



**ERIE CANAL HARBOR DEVELOPMENT CORPORATION**

at the  
University of Buffalo - Center of Excellence in Bioinformatics & Life Sciences  
701 Ellicott Street - Conference Room B2-209  
Buffalo, New York 14203

**Meeting of the Directors**

Monday  
April 17, 2023 – 10:30 AM

AGENDA

CORPORATE ACTION

1. ECHDC Revised Procurement Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

FOR CONSIDERATION

2. Canalside Land Use Improvement Project – Real Property Transaction - Authorization to Acquire Real Property from the City of Buffalo; Authorization to Dispose of Real Property to the City of Buffalo; and Authorization to Take Related Actions
3. North Aud Block – Design Approval of Canalside Gateway Building Architectural Design; and Authorization to Takes Related Actions
4. Canalside Gateway Building Project - Authorization to Enter into a Contract for General Construction Services; and Authorization to Take Related Actions
5. North Aud Block Development Project — Preferred Developer — Determination of Responsibility with Respect to the proposed North Aud Block Preferred Developer; Authorization to Designate a Preferred Developer to Undertake the North Aud Block Development Project; and Authorization to Take All Related Actions
6. Erie Canal Bicentennial at Canalside - Authorization to Designate a Premiere Museum Partner for the Erie Canal Bicentennial at Canalside; Authorization to Enter into a Contract for Museum Support Services; and Authorization to Take Related Actions
7. Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 2 - Authorization to Enter into a Contract Amendment with Fisher Associates, P.E., L.S., L.A., D.P.C. for Architectural and Engineering Services; and Authorization to Take Related Actions

# Item 1



FOR CONSIDERATION

April 17, 2023

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: ECHDC Procurement Guidelines

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

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I. Background

At its June 6, 2022 meeting, the Erie Canal Harbor Development Corporation (“ECHDC” or “the Corporation”) Directors adopted updated and revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the “2021 Guidelines”).

The Guidelines are designed to govern procurements by Empire State Development (“ESD”) and its subsidiaries such as ECHDC. There have been no substantive changes to relevant laws and regulations in the past two years.

II. Procurement Contracts Guidelines Summary

On March 23, 2023, the ESD Board of Directors adopted the proposed 2023 Guidelines which set forth the policies and procedures to be followed by ESD and its subsidiaries, including ECHDC, when seeking to contract for goods or services. It is required that each ESD subsidiary approve its own Procurement Guidelines in terms virtually identical to the proposed 2022 Guidelines, with any departure therefrom fully explained by the subsidiary Board. Accordingly, the ECHDC Directors are asked to approve the attached proposed 2023 Guidelines.

It should be noted that these Guidelines do not have the force of law and are intended as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The proposed 2023 Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by the Corporation must be competitive, except where State law provides for non-competitive sourcing (e.g., goods purchased from approved non-profit agencies for the blind, and procurements from the Office of General Services Centralized Contracts List). Based on the expected cost of procured goods and/or services, procurement contracts must be obtained after advertisement in the NYS Contract Reporter, except in limited instances where an exemption is obtained, generally for sole or single source procurements when only one vendor offers the

desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process. The proposed 2023 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the Corporation's Bid Opening Guidelines and the compilation of a Procurements Record for every covered procurement contract.

The proposed 2023 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all state agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

The proposed 2023 Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements.

Sources of help to users and information are included as clickable links, and virtually all required forms and ESD policy and procedure documents also can be accessed from within the document by hyperlinks. These links appear in blue font in the hard copy of the proposed 2023 Guidelines presented to the Directors for approval.

### III. Environmental Review

ESD staff has determined that approval of the proposed 2023 Guidelines does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

### IV. Requested Action

The Directors are requested to adopt the proposed 2023 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts.

### V. Recommendation

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

### Attachments

Resolution

Proposed 2023 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

April 17, 2023

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – ECHDC Procurements Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (“Materials”), the proposed 2023 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts (“Guidelines”), a copy of which is attached to the Materials, be and hereby is approved and adopted as of the date hereof; and the President or her designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION

D/B/A EMPIRE STATE DEVELOPMENT

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

Effective April 1, 2023



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

Effective April 1, 2023

**1. Overview and Requirements**

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

These Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the "SPC Guidelines"). The SPC Guidelines apply to all State agencies and thus provide useful guidance for procurement by ESD (which is not a State agency as that term is defined in the SPC Guidelines). The SPC Guidelines cover some issues and procedures rarely encountered by ESD but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained. View the [SPC Guidelines](#).

