

EANS #21-002

Title: Construction Management for Federal Stimulus Fund Supported HVAC and Window Repair

The New York State Education Department (NYSED) is implementing the Emergency Assistance to Non-Public Schools (EANS) program. Under the EANS program, we have received requests from non-public schools throughout New York State for the services outlined below. We are seeking proposals from qualified vendors that are interested and available to provide construction management services to scope, subcontract, oversee and manage, and ensure timely and efficient completion of all aspects of the projects for each labor force region.

Questions about this advertisement:

Questions regarding this advertisement must be submitted by email to EANSprocurement@nysed.gov no later than the close of business September 13, 2021. Answers will be posted with this advertisement by September 17, 2021. The following are the designated contacts for this procurement:

- Program Matters: Amanda Lolik, EANSprocurement@nysed.gov
- Fiscal Matters: Jessica Hartjen, EANSprocurement@nysed.gov
- Minority / Women-Owned Business Enterprises (M/WBE) matters: Brian Hackett, EANSprocurement@nysed.gov

Submission instructions:

The following documents must be submitted by email to EANSprocurement@nysed.gov and be received at NYSED no later than October 1, 2021, by 3:00 PM:

1. Technical Proposal
2. Cost Proposal
3. M/WBE Documents
4. Submission Documents

Please use the Cost Proposal, M/WBE Documents, and Submission Documents templates attached to this advertisement for your submission. In the subject line of the email transmitting your submission, please identify the region(s) for which you are applying and include the solicitation number, EANS #21-002.

We understand that this timing poses challenges due to the start of school year and religious holidays. With this in mind, we have attempted to make this a streamlined process.

Contract period:

The contracts resulting from this advertisement will be for a term anticipated to begin November 1, 2021, and to end September 30, 2023.

The services requested in this advertisement apply to the first round of EANS funding under the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, which requires work to be completed by September 2022. NYSED anticipates the contracts established in response to this advertisement will also be used to complete work under the second round of EANS funding included in the American Rescue Plan (ARP) Act, which must be completed by September 2023. The details associated with the second round of EANS funding, such as the number of schools to be served and estimates by region, are not available at this time.

Regions:

NYSED anticipates awarding one contract in each of New York State's economic/labor force regions, as illustrated here: <https://esd.ny.gov/regions>.

Bidders may apply for more than one region, but should submit a separate, complete proposal for each region. Please clearly identify the region(s) for which you are applying on the first page of your Technical Proposal.

Pricing:

Vendors will be paid for construction management services based on the hourly rates submitted in their Cost Proposals for the following titles:

- **Site Supervisor:** Performs on-site scoping of the work and leads walk-through visits with subcontractors
- **Estimator:** Performs cost estimation for scoped work
- **Mechanical Engineer** (if needed): Professional NYS licensed engineer for HVAC system design and/or consultation
- **Architect** (if needed): Professional NYS licensed architect for repair work design and consultation
- **Construction Manager:** Performs in-office coordination and scheduling oversight and/or on-site management of the construction work
- **Office/Administrative Staff:** Performs in-office support including but not limited to invoice and payment tracking, telephone and email correspondence with subcontractors and NYSED, and other administrative tasks as needed

NYSED understands that the same person or persons may perform the functional role of one or more titles above. To ensure fair evaluation of proposals, please provide the full hourly rate for each title listed. For cost comparison purposes, hourly rates will be weighted based on estimated percentages of time each title will spend on this project. The vendor will invoice and be paid based on actual service hours for each functional role, regardless of the title of the person or persons performing the role.

These rates must include all costs incurred by the vendor for performing the construction management services, including the costs of the following:

- Staffing (including any fringe benefits)
- Purchased services (e.g., non-employee consultants, subcontractors)
- Non-personal services (e.g., supplies and materials, etc.)
- Indirect costs

Vendors should be prepared to show how they arrived at the hourly rates should they be audited.

