NEW YORK STATE OF OPPORTUNITY. | USA Niagara Development Corporation
A Subsidiary of Empire State Development

USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors

At the offices of the
USA Niagara Development Corporation
222 First Street, 7th Floor
Niagara Falls, N.Y. 14303

Monday

July 20, 2026 – 11:00 a.m.

AGENDA

I. CORPORATE ACTION

A. Approval of Minutes of the March 25, 2026, Directors' Meeting

II. FOR CONSIDERATION

A. USAN Procurement Guidelines – Adoption of 2026 Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

B. Management Services Amendment – Niagara Falls Convention and Conference Facility Civic Project and Old Falls Street – Authorization to Enter into a Contract Amendment for Management Services and to Take All Related Actions

C. Consulting Services Amendment – Niagara Falls Heritage Gateways Design – Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

D. Construction Services Amendment – Gorge Gateway Park & Hydraulic – Power Plaza Sitework – Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

E. Proposed Acquisition of 470 2nd Street, Niagara Falls, NY by the USA Niagara Development Corporation - Authorization to Acquire Real Property; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

Item I. A.

DRAFT – SUBJECT TO REVIEW AND REVISION

USA NIAGARA DEVELOPMENT CORPORATION
Meeting of the Directors
Held at the USA Niagara Offices
222 First Street – 7th Floor
Niagara Falls, New York 14303

With videoconferencing to:

ESD New York City Regional Office
655 Third Avenue – 6th Floor Conference E
New York, NY 10017

March 25, 2026

MINUTES

In Attendance Directors:	Francine DelMonte – Chair Scott M. Brydges – Voting Director Dr. Chandra Foote – Voting Director
Present for USA Niagara:	Anthony Vilardo – President Yvonne Cooper – Acting Corporate Secretary (via video conferencing) Douglas Janese – Senior Counsel, Legal John Risio – Director of Admin. & Finance Loul Rizek – Officer Manager
ESD Staff: **(Via videoconferencing)**	Ann Descovich – Financial Project Manager, Subsidiary Finance Controller Eugene Kwiatkowski – Sr. Director of Budgeting Florence Moses – Director of Subsidiaries
Destination Niagara USA:	Andrea Czopp – Chief Operating Officer
Convention Center and Old Fall Street:	Jason Murgia – General Manager

Following the roll call and confirmation that a quorum was present, the meeting of the Directors of the USA Niagara Development Corporation ("USAN" or the "Corporation") was called to order at 10:59 a.m. by Chair Delmonte.

Chair Delmonte called the meeting to order and noted that the meeting will be webcast.

Chair Delmonte also noted that the public had been given an opportunity to comment on the Agenda items by submitting their written comments by 12:00 p.m. on Tuesday and noted that no comments were received from the public.

Chair Delmonte then noted that the Directors had received the relevant written materials in advance of today's meeting and are free to ask questions.

Chair Delmonte then asked the Directors if anyone had any potential conflict of interest with regard to any of the items on the Agenda and no conflicts were noted at this time.

Chair Delmonte then called for the approval of the Minutes of the October 28, 2025 Directors' meeting. There being no corrections noted, upon motion duly made and seconded, the following Resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE OCTOBER 28, 2025 MEETING OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on October 28,2025 and as

presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Chair Delmonte then called on Anthony Vilardo to present the next item on the Agenda related to Corporation's Operating and Capital budgets for the Fiscal Year 2026-2027 for the Directors' consideration.

Mr. Vilardo explained that the State Finance Law requires that prior to the commencement of each fiscal year on April, 1st, the Directors of the USA Niagara Development Corporation adopt an annual Operating and Capital budget.

Mr. Vilardo noted that the Operating budget in the amount of $792,873 in personal services and $224,418 in non-personal services consisted primarily of office occupancy, insurance and other proposed administrative expenses for fiscal year 2026-2027 totaled $1,017,291. The Capital budget in the amount of $80,720,646 included, but was not limited to design and soft costs, legal costs, property management/maintenance costs, insurance costs, demolition and site clearance, construction costs and other miscellaneous costs.

Mr. Vilardo further noted that the Capital budget will fund design and support construction for the Rainbow Mall Civic Improvement Project, Gorge Gateway Park and Hydraulic Power Plaza. The Capital budget will also fund capital grants related to the Hotel Niagara and First Street Mixed-Use Building projects which are both closed, with construction

beginning on the Hotel Niagara and across the street at 333 First Street. Expenses associated with the maintenance and site preparation of these properties have been secured through USA Niagara's Strategic Land Acquisition Program.

Chair Delmonte then called for questions or comments from the Directors.

Dr. Foote asked for clarification regarding the meaning that the projects are closed and if that is the reason a lot of the costs are in the capital budget.

Mr. Vilardo stated that's correct and that the insurance company has been informed that the deed for the Hotel Niagara has been recorded in the County Clerk's office and can now be removed from the insurance policy thereby reducing the cost.

The Chair then called for any further questions or comments from the Directors.

Hearing none and noting that no comments were received from the public, upon motion duly made and seconded, the following Resolution was unanimously adopted:

USA NIAGARA DEVELOPMENT CORPORATION – FY 2026-27 Operating and Capital Budgets – Approval of the Corporation's FY 2026-27 Operating and Capital Budgets (April 1, 2026 – March 31, 2027)

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the "Materials"), the Corporation's proposed FY 2026-27 Operating and Capital Budgets are hereby approved and adopted in all respects, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the Corporation is hereby authorized to undertake tasks and incur expenditures consistent with advancing the scope of work contemplated in the proposed budgets, subject to the availability of funds; and be it further

RESOLVED, that the Directors shall make individual approvals and authorizations for items under the Capital Budget; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute and deliver on behalf of the Corporation all documents, instruments and agreements that the President shall deem necessary and appropriate to carry out these resolutions; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to take any action necessary and appropriate to carry out the foregoing.

* * *

Chair Delmonte then called on Mr. Vilardo to present the next item on the Agenda related to the Niagara Falls Convention and Conference Facility Civic Project 2025 Operating and Capital Budgets for the Directors' consideration.

Mr. Vilardo explained that in March of 2025, the Directors approved the Operating and Capital budgets for the Niagara Falls Convention Center and at that time the 2025 Operating and Capital budgets were prepared with projections indicting additional resources would need to be allocated towards operating expenditures. As a request of this approval, the capital funding was reduced by $216,600. However, the actual 2025 net income exceeded budget projections that resulted in a favorable variance of approximately $200,000.

Mr. Vilardo noted that capital funds are needed to replace the original Convention Center banquet chairs which were acquired in 2004 and are a critical need and further delay is not advisable.

Mr. Vilardo further noted that staff is recommending that the current 2025 Niagara Falls

Convention Center Operating and Capital budgets be amended by transferring $200,000 from the Operating budget to the Capital budget.

Following the full presentation, Dr. Foote called for questions or comments from the Directors. Hearing none and noting that no comments were received from the public, upon motion duly made and seconded, the following Resolution was unanimously adopted:

USA NIAGARA DEVELOPMENT CORPORATION – Niagara Falls Convention and Conference Facility Civic Project – 2025 Operating and Capital Budgets – Approval to Amend the CY 2025 Niagara Falls Convention and Conference Facility Operating and Capital Budgets; and to Take Related Actions

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RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the "Materials"), the Corporation's proposed amendment to the CY 2025 Niagara Falls Convention and Conference Facility ("NCCF") Operating and Capital Budgets by transferring up to $200,000 of operating funds to the capital budget is hereby approved, and adopted in all respects, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute and deliver on behalf of the Corporation all documents, instruments and agreements that the President shall deem necessary and appropriate to carry out these resolutions; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to take any action necessary and appropriate to carry out the foregoing.

* * *

Chair DelMonte then called on Mr. Vilardo to present the final item on the Agenda related to the Niagara Falls Convention and Conference Facility Civic Project and Old Falls Street Calendar Year 2026 Operating and Capital Budgets for the Directors' consideration.

First, Mr. Vilardo noted that there were representatives from the Niagara Tourism and

Convention Corporation d/b/a Destination Niagara present and introduced the Chief Operating Officer, Andrea Czopp and the General Manager for the Convention Center and Old Falls Street projects, Jason Murgia to give an overview of last year and their operating plan for the upcoming year.

Following Ms. Czopp's presentation, Mr. Murgia gave an overview of some of the Convention Center's accomplishments and plans for the upcoming year.

Next, Mr. Vilardo explained that USA Niagara is the owner and developer of the Niagara Falls Convention Center and clarified the difference between a calendar year and a fiscal year noting that the Niagara Falls Convention Center is on a calendar year and so part of the project will be pre-funding their first quarter of 2027, which is our fourth quarter of 2026-2027 fiscal year.

Mr. Vilardo noted that the Operating budget for the Niagara Fall Convention Center is proposed to be $358,848 and the Operating budget for Old Falls Street is proposed to be $808,794 and the proposed 2026 calendar year Capital budget for both entities is $332,358. The Capital budget for the Convention Center includes major HVAC repairs, the replacement of additional banquet chairs and emergency repairs along with some food and beverage related equipment. The Capital budget for Old Falls Street is $32,358 and includes the purchase of mini-golf equipment in the amount of $19,000, some percussion playing instruments and upgrades to two kiosks on the street.

Mr. Vilardo further noted that the Niagara Falls Convention Center Operating and Capital budget total $658,848 and the Old Falls Street combine Operating and Capital budgets total $841,152 for a combined Capital and Operating budget of $1.5 million with is consistent with previous years.

Following the full presentation, Chair DelMonte called for questions or comments from the Directors. Hearing none, and noting that no comments were received from the public, upon motion duly made and seconded, the following Resolution was unanimously adopted:

USA NIAGARA DEVELOPMENT CORPORATION – Approval of the CY 2026 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets; Approval of First Quarter 2027 Funding; and Authorization to Disburse Funds

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RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the "Materials"), the Corporation's proposed CY 2026 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets in a cumulative amount not to exceed $1,500,000 are hereby approved, and adopted in all respects, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, the Corporation's proposal for first quarter 2027 (calendar quarter) funding for the Niagara Falls Convention and Conference Facility and Old Falls Street in an amount not to exceed $250,000 is hereby approved, and adopted in all respects, substantially in the form set forth in the Materials and subject to the availability of funds; and be it further

RESOLVED, that the actions of the President or his designees relating to the CY 2026 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets be approved and ratified, and the same hereby are, authorized to disburse funds substantially in accordance with the CY 2026 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets with such changes as the President or his designee deems necessary or appropriate; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute and deliver on behalf of the Corporation all documents, instruments and agreements that the President shall deem necessary and appropriate to carry out these resolutions; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to take any action necessary and appropriate to carry out the foregoing.

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There being no further business, the meeting was adjourned at 11:19 a.m.

Respectfully submitted,

Yvonne Cooper
Acting Corporate Secretary

Item II. A.

NEW YORK STATE OF OPPORTUNITY. USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 20, 2026

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: USAN Procurement Guidelines

REQUEST FOR: Adoption of 2026 Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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I. Background

Each year the USA Niagara Development Corporation ("USAN" or "the Corporation") Directors adopt updated and revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "Guidelines"). There have been no substantive changes to Executive Orders and discretion to authorities in the past year that would require modification of the proposed 2026 Guidelines (the "2026 Guidelines"). New York State Urban Development Corporation d/b/a Empire State Development ("ESD") staff reviewed the Guidelines and incorporated the following changes:

- Reviewing and updating all internal and external internet links to ensure they are all functional and provide the most current information;

- Adding additional guidance on the internal processing of memberships, sponsorships and certain types of subscriptions;

- Further clarifying the distinction between requisition solicitations, mini-bids from a pre-qualified list and discretionary purchases for staff and adding new Section 7.7 related to mini-bids from pre-qualified lists;

- Adding guidance regarding the newly enacted Section 139-m of the State Finance Law related to Gender-Based Violence and Workplace policies and certifications for vendors; and

- Updating section numbering, formatting and the table of contents for increased ease of use by staff.

Accordingly, the proposed 2026 Guidelines have been revised to incorporate these revisions, as well as the changes for consistency. As with previous Guidelines, the proposed 2026 Guidelines are modeled directly upon ESD's procurement guidelines.

On March 26, 2026, the ESD Board adopted the revised Guidelines (the "2026 Guidelines"), which are designed to govern procurements by ESD and its subsidiaries, such as USAN. A copy of the 2026 Guidelines is attached. Approval is sought for the adoption by the USAN Directors of the 2026 Guidelines.