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

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

**1.1. Contracts covered, and not covered, by the Guidelines**

Pursuant to PAL § 2879 (2), "**Procurement Contracts**" are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more. Contracts which are intended to earn money or other assets or benefits to ESD (often referred to as "**revenue contracts**") are also considered Procurement Contracts for the purposes of these Guidelines.

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

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

**Loans and grants** made by ESD in furtherance of its economic development mission are not Procurement Contracts, but may be subject to certain provisions of these Guidelines, including Office of the State Comptroller ("OSC") review and approval for grants over \$1 million (see p. 23, Section 10.5).

A Contract or Memorandum of Understanding ("MOU") with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement, as well as OSC approval for binding agreements) may apply to MOUs.

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

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

## **1.2. Types of Procurement Contracts**

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

Procurements of personal services include but are not limited to legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, temporary employees,

planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of ESD.

Reasons for procuring personal services include:

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

Term Contracts (sometimes referred to as "open retainer" contracts) are also included in and covered by these Guidelines. These contracts may be used when ESD anticipates using a vendor or vendors multiple times over a given period of time. In such cases, a maximum contract period must be specified when the contract is entered into. In all other respects, these Guidelines apply.

### **1.3. General Procurement Principles**

ESD's procurement process is designed to:

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

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

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

## 2. Procurement: Overview and Requirements

### 2.1. The Procurement Process Guide

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

- If ESD's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.
- If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.
- If ESD's needs cannot be met by the above options, you may elect to do an informal solicitation, in the following order: a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business (see section 2.6), a mini-bid off a pre-qualified list (see section 2.8) or a mini-bid to a minimum of three vendors equipped to provide services. One of the vendors should be an MWBE/SDVOB whenever practicable (see section 6) Contact the Procurement Unit for further assistance if needed.
- If this is an emergency situation or only one vendor can meet the needs required for service, the initiating department head must justify the need to Single or Sole Source this request in the justification memo and with the us

#### II. Purchases of \$50,000 or greater

- If ESD's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.
- If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.
- If ESD's needs cannot be met by the above options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business **up to \$500,000**. See Section 2.6.
- If ESD's needs cannot be met by the above options, you may elect to do a mini bid off of a prequalified list. You must solicit to a minimum of three vendors. One vendor should be an MWBE/SDVOB whenever practicable. See section 2.8.
- If ESD's needs cannot be met by the above options, use a Request for Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI), and **advertise in the Contract Reporter** if this is not an emergency situation and ESD's needs can be met by more than one vendor. See Section 4.

- In an emergency situation or if only one vendor can meet the needs required, obtain a Contract Reporter Exemption using a Single Source or Sole Source exemption as appropriate. See Section 3.

## **2.2. NYS Preferred Sources**

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

## **2.3. OGS Centralized Contracts**

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

## **2.4. Commodities Contracts**

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

## **2.5. Service Contracts**

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

## **2.6. Discretionary Purchases**

Pursuant to PAL § 2879(3)(b)(i) and State Finance Law §163(6), ESD may purchase services or commodities from small business concerns, from those certified pursuant to Article 15-A of the Executive Law (MWBEs), from those certified pursuant to Article 17-B of the Executive Law (SDVOBs), or commodities or technology products that are recycled or remanufactured, in an

amount up to \$500,000, without a "formal competitive process." In such a case, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits.

Staff should assess whether a formal competitive process, or one that is less formal but still competitive, may best meet ESD's needs. The award of a discretionary purchase contract should be published in the Contract Reporter.

As with any other procurement, for discretionary purchases the initiator must:

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

## **2.7. Piggyback Contracts**

ESD may find it efficient to establish a contract based on another governmental entity's contract. This is known as "piggybacking" and may be used in accordance with the criteria established by OGS in the Contract Piggybacking Guidelines under State Finance Law § 163(10)(e), available at [https://ogs.ny.gov/procurement/piggybacking-using-other-existing-contracts-0#:text=Guide for Piggybacking in NYS New York State, of the State Comptroller and under appropriate circumstances](https://ogs.ny.gov/procurement/piggybacking-using-other-existing-contracts-0#:text=Guide%20for%20Piggybacking%20in%20NYS%20New%20York%20State,%20of%20the%20State%20Comptroller%20and%20under%20appropriate%20circumstances). Note that a piggyback procurement requires approval by the OGS Procurement Services Group — this can be difficult and time-consuming to accomplish, as the OGS staff are not very familiar with public authority procurement policies and practices. For example, if the agency you wish to piggyback on is a State agency, it will have different contractual terms than those used by ESD. This may lead to delay, if OGS decides to seek approval of the proposed ESD contract terms from the Attorney General. Piggybacking is better accomplished when you wish to use a contract established by another public authority (rather than a State Agency).

