



## **SUMMARY OF THE COMPETITIVE PROCUREMENT CONDUCTED BY FORT SCHUYLER MANAGEMENT CORPORATION FOR THE AWARDS UNDER THE REQUEST FOR PROPOSALS FOR A QUALIFIED DEVELOPER IN THE GREATER BUFFALO AREA**

### **I. Brief Synopsis of the CNSE Model**

The 21<sup>st</sup> century innovation-driven economic development model that Governor Andrew Cuomo (commonly known as the CNSE Model) put in place is to create innovation and commercialization hubs that are owned and managed by state entities, including ownership of facilities and equipment. This creative model enables the attraction and retention of major corporate partners, leading to billions in private investments and thousands of high paying high tech jobs, without the corporations receiving a single dime of state dollars. It also allows anchoring of companies in the state, since if they decide to get up and leave, they can't take any of the capital assets with them; and permits the state to diversify its investment and leverage it multiple times over by bringing in multiple corporate partners into the same hub. The success of this model is not only reflected in the \$40 billion in private investments and thousands of high tech jobs it has attracted to the state, but also in the fact that the Federal government is attempting to duplicate it with the National Network for Manufacturing Innovation (NNMI).

So, under the Governor's Innovation and Commercialization Hubs Paradigm, public-private partnerships involve SUNY campuses owning and managing the hubs and require facility construction, facility operation and oversight, research, development, commercialization, and economic development. Accordingly, the SUNY campus involved (in this case the Colleges of Nanoscale Science and Engineering, CNSE) is represented by two SUNY affiliated not-for-profit corporations. One corporation manages research, development, and commercialization on behalf of the campus (SUNY Research Foundation), and the other manages facility construction and operation (Fort Schuyler Management Corporation in the case of CNSE), to ensure full compliance with Federal and State laws, rules, and regulations.

This innovative and groundbreaking economic model is further cemented by Governor Andrew Cuomo's bold Start-Up NY program, which creates tax free zones in facilities owned and run by and on SUNY (and other universities) campuses to host new operations and new jobs from either existing small, medium size, and large New York companies, and/or attract new companies and corporations to New York. The companies would establish innovation, education, and commercialization partnerships with the SUNY campuses, thus leading to significant investments and job creation in New York State. More information on the Start-Up NY program can be found on its website at <http://startup.ny.gov/>.

### **II. SUNY RF and FSMC**

The SUNY Research Foundation (SUNY RF) is a SUNY affiliated 501-c3 (IRS designation) not-for-profit corporation that acts since 1977 as the exclusive innovation, technology transfer, and commercialization arm for all SUNY campuses, including the Colleges of Nanoscale Science and Engineering. The SUNY RF negotiates and manages research and development contracts on behalf of all campuses with Federal and state funding agencies, as well as corporate and



private partners. More information on the SUNY Research Foundation can be found on its website at <http://www.rfsuny.org/>.

Fort Schuyler Management Corporation is a not-for-profit SUNY 501-c3 (IRS designation) affiliated corporation that was established by SUNY acquires and manages properties on behalf of CNSE, as well as construct and operate facilities on those properties. Such entities are required by Federal and state rules, including IRS rules that prohibit hosting private corporations on state-owned (read CNSE directly owned) lands. More information on FSMC can be found on its website at <http://www.ftsmc.org/>.

### **III. Empire State Development Corporation as Funding and Compliance Agency**

Under this model, Empire State Development Corporation (ESDC) acts as the funding source and compliance agent on behalf of New York State in all funding and financing transactions. Once the state approves one of the public-private partnerships/programs described above, and the executive branch and legislative branch finalize a state budget that includes funding for it, ESDC solicits a funding application from the SUNY RF and/or FSMC. The application is reviewed by ESDC and is modified or amended at the request of ESDC, ESDC then prepares a draft Grant Disbursement Agreement (GDA) for review and approval by its board of directors that includes all required attachments, such as construction contracts and agreements with corporations. The ESDC board reviews the GDA in a public meeting and, if approved, ESDC moves to execute the GDA with the SUNY RF and/or FSMC. A public hearing is then scheduled by ESDC, as required by law, to solicit input and opinions from the public on the program. Any major input or reaction from the public is taken into consideration and addressed in a modified GDA. Once the process is complete, ESDC's role evolves into acting as compliance agent on behalf of the State of New York, with all expenditures being submitted as invoices to ESDC by SUNY RF or FSMC for review, approval, and disbursement of funds. Furthermore, ESDC requires quarterly or yearly reports on employment and investments targets as outlined in the GDA, and reserves the right to withhold funding if targets are not met on a pre-determined schedule. ESDC also typically assigns an ESDC agent to be located on the ground at the site of the partnership or program to monitor progress and achievements in real time. This approach ensures appropriate checks and balances and establishes transparency and accountability, with ESDC acting as the state compliance agent, and eliminates any conflicts of interest that could arise from ESDC serving the dual role of compliance agent and partner with the private sector. More information on ESDC can be found on its website at <http://www.empire.state.ny.us/>.