II. Procurement Guidelines Summary

The proposed 2026 Guidelines set forth the policies and procedures to be followed by USAN when seeking to contract for goods or services. It should be noted that these Guidelines do not have the force of law, and are intended as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The proposed 2026 Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by USAN must be competitively awarded, except where State law provides for non-competitive sourcing (e.g., goods purchased from approved not-for-profit agencies for the blind, and procurements from the Office of General Services centralized contracts list). Based on the expected cost of procured goods and/or services, procurement contracts must be obtained after advertisement in the NYS Contract Reporter, except in limited instances where an exemption is obtained, generally for sole or single source procurements when only one vendor offers the desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process. The proposed 2026 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of ESD's Bid Opening Guidelines and the compilation of a procurement record for every covered procurement contract.

The proposed 2026 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all State agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

The proposed 2026 Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements.

Sources of help to users and information are included as clickable links, and virtually all required forms and ESD policy and procedure documents also can be accessed from within the document by hyperlinks. These links appear in blue font in the hard copy of the proposed 2026 Guidelines presented herewith to the Directors for approval.

III. Environmental Review

ESD staff on behalf of USAN, has determined that approval of the proposed 2026 Guidelines constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested approval.

IV. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority-and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the 2026 Guidelines. Specific goals related to the total value of ESD's funding will be established on a per-contract basis.

V. Requested Action

The Directors are requested to adopt the proposed 2026 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of April 1, 2026.

VI. Recommendation

Based on the foregoing, I recommend approval of the requested action.

Attachments

Resolution
Proposed 2026 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

July 20, 2026

USA NIAGARA DEVELOPMENT CORPORATION – USAN Procurement Guidelines – Adoption of 2026 Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the proposed 2026 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of April 1, 2026; and the President or his designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION

D/B/A EMPIRE STATE DEVELOPMENT

Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts

Effective April 1, 2026

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT ("ESD")
Guidelines Regarding the Use, Awarding, Monitoring and
Reporting of Procurement Contracts

Effective April 1, 2026

1. Overview And Requirements

The following guidelines (the "Guidelines") are applicable to the use, awarding, monitoring and reporting of procurement contracts of the New York State Urban Development Corporation, d/b/a Empire State Development and its subsidiaries (collectively, "ESD" or the "Corporation"), ESD is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law ("PAL"). The same law requires annual review and updating of the guidelines by the ESD Board of Directors ("Board").

These Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the "SPC Guidelines"). The SPC Guidelines apply to all State agencies and thus provide useful guidance for procurement by ESD (which is not a State agency as that term is defined in the SPC Guidelines). The SPC Guidelines cover some issues and procedures rarely encountered by ESD but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained. One can view the SPC guidelines at the link below:
https://ogs.ny.gov/system/files/documents/2025/08/2023-nys-procurement-guidelines-revised-august-2025-for-posting.pdf

In the Guidelines, a person, firm or corporation who wishes to provide goods and/or services to ESD may be called a **"vendor"** or **"offeror"** or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming an ESD vendor, a **"respondent."**

It is imperative that the proper steps are followed when procuring a vendor. Failure to follow the proper steps such as buying goods or services without proper approvals may leave both the purchaser and Corporation in a vulnerable position. Under no circumstance should anyone acquire goods or services without the necessary approvals or required documents. Please be advised that this applies to both new procurements and amendments or modifications of procurements. Corrective steps, including but not limited to restarting an entire procurement process, may be taken if the Guidelines are not strictly followed.

1.1. Contracts Covered, And Not Covered, By The Guidelines

Pursuant to PAL § 2879 (2), **"Procurement Contracts"** are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount equal to five thousand dollars ($5,000) or more. Contracts which are intended to earn money or other assets or

benefits to ESD (often referred to as **"revenue contracts")** are also considered Procurement Contracts for the purposes of these Guidelines.

For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see section 8.1), Procurement Contracts also include the purchase or lease of any interest in real property which involves an estimated annualized expenditure by ESD in excess of fifteen thousand dollars ($15,000).

Disposition of property (real or personal) by ESD is not a procurement covered by these Guidelines but is instead subject to ESD's Property Disposition Guidelines. However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines and established ESD policies and procedures to the extent practicable.

Loans and grants made by ESD in furtherance of its economic development mission are not Procurement Contracts but may be subject to certain provisions of these Guidelines, including Office of the State Comptroller ("OSC") review and approval for grants over $1 million (see Section 10.4).

Memberships, sponsorships and certain types of subscriptions are also not considered Procurement Contracts, but may be subject to certain provisions of these Guidelines. Memberships are generally handled by requisition and are usually less than $5,000. Sponsorships are generally handled by Direct Pay and are situations where ESD disburses a certain amount to assist with the promotion or production of an event or cause and receive no tangible goods or services in return. An example of one such subscription type are newspapers or other periodicals (whether in print or online) Advice about the requirements for these types of contracts, and about what types of subscriptions are not considered Procurement Contracts may be obtained from the Procurement department.

A Contract or Memorandum of Understanding ("MOU") with a sister State agency or authority (an “inter-agency agreement”) is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement, as well as OSC approval for binding agreements) may apply to MOUs. If you are attempting to create an inter-agency agreement, you must seek assistance from the Legal Department to negotiate and draft the document(s).

In connection with certain of its projects, ESD may need to obtain a license from a governmental agency, authority, or company or a public utility in order to enter the licensor's premises and perform work. As a precondition to receiving the license, ESD can be required to enter into agreements with the licensor that prescribe conditions for work to be performed on the site, including work and/or oversight of work which must be performed by the licensor's personnel or contractors, as well as payment of licensor costs by ESD. Examples include licenses for work on rail and utility facilities. Agreements of this kind, often referred to as **"forced contracts,"** are not covered by the competitive solicitation requirements of these Guidelines, because ESD has no discretion or authority with respect to the work to be performed by the licensor's personnel and

contractors. However, appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) would apply.

Procurement Contracts **under $50,000** may be handled by a Requisition approved by Department Head, Controller's Office and Contracts Administration. A formal competitive solicitation is not required, but these purchases should be made after obtaining three quotes whenever practicable. For further information, consult the Procurement Department.

Minority and Women-Owned Business Enterprise (MWBE) goal setting applies to any contract in an amount of $25,000 and greater. The Office of Contractor & Supplier Diversity (OCSD) must assign a MWBE goal or request an exclusion for approval. Exclusions are contracts that do not have subcontracting opportunities or where there is no availability of certified MWBEs to perform or provide specific goods or services. ESD is required to document this by searching the New York State MWBE Directory, and consulting with ESD's assigned Agency Services Analyst or the MWBE Business Development Unit. Exclusions will only be granted if MWBEs are solicited to participate as prime contractors or no MWBEs are available to participate as prime contractors. If seeking an exclusion and MWBE firms are in the Directory, ESD will need to solicit quotes to these firms to verify if they meet ESD's needs. If these firms cannot or do not meet the required needs, ESD must provide adequate documentation and submit the exclusion request to the DMWBE for approval. If not approved, ESD will assign a goal. The prime contractor is required to meet the goal or document good faith efforts to meet the goal.

1.2. Types Of Procurement Contracts

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with an ESD project, or to support the administrative needs of ESD. Procurements of goods cover the entire spectrum of goods, ranging from pens to motor vehicles.

Procurements of services include but are not limited to the following types: legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, specialized temporary employees, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of ESD.

Reasons for procuring services include:

a. Requirements of special expertise or unusual qualifications;
b. Nature, magnitude or complexity of services required;
c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
d. Short-term or infrequent need for the services; and
e. Distance of the location(s) where the services must be performed from ESD offices or facilities.

1.3. General Procurement Principles

ESD's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet agency needs;
- Provide checks and balances to regulate agency procurement activities; and
- Protect the interests of ESD, the State and taxpayers.

Procurement Contracts are to be awarded on a **competitive basis** to the maximum extent practicable. Such awards are generally made after notice of the procurement opportunity is published in the **New York State Contract Reporter** where the amount of the contract is **$50,000 or more** and after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents, including where practicable at least one State-certified minority- or woman-owned business enterprise ("MWBE") and one service-disabled veteran-owned business ("SDVOB"). (See Section 7: Types of Solicitations). Monetary thresholds may not be avoided by artificially splitting or breaking up contracts into lesser agreements, or entering into a series of agreements, for sums below the dollar thresholds. Also, if a smaller procurement (i.e. with an anticipated cost of less than $50,000) is completed and the respondents have submitted costs that are equal to or greater than the threshold of $50,000, an RFP must be posted on the contract reporter.

All procurements in the amount of $25,000 or greater must be forwarded to OCSD to review whether MWBE and/or SDVOB goals will apply to the contract.

Competition in the procurement process serves both ESD and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain ESD business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain ESD business.

2. Procurement: Overview And Requirements

2.1. The Procurement Process Guide

I. Purchases greater than $5,000 and less than $50,000

- Preferred Source: If ESD's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.

- OGS Centralized Contract: If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.

- Informal Solicitation: If ESD's needs cannot be met by the above options, you may elect to conduct an informal solicitation, in the following order:

    - Discretionary Purchase: a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business (see section 2.4).

    - Mini-Bid from a Pre-Qualified List: a shorter, simpler solicitation from vendors on a current pre-qualified list (see section 2.6). One of the vendors in each Mini-Bid should be an MWBE/SDVOB whenever practicable (see section 6). Contact the Procurement Unit for further assistance if needed.

    - Requisition Bid Process: a solicitation to a minimum of three vendors equipped to provide the required goods and/or services. One of the vendors in each Requisition Bid Process should be an MWBE/SDVOB whenever practicable (see section 6). Contact the Procurement Unit for further assistance if needed.

- Emergency/Single Source/Sole Source: If this is an emergency situation, one vendor is best suited to perform the work, or there is only one vendor that can meet the needs required for service, the initiating department head must justify the need procure the vendor as an Emergency, Single Source or Sole Source in the justification memo and forward it to the Procurement Unit to review.

II. <u>Purchases of $50,000 or greater</u>

- Preferred Source: If ESD's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.

- OGS Centralized Contract: If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.

- Informal Solicitation: If ESD's needs cannot be met by the above options, you may elect to conduct an informal solicitation, in the following order:

    - Discretionary Purchase: a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business (see section 2.4).

    - Mini-Bid from a Pre-Qualified List: a shorter, simpler solicitation from vendors on a current prequalified list (see section 2.6). One of the vendors in each solicitation should be an MWBE/SDVOB whenever practicable (see section 6). Please see Section 7 for additional information and contact the Procurement Unit for further assistance if needed.

- If ESD's needs cannot be met by the above options, use a Request for Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI"), and **advertise in the Contract Reporter** (see section 4) unless this procurement warrants a Contractor Reporter Exemption as set forth herein.

- Emergency/Single Source/Sole Source: If this is an emergency situation, one vendor is best suited to perform the work, or there is only one vendor that can meet the needs required for service, a Contract Reporter Exemption request may be appropriate (see Section 3).

2.2. NYS Preferred Sources

Goods and services needed by ESD may be available, without the need for competitive procurement, from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by ESD, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); NYS approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. For information on these Preferred Sources, see State Finance Law §162 and the Office of General Services ("OGS") Preferred Source Guide.

2.3. OGS Centralized Contracts

Goods and services needed by ESD may be available, without the need for a competitive procurement, through Centralized Contracts held by OGS. Please follow the OGS guidelines for each specific contract.

2.3.1 Commodities Contracts

The OGS Procurement Services Group (PSG) establishes centralized contracts for commodity contracts in the form, function and utility required by State agencies, for a wide range of items commonly acquired by agencies. If the commodity is available from a centralized contract in form, function and utility consistent with ESD's need, such item may be purchased from the centralized contract. However, ESD may competitively procure items otherwise available on a centralized contract when the resultant price is less.

2.3.2 Service Contracts

ESD has discretion to use the OGS centralized service contracts list. A wide and diverse range of services from routine maintenance to complex technology-based acquisitions are available through these OGS contracts. Again, ESD may competitively procure items otherwise available on the OGS centralized contract list when the resultant price is less.

2.4 Discretionary Purchases

Pursuant to PAL § 2879(3)(b)(i), ESD may purchase services or commodities from small business concerns, or commodities or technology products that are recycled or remanufactured, in an amount up to $500,000, without a "formal competitive process." Additionally, ESD may purchase services or commodities from enterprises certified pursuant to Article 15-A of the Executive Law (MWBEs), or from those certified pursuant to Article 3 of the Veterans' Services Law (SDVOBs) in an amount up to $1,500,000 without a "formal competitive process". In such a case, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits.

Any proposed discretionary purchase in the amount of $1,000,000 or more must be approved by the Chief Financial Officer (CFO) prior to making an award, naming a preferred vendor/developer, or seeking any required approvals for the Contract. Anyone intending to enter into such a contract must notify the Vice President of Contracts Administration as early in the process as possible to obtain the CFO's approval.

