

A Request for Qualifications and Concepts

For

The Development/Operation of Restaurant and Entertainment Establishments

And/or

Food and Beverage Provider/Caterer for New Niagara Falls Convention/Conference Center

Solicitation Issue Date: Monday, October 28, 2002

Information Session Date: Thursday, November 7, 2002

Response Due Date: Tuesday, December 3, 2002

I. THE OPPORTUNITY

A. Introduction

Pursuant to this Request for Qualifications and Concepts (this “RFQ” or “Request”), USA Niagara Development Corporation (“USA Niagara”) solicits responses from qualified candidates to establish restaurant, entertainment, food and beverage enterprise(s) in a portion of the Falls Street Faire that turns outwards toward the Old Falls Street pedestrian mall, and/or provide food and beverage services for the convention center. USA Niagara and its partners will consider all operating scenarios that best meet the objective of redevelopment of downtown Niagara Falls into a vibrant urban environment and complement the creation of a first class convention facility.

USA Niagara, a subsidiary of Empire State Development Corporation (“ESDC”), is dedicated to the support and promotion of economic development initiatives in Niagara Falls by leveraging private investment and encouraging growth and renewal of the tourism industry in the City of Niagara Falls (the “City”). USA Niagara’s Development Strategy will be implemented through a process that coordinates the commitments of the State of New York (the “State”), ESDC, the City, and other public and private sector interests with development potential. The approach meets redevelopment challenges one-by-one based on market and financial analysis to effect realistic, tangible, and meaningful results. These results will include the reactivation of high-profile empty buildings, development of important cultural and heritage attractions, physical improvements to downtown, establishment of a mix of new commercial, residential, entertainment, and lodging opportunities designed to re-establish Niagara Falls as a hub of regional tourism.

The current Niagara Falls Convention Center is considered obsolete by today’s standards for conventions, conferences, and meetings. As a result of the introduction of casino gaming to downtown Niagara Falls, the existing facility will no longer be available to host events as it has been selected as the site for the initial casino (the “Casino”). As part of our overall redevelopment efforts, USA

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Niagara recognized an opportunity to replace and enhance Niagara Falls' convention and conference offering. A higher quality offering will increase penetration of the high-impact meeting-related demand to affect greater overall economic impact on the hospitality industry, downtown private sector businesses and the Niagara area economy.

The Falls Street Faire site is located in the heart of the urban core and is in close proximity with existing hotels, underutilized parking, restaurants, and other attractions and its current configuration allows for smaller scale private development opportunities on the exterior portion of the building facing the pedestrian mall. Activation of the pedestrian mall with dynamic first floor uses, such as various types of restaurant, entertainment and smaller scale food and beverage venues, will greatly enhance the transition areas between the Falls and the casino and increase the flow of pedestrian traffic. Furthermore, this type of development will benefit from, and encourage repeat visitation by, tourists and convention and meeting attendees. Therefore, USA Niagara seeks to both spur downtown redevelopment and to complement the convention center project by issuing this solicitation for development concepts from qualified respondents for entertainment enterprises, restaurants, coffee shops, delicatessens, etc., and/or provide food and beverage services for the convention center

B. Project Plan

USA Niagara's Board of Director's have approved a General Project Plan for the acquisition and reconstruction of the site known as The Falls Street Faire (the "Site") into a new state-of-the-art convention and conference center. The Site is within a half-block of the current convention headquarters hotel and numerous other hotels, providing almost 2,000 hotel rooms. Utilization of the pedestrian mall provides an attractive pre-function and social space, enhancing the operation and appeal of the redeveloped Site as a convention center (the "Center"). The Center's location provides access to hotels, restaurants, retail, parking, tourist attractions, and entertainment, all within a 10-minute walk (Exhibit A).

The Site's original structure and footprint lends itself to a convention/conference center hall with 113,000 square feet of space. Preliminary conceptual design includes a 17,000 square foot ballroom, 31,000 square foot exhibit hall that can be combined with the ballroom for larger events, 25,000 square feet of dedicated meeting space, 5,000 square feet of pre-function space, a full service kitchen, and 10,600 square feet of restaurant/space facing the pedestrian mall (Exhibit B).

Among USA Niagara objectives for development of the Site is to:

- Spur job creation and create opportunities for small local entrepreneurs.
- Create active first floor uses.
- Create a high quality convention and conference facility, which will support the hospitality industry.

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The configuration of the existing building allows for the creation of food/beverage and entertainment establishments in the exterior portion of the building opening on to the pedestrian mall. It is expected that as part of the redevelopment, a high-quality restaurant(s) be created with outdoor dining within the 10,600 square feet of space referenced earlier. This type of development within the convention complex would create active first floor uses in a key pedestrian corridor, provide additional entertainment for all visitors to downtown Niagara Falls, and create opportunities for operating efficiencies for the Center. The interior floor plan is preliminary and will be refined over the next two months.

