

Request for Qualifications

Buffalo Urban Development Corporation

**Minority and Women Business Enterprise Compliance
Monitoring Services**

RFQ Issued: February 15, 2023

Due Date: March 13, 2023 at 4:00 p.m.



Buffalo Urban Development Corporation

Hon. Mayor Byron W. Brown, Chairman

1.0 RFQ Overview

Proposals are being solicited for MWBE compliance monitoring for a construction project at Buffalo Lakeside Commerce Park. Laborers Way, LLC, an affiliate of Zephyr Partners (“Zephyr”) is constructing a cannabis production facility at the site which was recently purchased from Buffalo Lakeside Commerce Park-1, LLC an affiliate of Buffalo Urban Development Corporation (“BUDC”). As part of the land sale transition, Zephyr must adhere to BUDC’s MWBE utilization goals. To ensure that these goals are met BUDC is soliciting firms for compliance monitoring services to make sure that BUDC’s MWBE goals are obtained.

2.0 Background

Background Overview

Zephyr has planned construction of a 75,000 square foot facility at Buffalo Lakeside Commerce Park (the “Project”). The Project will include a one-story steel-framed structure with approximately 72 surface parking spaces and will be located on approximately 5.3 net acres of unimproved land along the waterfront in the Park. The Project will be operated primarily as a cannabis production facility, with space for a variety of uses including manufacturing, cultivation, packaging, and distribution. The facility will focus on both recreational and medical cannabis consistent with New York State (NYS) laws and the Office of Cannabis Management (OCM) regulations. NYS has a process by which they are converting medicinal licenses to adult-use/recreational, as regulations are introduced and adopted.

The purpose of this RFQ is to obtain a Compliance Monitor to oversee Zephyr’s MWBE requirements for the Project being built. BUDC has set forth a contracting goal for Zephyr with firms that subcontract for 25% for minority-owned businesses and 5% for women-owned businesses as a percent of the total proposed fee. The Compliance Monitor will ensure that all of Zephyr’s MWBE goals are met.

Overview and Mission of BUDC

BUDC is the City of Buffalo's not-for-profit development agency, reclaiming distressed land and buildings for future development with Mayor Byron W. Brown serving as Chairman of the Board. As the City’s development agency, BUDC seeks to create an environment conducive to private investment, provide oversight and visioning for projects of regional significance, serve as a liaison among various public and private stakeholders, serve as a conduit for public funding of significant projects and serve as a real estate holding company for certain public-sector projects.

The mission of BUDC is to support the urban economic development efforts of the region through the acquisition, remediation, and management of distressed properties, and to engage in related real estate development activities to attract and/or retain new and existing businesses to the City as part of the region. The mission of BUDC also includes supporting the revitalization of downtown Buffalo by serving as the lead management entity for Buffalo Building Reuse Project (BBRP) and Race for Place initiatives, working in collaboration with the City of Buffalo, including the coordination of financial assistance for downtown adaptive re-use projects and public right-of-way improvements. BUDC also serves as the lead management entity for the Ralph C. Wilson Centennial Park transformation.

3.0 Scope of Work

For the qualifications submittal, include and expand on the following:

Task 1. Review Reports and Verify Evidence of Compliance.

The Compliance Monitor will review Zephyr's Evidence of Compliance and will independently verify, as necessary, that Zephyr is adhering to the applicable MWBE Obligations. The specific services required of the Compliance Monitor for this task include:

- a. Review Evidence of Compliance and assist BUDC in determining whether same is complete and sufficient.
- b. If BUDC determines that the Evidence of Compliance is incomplete or insufficient, the Compliance Monitor shall assist BUDC in providing notice to Zephyr specifying the areas of noncompliance and affording Zephyr the opportunity to resubmit compliance documentation or to cure any noncompliance. The Compliance Monitor shall also assist BUDC in determining whether any resubmitted documentation is complete and sufficient with respect to the applicable MWBE Obligations.
- c. At BUDC's direction, and upon reasonable written notice to Zephyr and to the extent reasonably necessary in good faith to verify Zephyr's compliance with the MWBE Obligations: (i) access any facilities or buildings owned or controlled by Zephyr on or proximate to the Project Site, accompanied by a representative of Zephyr, and (ii) review reports, books and records maintained by Zephyr relating to the MWBE Obligations.
- d. Meet with, and as requested report in writing to, BUDC periodically in order to ascertain whether Zephyr is complying with the MWBE Obligations.