Staff should assess whether a formal competitive process, or one that is less formal but still competitive, may best meet ESD's needs. The award of a discretionary purchase contract should be published in the Contract Reporter. As with any other procurement, for discretionary purchases the initiator must:

- review the Preferred Source list and OGS Centralized Contracts (see links above) to determine whether the desired goods or services are available to meet ESD's needs;
- ensure that the commodities, services or technology acquired meet ESD's form, function and utility needs;
- document and justify the selection of the vendor;
- document and justify the reasonableness of the price; and
- ensure that ESD buys from responsible vendors.
- Obtain board approval if the contract amount is over $500,000 (or $250,000 for subsidiaries)

2.5 "Piggyback" Contracts

ESD may find it efficient to establish a contract based on another governmental entity's contract. This is known as "piggybacking" and may be used in accordance with the criteria established by OGS in the Contract Piggybacking Guidelines under State Finance Law § 163(10)(e), available at https://www.ogs.state.ny.us/procurecounc/pdfdoc/pgbguidelines.pdf. Note that a piggyback procurement requires approval by the OGS Procurement Services Group — this can be difficult and time-consuming to accomplish, as the OGS staff are not very familiar with public authority procurement policies and practices. For example, if the agency you wish to piggyback on is a State agency, it will have different contractual terms than those used by ESD. This may lead to delay, if OGS decides to seek approval of the proposed ESD contract terms from the Attorney General. Piggybacking is better accomplished when you wish to use a contract established by another public authority (rather than a State Agency).

2.6 Pre-Qualified Lists

Goods and services needed by ESD may be available without the need for full competitive procurement, from a pre-qualified list of vendors that have been vetted for qualifications and pricing. When selecting from a pre-qualified list, solicitations should go out to as many providers on the list as practicable including an MWBE or SDVOB entity if pre-qualified.

When a member of a prequalified firm leaves the firm to one that is not on the prequalified list, the prequalification follows the member. A new contract would be required.

Also, ESD staff will have the option of adding additional vendors to Prequalified Lists for a variety of reasons including but not limited to increasing the number of prequalified vendors to better serve ESD's needs. It is anticipated that links to all current ESD Pre-Qualified Lists will be made available to ESD Staff via ESD's Intranet.

If a vendor was procured from a prequalified list that has expired and is not on the current prequalified list, any contract amendment must be accompanied by a contract reporter exemption.

Adoption of the Pre-Qualified Lists by ESD subsidiaries are governed by the approval of ESD's Board of Directors. The subsidiaries are not required to separately adopt and approve the use of Pre-Qualified Lists.

2.7. GSA Contracts

ESD is permitted to order from federal General Supply Schedules (GSA) through the GSA Multiple Award Schedule (MAS) program. GSA has already determined the prices of supplies and fixed-price services and rates for services offered at hourly rates under GSA contracts to be fair and reasonable. However, the originator shall evaluate all responses received using the evaluation criteria provided to the GSA contractors to determine whether the total price is reasonable and represents the best overall value to ESD. The advantages of using this program include competitive pre-negotiated terms, conditions, and competitive prices with the flexibility to seek more discounts.

Please see below link to GSA Multiple Award Schedule program.
https://www.gsa.gov/buy-through-us/purchasing-programs/multiple-award-schedule

3. Contract Reporter Exemptions

3.1. Reasons For Exemptions

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption. A Contract Reporter exemption may be granted by the

Officer(s) specified in Attachment A to these Guidelines, only if any of the following circumstances can be demonstrated:

(a) **Sole Source.** Only one source for the goods or services is available. Three examples of sole source procurements: (i) proprietary software compatible with ESD operating systems that no-one else offers; (ii) a printer's warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty; (iii) a vendor has developed a proprietary system for remediating contaminated land, unavailable from anyone else.

(b) **Single Source.** The required goods or services are available from two or more vendors, but a compelling reason exists to make the award to a particular vendor. A request for a single source exemption must include information about the alternatives considered and justification that price is reasonable. One common example of a single source procurement is where a vendor needs to complete work on a project for which it was originally competitively procured.

In general, the Corporation's policy is to minimize the use of single source contracts and to maximize the use of competitive procurement methods. Please discuss a contract reporter exemption request early on in the process with Contracts Administration and Procurement Counsel.

(c) **Emergency Circumstances.** Emergency circumstances exist when an urgent and unexpected situation arises which places public health or safety or the use or conservation of resources at risk and requires immediate action. Poor or late planning does not constitute an emergency. Contracts entered into as a result of an emergency situation should only cover the goods or services reasonably necessary to stabilize, ameliorate or remedy the situation. An example is a hazardous condition at a building owned by ESD: a contractor can be hired immediately to deal with the situation.

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract or contract amendment with a value or aggregate value of $50,000 or more must be published in the Contract Reporter (Economic Development Law, §143(4). if the original contract was under $50,000 and the aggregate amount is less than $50,000.

3.2. Authorization For Exemptions

The initiator of the proposed contract must complete a Contract Reporter Exemption form, signed by the Officer(s) specified in Attachment A to these Guidelines.

The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances.

The Contract Reporter Exemption form can be found at: Contract Reporter Exemption Request.

If the proposed contract amount is over $500,000 (or over 250,000 for subsidiaries) or is a services contract that will last more than one year, the exemption authorization **must be obtained before** ESD Board or President/designee approval. If the proposed amount is $500,000 (or $250,000 or less for subsidiaries) or less, and the term of the contract is less than one year, the exemption authorization should be obtained from the Officer(s) specified in Attachment A to these Guidelines, prior to contract execution and the commencement of any services or delivery of any goods.

Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139k (Lobbying Laws) and State Tax Law § 5-a must still be satisfied (see Section 8.1). Where appropriate, a statement from the staff initiator that the price obtained for the goods or service is compatible with market pricing must be presented with the exemption request.

Once a single or sole source vendor has been approved for a contract by the appropriate board and contract amount is equal to $50,000 or more, ESD should submit an announcement of the contract for publication in the NYS Contract Reporter and must identify the recipient of the contract.

4. How To Conduct A Competitive Solicitation

- **Get Approval to Advertise:** Fill out the ESD Procurement Opportunity Advertisement Approval form for Corporate or Subsidiary and forward it for review along with procurement solicitation material to the Procurement Department for review. See section 5.

- **Approval of Advertisement and Contract Reporter:** When review is completed, material is sent to the Officer(s) specified in Attachment A to these Guidelines for approval. Upon approval, the Procurement Unit will submit the solicitation through the Contract Reporter, with a minimum of 15 business days for responses. Solicitation should also be posted on the ESD and Subsidiary (if applicable) website. See section 8.9.

- **Response Opening and Selection:** All responses must be timely submitted via a designated Dropbox link provided in each solicitation. Staff can then conduct a review and selection process. See section 8.11.

- **Board Approval:** Once a vendor is selected, staff must obtain Board approval, where required. See section 9.1

- **Preparation of Commitment Package:** Once Board approval is granted, the originating team must prepare a commitment package and enter it into Peoplesoft for Contract processing. See section 10.1.

5. Approval To Advertise

Prior written approval of the Officer(s) specified in Attachment A to these Guidelines is required when you need to advertise a procurement opportunity, including Requests for Proposals ("RFPs"), Requests for Statements of Qualifications ("RFQs"), Invitation to Bidders (“ITB”), and Requests For Expression of Interest ("RFEIs") (See Section 7: Types of Solicitation).

Note also that other approvals may be required to comply with State Division of Budget procedures (see Section 11.4). Submit the ESD Procurement Opportunity Advertisement Approval form (either Corporate or Subsidiary) to the appropriate officer at least 10 business days in advance of the relevant New York State Contract Reporter publication submission date.

6. Contents Of Procurement Solicitations

For all Procurement Contracts (see section 1.1), whether the procurement is formal (such as an RFP, RFQ, RFEI, or, ITB) or informal (such as Mini-RFP/Mini-RFQ for less than $50,000, or a Discretionary Purchase from an MWBE or SDVOB for up to $1,500,000), or procurement from a pre-qualified list) the same basic information should be included in the solicitation:

(i) What goods are being sought or what scope of services is desired;
(ii) What the projected length ("term") of the resultant contract will be;
(iii) What criteria will be used in evaluating bids, and how those criteria are weighted. For example, price, bidders' expertise, the qualifications of the proposed staff; past history of government contracts, references/testimonials, understanding of ESD's mission, and either diversity practices (commitment to sound diversity practices within the firm) or a firm's status as a certified MWBE and/or SDV0B[1];
(iv) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings/interviews held, etc.);
(v) Contact information for a designated Procurement contact at ESD, who is the only person at ESD to whom communications about the solicitation may be directed. Failure to abide by this requirement may result in disqualification of the bidder;
(vi) ESD's insurance requirements (obtained from Contract Administration for all solicitations);
(vii) ESD’s contractor and supplier diversity requirements: MWBE and SDVOB goals, if applicable (The Office of Contractor and Supplier

[1] Program regulations provide that ESD can either score a firm's diversity practices or the firm's status as a certified MWBE, but not score both in the same procurement. So, if certified firms are likely to respond, then the solicitation should request proof of certified status. But if it is more likely that no MWBE will respond to a solicitation, the solicitation should request diversity practice information instead. In either event, this factor must not exceed 10% of the overall technical score.

Diversity must be contacted during the drafting of a solicitation to identify the appropriate goals);

(viii) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;

(ix) A copy of the ESD standard terms and conditions to which the successful bidder will be expected to agree. This will generally be ESD's Schedule A - Standard Terms and Conditions (For Materials and Services or for Law Firms).IMPORTANT: ESD's standard terms and conditions must be sent to potential vendors as early in the process as possible, to avoid later disputes about terms. Staff should not modify or amend Schedule A, nor should vendors be permitted to do so without first consulting the Legal Department and receiving sign off on any such changes;

(x) Vendor Responsibility Questionnaire (i.e. "VENDREP") where needed (See Section 8.13);

(xi) Proof that the vendor is authorized to do business in New York State, if services are to be performed in New York State; and

(xii) Encouragement of use of New York State businesses as subcontractors or suppliers (See Section 8.6).

A template for informal solicitation language can be viewed at this link: Informal Solicitation Request Form

7. **Types Of Solicitations**

7.1. **General Information**

There are a number of procurement techniques available, including Request for Proposals (RFP), Request for Statements of Qualifications (RFQ), Invitations to Bid (ITB) and, rarely, Requests for Expressions of Interest (RFEI). When selecting among these various approaches, the determining factors are:

- The importance of price or cost as a component in the review of incoming bids or proposals; and
- The ability to define specifications for goods or services being acquired, or to obtain those specifications from potential vendors (where the RFEI may be useful).

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible vendors. "Best value" is the basis for awarding service and technology contracts to the vendor that optimizes quality, cost and efficiency, among responsive and responsible vendors. The basis for a "best value" contract award must be, wherever possible, quantifiable. However, all procurement solicitations issued by ESD are to be guided by the same basic principles:

Clarity: Procurement documents should clearly convey to vendors what ESD wants to buy;
Fairness: No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria (note that vendors must submit a statement of non-collusion (see s. 7.2 below)
Openness: All relevant vendors should have an equal opportunity to respond to the offering.
Disclosure of Selection Criteria: The criteria for awards should be developed in preparation for the release of the solicitation and included in the solicitation before it is publicly advertised. Vendors should know the basis upon which their offers are being evaluated. ***Note that if cost is weighted below 20%, a written justification for such weighting must be prepared and included in the Procurement Record.***
Efficiency: The process should be efficient, fair and able to withstand public scrutiny.

7.2. Requests For Proposals ("RFP")

RFP solicitations may range from relatively uncomplicated procurements to highly complex, long term efforts involving the significant commitment of both ESD and vendor resources. RFPs follow a common format, focusing on a description of tasks including, but not limited to:

- Description of program objectives and background;
- Scope of services to be provided;
- Detailed requirements or specifications (required qualifications of vendors, "what" is needed and "how" services should be provided). Note that the terms of the RFP may not be knowingly tailored to favor a particular vendor;
- Statement of Non-Collusion required by Section 2878 of the Public Authorities Law (responders must certify that they have not colluded with any other responder(s).

Please use this link to view ESD's standard RFP template: RFP Template

7.3. Requests For Statements Of Qualification ("RFQ")

RFQs are appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by ESD on a regular or semi-regular basis as the need arises. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of contractors or property appraisers. If ESD has established a list of prequalified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a pre-set maximum, three quotes should be obtained from vendors on the list, and/or from vendors known to ESD outside the list. Amendments to contracts with vendors selected from a prequalified list should also follow this process (and comply with all requirements in Section 9.2).

Where a vendor's eligibility to be on a pre-qualified list is contingent upon the vendor's agreement that professional services will be rendered at pre-established rates, or will not exceed certain limits, this solicitation should be accomplished through an RFP.