USA Niagara strongly recommends that all potential respondents review the Development Strategy report before responding to this RFQ. The report, and all current and future additional information of interest to potential respondents, is available on our website www.usaniagara.com.

II. THE INVITATION

USA Niagara will evaluate submissions to this RFQ and select qualified respondents to be included in a “short list” of respondents invited to participate in a second phase, Request for Proposals (“RFP”) solicitation. Responses should indicate an understanding of the project and present all the information requested in the same format as “Section II” is presented, clearly divided by the lettered sections, A- D.

The short list of respondents will have the opportunity to submit proposals and make presentations, and may modify their initial concepts in response to additional information and/or different requirements contained in the subsequent RFP. All final proposals will require a substantial amount of detailed information, including the proposed business plan, staffing schedule and preliminary design layout and renderings.

A. Requirements

This request for information is intended to be simple and straightforward, not overly time consuming and complicated. The primary purpose of respondent’s submissions is to illustrate your organization’s qualifications and initial vision for your proposed establishments(s). As stated previously, at this stage USA Niagara will consider all development concepts, including one or many scenarios, of any scope and size.

Responses to this initial request will be evaluated based on overall capability of respondent and/or partner(s) and, in whole or in part:

1. Qualification and interest in establishment of restaurant, nightclub, coffee shop, delicatessen and/or other entertainment venue(s) for the exterior portion of the Fall Street Faire building.

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2. Qualification and interest in acting as a designated food service provider for the new Niagara Falls convention center.
3. The impact of responses to #1 and #2 above to facilitate the reactivation of the Old Falls Street corridor and contribute to the creation of an environment complementary to a premier convention center.
4. In addition to, or independent of, concepts for the Falls Street Faire site, interest in establishing similar enterprise(s) elsewhere in the urban core, based on market research and available space. This information will allow USA Niagara to assist in further downtown revitalization through potential public/private partnerships.

B. Organization

1. Provide the following information: full legal company name, organization structure (e.g., corporation, partnership, joint venture) of respondent, and complete contact information including mailing address, phone and fax numbers, and email address.
2. Briefly describe the offeror's organization and management team as it relates to the management operations and marketing of the Center. The respondent should indicate if the company has been a party in any legal suit or action in the last five years. If so, please explain.

C. Experience and References

1. Existing food/beverage and entertainment venues, also detail any catering operations.
2. Describe involvement in any facilities closed within last 5 years.
3. For each facility operated during the last five years, provide square footages, number of seats, and if appropriate, location, average cover, menu, etc.
4. Include proposed square footage and related usage. Note: the amount of space delineated will not be a criteria in this first phase evaluation, as one or many different establishments will be considered.
5. Comment on possibility of utilizing shared kitchen facilities/components for multiple operations/users.
6. Preferred lease structure- general terms such as length, proposed risk-sharing mechanisms etc.

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7. Give at least three operational and financial references, including current contact names and numbers.

D. Certification

The respondent shall include with its submission a duly executed Certification in the form of Exhibit C annexed hereto, without modifications or supplement, sworn before a notary public.

III. Time and Place of Submission

Respondents are required to submit one original and eight (8) copies of the response to this RFQ. Responses must be received prior to 4:00 P.M. local time on December 3, 2002. At the discretion of USA Niagara, requests for deadline extensions will be considered prior to the deadline and, if granted, announced on our website www.usaniagara.com. Interviews may be scheduled on or around December 16 & 17, 2002.

Direct all questions regarding the preparation of responses in writing to:

Mr. Geoff Graham, Vice President
Hunter Interests Inc.
121 Main Street
Annapolis, MD 21401
410-269-0033
410-280-9163 (fax)
Email: hunter@toad.net

Deliver responses to:

Mr. Michael Wilton, President
USA Niagara Development Corporation
345 Third Street, Suite 505
Niagara Falls, NY 14303
716-284-2556

USA Niagara reserves the right to reject any and all responses and to waive any informalities or irregularities in procedure. As stated previously, interviews will be conducted for candidates selected for further consideration in this solicitation process.

IV. Additional Information

Additional information may be made available from time to time on our website at www.usaniagara.com. Any questions or requests for additional information or documents should be directed to USA Niagara. All substantive questions and document requests must be submitted to USA Niagara in writing; however, telephone inquiries are acceptable at the discretion of the president on non-

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substantive matters. Additional information may become available and, along with the responses to all requests for deadline extensions, substantive questions and document requests, may be made available on our website at any point during this process.

