision for the site is the implementation of a comprehensive energy strategy that will serve as national model. The following objectives frame areas that are of the highest importance for Z7+ LLC:

- Aspire to achieve a site-wide goal of net positive energy.
- Meet or exceed New York State's REV 2030 Challenge Goals for Year 2030.
- Manage energy consumption through site user education, incentive, and transparent dashboard systems and programs.
- Leverage viable on-site resources to create renewable energy supply sources.
- Advance new technologies and practices that mitigate the potential carbon impact of high capacity production, process and plug related loads.
- Include transparent monitoring and testing of performance for effective management to inform the evolution of best practices as development progresses.
- Allow for market advances through flexible design and phased implementation.
- Consider the potential for expansion of services and other benefits to the adjacent parcels on the remaining BSRA 135-acre site also owned by the ILDC.

MARKET DEMAND

According to the **U.S. Green Building Council**, the global demand for green building continues to double every three years. The top two reasons for green building are client demand (35%) and market demand (33%). The global green market trend is expected to intensify in the coming years both in the US and internationally. Much of this is driven by the corporate consumers that continue to demand increased sustainability in their building projects. This is evident in the recent RFP solicitation put out by Amazon in their quest for a second headquarters in North America, which includes a significant sustainability component. The business case for expanding the local green building inventory includes:

Competitive Differentiator: LEED-certified buildings with lower operating costs and better indoor environmental quality are more attractive to a growing market of corporate, public and individual buyers. Building performance will continue to enter into tenant decisions about leasing space and into the buyer's decisions about purchasing properties.

Attract Tenants: Today's tenants understand and are looking for the benefits that LEED-certified spaces offer. Much of the new class A office space is green; lease -up rates for green buildings are typically above-average.

Cost Effective: Owners of Green buildings typically report an improved ROI for existing and new green projects.

Increased Productivity and Worker Satisfaction: A healthy work environment can translate into reduced employee sick days as well as improved mental functioning. The highly sought-after millennial workers are less

willing to accept uncomfortable/unhealthy working conditions as their parents once did. LEED-certified and Net Zero buildings can play an important role in the recruitment and retention of a skilled workforce.

Better Health Standards for Commercial Building Tenants: Industry research has found that improved health and productivity benefits are playing a larger role in driving companies to invest in green building today than they have in the past. In a McGraw-Hill survey, 55% of firms rate greater health and well-being as the top social reason for building green, up from 29% in 2008.

Increased Rental Rates: High performance buildings significantly outperform their peers; therefore, justifying increased rental/lease rates.



How going green can help the planet and your profits *March 9, 2017*



ROLE DELINEATION

Role of the ILDC

The envisioned role of the ILDC in the collaborative development of the NZE manufacturing facility:

1. Preparation of design development and construction documents.
2. Land shall be procured by the ILDC who will provide the land as equity contribution to the Z7+ project.
3. Obtain BCP Certificate of Completion from the DEC with ability to claim Generation 1.0 BCP tax credits.
4. Development of the infrastructure at the site.
5. Form a for-profit entity to assume ownership and maintain the assets created under the collaboration.
6. Secure and contract with tenants for the facility; collect lease payment/rents from building tenants.
7. Contract with necessary provider/vendor for technical, financial and managerial functions regarding the asset.
8. Obtain all statutory approvals and clearances from government/regulatory bodies.
9. Secure and administer grants, incentives and loans totaling **\$14 million** to support the construction phase of the project.
10. Provide staff and expertise to fulfill the role (described above) in the collaborative effort.

11. Work with Erie County and the City of Lackawanna to establish an Industrial Business Park at the Bethlehem Steel site.
12. Play an active role in attracting private development and creating jobs at the site.

Interested parties can participate as an active partner or in a strictly financial capacity.

Envisioned Role of the Co-Developer/Co-Owner

1. The ILDC is seeking to collaborate with a capable partner as Co-Developer chosen through a defined selection process. Overall efficiency, exposure in handling projects of similar nature and financial strength of the Developer are the key ingredients that would be desirable for ILDC for the proposed project. The ILDC will be receptive to responses containing productive concepts and ideas detailing how co-developer affiliation with the ILDC can be mutually beneficial to the ILDC and the respondent developer.
2. Financial details will be provided at the next phase of the selection process; however, the Co-Developer should have the capacity to participate at approximately \$15 million, including offering creative ways to participate in the capital stack for the project. In exchange for their investment, the co-developer will participate in a shared revenue arrangement (to be negotiated).
3. The selected Co-developer shall play a vital role in collaborating with the ILDC for the following:
 - a. Selection of potential building tenants and development of Green Building Lease;
 - b. All activities for obtaining initial and final approval from federal, state, county and local government agencies to complete the construction of the Z7+ building;
 - c. Implementation and management of the NZE facility in collaboration with Z7+ LLC;
4. Adequate flexibility is expected to be provided to the selected Co-Developer in advancing the project provided that certain minimum obligations, as well as ILDC project requirements, are fulfilled by the Developer.