Please use this link to view ESD's standard RFQ template: RFQ Template

7.4. Requests For Expressions Of Interest ("RFEI")

RFEIs are generally appropriate when ESD does not know the precise scope of services or goods required and wishes to obtain this information from prospective vendors. An example would be a proposal for adaptive re-use of ESD or other State surplus property, where the re-use is likely to be dependent on the prospective respondents' needs or ideas.

7.5 Invitation To Bidders ("ITB")

Invitation to Bidders ("ITB") are used strictly for construction related projects. Usually, in such case, the scope of work is predetermined and well defined. The only determining factor in choosing the preferred vendor is cost. Utilization of this process means that there is no opportunity to negotiate prices, fee structures, or level of services with a preferred vendor or vendors.

Please use the links below to view ESD's standard ITB template and a sample bid form.
ITB Template
ITB Sample Bid Form

7.6 Requests For Applications ("RFA")

RFA are often used for grant and loan disbursements. RFAs for grant and loan disbursements are considered procurements, but some of the procurement forms are included in an RFA solicitation, and some of the procurement guidelines and rules apply to RFA solicitations.

Please use this link to view ESD's standard RFA template: RFA Template

7.7 Mini-Bids from a Board Approved Pre-Qualified List

From time to time, the ESD Board of Directors will establish lists of pre-qualified vendors following a competitive solicitation process. Once a list is established, the vendors listed therein are deemed to be pre-qualified to provide certain goods and/or services to the Corporation.

Staff wishing to procure goods or services from a pre-qualified vendor should complete a Mini-Bid and solicit quotations or proposals from at least three pre-qualified vendors, and at least one MWBE/SDVOB vendor wherever practicable. While Mini-Bids from a Pre-Qualified List are a faster and more efficient way to procure goods and services, most of the provisions of these Guidelines still apply to these solicitations. This includes, but is not limited to, informing the Procurement Unit you intend to start/complete a Mini-Bid; obtaining appropriate language and sign-off from OCSD and IT for inclusion in the solicitation; verifying the funding source; and establishing basic evaluation criteria and methodology for vendor selection.

8. Compliance With State Laws And Executive Orders

8.1. Compliance With State Finance Law § 139-j And § 139-k (Lobbying)

State Finance Law ("SFL") §§ 139-j and 139-k apply to all Procurement Contracts over $15,000, regardless of whether the contract was competitively bid.

Among other things, SFL §§ 139-j and 139-k: (i) govern permissible communications between potential vendors, and staff of ESD, its subsidiaries, or other involved governmental entities during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and willful violations of such provisions, including disqualification from eligibility for an award of any contract. Specifically, SFL §§ 139-j and 139-k require that only permitted ESD and subsidiary contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from the issuance of the earliest written notice of a Request for Proposal through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL § 139-j (6)(b) also requires potential vendors to complete the Offeror's Affirmation of Understanding and Agreement to comply with ESD's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by ESD after an initial affirmation is received with an initial bid.

SFL § 139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k (5) requires potential vendors to certify that the information they provide to ESD for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL § 139-j and § 139-k as part of their proposals: 1) the Offeror's Affirmation of Understanding and Agreement., and 2) the Offeror's Disclosure of Prior Non-Responsibility Determinations. See use this link to obtain copies of these required forms: SFL 139-j and 139-k

When contacted during the Restricted Period, ESD staff must obtain the following information: the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact. Further, ESD staff must inquire whether the person or organization making the contact was the offeror or retained, employed or designated by the offeror. All such recorded contacts must be included in the procurement record for the procurement contract.

In addition, ESD staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL §§ 139-j and 139-k do not prohibit an offeror from communicating with a member of the State legislature or legislative staff about a government procurement, provided such member of the State legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor

entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

For further guidance, ESD staff engaged in the procurement process should review ESD's policy regarding permissible lobbying contacts, and the required language for solicitations by ESD and its subsidiaries to ensure compliance with SFL §§ 139-j and 139-k. See also the OGS website on procurement lobbying, found at https://ogs.ny.gov/acpl.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an ESD employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported and asked to communicate directly with the designated contact person in the future.

8.2. Compliance With State Tax Law § 5-a / ST-220 (Sales Tax Registration)

State Tax Law § 5-a prohibits ESD and its subsidiaries from approving any contract valued at more than $100,000 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 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

Accordingly, all respondents to a solicitation where the amount of the contract is expected to exceed $100,000 must include in their responses a properly completed Form ST-220-CA. However, if a vendor is not registered with DTF because of a lack of sales of over $300,000 within the relevant period, the vendor must submit an affidavit pursuant to § 5-a so certifying. Note also that § 5-a does not apply to contracts for architectural, engineering or surveying services. If in doubt, contact the ESD legal department after having reviewed DTF Publication 223.

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor's sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the subcontractors.

Further in accordance with the requirements of § 5-a, any contract resulting from a solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

8.3. Compliance With Executive Order 177 (Prohibiting Contracts With Entities That Fail To Address Discrimination)

EO 177, issued on February 3, 2018, directs all State agencies, including public authorities, to amend their procurement procedures to prevent contracting with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity,
Military status, sex, marital status, disability, or other protected basis. All ESD contracts must contain a representation that the vendor's policies or practices do not fail to address harassment and discrimination.

8.4. Compliance With Executive Law Article 15-A And Veteran's Service Law Article 3: Contractor And Supplier Diversity

Background
All Procurement Contracts must comply with the requirements of New York Executive Law Article 15-A, which governs the New York State MWBE Program. The purpose of the MWBE Program is to eliminate historic barriers to participation by minority and women-owned business enterprises in State contracting. The MWBE Program contributes significantly to ESD's mission of promoting a growing State economy; encouraging business investment and job creation; and supporting diverse, prosperous local economies across the State.

All Procurement Contracts must also comply with the requirements of New York Veteran's Service Law Article 3, which acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Staff should familiarize themselves with the SDVOB Operations Guidance Document published by the Office of General Services ("OGS"), Division of Service-Disabled Veterans' Business Development to ensure compliance with SDVOB-related laws and requirements.

ESD staff are expected to encourage the use of MWBEs and SDVOBs in all procurements, including any amendments to existing contracts. Staff must reach out to the Office of Contractor and Supplier Diversity ("OCSD") as early as possible in the procurement process in order to facilitate goal setting for each contract. Additionally, upon advertising a solicitation for a new opportunity, staff should consider publicly posting a list of State-certified MWBEs or SDVOBs who have expressed interest in subcontracting opportunities in connection with the solicitation.

Executive Order 162
Pursuant to Executive Order Number 162 ("EO 162"), all New York State contracts, agreements and procurements issued and executed on or after June 1, 2017 require contractors to submit

detailed workforce utilization reports that include the job title and gross wages of each employee of a contractor and subcontractor performing work on a State contract, or of each employee in the contractor's and subcontractor's entire workforce, if the contractor/subcontractor cannot identify the individuals working directly on a State contract. A State contract includes all agreements in excess of $25,000 for services and commodities, and all agreements in excess of $100,000 for construction. Contractors and subcontractors performing work on construction contracts with a total value in excess of $100,000 are required to submit workforce utilization reports on a monthly basis. Contractors and subcontractors performing work on commodities and service contracts with a total value in excess of $25,000 are required to submit workforce utilization reports on a quarterly basis.

Goal Setting

All State contracts, including revenue contracts, as defined in State Finance Law Section 139-j, exceeding $25,000 for commodities and/or services, and $100,000 for construction **must** be assessed for MWBE & SDVOB goals. For ESD's purposes, a State contract includes commodities procurements, professional services contracts, loans, grants, and leases of real property involving construction, demolition, replacement, and major repairs or renovation.

OCSD is responsible for ensuring ESD's compliance with the MWBE and SDVOB Programs. OCSD works with ESD program staff (project managers, program directors, originators and procurement officers) to determine if a contract is eligible for MWBE and SDVOB goal setting, exempted from goal setting, or excluded from goal setting.

"Exemptions" are defined contracts which are excluded from MWBE and SDVOB goal setting. Some examples of exemptions are wages, benefits, and other employee-expenditures; debt service; travel reimbursement; utilities; OGS centralized services; sole source contracts (subject to there being no MWBE or SDVOB available to participate as a sub-contractor when subcontracting is appropriate); postage; telephones; operating transfers; certain rentals and repairs; and special departmental charges (i.e. unemployment insurance and tuition reimbursement).

"Exclusions" are contracts that either do not have subcontracting opportunities or no availability of certified MWBEs or SDVOBs to perform or provide specific goods or services. In cases where a contract is awarded by a means other than an RFP, including, but not limited to discretionary purchases and single source contracts, **DMWBD will only grant an exclusion if MWBEs or SDVOBs are solicited to participate as prime contractors or no MWBEs or SDVOBs are available to participate as prime contractors.**

Please note that for projects which encompass multiple individual contracts, they will have goals assessed for each contract, rather than a single set of goals for the multi-contract project.

OCSD may determine that an MWBE goal of less than 30% is appropriate due to limited or no MWBE subcontracting opportunities. All MWBE participation goals of less than 30%, will be forwarded to the Executive Chamber for review and must include documentation to reflect the reason for goal reduction.

Waiver Requests

A firm responding to a solicitation or already engaged on an ESD contract, after making good faith efforts to achieve the maximum feasible portion of an MWBE and/or SDVOB participation goal, may submit a Waiver Request Form to OCSD with appropriate information documenting its "good faith efforts" to meet its goals. The waiver process includes reviews by: OCSD Compliance Manager and the OCSD Director. The Executive Chamber must approve MWBE waiver requests before a waiver can be issued.

MWBE waivers must be sought even if the overall MWBE goal is met but either the Minority owned Business Enterprise or the Women-owned Business Enterprise component of the MWBE goal is not met in part or in full. SDVOB waivers must be sought if the assessed goal is not achieved.

"Good Faith Efforts" are the actions that all contractors must demonstrate to certify they have performed their due diligence to solicit MWBE and SDVOB participation in support of the required goals for each contract. Good Faith Efforts requirements are outlined in 5 NYCRR §142.8 (MWBEs) and 9 NYCRR § 252.2(n) (SDVOBs). A waiver of MWBE or SDVOB goals will not be granted unless the contractor has provided documentation of good faith efforts. In addition to completing a waiver request form, the contractor shall also provide OCSD with supporting information including, but not limited to:

- A statement setting forth the basis for the waiver request;
- Proof of posting on the New York State Contract Reporter or other publications where certified MWBE/SDVOBs were solicited for the purposes of complying with participation goals related to this contract;
- A list identifying the date(s) that all solicitations for certified MWBE/SDVOB participation were published in any of the above publications;
- A list of all certified MWBEs appearing in the NYS Directory of Certified Firm: and all certified SDVOBs appearing in the OGS Directory that were solicited for purposes of complying with the participation goals;
- Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations to all certified MWBEs/SDVOBs;
- Copies of responses to solicitations received from NYS certified MWBEs/SDVOBs;
- Copies of bid prices from all respondents to a solicitation; and
- A description of any contract documents, plans, or specifications made available to certified MWBEs/SDVOBs for purposes of soliciting bids and the date and manner in which these documents were made available.

In the event that a waiver is not granted or approved by one or all of the above parties, OCSD may assess liquidated damages or seek settlement in accordance with the MWBE and/or SDVOB Regulations and the provisions of the contract language.

Where practical, feasible and appropriate, ESD shall promote and encourage participation by MWBEs and SDVOBs in the selection and award of all contracts. Such MWBE and SDVOB

participation shall be documented in a regular supplement, prepared by OCSD, for inclusion in the quarterly and annual reports made by Contracts Administration to the Board. To assist in the gathering of this information, the originator must provide OCSD with a completed Utilization Plan of MWBE and, separately, SDVOB Participation, from the potential contract awardee, for OCSD's review and approval, prior to contract award. The required forms are accessible at by utilizing the following link: OCSD Forms.

8.5. Compliance With Iran Divestment Act Of 2012

Every bid or proposal made to ESD pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent 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 no 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 OGS and is available here: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestiture Act (contact the Legal Department for additional guidance).

8.6. Encouragement Of Use Of New York Businesses As Sub-Contractors And Suppliers.

The Secretary to the Governor has issued a directive that provides that all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts must be encouraged (but not required) to use New York State businesses. All procurement solicitations of any kind must include specific language aimed at such encouragement. The model language can be found at the following link: Use of NYS Businesses.

8.7 Compliance With State Finance Law § 139-m (Gender-Based Violence and the Workplace Policy)

Section 139-m of the New York State Finance Law requires that all vendors bidding or otherwise submitting a proposal for a competitive procurement must implement and attest (via written certification) to a Gender-Based Violence and the Workplace policy. This policy must be in place at the time for bid or proposal submission to be considered.