As described in further detail below, the cost for the repair and construction work at each non-public school will be established by the vendor, upon NYSED approval, based on a competitive bidding process (as applicable).

Each work order will be structured to include two separate maximum price caps:

1. Construction management based on actual billable hours of service. Please note that the maximum price for construction management services shall not exceed 7.5% of the cost for each school project.
2. Repair and construction work (provided by the vendor and/or subcontractors) based on time and materials

Please note that for all billing purposes, billable hours must be rounded to the nearest fifteen (15) minutes.

The work order may be modified through the change order process outlined in the contract. Payments will be contingent upon properly prepared invoices and acceptable performance by the vendor and any subcontractors, as determined by NYSED.

Staffing:

Only NYS licensed (as applicable) and qualified staff and subcontractors may perform the services required under these contracts.

The vendor must ensure that staff and subcontractors are respectful of the diverse religious and ethnic communities within the non-public school population of New York State.

Estimated numbers of schools and students to be served during the 2021-22 school year:

NYSED estimates that **approximately 250** schools, across all regions, will receive services under these contracts. Please see the regional breakdown of schools, student enrollment numbers, and funding amounts requested for ventilation improvement services attached (“EANS Facilities Services Requested by Region”). Vendor will be responsible for providing services to all schools indicated within their economic/labor force region (<https://esd.ny.gov/regions>).

Description of services:

NYSED will select vendors to provide project and construction management services that will fulfill its obligation to make improvements to ventilation systems, such as repairs to windows and/or Heating, Ventilation and Air Conditioning (HVAC) systems, in New York State non-public schools that have requested those services. For more information about the allowable services, please see question E-2 of the USDE EANS FAQ at the following link: <https://oese.ed.gov/files/2021/03/Final-EANS-FAQ-2.0-3.19.21.pdf>.

See attached table listing budget estimates for the work under the first round of EANS, by labor force region (“EANS Facilities Services Requested by Region”). The details, such as the number of schools to be served and budget estimates by region for the second round of EANS are not available at this time, although we expect the total funding to be used for repairs of Heating, Ventilation and Air Conditioning (HVAC) systems and/or windows will be greater.

The selected vendor(s) will be responsible for providing services, or contracting with providers, to enable non-public schools to reduce the risk of virus transmission and improve indoor air quality, including repair and upgrades to mechanical or natural ventilation systems (e.g. upgrade filtration to MERV 13 or better and rebalance fans to maintain ventilation rates; repair window sashes on operable windows for natural ventilation; repair relief air ventilators, etc.). The selected vendor in each region will be responsible for oversight and completion of all scoped and agreed upon work identified in each region.

The vendor will:

- be responsible for reaching out to all schools that requested facilities services through the EANS application process within the labor force region (see spreadsheet “EANS Facilities Services Requested by Region”)
- arrange a site visit to develop a clear project scope. Please note that some school buildings may require more than one type of service. This may include window work, HVAC work, or other ventilation repairs or improvements. Combined, this will comprise a “project.”
- develop estimates for the cost of services for each project
- obtain any necessary permits for construction work prior to the start date
- obtain a minimum of three (3) quotes from licensed and qualified subcontractors to perform the services needed to complete each project if subcontractors are deemed necessary. Where a preexisting contractual relationship exists between a school and a subcontractor, a quote must be solicited from that subcontractor. Additionally, preexisting warranties must be maintained (NYSED must approve the vendor to perform any repair and construction services themselves and the vendor must provide a price justification for the work order that is acceptable to NYSED.)
- select a qualified subcontractor (if not performing the repair and construction work themselves) that can provide all the services outlined, within the specified timeframe, and that submits a quote that is within 10% of the lowest cost.
- prepare a work order detailing the number of hours, job titles, and hourly rates (consistent with Cost Proposal) anticipated for each project performed by the vendor

and each subcontractor. The work order will be accompanied by a minimum of three quotes or price justification (if NYSED has approved the work to be performed by the vendor, rather than a subcontractor) to support the cost. NYSED will review and approve the work order prior to the subcontractor or vendor beginning any work.