### **IV. Issuance of the Request for Proposals**

As outlined above, and in response to the expanding initiatives of the State University of New York Polytechnic Institute and its Colleges of Nanoscale Science and Engineering ("CNSE", with CNSE being formerly the College of Nanoscale Science and Engineering), on October 11, 2013, the Board of Directors of Fort Schuyler Management Corporation ("FSMC"), by unanimous vote, authorized FSMC, in conjunction with CNSE, to conduct a competitive process to procure developer services by issuing a request for proposals to establish a strategic research, technology outreach, business development, manufacturing, and education and workforce



training partnership with a qualified developer or developers in the Greater Buffalo Area. Pursuant to this Board authorization, on October 15, 2013, the President of FSMC issued a request for proposals (“RFP”) for a qualified developer in the Greater Buffalo Area.

In the RFP, FSMC set forth several requirements for bidding developers to satisfy, including, without limitation, the following: (1) a proven track record in successfully implementing large scale projects within the public-private partnership organizational context; (2) over 15 years of proven experience and successful track record in the construction and operation of mixed use facilities and buildings, including Class A office space, electronic classrooms and conference rooms, high technology laboratory space, and advanced cleanroom infrastructure in the Greater Buffalo Area; (3) location of headquarters and major operations in the Greater Buffalo Area, with extensive knowledge and demonstrated know how of the local real estate market and business and financial drivers in the Greater Buffalo Area; (4) proven ability and keen interest in partnering with FSMC and CNSE on strategic economic development initiatives; (5) recognized ability to successfully carry out acquisition, planning, design, construction, ownership, and operation of large and multi-use tech parks, with complex research, development, workforce training, and commercialization buildings and facilities; and (6) demonstrated readiness to comply at least 23% women and minority owned business enterprise participation.

FSMC established the following schedule in the RFP for completing the competitive procurement:

Legal Notice Announcement	October 15, 2013-October 19, 2013
Request for Proposal Document Issue/Available	October 15, 2013-October 25, 2013
Signed Confidentiality Agreement	October 15, 2013-October 25, 2013
Signed Confirmation to Attend the Project Conference	October 29, 2013
Project Conference Scheduling to Commence	November 1, 2013
Deadline for Submission of Written Questions	November 12, 2013
Response due by Owner to Written Questions	November 25, 2013
Letter of Interest and Developer Proposal Due Date	December 10, 2013

**V. Legal Notice Announcement**

In compliance with the terms of the RFP, FSMC caused a legal notice announcing the RFP to be published by The Buffalo News. The legal notice states that “FSMC and SUNY seek to develop strategic partnerships with a qualified local developer in the Greater Buffalo Area for potential research, technology outreach, business development, manufacturing, and education and training hubs.” The legal notice notified interested bidders that each interested bidder may obtain a confidential disclosure agreement by contacting FSMC and that, upon an interested bidder signing a confidential disclosure agreement, an RFP package would be sent to the interested bidder, with the RFP package being available from October 15, 2013 through October 25, 2013. The Buffalo News published the legal notice advertising the RFP in print format on October 15, 2013 and in widely accessible web format from October 15, 2013 through October 21, 2013.