The model policy published by the New York State Office for the Prevention of Domestic Violence can be found at: https://opdv-gbv-workplace-bidder-model-policy_2025.08.28_0.pdf. The required Gender-Based Violence and the Workplace Certification can be found at: https://esd.ny.gov/sites/default/files/media/document/GBVandtheWorkplacePolicyAttestationTemplate-103125.pdf and must be signed and included with all bids, proposals or other submissions.

8.8. Project Sunlight

Project Sunlight is an important component of the Public Integrity Reform Act of 2011. Under this law, State governmental entities specified in the law are required to cooperate with the Office of General Services (OGS) and identify in a database developed by OGS all individuals, firms or other entities (other than State or local governmental agencies) that appear before such entity on behalf of themselves or in a representative capacity on behalf of a client or customer for any of various specified purposes. This includes appearances related to (a) procurement, (b) ratemaking, (c) regulatory matters, (d) judicial or quasi-judicial proceedings, (e) adoption or repeal of a rule or regulation.

Project Sunlight's reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a State contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated. Appearances during the Restricted Period— whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law do not need to be reported. As well as, appearances following the award of a State contract do not need to be reported.

8.9. Publication On ESD Website

Competitive solicitations must be made available on the ESD (and subsidiary, if applicable) website after advertisement in the NYS Contract Reporter. This website is also the appropriate place to post Addenda and Questions and Answers regarding the procurement.

8.10. Contract Reporter Advertising Process

As stated above, ESD must advertise in the New York State Contract Reporter all contracts for the acquisition of goods and services of $50,000 or more, unless an exemption is granted. In order to commence the process to place an advertisement, the initiator should contact the Procurement Unit, who will work with the originator and IT department to complete the process.

The minimum time for vendors to respond to a Contract Reporter solicitation is 15 business days (i.e., Saturdays, Sundays and legal holidays are excluded). The Contract Reporter website provides authorized users with a publication calculator tool in order to calculate the earliest due date for a solicitation.

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate certified MWBE vendors

listed in the NYS M/WBE Directory and appropriate certified SDVOBs listed in the Service Disabled Veteran-Owned Business Directory.

8.11. Selection Criteria

Written selection criteria shall generally be established for each proposed Procurement Contract and shall be included in any written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP wherever practicable and, in the absence of written weighting, each criterion shall be deemed to have the same weight.

The selection criteria shall generally include price as an important factor to be considered in the selection process; however, many ESD procurements are based on "Best Value," which allows for factors other than price to the considered. Such factors commonly include the quality of goods and services, the experience of the vendor and specific expertise with respect to the goods or services to be supplied. See also Section 7.1 above if price is weighted at less than 20%.

Starting in January 2020, for MWBE prime contractors, a ten percent bidding credit was established for low-bid construction projects (ITBs) provided the cost of such project does not exceed the maximum project cost permitted by Public Buildings Law §8.

8.12. Bid Opening Procedures

In an effort to be more environmentally conscious, ESD has recently moved toward electric submissions of bids/proposals/applications via a filing sharing service. A unique sharing link is created for each solicitation. Proposals/Bid Forms/Applications must be submitted on time and compliant with RFP/RFQ/RFA/or ITB requests. There is no in-person bid opening for electronic submission. The entire process is controlled by the Procurement Unit. Documents submitted via any other method other than the drop box will not be accepted.

Although Mini-Bids, Mini-RFPs and Mini-RFQs are generally handled by the originating department, the originating department must inform the Procurement Unit before the solicitation process starts to ensure compliance with all applicable procurement guidelines. Once the solicitation is completed, the originating team must inform the Procurement Unit of: 1) all responses received and 2) the selected respondent. Procurement may conduct periodic audits of these types of solicitations.

A Public Bid Opening is required for Public Works contract solicitations, pursuant to UDC Act § 11 (which incorporates by reference State Finance Law § 135). This section generally covers bids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. ESD or a subsidiary must be a party to the contract, which must involve the use of laborers, mechanics or workers (not, for example, architects and engineers). Construction contracts must be awarded to the lowest qualified and responsible bidder. See UDC Act § 11. The definition of a "Public Work" is more a matter of art than law: if in doubt as to whether the contract is for Public Work, contact the Legal Department for guidance. ESD and its subsidiaries typically use the Invitation to Bidders (ITB) for this type of work. Because the bids

are submitted electronically, the Public Bid Opening mentioned in the afore paragraph has been replaced by a Public Bid Announcement. This type of announcement is usually conducted via a conference call.

8.13. Bid Evaluation And Vendor Selection

The initiating Department Head or his/her designee should establish, as early as practicable prior to bid opening, a team of at least three and no more than seven (with five being preferred when possible) individuals to evaluate proposals. with relevant knowledge and experience of the goods and/or services being procured, and staff members that will be utilizing the goods or services generally merit inclusion as well. The selected individuals should not all work in one department, division or subsidiary, and one member of the evaluation committee should come from the Legal Department, Contracts Administration or Finance. The Procurement Unit controls and monitors the integrity of the entire procurement process. The Procurement Director must be present at the first meeting held for planning a solicitation and every meeting or discussion through the approval of the selected bidder by ESD's Board of Directors. In order to maintain transparency, the Procurement Director will serve as the only liaison between the Procurement Unit and Potential bidders. As such, the primary and secondary contact names on the solicitation should be those of the Procurement Directors. At times, the Procurement Director can serve on the Review Committee, but must always be present to monitor the integrity of the procurement process. The Procurement Director will assign staff if there is a conflict of interest and the Procurement Director is unable to attend. It is possible to have one or more non-ESD team members join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. This involvement of non-ESD persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as ESD to "take into consideration the views and policies of any elected official or body, or other person" in the exercise of its powers and duties, provided that ESD must "apply independent judgment in the best interest of the authority, its mission and the public." If non-ESD staff is included in the review team, the team must be expanded in number such that a majority will always be ESD staff members.

Analysis of the proposals and/or bids submitted, and the award of the contract shall be documented in reasonable detail. With respect to an ITB, award to anyone other than the low bidder must include documentation as to the reason the low bidder was not selected. For all other solicitation types, ESD will award to the vendor whose proposal represents the best value to the Corporation based on the evaluation criteria..

The Q&A matrix and the scoring matrix will be provided and maintained by the Procurement Director, All members of the Review Committee must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must include relevant comments/opinions/notes, etc. explaining the rationale for the score provided). Original scoring sheets must be signed and submitted to only the Procurement Director as part of the Procurement Record.

8.14. Determination Of Responsibility — "DoR" And The VendRep Form

Pursuant to State Finance Law § 139-j (7), ESD or the Subsidiary Board must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. Regardless of whether or not a formal Determination of Responsibility ("DoR") is being sought from the relevant Board, the initiator should ensure that all selected vendors are "responsible." **For all procurements, the initiator must submit a memo to the Procurements Director attesting that the initiator conducted both a DoR and a thorough review of the VendRep.** Please utilize this link to access the form**:** Determination of Responsibility. In addition to consulting the resources listed on the Determination of Responsibility form, staff may find it useful to consult OSC's list of suggested resources, or review OGS's bulletin of best practices for determining vendor responsibility. for determining vendor responsibility.

Category and Factors to be considered include but not limited to:

a) Financial and Organizational and Capacity: Assets, liabilities, recent bankruptcies, equipment, facilities personnel resources and expertise, and proper auditing and accounting controls.

b) Legal Authority: Authority to do business in New York State, licenses, and registrations.

c) Integrity: Criminal indictments or convictions, civil fines and injunctions imposed by other agencies, anti-trust investigations, ethical violations, tax delinquencies, or debarment by federal, State or local governments.

d) Previous Contract Performance: Report of less satisfactory performances, early contract termination for cause, contract abandonment, court determination of breach of contract.

It is imperative that the DOR is conducted very early in the process in order to avoid wasting time on proposals for bidders that might be ineligible.

- The OSC VendRep Questionnaire, which should be used wherever possible and is required for all purchases of $100,000 or more. This form seeks information about the vendor, its affiliates and subsidiaries, officers and owners, past responsibility determinations by agencies and investigations/prosecutions. It must be notarized, and false statements may be actionable and, in some cases, may be criminal. The VendRep forms for different types of vendors can be accessed here: http://www.osc.state.ny.us/vendrep/webresources.htm.

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a

meeting. Consult the ESD Legal Department in such cases, after having reviewed the resources available from OSC and OGS set forth above.

Pursuant to Governor Cuomo's Executive Order No. 192, issued on January 15, 2019, all vendors, suppliers, service firms and most other contractors to State agencies and Public Authorities (such as ESD), must remain "responsible" throughout the term of the contract. There are serious consequences if contractors fail to maintain responsibility. This requirement is expressly included in ESD solicitations and in Schedule A to contracts.

8.15. Cancellation Of A Solicitation

On occasion, the competitive solicitation process does not yield any satisfactory responses and ESD wishes to pursue other methods of procurement. To notify the public that ESD has cancelled a solicitation, the Procurement Unit should (1) inform all respondents via phone call (which should be documented for the procurement record), letter or email of the cancellation and (2) publish or post notice of the cancellation in each place that the solicitation was published (usually the Contract Reporter and the ESD website) for no less than 2 weeks. If the decision is made to readvertise the opportunity, the project team should scrutinize the initial solicitation document to determine whether any restrictions can be lifted, or the document can otherwise be revised to produce better results.

8.16. Procurement Record

The Procurement Unit shall be responsible for creating and maintaining a record of the procurement process. Such record shall contain documentation related to the procurement process, any competitive solicitation exemption, proposals and/or bids received, scoring sheets, vendor responsibility documentation and other documents prepared or used by the bid reviewers in their vendor selection process. Note that final scoring sheets must be sent to the Procurements Director before a vendor is conditionally designated, selected, Board/CEO approval is sought or a contract is executed.

8.17. Post Proposal Submission Activities - Debriefing Of Respondents

With respect to unsuccessful respondents, a debriefing is available upon request. The solicitation must include information advising bidders that a debriefing may be requested by any unsuccessful offeror, within 15 calendar days of notification by ESD that the proposal or bid submitted by the unsuccessful offeror was not selected for an award. Debriefing is typically conducted by video conference, over the phone, or through written correspondence. The purpose of the debriefing is to be open and transparent, and to promote future competition. The debriefing should address strengths, weakness; and provide other relevant information that ESD used to determine best value, including the qualitative and quantitative analysis used in assessing the relative merits of the proposal The Procurement Director is responsible for debriefing unsuccessful respondents and all correspondence must come from Procurement. ESD is precluded from disclosing the content of

any other proposal during the debriefing that would jeopardize the integrity of the procurement or impede contract negotiations.

8.18. Conflicts Of Interest

Respondents must have read, understood and comply with the provisions of the conflict of interest attestation found here: Conflict of Interest Attestation.

ESD shall have the right to disqualify any Respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

a. Gifts and Offers of Employment: Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

b. Disclosure of Potential Conflicts: Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

c. Disclosure of Ethics Investigations: Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

9. Contract Approval

Procurement Contracts for goods with a total value of **up to $500,000 (or $250,000** for subsidiaries) must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts, but if the contract value is **between $50,000 and $500,000** (or whatever amount the applicable subsidiary board approval threshold is), it must also be approved by the President of ESD (or the applicable subsidiary) or his or her designee.

Procurement Contracts for services with a total value **up to $500,000 (or $250,000 for subsidiaries)** that will be completed within one year must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts, but if the contract value is **between $50,000 and $500,000** (or whatever amount the applicable subsidiary board approval threshold is), it must be approved by the President of ESD (or the applicable subsidiary) or his or her designee.

Procurement Contracts with at total value **in excess of $500,000 (or 250,000 for subsidiaries),** as well as service contracts for **any amount with a term greater than one year,** must be approved by ESD (or applicable subsidiary) Board, with the possibility of a single three (3) month extension in accordance with Section 9.2(d)(v). For contracts that have been approved by the applicable board, a no cost time extension can be requested without requiring further board approval.

For the purposes of this section, several types of service contracts are considered "non-personal service" contracts, and therefore do not require approval by the ESD (or applicable subsidiary) Board unless the total value of the contract exceeds $500,000 (or $250,000 for subsidiaries) in the aggregate through its term, inclusive of any contract amendments or extensions. Non-personal service contracts up to $500,000 (or $250,000 for subsidiaries) must still be approved by the Officer(s) specified in Attachment A to these Guidelines, and if the contract value is between $50,000 and $500,000 (or whatever amount the applicable subsidiary board approval threshold is), it must also be approved by the President of ESD (or the applicable subsidiary) or his or her designee. These non-personal service contracts include but are not limited to: insurance policies; warranties; product maintenance, support and/or service contracts; building or facility upkeep, service and/or maintenance contracts; software as a subscription ("SaaS") contracts; and true leases. If you are uncertain whether a particular contract is non-personal service contract, please contact the Procurement Unit for the appropriate guidance.