Envisioned Role of the Investor

1. Provide minimum of \$15 million in funds for the construction phase of the NZE manufacturing facility in exchange for an ownership stake or future return (to be negotiated).
2. Provide purpose-driven (Impact Investing) to play a role in achieving the site energy objectives and priorities (page 3).
3. Co-ordinate with ILDC on the marketing and communication strategy

INSTRUCTIONS FOR SUBMISSION

1. PURPOSE

1.1 The purpose of this Expression of Interest (EOI) is to create initial awareness about the Project in the market, identify potential Co-Developer in the project and asses interest to partner with ILDC for implementation of the project. Following submission of the EOI Proposals, applicants fulfilling the EOI requirements shall be invited to an information session hosted by ILDC to discuss the project contours.

1.2 The interested parties submitting their EOIs shall bear all costs associated with or relating to the preparation and submission of its EOI including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by ILDC or any other costs incurred relating to its EOI.

2. INVITATION

ILDC invites Expression of Interests (EOIs) from Entities, Organization, Joint ventures, Consortiums in the construction/development sector

or

Infrastructure developers having experience in developing such Industrial Parks (the '**Interested Parties**') to participate in EOI process for the proposed Project.

Entities, Organization, Joint ventures, Consortiums having experience and exposure in developing such Industrial parks / Industrial clusters under any similar circumstances shall be preferred.

3. REQUIREMENTS TO PARTICIPATE IN THE EOI

**** By responding to this EOI, respondent acknowledges that the ILDC is subject to the New York State Freedom of Information Law and Open Meetings Law as codified pursuant to the Public Officers Law of the State of New York ("POL"). Accordingly, your EOI response, including all company specific information contained therein, is potentially subject to public disclosure in accordance with applicable provisions of the POL. Notwithstanding the foregoing, the respondent may formally request that the ILDC consider certain information contained within the response to this EOI and other applicable supporting materials proprietary or confidential as defined within the POL by marking each page of its submission on which there appears any material claimed to be so protected as proprietary or confidential and also simultaneously setting forth the reason for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made by the ILDC in accordance with statutory procedures.**

3.1. ILDC reserves the right to accept & consider only those EOIs from Interested Parties which meet the following minimum requirements:

a) Financial Requirement: Provide evidence that co-developer has the financial means to participate in the project; and

b) Experience Requirement- Incorporated entities either should have at least five years of experience in commercial real estate development/financing;

3.2. Interested Parties may participate in the EOI either singly or in a group in the form of a Consortium. In case of a Consortium participating in the EOI, the following additional requirements are required to be fulfilled.

a) Number of members in a Consortium shall be limited to three (3);

b) A Memorandum of Understanding (MoU) executed among the members shall be submitted as part of the EOI which shall include the following:

- i. Joint intent of the members to participate in this EOI
- ii. Nomination of the Lead Member of the Consortium
- iii. Outline of roles and responsibilities of either party in terms of participating in the Project if considered in future.

c) One of the members shall be nominated as the Lead Member who shall individually fulfil the above mentioned "Financial Requirement" and 'Experience Requirement."

4. SUBMISSION OF EOI

Interested parties are strongly encouraged to declare their intension to respond via email by **August 9, 2019**. The EOIs to be submitted by the Interested Parties shall include, at a minimum, the following:

(a) **Letter of Interest** on the firm's letterhead:

- Stating that the proposer understands the co-developer requirements
- Stating why respondent believes that they are best qualified to perform the engagement
- MoU to be submitted in case of a Consortium

(b) **Previous Experience:** Details of projects (between 2-5) undertaken (applicable for Interested Parties which have experience in Industrial parks as infrastructure developers) including:

- Level of involvement
- Diversity of financial solutions
- Experience in working with Brownfield/Environmentally Regulated sites