- Work orders must specify the timeframe in which all work will be completed and must be agreed upon by school.
- It is important that the implementation timeline is created with the ability and needs of the specific school in mind. The vendor should ensure that each school has a firm understanding of the scope of work and all the tasks outlined. The school will agree, in writing, to the project scope, timeline, and any reasonable requests to ensure timely completion.
- Any changes to the project completion timeframe must be approved by both the school and NYSED.
- Upon suspicion of hazardous materials, including asbestos, polychlorinated biphenyl (PCB), or other toxic substances, the vendor must inform the school. Unless otherwise provided in the contract, the vendor and any subcontractors shall have no responsibility for the presence, handling, removal, or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, PCB or other toxic substances.
- Vendor will oversee all aspects of each project, including:
 - coordination and communication between school and subcontractor(s);
 - accurate record keeping and reporting (in a form and format to be determined by NYSED);
 - ensuring that work is performed and completed on schedule and on budget, and is satisfactory;
 - remitting payment to subcontractor as per vendor's agreement with subcontractor
 - Please note that project scope may exceed amount shown on "EANS Facilities Services Requested by Region" spreadsheet should schools wish to contribute additional funds to pursue a broader scope of services.
 - Project budgets shown on "EANS Facilities Services Requested by Region" spreadsheet are intended for proposal estimation and projection purposes, and do not necessarily include costs related to the construction management services.
- Upon notification of project completion, vendor will arrange for local jurisdiction inspections if required, and NYSED will arrange for commissioning (if applicable) of each project.
- Corrections must be completed at no additional cost to NYSED or to school for any deficiencies found by inspection or commissioning if applicable.
- Vendor will receive payment for each project deemed complete by NYSED and/or commissioning agent (if applicable). Vendor must submit cumulative monthly invoices to receive payment for projects completed in the preceding month (ex – July invoice for June completions).

- Vendor must supply digital copies of payment records or other documents and reports related to a project or projects to NYSED.

Payments to vendor will only be authorized for projects that are completed, inspected, and fully commissioned (if applicable), or otherwise deemed completed by NYSED.

Insurance and Bonds

Notwithstanding any terms, conditions, or provisions, in any other writing between the parties, the construction manager will agree to effectuate the naming of NYSED and the school as an additional insured on the construction manager's commercial general liability and umbrella and/or excess liability policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.

The policy naming NYSED and the school as additional insureds shall indemnify NYSED and the school for any applicable deductibles and self-insured retentions. (This does not suggest NYSED has any ownership over the school buildings. NYSED is the responsible State agency and will be contracting with the contractor to provide services to the school buildings.)

General terms regarding insurance:

- Contractor agrees and acknowledges that, because the contractor (and not NYSED or the school) is responsible for performance of the duties and obligations set forth in this contract for completion of the project, the contractor, through the use of insurance, intends to allocate all losses to such insurance to protect itself and NYSED and the school.
- Contractor is responsible for ensuring that each subcontractor obtains and maintains in the required amount each type of insurance policy required by this contract and that such insurance policy provides NYSED, the school, and construction manager with the coverage required by this contract.
- The construction manager acknowledges that failure to obtain and maintain such insurance throughout the duration of the contract constitutes a material breach of contract. The construction manager is to provide NYSED with a certificate of insurance for the construction manager and/or one or more subcontractors, as applicable, evidencing the above requirements have been met, prior to the commencement of work. The failure of NYSED to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by NYSED.

Required Insurance (in addition to Workers' Compensation and NYS Disability insurance):

- **Commercial General Liability Insurance:**

\$1,000,000 per occurrence/ \$2,000,000 aggregate.

- **Professional Errors and Omissions Insurance**

\$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of the Construction Manager performed under the contract for NYSED and the school. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.