V. Information Session

An Information Session will be held from 1:00pm – 2:15pm on Thursday, November 7, 2002, with Geoff Graham, Vice President, Hunter Interests, Inc. Please RSVP by November 4th to reserve a seat at the Session by contacting Mr. Jim Comerford at 716-284-2556 or jcomerford@empire.state.ny.us. Location of the Session will be based on anticipated attendance and will be confirmed by Mr. Comerford as of the 5th. Responses to all substantive questions and document requests received before October 29th will be addressed at the Session and will be posted on our website afterwards.

VI. General Terms and Conditions

In addition to the terms and conditions stated elsewhere in this Request, it is subject to the terms and conditions set forth in Exhibit D hereto.

ATTACHMENTS:

- Exhibit A – Falls Street Faire Site Study
- Exhibit B – Floor Plan & Renderings
- Exhibit C – Certification
- Exhibit D – General Terms and Conditions

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EXHIBIT C **CERTIFICATION**

The undersigned: recognizes that all information and material provided all information and material submitted by the undersigned respondent in connection with its response and the Request for Qualifications are submitted for the express purpose of inducing USA Niagara Development Corporation (“USA Niagara”), a subsidiary of New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESD”), a corporate governmental agency of the State of New York (the “State”), constituting a political subdivision and public benefit corporation, to award a contract to the undersigned; acknowledges that each of USA Niagara, the State and the State’s agencies and instrumentalities may, each in its sole and absolute discretion, by any means which it may choose, determine the truth and accuracy of all statements made therein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law §210.40 or a misdemeanor under Penal Law §210.35 or §210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. §1001; and states that the information submitted is true, accurate and complete.

By submission of this response, the respondent and each person signing on behalf of the respondent certifies, and in the case of a joint response each party thereto certifies as to his or her own organization under penalty of perjury, that to the best of his or her knowledge and belief:

(1) The prices, amounts and material in this response have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices, amounts and materials with any other respondent or with any competitor;

(2) Unless otherwise required by law, the prices, amounts and material that have been quoted in this response have not been knowingly disclosed by the respondent and will not knowingly be disclosed by the respondent prior to award, directly or indirectly, to any other respondent or to any competitor, and

(3) No attempt has been made or will be made by the respondent to induce any other person, partnership or corporation to submit or not to submit a response for the purpose of restricting competition.

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The respondent hereby authorizes USA Niagara, ESD, the State and their agents and instrumentalities to contact the respondent's bank(s) and credit references and any other persons identified in its submission, including without limiting the foregoing, all persons and entities identified in its response and any financial information, in connection with the response, and any and all other persons identified in any investigation conducted by or on behalf of USA Niagara, ESD or the State, and obtain release of pertinent financial and other information, as well as to obtain verification of information provided by or on behalf of the respondent.

Name of Respondent

Signature of Officer

Title

Sworn to before me this
_____ day of _____, 2002.

Notary Public

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EXHIBIT D GENERAL TERMS AND CONDITIONS

In addition to those terms and conditions stated elsewhere, this Request for Qualifications and Concepts (“RFQ or Request”) is subject to the following:

Neither the State, ESD nor USA Niagara make any representations or warranties whatsoever with respect to this Request or the real property and improvements known as the Falls Street Faire (the “Facility”) including, without limiting the foregoing, representations or warranties as to: the accuracy or completeness of any information or assumptions contained in or provided in connection with this Request or otherwise furnished to respondents; the use or development, or potential use or development, of the Facility or any portion thereof; the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Facility and for the adjacent properties; and the suitability of the Facility for any specific uses or development.

Respondents shall not rely upon any statement or information given to respondents by the State, ESD or USA Niagara including, without limiting the foregoing, any information contained in this Request or made available pursuant to this Request or otherwise. Each respondent shall make its own analysis and evaluation of the Facility. Each respondent shall obtain its own independent legal, accounting, engineering and technical advice on all matters relating to the Facility, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of the State, ESD or USA Niagara and its advisors.

In the event that the selected respondent does not enter into any agreement for the Facility, USA Niagara may, in its sole discretion, invite any of the other respondents and others to participate in a further competitive process to determine a new selected respondent.

USA Niagara will not pay for or refund any costs and expenses incurred by any respondent in responding to this Request or by any preferred respondent following selection or designation.

All determinations as to the completeness or compliance of any response or as to the eligibility, qualification or capability of any respondent will be within the sole and absolute discretion of USA Niagara.