(c) **Financial Details:**

- Provide documentation of ability to invest approximately \$15 million
- Experience in applying for and integrating multiple financial resources such as tax credits, grants, NYSEDA incentives, tax exempt bonds, Opportunity Zone incentives, etc.
- Management experience in mixed-finance properties

(d) **Organization Structure/Profile of Principals and Key Staff:**

- Description of organizational structure or organizational chart
- Profiles of principals and key staff, roles served, level of experience
- Involvement in similar projects and activities, particularly in securing approvals and funding for commercial and/or industrial projects
- Familiarity with regulations in New York State
- Experience with tax credits, tax-exempts bonds and NYSEDA incentives, Qualified Opportunity Zone program
- Availability of key staff

In addition to submission of the above, the Interested Parties may be required to make a presentation before the ILDC covering all the above aspects.

5. OUTCOME OF THE EOI

All the EOIs applications meeting the Minimum Requirement shall be evaluated. The EOIs shall be evaluated based on the Proposal submitted by the Applicant. Final selection of Applicants shall be done by ILDC based on the capabilities of the Applicants and their proposals as follows:

- Financial ability to participate in the project
- Experience/Track record of projects.
- Qualifications of organization and staff to be involved in the project
- Understanding/Buy-in regarding the intent of the project
- Approach to the project
- Schedule
- Specialty skills and/or experience

The ILDC may, at its exclusive discretion, either invite detailed proposals only from those Interested Parties who had submitted their EOIs and were shortlisted in the process or from the open market.

6. EOI SUBMISSION – DATE AND TIME

6.1. The Interested Parties should submit their EOIs in the form & manners mentioned under Clause 4 (Submission of EOI) in a sealed envelope marked as “EOI for Development of NZE” to ILDC, 95 Perry Street, Suite 403, Buffalo, NY 14203 on or before **3:30 P.M. August 16, 2019**.

6.2. The envelope shall clearly indicate the name and address of the Interested Party. All completed EOIs should be sent through registered/speed post/courier or by in-person at the address mentioned under Clause 7 herein below. Any EOI delivered after the stipulated date and time shall be returned unopened and no further communication from the concerned Interested Party in this regard shall be entertained by ILDC.

6.3 ILDC may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this EOI. The issue of this EOI does not imply that ILDC is bound to undertake the Selection Process and/or select and short-list pre-qualified EOIs for review or to appoint the selected Applicant or Developer, as the case may be, for the Project and ILDC reserves the right to reject all or any of the submissions hereunder without assigning any reasons whatsoever.

7. CONTACT

Grant Lesswing, Business Development
ILDC/ECIDA
95 Perry Street, Suite 403
Buffalo, NY 14203
glesswing@ecidany.com
716-362-8371

Alternative Contact

John Cappellino, Executive Vice President
ILDC/ECIDA
95 Perry Street, Suite 403
Buffalo, NY 14202
jcappell@ecidany.com
716-362-8362

All questions about the meaning or intent of the EOI must be submitted to the aforementioned designated persons. Other than the contact persons identified above, prospective respondents shall not approach ILDC

members during the period of this EOI process about any matters related to this EOI or any proposals submitted pursuant thereto. Submissions should include adequate detail to address each of the criteria (please reference the question # for each of your answers). A limit of 15-pages total, generally using 11 pt. font size with standard margins, has been established to guide the level of detail anticipated. Any supporting information may be included as an appendix.

Submission Process

Questions are to be sent electronically to glesswing@ecidany.com Please include “EOI for Development of NZE” in the subject line of the email. Please see timeline below for key dates in the submission process.

ACTION	DATE
RFEI Issued	August 2, 2019
Strongly Encouraged - Declare Intention to Respond via Email & Final Day to Submit Questions	August 9, 2019
Responses Due	August 16, 2019, 3:30 pm EST
<p>The Structured selection process will include the following:</p> <ul style="list-style-type: none"> • Evaluate responses and short list applicants who best meet the criteria; • Schedule interviews to evaluate the short-listed applicants; • Negotiate options; • Make recommendation to the ILDC Board for approval; and • Negotiate contract. 	3 rd /4 th Quarter 2019

The ILDC board of directors will select a firm/respondent upon completion of the evaluation process as described above. It is anticipated that the selection of a firm will be completed sometime within the 3rd / 4th Quarter of 2019.