Task 2. Periodic Revisions to Reports. BUDC or Zephyr may from time to time request that the Evidence of Compliance be amended or adjusted in order to better or more accurately reflect compliance with the MWBE Obligations or to reflect modifications to the MWBE Obligations or methods of compliance mutually agreed to by BUDC and Zephyr. The Compliance Monitor will be expected to consult with Zephyr and BUDC on such proposed amendments/adjustments and to advise BUDC on their appropriateness in view of the goals of the MWBE Obligations. The specific services required of the Compliance Monitor for this task include:

- a. Consult with and respond to BUDC with respect to written requests from Zephyr concerning revisions to the Evidence of Compliance.
- b. Make recommendations to BUDC on an as-needed basis for improvements and refinements to the Evidence of Compliance to improve clarity, respond to changed circumstances, or minimize undue administrative burdens.

Task 3. Tracking Construction Milestones and Delays. The specific services required of the Compliance Monitor for this task include:

- a. Review and verify reports to be submitted by Zephyr.
- b. Review, evaluate and advise BUDC concerning any claim made by Zephyr to BUDC that the Project is or will be subject to a delay that may affect Zephyr's achieving one or more of the Milestone Dates.

- c. Suggest any adjustments to the foregoing reports submitted by Zephyr to reflect any Zephyr delay claim accepted by BUDC.

Task 4. Project Administration. The specific services required of the Compliance Monitor for this task include:

- a. At least 60 days prior to the end of each one-year term, submit an itemized budget for the following one-year term that assumes that Zephyr will reasonably cooperate with the Compliance Monitor and will at all times be in compliance with the MWBE Obligations.
- b. Participate in meetings with BUDC staff (at least quarterly).
- c. Attend meetings, as directed by BUDC, with Zephyr, Zephyr's consultants, Zephyr's contractors, and/or the City of Buffalo, as necessary to independently verify compliance, provided that meetings with Zephyr's consultants or contractors be attended by a representative of Zephyr.
- d. Participate in at least one annual meeting with BUDC and Zephyr to review compliance issues and frequency of reports.
- e. Advise and assist BUDC in connection with the preparation of any correspondences, notices, and other documents related to Zephyr's compliance with the MWBE Obligations. Upon direction from BUDC, make inquiries to the FEIS Monitor on behalf of BUDC. The Compliance Monitor will not have the responsibility or the authority to enforce the Restrictive Declaration or to send notices of default.

Task 5. Miscellaneous. The miscellaneous services required of the Compliance Monitor include:

Assist BUDC in various administrative functions in connection with the Project, including, but not limited to, scheduling meetings, document management, assistance in complying with Freedom of Information Law requests, tracking compliance timelines, and providing supplemental written memoranda regarding compliance issues at BUDC's request.

4.0 Qualification Requirements

The Qualifications Statement submission should include the following:

Cover Letter

The cover letter should include the official name of the firm, mailing address, e-mail address, telephone number, and primary contact name.

a) FIRM EXPERIENCE: Respondents to this RFQ should include a brief narrative explaining their general project management plan and proposed control systems for the project. Narratives and examples of documentation developed to address each of the below items within previous projects should be included:

- MWBE Monitoring
- Quality Assurance / Control Program
- Scheduling meetings
- Document management

- Assistance in complying with Freedom of Information Law requests
- Tacking compliance timelines

b) FIRM INFORMATION: Experience of Firm/Construction Management Team

- A description of the firm’s experience providing similar services for the public sector including but not limited to the State of New York and/or Municipalities within the State of New York.
- Include 5 reference projects showing recent relevant project experience.

Minority and Women Business Enterprises

Each Consultant team shall provide any relevant information with respect to any program or action taken to attract, recruit, retain and promote minority and women employees, partners, and associates, including the Consultant’s team’s current minority and women workforce (“Workforce Development”). Each Consultant team shall additionally provide any information with respect to programs, initiatives, policies, or practices that support the development of, and provide business opportunities too, minority-owned and women-owned businesses in the City, including suppliers and service providers (“Community Involvement and Vendor Policies”). Examples of Workforce Development, Community Involvement, and Vendor Policies that promote the employment of minority and women employees and contracting with minority-owned and women-owned businesses include direct hire programs, business utilization plans, and youth hiring programs.

The contracting goal with firms that subcontract is 25% for minority-owned businesses and 5% for women-owned businesses as a percent of the total proposed fee.