In addition to the requirements above, all contracts with a technology component must be approved by ESD's Information Security Officer or designee prior to execution or Board approval.

9.1. Board Materials

The initiator writes a memorandum from the respective Department Head to the Officer(s) specified in Attachment A to these Guidelines, explaining the need for the contract. View Model Directors' Materials Template (these materials can also be used for obtaining approval of the

President or his or her designee by adding a CEO/Designee Approval Memo). The Board materials must set out:

a. the need for goods and services;
b. a brief description of the goods or services needed;
c. the expected maximum cost and the term of the contract for the proposed goods or services;
d. the selection process used to determine an award based on best value, or where not quantifiable, the justification which demonstrates the best value will be achieved; and
e. the funding sources.

9.2. ESD Contracts And Approval - Contracts Over One Year.

a. If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted. If a contract has already been presented to the board and it needs to be extended because the work took longer than expected, a No Cost Time Extension can be provided without further board approval as long as sufficient funds and the scope of work remains unchanged.

b. **Contracts for services** to be rendered over a period of more than one year, regardless of the amount of the contract, which must have been approved by the Board, must in addition be reviewed annually by the ESD (or subsidiary) Directors, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.

c. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, and before Board or President approval if required, the officer named in Attachment A to these Guidelines may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents **("Notice to Proceed"),** provided that:

i. the contract is not subject to OSC approval (See Section 10.4); and

ii. the authorization contained in the Notice to Proceed is (a) $500,000 (or $250,000 for subsidiaries) or less and (b) does not exceed 20% of the total contract value; and

iii. the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of the Officer(s) specified in Attachment A to these Guidelines.

iv. Notice to Proceed can be used prior or after board approval and has a lifespan of just one year. No more than one Notice to Proceed can be used per contract.

All Notices to Proceed shall include:

a) A statement or scope of the tasks the vendor will commence and/or complete pursuant to the Notice to Proceed;

b) The fees and other costs for completing the tasks, (including hourly fees and anticipated numbers of hours or fees for each completed task), as appropriate; and

c) Any deliverables and/or milestones that the vendor is expected to provide/meet while working pursuant to the Notice to Proceed.

d. **Contract Amendments**

i. **Amendments** to **existing contracts** generally follow the same process as new contracts, i.e., any amendment over $50,000 needs to be advertised in the Contract Reporter, exempted, or awarded to a firm on a pre-qualified list after soliciting bids from three other firms including at least one MWBE firm and one SDVOB firm. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated. If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of SFL §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications

may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed $1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds. If the proposed amendment will be for a different scope of work, the process for a new contract should be followed

ii. Amendments that increase the **contract amount** to more than $500,000 (or $250,000 for subsidiaries) must be approved by the ESD (or subsidiary) Directors.

iii. An amendment for less than $50,000, or an amendment for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) up to $500,000 (or up to $250,000 for subsidiaries) may be executed by the ESD officer named in Attachment A to these Guidelines without further Board or CFO approval, unless the amendment increases the contract to an amount above $500,000 (or above $250,000 for subsidiaries) and Directors' approval has not been previously obtained. An amendment for less than 10% of the current contract amount of between $250,000.01 and $500,000 must be pre-approved by the Chief Financial Officer for execution by the ESD officer named in Attachment A provided Director's approval has been previously obtained. Amendments that exceed the aforementioned threshold(s) require Board approval.

iv. Additionally, only one (1) such Amendment permitted pursuant to Section 9.2(d)(iii) may be sought from the ESD officer named in Attachment A per contract.

v. If a proposed amendment to a contract for services will increase the **term** of the contract to more than one year, Board approval is necessary, and Contract Reporter advertising is necessary unless (i) as discussed in paragraph (a) above, the original contract contained a clause specifically permitting extension; or (ii) the amendment is awarded to a vendor on a pre-qualified list following wherever practicable the receipt of three quotes from other vendors on the list including at least one from a certified MWBE or SDVOB firm; or (iii) the amendment increases the term of the contract by not more than three months, and approval for the extension is given by the person named in Attachment A to these Guidelines. If the amendment will increase the amount of time or other terms of the contract but **will not increase the contract amount,** the initiator need not submit a new Commitment Request Package. Additionally, if the amendment will only increase the length of the contract with

no other changes, Board approval is not required as this is deemed a "no cost time extension" amendment.

vi. In the case of contracts for more than $1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and/or the Chief Financial Officer of the corporation. Note that such an amendment may require OSC review and approval (see section 10.4). If in doubt, consult the Legal Department.

Example A: Original contract for $100,000 was awarded competitively. The initiator wishes to amend the contract for an additional $5,000. Because the amendment is for less than $50,000 it does not require advertisement or an exemption, and because it will not increase the total contract amount to more than $500,000* and is less than 10% of the original contract amount, it does not require Board approval. This example also assumes that the amendment will not extend services beyond one year, and so will not require Board approval.

*Some subsidiaries have lower monetary thresholds for board approval.

Example B: Original contract for $40,000 was awarded via purchase order. Due to unforeseen circumstances, the initiator wishes to amend the contract for an additional $20,000. Because the amendment will bring the total revised amount over the threshold of $50,000, it can no longer be treated as a requisition. Staff will take the necessary steps to complete a sequence package.

Example C: Original contract for $5 million was awarded competitively and approved by the Board and by OSC. The Board also approved the power to amend the contract to reflect an increase in the scope of services/goods, in an amount not to exceed 10% of the original approved amount, with the amendment to be approved by the CEO/CFO. The initiator wishes to amend the contract for an additional $300,000. Because the amendment is less than 10%, and the contract has previously been approved by the Board, no further Board approval is necessary, but Contract Reporter advertising is still necessary, unless an exemption is granted (see section 3.2 above).

Example D: Original contract for $100,000 was awarded to a firm on a Board-approved prequalified list. The initiator wishes to amend the contract for an additional $50,000 and extend the term beyond one year. Because the amendment will extend the contract term beyond one year, Board approval is necessary. However, because the firm was pre-qualified through a competitive process no further contract reporter advertising is necessary (but the initiator should solicit bids from three other firms on the list where practicable, including at least one MWBE and one SDVOB.

10. Steps After Contract Approval Is Obtained

10.1. Commitment Request Process (For Contracts And Contract Amendments Where The Total Contract Value Is $50,000 Or More)

The contract initiator should assemble and submit via Peoplesoft a Commitment Request Package containing the following documents:

1. A Commitment Request Form (composed in Peoplesoft).
2. A Contract Summary/Justification Memorandum explaining the need for the procurement and the method of procurement used.
3. A Standard Form Contract - Short Form for Goods/Services or a Standard Form Amendment with: (i) Schedule A (conditions applicable to procurements of goods/services or legal services); (ii) Schedule B (Participation By Minority and Women-Owned Business Enterprises: Requirements and Procedures) provided by OCSD; (iv) Schedule B-1 (Participation by Service Disabled Veteran-Owned Businesses with Respect to State Contracts) provided by OCSD; (v) Appendix A (ST-220 Contractor Certification Form pursuant to Tax Law § 5-a); (vi) Appendix B (Compliance with SFL § 139-j and 139-k, the Offeror's Affirmation of Understanding and Agreement pursuant to SFL §139-j; and (vii) Appendix C (Offeror). Disclosure of Prior Non-Responsibility Determinations under SFL § 139-k). Remember that the provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and ESD, and the method of payment to the contractor. The clearer and more specific the contract, the easier it will be to monitor. The terms of the contract should include, but not be limited to:

   - the scope and purpose of the contract;
   - the description of the services to be performed;
   - the location where the work is to be performed;
   - the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
   - the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
   - the projected starting date and the contract period;
   - the finished product or the services to be delivered;
   - record-keeping and reporting requirements, including a statement that ESD and any relevant State agency has the right to audit the contractor's records;

   This task can usually be accomplished by incorporating a solicitation's scope of work, the vendor's proposal, and fee schedule. For more complicated contracts,

the Legal Department should be consulted to ensure all necessary terms and conditions are incorporated.

4. Completed and approved Determination of Responsibility form. For contracts valued at $100,000 or more, staff must also submit a VendRep Form completed by the vendor (not applicable to vendors outside NY).
5. ESD/Subsidiary Board of Directors or CEO/designee approval, if applicable. View Model Directors Materials Template and CEO/Designee Approval Memo.
6. Depending on the procurement method used: (i) the Contract Reporter advertisement and posting of bid results and internal approval to advertise and the scoring sheet/bid opening log; or (ii) an approved exemption letter; or (iii) the OGS Centralized Contract; or (iv) a copy of the relevant Board-approved prequalified list.
    a. All appropriate insurance certificates, as approved by the ESD Insurance Administrator, a copy of the appropriate officer's approval and a copy of the RFP, if applicable. Note that all contractors must have evidence of Workers' Compensation and Disability Insurance coverage.
    b. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various ESD departments via PeopleSoft .
    c. Upon full approval and execution, the original copy of the fully executed contract or amendment is sent by Contract Administration to the vendor.

10.2. Contract Reporter Award Notification

A contract is considered conditionally awarded when it has approved by the appropriate Board of Directors or CEO/designee. A contract is considered fully awarded when it has been conditionally awarded, reduced to writing and has been executed (signed) by all parties. If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of MWBE and SDVOB Participation (and/or Disadvantaged Business Enterprise Participation, where applicable), must be posted on the Contract Reporter system. This posting will be completed by Contracts Administration at the appropriate time with information provided in the approval from the Board of Directors or CEO/designee.

10.3. Division Of Budget ("DoB") Approval For State Agency Spending

Under DOB Bulletin B-1184 (Revised), approval for certain procurements by state agencies over $500 is required. In general, if a State or legislative appropriation is the source of funds, approval is needed. A web-based application known as the "Agency Spending Controls Application" process is used to obtain prior approval. DOB approval is not required when the funding source for the procurement comes from a non-State source (e.g., a developer of an ESD project), where at least 75% of the procurement cost will be reimbursed by federal funds, or when the procurement is needed to address an immediate threat to public health and/or safety. DOB mandated forms are used in cases where approval is required. ESD has implemented the cost control measures

described in Bulletin B1184 (Revised). Please see the aforementioned bulletin for additional guidance. Additional assistance is available by contacting the ESD Controller's Department as well.

10.4. OSC Jurisdiction Over Contracts In Excess Of $1 Million

Under Public Authorities Law § 2879-a (effective March 1, 2010), ESD must make certain communications to OSC about certain types of contracts valued at more than one million dollars. OSC has issued final regulations implementing this law, and OSC approval shall be deemed part of these Guidelines. A memorandum explaining the application and procedures involved in OSC approval has been circulated to all relevant staff and may be viewed here.

"Eligible Contracts" are contracts in excess of one million dollars that are either: (i) to be paid for in whole or in part by State appropriations; or (ii) noncompetitively awarded (regardless of the funding source).

"Eligible Contract Amendment" is any modification to (A) an Eligible Contract; or (B) a contract executed after March 1, 2010 where is the value as amended is in excess of $1 million where (i) the contract as amended will be funded in whole or in part by State appropriations; or (ii) the contract was originally awarded noncompetitively; or (iii) the contract was originally awarded competitively but the modification was "neither contemplated nor provided for" in the original solicitation (i.e, new scope).

- ESD must annually report to OSC all Eligible Contracts/Amendments that it anticipates in the next fiscal year and revise such report within 30 days of learning of any significant changes to the annual report.
- ESD must give OSC 10 days' notice before (i) publishing a solicitation that ESD expects will result in an Eligible Contract/Amendment that was not previously reported to OSC or (ii) executing a noncompetitive Eligible Contract/Amendment that was not previously reported to OSC.
- ESD must file all Eligible Contracts/Amendments that are not subject to OSC approval (see following paragraph) with OSC within 60 days of execution.
  Certain Eligible Contracts/Amendments that are the subject of a written notice must also be approved by OSC within 90 days after the contract is signed. A list of active written notices can be viewed here. If approval by OSC has not been obtained, the signed contract "shall not be a valid enforceable contract."
  All submissions to and communications with OSC are to be handled by Contracts Administration only. Submit nothing to OSC directly.

OSC has confirmed that contracts for the sale of real property for an amount over $1 million are covered by the Property Disposition Guidelines and are not subject to OSC review and approval under PAL § 2879-a.

11. Monitoring Of Procurement Contracts

Performance of Procurement Contracts must be monitored by the initiating Department to ensure that the scope of work or services to be provided are being/have been performed; that use of ESD personnel, supplies and facilities is documented; that the MWBE and SDVOB requirements, as provided by OCSD, are being met; and that the established starting and completion dates for major components of the contract are being/have been met.