Thank you for your interest in this very exciting project. Please know that this RFEI has been sent directly to many businesses/organizations. However, in the interest of inclusion we are open to receiving submissions from others beyond this direct list, assuming they can meet the timeline. We look forward to your response, please look for updates to the EOI on the ECIDA web site (http://www.ecidany.com/requests_for_proposals).

Buffalo and Erie County Industrial Land Development Corporation
Net Zero Energy Commercial & Manufacturing Building
Request for Expression of Interest

ATTACHMENTS

Insurance Requirements
Certification Regarding Lobbying
NYS Finance Law Requirements



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
INSURED	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A :		
	INSURER B :		
	INSURER C :		
	INSURER D :		
INSURER E :			
INSURER F :			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> Blanket Broad Form						PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> Contractual						GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						\$
	<input type="checkbox"/> NON-OWNED AUTOS						
	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$ 5,000,000
	<input type="checkbox"/> CLAIMS-MADE						\$
	<input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/>	<input checked="" type="checkbox"/>				OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder shall be named as Additional Insured per ISO Form CG 20 26-Additional Insured Designated Person or Organization.

Coverage applies on a Primary and Non-Contributory Basis.

CERTIFICATE HOLDER**CANCELLATION**

Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, NY 14203

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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NEW YORK STATE FINANCE LAW REQUIREMENTS

Permissible Contacts

Pursuant to State Finance Law §§139-j and 139-k, this Solicitation/Request for Proposal includes and imposes certain restrictions on communications between the ILDC and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit Request for Proposals through the final award and approval of the Procurement Contract by the ILDC and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, are identified on page 1 of this solicitation. ILDC employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four (4) year period, the Offerer/bidder is barred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Offerer/Bidder's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j(6)(b)

State Finance Law §139-j(6)(b) requires that the ILDC seek written affirmations from all Offerers/bidders as to the Offerer's/bidder's understanding of and agreement to comply with the ILDC's procedures relating to permissible contacts (described above) during a Governmental Procurement pursuant to subdivision three of this section. It is recommended that this affirmation be provided to the ILDC as early as possible in the procurement process, such as when the Offerer/bidder submits its proposal or bid. Attachment A may be used to satisfy this requirement.

Offerer's/Bidder's Certification of Compliance with State Finance Law §139-k(5)

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer/bidder that all information provided to the ILDC with respect to State Finance Law §139-k is complete, true and accurate. It is recommended that the certification be provided to the ECIDA as early as possible in the process, such as when an Offerer/Bidder submits its proposal, bid or other form of offer. Attachment B may be used to satisfy this requirement.

Offerer/Bidder Disclosure of Prior Non-Responsibility Determinations

New York State Finance Law §139-k(2) obligates the ILDC to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer/bidder must disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law §139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

NEW YORK STATE FINANCE LAW REQUIREMENTS

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer/bidder fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with the law, no Procurement Contract shall be awarded to any Offerer/bidder that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer/bidder is necessary to protect public property or public health safety, and that the Offerer/bidder is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The ILDC must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. Attachment C entitled "Offerer Disclosure of Prior Non-Responsibility Determinations" must be completed by the Offer/bidder and submitted to the ILDC.

Public Disclosure

Responses submitted under this Request for Qualifications are subject to public disclosure under the New York State Freedom of Information Law. If the respondent does not want certain data disclosed for any purpose other than for the evaluation of the submitted proposal, the respondent must prominently identify sections or pages of the response which they wish to have restricted. Such sections shall be restricted from disclosure, if allowed by law.

Contract Termination Provision

New York State Finance Law §139-k (5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j contain a provision authorizing the ILDC to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. "Governmental Entity" and "procurement contract" are defined in State Finance Law §139-k(1). If a contract is terminated in accordance with State Finance Law §139-k (5), the ECIDA is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

ILDC Termination Provision

Pursuant to New York State Finance Law §139-k(5), the ILDC reserve the right to terminate any contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139k was intentionally false or intentionally incomplete. Upon such finding, the ILDC may exercise its termination rights by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

NEW YORK STATE FINANCE LAW REQUIREMENTS

ATTACHMENT A

Affirmation of Understanding & Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

I affirm that I understand and agree to comply with the procedures of the ILDC relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

NEW YORK STATE FINANCE LAW REQUIREMENTS

ATTACHMENT B

Offerer/Bidder Certification:

I certify that all information provided to the ILDC with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

NEW YORK STATE FINANCE LAW REQUIREMENTS

ATTACHMENT C

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract: _____

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No

Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the BCIDA with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature

Name: _____ Title: _____