Understanding and Approach

Respondents to this RFQ should include a brief narrative explaining their understanding and approach to this project and the requested scope of work. The understanding and approach should outline a proposed scope of work, specific phases and tasks, and the deliverables and products to be provided.

Firm Profile, Experience of Firm/Project Team, and References

Firms or their principals responding to this RFQ must be licensed to practice in New York State. Proposals should include a firm profile, an organizational chart identifying the project manager and team members with their titles, resumes from key personnel, and references from at least three (3) clients for whom the consultant has performed services within the past three (3) years.

Fee Proposal

The proposal should include a proposed fee for all services delineated by phase and task as outlined in the consultant's proposed scope of work. The fee proposal should include the hourly rate of each staff member who will work on a task and their number of hours by phase and task.

5.0 Submission Instructions

Five (5) copies of the proposal must be submitted in hard copy and one (1) electronically via e-mail, no later than 4:00 p.m. on March 15, 2023 to:

Brandye Merriweather, President
Buffalo Urban Development Corporation

95 Perry Street, Suite 404
Buffalo, New York, 14203
E-mail: Bmerriweather@buffalourbandevelopment.com

Procurement Lobbying Restrictions

1. Restrictions on Bidder Communications with BUDC

Pursuant to State Finance Law §§139-j and 139-k, this Request for Applications imposes certain restrictions on communications between Applicants and BUDC during the procurement process. Applicants are prohibited from making contacts (whether oral, written, or electronic) with any BUDC personnel or BUDC Board member other than the designated BUDC staff member (unless the contact is otherwise permitted under State Finance Law §139-j (3) (a)). In addition, Applicants are hereby notified that any contact with any BUDC personnel, BUDC Board member, or the designated BUDC staff member that a reasonable person would infer is intended to influence the award of the contract under this Request for Applications is prohibited. These prohibitions apply from the Bidder's earliest notice of BUDC's intent to solicit applications through the final award and approval of the procurement contract ("Restricted Period"). For purposes of this Request for Applications, the designated BUDC staff member is Brandye Merriweather (bmerriweather@buffalourbandevelopment.com).

Applicants are hereby notified that BUDC is required to collect certain information when contacted by a Bidder during the Restricted Period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §§139-j and 139-k. Certain findings of non-responsibility can result in rejection of a contract award, and in the event of two findings within a four (4) year period, the Bidder may be barred from obtaining governmental procurement contracts.

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

BUDC is required to obtain written affirmations from all Applicants as to the Respondent's understanding of, and agreement to comply with BUDC's procedures relating to permissible contacts (described in paragraph 1 above). The affirmation must be provided to BUDC when the Bidder submits its application. The form of affirmation to be completed and submitted by the Bidder is included herein as Attachment A.

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

State Finance Law §139-k (5) requires Applicants to provide written certification that all information provided to BUDC with respect to State Finance Law §139-k is complete, true, and accurate. The certification must be provided to BUDC when Bidder submits its application. The form of certification to be completed and submitted by the Bidder is included herein as Attachment B.

Procurement Lobbying Restrictions

4. Bidder Disclosure of Prior Non-Responsibility Determinations

State Finance Law §139-k (2) obligates BUDC to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, each Bidder must disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. State Finance Law §139-j sets forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the Restricted Period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions). As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether a Bidder fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with the law, no procurement contract shall be awarded to any Bidder that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the procurement contract to the Bidder is necessary to protect public property or public health and safety, and that the Bidder is the only source capable of supplying the required article of procurement within the necessary timeframe. Attachment C entitled "Offerer Disclosure of Prior Non-Responsibility Determinations" must be completed by the Bidder and submitted to BUDC at the time of Bidder's submission of its application.

5. Contract Termination Provision

New York State Finance Law §139-k (5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing termination of the contract in the event that the certification provided by the Bidder that is awarded the contract is found to be intentionally false or intentionally incomplete. The following provision is hereby incorporated by reference and included in the contract that is awarded (if one is awarded) pursuant to this Request for Applications:

BUDC Termination Provision

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

Procurement Lobbying Restrictions

ATTACHMENT A

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

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

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

Procurement Lobbying Restrictions

ATTACHMENT B

6.0 **Offerer/Bidder Certification:**

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

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

Procurement Lobbying Restrictions

ATTACHMENT C

Offerer Disclosure of Prior Non-Responsibility Determinations

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

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

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

No Yes

If yes, please answer the next questions:

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

No Yes

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

No Yes

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

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

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

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

By: _____ Date: _____
Signature

Name: _____ Title: _____