**VI. RFP Packages Submission to Interested Developers Satisfying RFP Participation Qualifications**

A total of nine (9) developers expressed initial interest in participating in the project as set forth in the RFP. Two (2) of the developers (Delta Vista Group and The Krog Corporation), however, were denied further participation and were not provided with a copy of the confidential disclosure agreement (“CDA”) or the RFP due to the lateness of their expressed interest. One (1) developer (Lend Lease) did not submit the required CDA and was therefore denied further participation. The remaining six (6) developers were provided with the CDA and submitted signed CDAs to FSMC and in turn FSMC sent to these developers a copy of the RFP as follows:

<b>Developer</b>	<b>Date CDA Signed/Effective Date</b>	<b>Date RFP Sent</b>
Aquest Development Firm	Signed on October 18, 2013	October 18, 2013
L.P. Ciminelli, Inc.	Effective as of October 16, 2013	October 17, 2013
McGuire Development, LLC	Effective as of October 28, 2013	October 28, 2013
Mensch Capital Partners	Signed on November 4, 2013	November 5, 2013
TM Montante Development	Signed on October 25, 2013	October 25, 2013
Uniland Development	Signed on October 25, 2013	October 25, 2013

**VII. Project Conference Call with Interested Developers Satisfying RFP Participation Requirements**

In accordance with the RFP, interested developers that submitted a CDA in a timely fashion were required to confirm their interest in participation in the project conference call by October 29, 2013 and then participate in a project conference call. Mensch Capital Partners did not submit its confirmation of attendance of the project conference call in a timely manner and was denied further participation.

During the process of setting up the conference calls, a typographical error was discovered in the Developer Requirements section of the RFP. As a result, the following RFP Clarification with Reply Requested was issued by FSMC in writing to Aquest, LP Ciminelli, McGuire, TM Montante, and Uniland:

“Dear Prospective Bidder-

This is notification of a typographical error in the Developer Requirements section of the Strategic Research, Technology Outreach, Business Development, Manufacturing, And Education And Training Partnership With A Qualified Local Developer In The Greater Buffalo Area Request For Proposal (RFP) issued by the Fort Schuyler Management Corporation.

Section 2 A (a) on page six of the RFP document, recreated below, incorrectly indicates “Over 50 years of proven experience...”. The required amount of proven experience is fifteen (15) years.

(a) Over ~~50~~ 15 years of proven experience and successful track record in the construction and operation of mixed-use facilities and buildings, including Class A office space, electronic



classrooms and conference rooms, high tech laboratory space, and advanced cleanroom infrastructure in the Greater Buffalo Area, with emphasis on nanotechnology, medical, and green energy infrastructure and facilities.

Would you please reply to this email acknowledging your understanding of the clarification. Upon receipt of your acknowledgement, you will be contacted for the purpose of scheduling a project teleconference.”

In response to the RFP Clarification with Reply Requested, FSMC received receipt acknowledgments in writing from Aquest and MaQuire on November 1, 2013; from LP Ciminelli on November 2, 2014; and TM Montante on November 4, 2014. Uniland acknowledged receipt of the clarification during its teleconference with FSMC on November 15, 2013.

Mensch was the last entry and received the revised/corrected RFP document on November 1, 2013. Subsequently, five (5) developers participated in project conference calls as follows:

<b>Developer</b>	<b>Date of Project Conference Call</b>
Aquest Development Firm	November 13, 2014
L.P. Ciminelli, Inc.	November 15, 2013
McGuire Development, LLC	November 12, 2013
TM Montante Development	November 12, 2013
Uniland Development	November 15, 2013

### **VIII. Proposals Received by FSMC**

Two (2) of the developers (Aquest Development Firm and TM Montante Development) did not submit proposals for FSMC’s consideration. The remaining three (3) participating developers submitted proposals to FSMC as follows:

<b>Developer</b>	<b>Date Proposal Submitted</b>
L.P. Ciminelli, Inc.	December 10, 2013
McGuire Development, LLC	December 9, 2013
Uniland Development	December 10, 2013

### **IX. RFP Evaluation Committee**

As is standard operating procedure in all FSMC RFP processes, FSMC appointed an evaluation committee consisting of Chair of the Board of FSMC, FSMC Legal Counsel, President of FSMC, and CNSE Associate Vice President for Innovation Infrastructure and Resources, along with an observer, Joseph Schell (CNSE Director of Procurement), to evaluate the RFP proposals received by FSMC. The evaluation committee met to evaluate the qualifications of the three proposals received by FSMC and, after completing its evaluation of the proposals, determined, based on the qualifications and proposals of the developers, that L.P. Ciminelli, Inc. and McGuire Development, LLC best satisfied the RFP developer requirements. The evaluation committee further determined that L.P. Ciminelli Inc.’s greater experience with public-private partnerships, legal team presented in its proposal, existing employee resources, and construction bonding capacity better suited L.P. Ciminelli, Inc. for award of the development of the \$1.7 billion public-private partnership, which was announced in November of 2013 by Governor Cuomo, (“Buffalo High-Tech Manufacturing and Innovation Hub”) and that McGuire