- **Commercial Automobile Liability insurance**

The Commercial Automobile Liability insurance policy shall cover liability arising out of the use of any motor vehicle in connection with the Contract, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the laws of NYS to bear, license plates. The policy shall have a combined single limit for bodily injury and property damage of at least \$1,000,000. The limit may be provided through a combination of primary and umbrella and/or excess liability policies. If the Contract involves the removal of hazardous waste or otherwise transporting Hazardous Materials, pollution liability coverage for covered autos shall be provided by endorsement CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

- **Umbrella Insurance**

\$3,000,000 each occurrence and aggregate. Excess coverage shall be on a follow-form basis

Required Bonds:

The contractor shall provide the Performance Bond in an amount at least equal to 100% of the contract sum as security for the faithful performance of the contract. The contractor shall also provide the Payment Bond in an amount at least equal to 100% of the contract sum for the payment of all persons performing labor or providing materials in connection with the Work of the contract.

Any subcontractor receiving \$100,000 or more under this contract must also meet these Payment and Performance Bond requirements.

Technical proposal

Please clearly and comprehensively address the following, in this order, in your Technical Proposal. Do not provide any additional information that is not requested here:

- Describe, in detail, your plan to manage the project. Include in your narrative:

- the steps you will take to identify the need(s) at each school
- a base-level staffing plan to ensure appropriate project support and capacity to hire and place additional staff as needed
- a tentative annual calendar of major planning, deliverables, and meeting dates
- Provide evidence of readiness to work within the parameters outlined in this advertisement, including:
 - A description of prior experience in performing services of the type contemplated by this advertisement particularly within K-12 schools, public and non-public.
 - A description of their capacity to manage the scale and scope of the services required in the region(s) for which they are applying.
 - Level of skill/expertise/proof of appropriate licensure.

Criteria for evaluating bids

All eligible proposals received by the deadline will be reviewed using the same criteria. NYSED will review each proposal to determine responsiveness to requirements described in this advertisement. NYSED retains the right to determine whether any deviation from the requirements is substantial in nature and may reject in whole or in part any and all proposals, waive minor irregularities and conduct discussions with all responsible bidders.

Technical Criteria (70 Points)

Financial Criteria (30 Points)

The Financial Criteria will be scored based upon the weighted average hourly rate in the Cost Proposal, pursuant to a formula that awards the highest score of 30 points to the Cost Proposal that reflects the lowest cost. The remaining Cost Proposals will be awarded points based on a calculation that computes the relative difference of each proposal against the lowest cost submitted. The resulting percentage is then applied to the maximum point value of 30 points.

NYSED reserves the right to request best and final offers. In the event NYSED exercises this right, all responsive bidders will be asked to provide a best and final offer.

Method of award

The aggregate score of all the criteria listed will be calculated for each proposal received. The contracts issued pursuant to this advertisement will be awarded to the vendors whose aggregate technical and cost score are the highest among all the proposals rated within their respective regions. If NYSED exercises the right to request best and final offers, the contract must be issued to the vendor with the highest aggregate technical and financial score that results from the best and final offer.

If more than one proposal obtains the highest aggregate score, the contract will be awarded to the vendor in that group of highest aggregate scores whose budget component reflects the lowest overall cost.

Minority and Women-Owned Business Enterprise (M/WBE) Participation Goals Pursuant to Article 15-A of the New York State Executive Law:

For purposes of this procurement, NYS Education Department hereby establishes an overall goal of 30% of the total contract amount for M/WBE participation, 17% for Minority-Owned Business Enterprises (“MBE”) participation and 13% for Women-Owned Business Enterprises (“WBE”) participation based on the current availability of qualified MBEs and WBEs. All bidders must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. Minority and Women-Owned Business Enterprise (M/WBE) participation includes any and all services, materials or supplies purchased from New York State certified minority and women-owned firms. Utilization of certified Minority and Women-Owned firms will be applied toward the goals. Bidders can achieve compliance with NYSED’s Minority and Women-Owned Business Enterprise goals as described below.