ESD employees assigned the responsibility of monitoring the work should be familiar with the type of work being performed and with the specific terms of the contract, including MWBE and SDVOB participation goals.

The frequency and manner in which the vendor's performance will be monitored should be clearly stated to the vendor and directly related to the terms of the contract.

Written documentation pertaining to vendor performance, such as progress reports, site visit reports, payment and expenditure data, Memoranda of verbal discussions, MWBE and SDVOB utilization plans and written correspondence should be maintained and reviewed by the initiating Department.

Periodic visits to the work sites should be made where appropriate to review work in progress and work completed. Site visit reports should be completed and include the observations of pertinent matters, such as the number and type of persons employed by the vendor, adequacy of the facilities and equipment, and quality of performance, including any deficiencies in the performance of the work, which may have an impact on satisfactory completion of the project.

The evaluation of the vendor's performance should take into consideration the quantity and quality of the work performed; the timeliness of submission of contract deliverables; the adequacy of cost and performance records and other supporting documentation; the ability of the vendor to meet MWBE and SDVOB participation goals; and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

All MWBE and SDVOB performance should be reported to OCSD.

Performance that is below expectations or established standards should be reported to ESD management immediately. All deficiency reports should be specific and in writing. Management should review deficiency reports and take appropriate action, which may include termination of a contract.

All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head. No payment should be made unless the work is satisfactory and in accordance with the terms of the contract. Approval on the Payment Authorization form attests to this. ESD's prompt payment procedures can be found at 21 NYCRR 4214.3, available here.

12. Ethical Considerations

12.1 Procurement Contracts Involving Former Employees Of ESD

Public Officers Law § 73 and ESD's Ethics Guidelines impose restrictions on former ESD officers and employees deriving compensation from ESD contracts or appearing before ESD. Accordingly, evaluation team members should carefully review lists of all proposed staff submitted by vendors to identify any former ESD employees. If a former ESD employee is identified, review his/her employment history to ensure it is appropriate and allowable. Direct any questions to the ESD Ethics Officer.

12.2 Conflicts Of Interest

All actions of ESD staff, including but not limited to procurement, are subject to ESD's Ethics Policies and the provisions of Public Officers Law §§ 73 and 74. Evaluation team members should ensure that they do not have any conflict of interest with respect to any bidder, and should alert the ESD Ethics Officer immediately upon identifying any potential conflict. For particularly large or complex solicitations, especially where outside consultants are assisting with the evaluation process, the project team should consider having each member of the evaluation team complete an Evaluation Conflict Disclosure Statement. Procurement counsel can advise on how to use this form.

12.3 Unfair Advantage Prohibited

Firms that develop or draft specifications, requirements, statements of work, or requests for bids or proposals for a procurement must be excluded from competing in any resulting procurement.

13. Implementation Of These Guidelines

ESD's Legal Department, in conjunction with Contracts Administration, shall be responsible for preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines, as well as preparing proposed amendments to the Guidelines for approval by the CEO and the ESD Directors when and as required.

14. Reporting

Annually, ESD's VP/Contract Administration shall prepare for the Directors' review a report on Procurement Contracts as of the end of each fiscal year, summarizing procurement activity by ESD for the period of the report, including a listing of all contracts entered into, the selection process used to select vendors, the status of existing Procurement Contracts and required Schedules of MWBE Participation. ESD's VP/Contract Administration shall also prepare, on an annual basis, a report for submission to:

a. The Division of Budget;
b. The Department of Audit and Control;
c. The Senate Finance Committee;
d. The Assembly Ways and Means Committee;
e. Members of the public (upon receipt of reasonable requests therefor); and
f. The Commissioner of Economic Development.

The reports shall include these Guidelines, any amendments thereto, and an explanation of the amendments.

15. Effect On Awarded Contracts

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. These Guidelines reflect best and customary practice but are not intended to be rules of law. Note, however, that certain contracts may not be "valid or enforceable" without OSC approval. (See Section 10.4)

Item II. B.

NEW YORK STATE OF OPPORTUNITY. USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 20, 2026

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: Management Services Amendment – Niagara Falls Convention and Conference Facility Civic Project and Old Falls Street

REQUEST FOR: Authorization to Enter into a Contract Amendment for Management Services and to Take All Related Actions

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CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: Niagara Tourism and Convention Corporation d/b/a Destination Niagara USA ("DNUSA).

Scope of Services: Management Services for the Niagara Falls Conference and Convention Facility Civic Project ("NFCC") and Old Falls Street ("OFS").

Contract Term: The amendment will add twenty-four (24) months to the contract term (January 1, 2027 – December 31, 2028).

Original Contract Amount: Not to exceed $1,600,000 (first year only). The contract amount for each subsequent year of the contract term was subject to USAN Board approval.

Current Contract Amount: Not to exceed $7,849,863.

Proposed Amendment Amount: The contract amount for each subsequent year of the contract term will be subject to USAN Board approval.

II. Background

The USA Niagara Development Corporation ("USAN" or the "Corporation") Board of Directors on October 12, 2021, authorized USAN to enter into a five-year agreement (the "Agreement") with the Niagara Tourism and Convention Corporation d/b/a/ Destination Niagara USA ("DNUSA") to provide management services for the USAN owned Niagara Falls Convention and Conference Facility Civic Project, known as the Niagara Falls Convention Center ("NFCC") and the City of Niagara Falls owned Old Falls Street ("OFS"), for a five-year term starting January 1, 2022 and ending on December 31, 2026.

The Agreement has two (2) one-year contract term extension options. The first extension is from January 1, 2027, through December 31, 2027, and the second is from January 1, 2028, through December 31, 2028. The Agreement requires the contact term extensions to be approved by both the USAN and DNUSA Board of Directors. USAN staff recommends the USAN Board approve exercising both contract term extension options at this time, extending the Agreement through December 31, 2028.

III. Contractor Selection Process

DNUSA received an exemption from the *New York State Contract Reporter* requirements and was approved by Empire State Development ("ESD") as a single source provider on May 17, 2021.

Since the beginning of USAN's ownership of NFCC in 2004 and management of OFS in 2009, USAN has conducted several competitive procurements for a private sector operator to manage both venues. USAN reviewed other similar publicly owned facilities across the state/region and many are managed by a quasi-governmental local official Destination Marketing Organization ("DMO") or a subsidiary of the DMO. As the official DMO for the City of Niagara Falls and Niagara County, DNUSA is a registered 501(c)6 Not-for-Profit Corporation, with a corporate purpose to encourage, facilitate and coordinate the planning and implementation of programs to advertise, promote and increase tourist travel, resort, vacation, cultural and convention activities within the County and region of Niagara. It is governed by a Board of Directors of thirteen voting members who are appointed through a Board nominating and interview process set by the organization's by-laws. USAN holds an ex-officio non-voting seat on the DNUSA Board.

Selected by the USAN Board in October 2021, DNUSA has demonstrated over the course of its initial term that it understands the local conventions and meetings business and knows how to attract events, corporate meeting and convention groups. DNUSA has also worked diligently to increase the visibility of the Niagara Falls brand to the meetings market by integrating targeted marketing programs. DNUSA has collaborated with local hotel partners to focus on the market segments to make NFCC/OFS successful. DNUSA has also brought a management advantage by being able to elevate the product, control the brand, increase sales and provide a level of synergy not available before. As a not-for-profit, DNUSA has also brought a financial advantage by not charging the type of fees USAN has incurred with private sector operators, enabling more of USAN's resources to be reinvested back into the development of NFCC and OFS.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has; a) considered proposed contractor's ability to perform the services provided for in the proposed contract; and b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

IV. Scope of Work

DNUSA will continue to manage the NFCC at a level consistent with the operation of a first-class facility per the Agreement. DNUSA will have the sole and exclusive right to hire, promote, discharge and supervise the work of the management staff for NFCC and OFS. DNUSA's scope of services for OFS briefly includes general cleaning and upkeep, facilitating and coordinating the programming of OFS events, and administering the permit application process and conducting enforcement for both event and daily vending operations.

V. Contract Term, Price and Funding

All business terms between USAN and DNUSA for both NFCC and OFS, continue per the Agreement. The proposed amendment will add twenty-four (24) months to the contract term (January 1, 2027 – December 31, 2028). The contract amount for each subsequent year of the contract term will be subject to USAN Board approval.

VI. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. Specific goals related to the total value of ESD's funding will be established on a per-contract basis.

VII. Environmental Review

ESD staff on behalf of USAN, has determined that the requested authorization, which involves engaging an operator to undertake management services that do not commit USAN to implementing any future project, constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a contract amendment with DNUSA to extend the contract term for 24 months; and (3) to authorize the taking of all related actions.

IX. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

X. Attachment

Resolution

July 20, 2026

USA NIAGARA DEVELOPMENT CORPORATION – Authorization to Enter into a Contract Amendment with Niagara Tourism and Convention Corporation d/b/a Destination Niagara USA to provide Management Services for the Niagara Falls Convention Center and Old Falls Street; and to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds the Niagara Tourism and Convention Corporation d/b/a Destination Niagara USA ("DNUSA") to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract amendment with DNUSA, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

* * *

Item II. C.

NEW YORK STATE OF OPPORTUNITY. USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 20, 2026

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: Consulting Services Amendment – Niagara Falls Heritage Gateways Design

REQUEST FOR: Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

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CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: Practice for Architecture Urbanism DPC ("PAU")

Scope of Services: Architecture & Engineering Services

Contract Term: The amendment will add eight (8) months to the contract timeline and will be completed by September 1, 2027

Original Contract Amount: Not to exceed $2,100,000

Current Contract Amount: Not to exceed $2,941,663

Proposed Amendment Amount: Not to exceed $356,762

New Proposed Total Contact Amount: Not to exceed $3,298,425

Funding Source: NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster and Regional Economic & Community Assistance Program (RECAP)

II. Background

In 2018, USA Niagara Development Corporation ("USAN") began purchasing vacant parcels near Niagara Falls State Park to return long-dormant land back to productive use. In total, USAN acquired 7 buildings and over 8 acres of vacant land through its Strategic Land Acquisition Program. With the land now acquired, USAN has begun to focus on projects that will activate the sites and attract new developments. Future infill, mixed-use developments will enhance the tourism industry, evolve a downtown neighborhood, diversify the economy, and benefit those who live and work in Niagara Falls.

On July 8, 2022, USAN issued a request for proposals titled "Niagara Falls Heritage Gateways" to select a qualified Architecture and Engineering team to provide design services and construction administration services for a project that will activate three of USAN's sites. Pursuant to the resulting process, Practice for Architecture Urbanism (PAU) was scored the highest by the designated scoring committee and was approved by the USAN Board for contract approval in November 2022.

This amendment would allocate additional resources related to the redesign of a pavilion that was precipitated by construction cost concerns. The new pavilion design will be more in line with the original construction budget for the project. Additionally, unforeseen circumstances related to site conditions have extended the schedule by five months and increased the need for construction administration effort from the lead architect (PAU), the landscape architect (Hargreaves Jones) and civil engineer (EDR).

III. Contractor Selection Process

On July 8, 2022, USAN advertised for the Niagara Falls Heritage Gateways Design Services Project in the New York State Contract Reporter. The Request for Proposals ("RFP') sought to retain a qualified Architecture and Engineering team to provide design services and construction administration services for the Project. On August 22, 2022, USAN received and opened seven (7) proposals. After reviewing all proposals and interviewing the top four ranked teams, a Selection Committee comprised of representatives from USAN, New York State Parks, Recreation & Historic Preservation, and the City of Niagara Falls, gave the highest score to the proposal submitted by PAU and they were recommended as the preferred consultant. A contract reporter exemption has been approved for this amendment

IV. Scope of Work

The proposed scope of work would include the extension of existing tasks including design documents, construction documents, and administrative support during construction.

V. Contract Term, Price and Funding

The proposed amendment will add $356,762 to the total contract amount. The amendment will add eight (8) months to the contract timeline and will be completed by September 1, 2027. The funding source is Buffalo Regional Innovation Cluster Funds and Regional Economic & Community Assistance Program (RECAP), which is a different funding source than the original contract.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Contractor shall be required to solicit and utilize Minority and Women Business Enterprise (MWBEs) and Service-Disabled Veteran-owned Businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(n)) to achieve an overall MWBE Participation Goal of 30% and an SDVOB Participation Goal of 6%.

VII. Environmental Review

ESD staff on behalf of USAN, has determined that the requested authorization, which involves engaging a consultant to undertake design efforts that do not commit USAN to implementing any future project, constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a contract amendment with PAU for an amount not to exceed $356,762; and (3) to authorize the taking of all related actions.