Development LLC would be better suited for award of the development of the public-private partnership in downtown Buffalo to be leveraged by a \$55 million investment by New York State, which was announced in February 2014 by Governor Cuomo, (“Buffalo IT Innovation and

Commercialization Hub”). A matrix summarizing the factors contributing to the recommendation of the evaluation committee for L.P. Ciminelli, Inc. for the Buffalo High-Tech Manufacturing and Innovation Hub and for McGuire Development, LLC for the Buffalo IT Innovation and Commercialization Hub follows:

	<b>L. P. Ciminelli, Inc.</b>	<b>McGuire Development, LLC</b>
Public-Private Partnership Experience	Advantage	----
Public-Private Partnership Legal Team	Advantage	None included
Bonding Capacity	\$300M per project/ \$1B aggregate	\$50M
Volume of Construction	\$400M per year	\$400M over 10 years
No. of Employees	190	30

**X. FSMC Board Approval for RFP Awards**

Upon the recommendation of the RFP evaluation committee and FSMC management, on January 28, 2014, the Board of Directors of FSMC, by unanimous written consent, authorized the awarding to L.P. Ciminelli, Inc. and McGuire Development Company, LLC of one or more projects under the RFP and authorized, empowered and directed the FSMC President to approve and enter into documents and contracts in such form, substance and content, and upon such terms, as may be necessary or appropriate to implement and carry out the awarding to L.P. Ciminelli, Inc. and McGuire Development Company, LLC of one or more projects under the RFP.

**XI. Notifications to Successful RFP Bidders and RFP Awards**

On January 31, 2014, FSMC notified L.P. Ciminelli, Inc. and McGuire Development Company, LLC of FSMC’s intent to award a project under the RFP to each of them subject to FSMC negotiating and entering into an agreement with each of them. In accordance with the authorization, empowerment, and direction from the FSMC Board, the FSMC President entered into a Memorandum of Understanding, effective March 13, 2014, with L.P. Ciminelli, Inc. for L.P. Ciminelli, Inc. to develop and build facilities for the Buffalo High-Tech Manufacturing and Innovation Hub at 1339-1341 South Park Avenue in Buffalo, New York. In addition, and again in accordance with the authorization, empowerment, and direction from the FSMC Board, the FSMC President entered into a Memorandum of Understanding, effective March 20, 2014, with McGuire Development, LLC for McGuire Development, LLC to identify and evaluate potential locations in the Greater Buffalo Area for the Buffalo IT Innovation and Commercialization Hub facilities and, after identification and selection of a location, to develop, design, and fit-up for the Buffalo IT Innovation and Commercialization Hub facilities. On March 27, 2014, Governor Cuomo announced the award by FSMC of the project for the development and construction of



facilities for the Buffalo High-Tech Manufacturing and Innovation Hub to L.P. Ciminelli, Inc. and of the project for the development and construction of facilities for the Buffalo IT Innovation and Commercialization Hub to McGuire Development Company, LLC.

## **XII. Post Award Project Updates**

Since the award of the Buffalo IT Innovation and Commercialization Hub development project to McGuire Development, LLC, McGuire Development, LLC, in consultation with FSMC, identified and evaluated options for the location of the Buffalo IT Innovation and Commercialization Hub facilities. After evaluation, as announced by Governor Cuomo on June 4, 2014, FSMC has selected Key Center to house the Buffalo IT Innovation and Commercialization Hub, and FSMC is currently working with McGuire Development, LLC to reach mutually acceptable terms with the owner of Key Center for FSMC to locate the Buffalo IT Innovation and Commercialization Hub at Key Center.

With regard to the Buffalo High-Tech Manufacturing and Innovation Hub, on September 23, 2014, Governor Cuomo announced that CNSE's initiatives for the Buffalo High-Tech Manufacturing and Innovation Hub have greatly expanded to require a 1 million square foot facility for the manufacture of solar panels. FSMC is currently working with L.P. Ciminelli, Inc. on a comprehensive agreement for terms related to L.P. Ciminelli, Inc. completing the site work, design and construction for the expanded facilities.