Selection or designation of any respondent or a response pursuant to this Request will not create any rights for the respondent including, without limitation, rights of enforcement, equity or reimbursement. USA Niagara shall have no obligation or liability whatsoever to any person or entity whose response is selected or designated as a result of this Request unless and until an Agreement shall have been fully executed and delivered by all parties thereto and all consents and approvals necessary for USA Niagara’s entry into such agreement have been

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obtained, and then all such obligations and liabilities shall be solely in accordance with the terms and conditions of such Agreement.

A respondent may be rejected if USA Niagara determines, in the exercise of its sole and absolute discretion, that such respondent, any respondent partner, or member of a respondent team or any principal, partner, officer, director, affiliated person, or principal shareholder or member of the respondent, of any respondent partner, or of any member of a respondent team, has been convicted of, or pled guilty or nolo contendere to, a felony or crime of moral turpitude, is an “organized crime figure,” under indictment or criminal investigation, or is in arrears or in default on any debt, contract, or obligation to or with USA Niagara, ESD, the State, or any of their respective affiliates, subsidiaries, agencies, departments or instrumentalities. Each respondent, respondent partner, and member of a respondent team and any principal, partner officer director, affiliated person, or principal shareholder of the selected respondent, respondent partner, or member of the respondent team may be required to complete a background questionnaire with respect to the foregoing, or other matters, and may be subject to investigation by USA Niagara, ESD and the State.

USA Niagara is under no legal obligation to obtain or enter into any agreement for the Facility through a competitive bid process. This Request does not constitute an offer of any nature and does not obligate USA Niagara to undertake any action or to proceed with the project.

USA Niagara will review all responses for completeness and compliance with the terms and conditions of this Request, and may request from any and all of the respondents, at any time during the selection process, additional information, material, clarification, confirmation or modification of any submitted response. USA Niagara may also, but is not obligated to, make requests for additional material or for clarification or modification of any submitted response which is incomplete or non-conforming as submitted. Submission of a response shall constitute the respondent’s permission to USA Niagara to make such inquiries concerning the respondent and members of the development team as USA Niagara, in its sole discretion, deems useful or appropriate including, without limitation, authorization to contact the respondent’s bank(s) and credit references, and any other persons identified in the response and to obtain release of pertinent financial and other information. Except at the request or by the consent of USA Niagara in its sole discretion, no respondent will be entitled to change its response once submitted.

USA Niagara may at any time exclude those responses which, in the sole discretion of USA Niagara, fail to demonstrate the necessary qualifications or which fail to comply with the terms and conditions of this Request.

USA Niagara reserves the right, in its sole discretion, to reject at any time any or all responses; to withdraw the request without notice; to negotiate with one or more respondents submitting responses and/or enter into agreements with respect to the Facility (including to parties other than those responding to this request) on

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terms other than those set forth herein. USA Niagara reserves the right to waive compliance with and/or change any of the terms of this request and to waive any informalities or irregularities in the request process. Under no circumstances will USA Niagara pay or be liable for any costs incurred by a respondent in responding to this request or in connection with the negotiation of any agreement.

No brokerage fees, finders' fees, commissions or other compensation will be payable by USA Niagara in connection with the selection of any respondent or the negotiation and closing of any agreement. Submission of a response by a respondent in response to this request will constitute an undertaking by the respondent to hold harmless and indemnify USA Niagara from and against any and all expenses, damage or liability (including, without limitation, attorney's fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such respondent's response to this request, selection or non-selection hereunder or negotiation and execution (or non-execution) of any agreement.

Public access to material submitted by respondents in response to this request shall be governed by the relevant provisions of the Freedom of Information Law, which constitutes Article 6 of the New York State Public Officers Law ("FOIL"), and regulations adopted pursuant thereto. If any respondent submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure. Notwithstanding the foregoing, neither the State, ESD nor USA Niagara shall be liable if the State, ESD or USA Niagara releases information pursuant to FOIL which the respondent believes to be a trade secret or detrimental to its business.

In the event that USA Niagara becomes aware of any material misrepresentation in the information supplied by a respondent, USA Niagara shall have the right to reject at any time the response of the respondent, to refuse to negotiate or continue negotiations with the respondent and to take any other action, including retaining any deposit made by the respondent, as shall be deemed appropriate by USA Niagara, in its sole discretion.

It is the policy of the State, ESD and USA Niagara to comply with all federal, State and local laws, policies, orders, rules and regulations that prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESD's and/or its subsidiaries participation in projects or initiatives, and/or the use of their funds. ESD's non-discrimination and affirmative action policies will apply to this initiative. M/WBEs are encouraged to respond.

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The selection of a respondent will create no legal or equitable rights in favor of the selected respondent, including rights of enforcement or reimbursement. A respondent's response for a site is not assignable.

By submitting a response for this Request, the respondent agrees to be bound by all the terms and conditions of this Request.