IX. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

X. Attachment
Resolution

July 20, 2026

USA NIAGARA DEVELOPMENT CORPORATION – Authorization to Enter into a Contract Amendment with Practice for Architecture Urbanism DPC to provide Consultant Services and to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Practice for Architecture Urbanism DPC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract amendment with Practice for Architecture Urbanism DPC in an amount not to exceed THREE HUNDRED FIFTY-SIX THOUSAND SEVEN HUNDRED SIXTY-TWO ($356,762) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

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Item II. D.

NEW YORK STATE OF OPPORTUNITY. USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 20, 2026

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: Construction Services Amendment – Gorge Gateway Park & Hydraulic Power Plaza Sitework

REQUEST FOR: Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

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CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc.

Scope of Services: Construction Services

Contract Term: The amendment will add fifteen (15) months to the contract timeline and will be completed by September 1, 2027

Original Contract Amount: Not to exceed $13,831,212

Proposed Amendment Amount: Not to exceed $766,600

New Proposed Total Contact Amount: Not to exceed $14,597,812

Funding Source: NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster and Regional Economic & Community Assistance Program (RECAP)

II. Background

USA Niagara Development Corporation ("USAN" or the "Corporation"), acquired over 30 properties in 2019 through a strategic land acquisition program. The program is intended to assemble long-dormant properties near Niagara Falls State Park and redevelop them to remove blight, increase density, and expand the types of uses in the area, re-establishing a year-round, sustainable downtown. With these key parcels now acquired, USAN has begun to focus its attention on strategies that will reactivate these properties. The first step in this process was the creation of a formal strategy to ensure new development is done in a thoughtful manner that responds to the character of downtown. The resulting "Downtown Niagara Falls 2 Development Strategy" illustrated a range of interim interventions and attainable development guidelines to re-imagine a more vibrant downtown in the near-term while building momentum and continuing to promote sustainable dynamic growth over time. Implementation of the Development Strategy includes the construction of several public infrastructure investments, including a series of heritage-themed gateways to better connect downtown amenities with the natural assets of the State Park. The gateways will also include checkpoints that link together the numerous cultural, historical and natural assets of downtown Niagara Falls.

On June 26, 2024, the USAN Board of Directors approved the General Project Plan for the Gorge Gateway Park & Hydraulic Power Plaza Project. Phase I of Project construction will focus on sitework for the "Hydraulic Power Plaza" and "Gorge Gateway Park" at the corner of Main Street and 1st Street.

Gorge Gateway Park will transform approximately 2.27 acres of City-owned vacant land (formerly DiFranco Park) into a multi-use recreational space to act as transition between the natural setting of Niagara Falls State Park and the dense urban setting of downtown Niagara Falls. The park will include an event lawn for gatherings and picnicking; woodland gardens with walking paths and benches; stormwater meadows to capture and store rainwater on-site; and a seat wall terrace that will allow for views above the rest of the site, provide seating and accessible path from the top of the site to the bottom while traversing approximately 12 feet of elevation drop.

Hydraulic Power Plaza will be built on vacant land between 1st and 2nd streets. The approximately 1.4-acre plaza will follow the alignment of the historic hydraulic canal that once ran through the site to power early industry and electric generation. The plaza will include landscaping, informal setting areas, a small play structure, an array of lights supported by steel structures inspired by historic transmission line towers and a 105-foot-long misting fountain that invokes the former canal. In addition to providing a new connection from the State Park to downtown Niagara Falls, the plaza will become an amenity for adjacent future developments to be constructed on the surrounding State-owned land. Following construction, the plaza will remain a public amenity owned and operated by New York State agencies.

Following an invitation to bid process, Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc. was chosen to perform construction services for phase I of the project and began work in the

fall of 2024. To date, earthwork and installation of utilities has been completed on both sites (Plaza side and Park side). During the execution of this work, several unforeseen conditions were uncovered that have added cost to the project. Most notably, the discovery of an unmarked electrical line directly below the Gorge Gateway Park pathway that led to a substantial redesign of the project. Additionally, site access issues and additional coordination on utility placement and installation have added time to the project schedule. Additional funds are being requested to pay for several formal change order requests submitted by Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc. which have been vetted by USAN and project design team.

III. Contractor Selection Process

A contract reporter exemption was approved for this amendment. Originally in order to procure a qualified general contractor, USAN advertised in the New York State Contract Reporter on June 24, 2024. USAN and PAU followed all standard ESD bidding procedures. A pre-bid meeting was held on July 2, 2024. The basis for award of a contract was set forth as the lowest responsible bidder on the base contract. One bid was received by USAN on July 29, 2024, at 4:00 p.m. USAN entered into a contract with the lowest responsive bidder, Scott Lawn Yard, Inc. Their base bid price is listed below.

Contractor	Base Bid Price (Basis of Award)
Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc.	$13,831,212

Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc. is a Niagara County based company that has provided a wide variety of construction services aimed at municipalities, public agencies, developers, and general contractors for 39 years. They have performed work for several public agencies including the Cities of Niagara Falls and Buffalo; NYS Office of Parks, Recreation and Historic Preservation; Erie Canal Harbor Development Corporation; and USAN.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has; a) considered proposed contractor's ability to perform the services provided for in the proposed contract; and b) consulted the list of offerers determined to be nonresponsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

IV. Scope of Work

The proposed scope of work would include additional effort in the execution of the tasks below as included in the original contract:

- Permit Applications
- Tests and Inspections

- Construction Layout
- Field Engineering and Surveying
- Installation of the Work
- Cutting and Patching
- Progress Cleaning
- Starting and Adjusting
- Protection of Installed Construction
- Construction Waste Management and Disposal
- Closeout Procedures

V. Contract Term, Price and Funding

The proposed amendment would add $766,600 to the total contract amount. The amendment would add fifteen (15) months to the contract timeline and will be completed by September 1, 2027. The funding source is Buffalo Regional Innovation Cluster Funds and Regional Economic & Community Assistance Program (RECAP). No USAN Corporate funds would be used to fund the amendment.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Contractor shall be required to solicit and utilize Minority and Women Business Enterprise (MWBEs) and Service-Disabled Veteran-owned Businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(n)) to achieve an overall MWBE Participation Goal of 30% and an SDVOB Participation Goal of 6%.

VII. Environmental Review

The Directors made a Determination of No Significant Effect on the Environment for the proposed project at their meeting of June 26, 2024, in connection with the approval of the General Project Plan. This determination addressed all aspects of the Gorge Gateway Park & Hydraulic Power Plaza Project, including the award of a contract for Phase I of its construction. Therefore, no further environmental review is required in connection with this action.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a contract amendment with

Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc. for an amount not to exceed $766,600; and (3) to authorize the taking of all related actions.

IX. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

X. Attachment
Resolution

July 20, 2026

USA NIAGARA DEVELOPMENT CORPORATION – Authorization to Enter into a Contract Amendment with Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc. to provide Construction Services and to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc. to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract amendment with Miller Construction Services, Inc a/k/a Scott Lawn Yard, Inc. in an amount not to exceed SEVEN HUNDRED SIXTY-SIX THOUSAND SIX HUNDRED ($766,600) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

* * *

Item II. E.

NEW YORK STATE OF OPPORTUNITY. | USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 20, 2026

TO:	The Directors
FROM:	Anthony Vilardo
SUBJECT:	Proposed Acquisition of 470 2nd Street, Niagara Falls, NY by the USA Niagara Development Corporation
REQUEST FOR:	Authorization to Acquire Real Property; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

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I. Background

The New York State Department of Transportation ("NYSDOT" or "the Seller") is the owner of a vacant land parcel located at 470 2nd Street in Niagara Falls (SBL # 158.08-1-5), consisting of approximately .05 acres (2,280 ± SF) located on the southwest corner of the intersection of Main Street and 2nd Street (the "Property"). The Seller has owned the Property for over thirty years and has determined that it does not need to retain the site for a DOT purpose, and is therefore willing to dispose of the Property.

As envisioned under the Strategic Land Acquisition Program ("the Acquisition Program")—approved by the USA Niagara Development Corporation ("USAN" or the "Corporation") Board of Directors in 2018—USAN has been acquiring downtown properties to support tourism, community and economic development in Niagara Falls. The Property is located directly adjacent to several properties that were previously acquired under the Acquisition Program and are now undergoing redevelopment. Acquisition of the Property will allow USAN to utilize the entire block for future development and eliminate a small outlier on an otherwise seamless development site. USAN staff have determined that based on the physically possible, legally permissible and financially feasible uses, the highest and best use of the Property, is in support of future development to maximize the economic development opportunities on the site.

II. Proposed Transaction

USAN will acquire the Property from the Seller for $10,000, (the "Purchase Price"), to be paid under the conditions as described below. The fair market value of the Property was determined by the New York State Office of General Services State Asset and Land Management Office to be $38,000.

USAN and Seller intend to execute a Purchase and Sale Agreement ("Agreement") for the acquisition of the Property following approval of the transaction by USAN's Board of Directors.

USAN does not intend to own the Property long-term but will need to hold and insure the Property after closing and then will dispose of the Property to a private party for development. Holding costs would be limited to insurance costs (the Property will be added to ESD/USAN's Corporate policy for a nominal fee) and periodic grass cutting services.

Funding source for the $10,000 acquisition cost and $873/yr. in estimated interim holding costs is Buffalo Regional Innovation Cluster Funds.

III. Future Development/Use of the Property

It is intended that, following acquisition, this parcel will be amalgamated into the Heritage Gateways project site (bounded by First Street, Niagara Street, Second Street and Main Street) and utilized as part of a future development site adjacent to the Hydraulic Canal Plaza being currently constructed thereupon.

Any future development of the parcel and/or transfer of property for new development will require additional approvals from the USAN Board of Directors.

IV. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Article 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority-and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that MWBE and SDVOB participation goals will not apply to this project.

V. Environmental Review

USAN, as lead agency, completed an environmental review of the proposed acquisition, pursuant to the requirements of the State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. This review found that the proposed action, which would involve as-is acquisition of the Property, to be an Unlisted

Action that would not result in significant adverse impacts on the environment. Therefore, USAN staff recommend that the Directors make a Determination of No Significant Effect on the Environment.

USAN staff also recommends that the Directors find that to the extent the requested authorization may be deemed to be "segmented" from any future development of the property that such "segmentation" is permissible pursuant to 6 NYCRR Part 617.3(g) due to the relevant circumstances of the project, specifically: (i) that it is not possible to consider future uses for the property in the absence of a development plan; (ii) that any such future plans will be subject to review under SEQRA; and (iii) that the review of the requested authorization to acquire the property is no less protective of the environment than any present review of any future development plan.

VI. Requested Action

The Directors are requested to: (i) authorize the Corporation to enter into the necessary agreements to effectuate the transfer of the Property as stated in these materials; (ii) acquire the Property in accordance with these materials; (iii) authorize the commitment of $10,000 in Buffalo Regional Innovation Cluster Funds to purchase the Property, plus related holding costs; (iv) make a determination of no significant effect on the environment; and (v) authorize the Corporation to take all related actions.

VII. Recommendation

Based on the foregoing, I recommend approval of the attached resolution

Attachments

Resolution
Figure 1: Property Location Map

July 20, 2026

USA NIAGARA DEVELOPMENT CORPORATION – Proposed Acquisition of 470 2nd Street, Niagara Falls, NY by the USA Niagara Development Corporation - Authorization to Acquire Real Property; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

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RESOLVED, that based on the materials presented to this meeting and ordered filed with the records of the USA Niagara Development Corporation (the "Corporation") relating to 470 2nd Street, Niagara Falls (the "Property"), the Corporation is hereby authorized to enter the necessary agreements to effectuate the transfer of the Property and to acquire the Property, as stated in these Board materials; (ii) to authorize the commitment of $10,000 of Buffalo Regional Innovation Cluster Funds to purchase the Property, plus related holding costs; and (iii) take all related actions; and be it further

RESOLVED, that on the basis of the materials submitted to the Directors, the Corporation hereby determines that the proposed action will not have a significant adverse effect on the environment; and be it further

RESOLVED, that on the basis of the materials submitted to the Directors, the Corporation hereby finds that because there are no specific future plans for the subject property, the environmental review of the proposed disposition is not being "segmented" from the review of any such plan and that to the extent the requested authorization may be deemed to be "segmented", that such "segmentation" is permissible pursuant to 6 NYCRR Part 617.3(g) due to the relevant circumstances of the project, specifically: (i) that it is not possible to consider future plans for project site in the absence of a future development plan; (ii) that any such future plan(s) will be subject to review under SEQRA; and (iii) that the review of the requested authorization to acquire the site is no less protective of the environment than any present review of any future plan, and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designees be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolutions.

* * *

Figure 1: Property Location Map