Achieve Full Compliance with Participation Goals (Preferred)

Bidders should submit subcontracting/supplier forms that meet or exceed NYSED’s participation goals for this procurement. All subcontracting/supplier forms must be submitted with the bid proposal. In addition, bidders must complete and submit M/WBE 100: Utilization Plan, M/WBE 102: Notice of Intent to Participate and EEO 100: Staffing Plan. Instructions and copies of these forms are located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#).

The contact person on M/WBE matters is available throughout the application and procurement process to assist bidders in meeting the M/WBE goals. NYSED reserves the right to approve the addition or deletion of subcontractors or suppliers to enable bidders to comply with the M/WBE goals, provided such addition or deletion does not impact the technical proposal and/or increase the total cost of the bid proposal.

Request a Partial Waiver of Participation Goals

In order to request a partial waiver of the participation goals for this procurement, Bidders must provide documentation of their good faith efforts to obtain the use of certified M/WBE enterprises along with their bid proposal forms. The subcontracting forms must include the participation percentage(s) for which they seek approval. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a partial waiver (Form M/WBE 101) and document their Good Faith Efforts (Form M/WBE 105) at the same time as the bid is submitted. Bidders must also complete and submit M/WBE 100: Utilization Plan, M/WBE 102: Notice of Intent to Participate and EEO 100: Staffing Plan. The M/WBE

Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

Request a Complete Waiver of Participation Goals

In order to request a complete waiver of the participation goals for this procurement, Bidders must provide documentation of their Good Faith Efforts to obtain the use of certified M/WBE enterprises along with their bid proposal forms. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a complete waiver on Form M/WBE 101 and document their Good Faith Efforts (Form M/WBE 105) at the same time as they submit their bid. The M/WBE Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

Bidders must undertake a good faith effort to solicit NYS Certified M/WBE firms as subcontractors and/or suppliers in fulfillment of this procurement. Means of solicitation may include but are not limited to: advertisements in minority centered publications; solicitation of vendors found in the [NYS Directory of Certified Minority and Women-Owned Business Enterprises](#); and the solicitation of minority and women-oriented trade and labor organizations. Bidders will be required to certify and attest to their good faith efforts by completing NYSED's Certification of Good Faith Efforts (Form M/WBE 105). See the M/WBE Submission Documents for detailed examples of and required forms to document good faith efforts.

NYSED reserves the right to reject any bid for failure to document "good faith efforts" to comply with the stated M/WBE goals.

All payments to Minority and Women-Owned Business Enterprise subcontractor(s) must be reported to NYSED M/WBE Program Unit using M/WBE 103 Quarterly M/WBE Compliance Report. This report must be submitted on a quarterly basis and can be found at NYSED's [M/WBE Forms and Compliance Forms webpage](#).

Vendor Responsibility

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, NYSED must make an affirmative responsibility determination. The factors to be considered include legal authority to do business in New York State; integrity; capacity – both organizational and financial; and previous performance. Before an award of \$100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a [Vendor Responsibility Questionnaire](#). School districts, Charter Schools, BOCES, public colleges and universities, public libraries, and the Research Foundation for SUNY and CUNY are some of the exempt entities. A [complete list of exempt entities](#) can be viewed at the Office of the State Comptroller's website.

NYSED recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep

System, see the [VendRep System Instructions](#) or go directly to the [VendRep System on the Office of the State Comptroller's website](#).

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the [Office of the State Comptroller's Help Desk](#) at 866-370-4672 or 518-408-4672 or by email at ITServiceDesk@osc.ny.gov.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the [VendRep website](#) or may contact NYSED or the Office of the State Comptroller's Help Desk for a copy of the paper form.

Subcontractors:

For vendors using subcontractors, a Vendor Responsibility Questionnaire and a NYSED vendor responsibility review are required for a subcontractor where:

- the subcontractor is known at the time of the contract award;
- the subcontractor is not an entity that is exempt from reporting by OSC; and
- the subcontract will equal or exceed \$100,000 over the life of the contract.