## **2.8. Pre-Qualified Lists**

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

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

Also, ESD staff will have the option of adding additional vendors to Prequalified Lists for a variety of reasons including but not limited to increasing the number of prequalified vendors to better serve ESD's needs.

A list of all current ESD Pre-Qualified Lists will be made available to ESD Staff via ESD's Intranet. A link to exact location will be sent via Broadcast messages to all ESD staff.

Adoption of the Pre-Qualified Lists by ESD subsidiaries are now covered under ESD's board approval. The subsidiaries no longer have to hold a special session to approve board materials.

## **2.9. GSA Contracts**

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

Please see below link to GSA Multiple Award Schedule program.  
<https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-results/>

## **3. Contract Reporter Exemptions**

### **3.1. Reasons for Exemptions**

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption. A Contract Reporter exemption may be granted by the Officer(s) specified in Attachment A to these Guidelines, only if any of the following circumstances can be demonstrated:

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

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



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

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

**NOTE:** Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract awarded in the amount of \$50,000 or more should be published in the Contract Reporter (Economic Development Law, §143(4)). This publication requirement does not apply to contract amendments.

### **3.2. Authorization for Exemptions**

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

The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances. The Contract Reporter Exemption form can be found [http://intranet.empire.internal/Finance/2018/ContractReporterExemptionRequestForm\\_Nov.2018.docx](http://intranet.empire.internal/Finance/2018/ContractReporterExemptionRequestForm_Nov.2018.docx). If the proposed contract amount is over \$250,000 or is a personal services contract that will last more than one year, the exemption authorization should be obtained before ESD Board or President approval. If the proposed amount is \$250,000 or less, and the term of the contract is less than one year, the exemption authorization should be obtained from the Officer(s) specified in Attachment A to these Guidelines, prior to contract execution and the commencement of any services or delivery of any goods.

Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139k (Lobbying Laws) and State Tax Law § 5-a must still be satisfied (see Section 8.1, p.12). Where appropriate, a statement from the staff initiator that the price obtained for the goods or service is compatible with market pricing must be presented with the exemption request.

At the time ESD enters into a contract with a single or sole source provider for an amount in \$50,000 or more, ESD should submit an announcement of the contract for publication in the NYS Contract Reporter and must identify the recipient of the contract.

#### 4. How to Conduct a Competitive Solicitation

- **Get Approval to Advertise:** Fill out the ESD Procurement Opportunity Advertisement Approval form for Corporate or Subsidiary and forward it for review along with procurement solicitation material to the Procurement Department for review. See section 5.
- **Approval of Advertisement and Contract Reporter:** When review is completed, material is sent to the Officer(s) specified in Attachment A to these Guidelines for approval. Upon approval, you may submit your solicitation through the Contract Reporter, with a minimum of 15 business days for responses. Solicitation should also be posted on the ESD and Subsidiary (if applicable) website. See section 8.9.
- **Bid Opening and Selection:** All bids must be submitted via a designated Dropbox which link should be provided in each solicitation. Staff can then conduct a review and selection process. See section 8.11.

In order to avoid the risk of submitting a late bid, ESD suggests that potential bidders submit their bids approximately 24 hours before the deadline.

- **Board Approval:** Once a vendor is selected, staff must obtain Board approval, where required. See section 9.1
- **Preparation of Commitment Package:** Once Board approval is granted; staff must prepare a commitment package and enter it into Peoplesoft for Contract processing. See section 10.1.

#### 5. Approval to Advertise

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

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

## 6. Contents of ANY Procurement Solicitation

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

- (i) What goods are being sought or what scope of services is desired;
- (ii) What the projected length ("term") of the resultant contract will be;
- (iii) What criteria will be used in evaluating bids, and how those criteria are weighted. For example, price, bidders' expertise, the qualifications of the proposed staff; past history of government contracts, references/testimonials, understanding of ESD's mission, and either diversity practices (commitment to sound diversity practices within the firm) or a firm's status as a certified MWBE and/or SDVOB<sup>1</sup>;
- (iv) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings/interviews held, etc.);
- (v) Contact information for a designated contact at ESD is the only person at ESD to whom communications about the solicitation may be directed. Failure to abide by this requirement may result in disqualification of the bidder.

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

- (vi) ESD's insurance requirements (obtained from Contract Administration for all solicitations);
- (vii) ESD's contractor and supplier diversity requirements: MWBE and SDVOB goals, if applicable (goals should be identified before seeking approval to advertise);
- (viii) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;
- (xi) A copy of the ESD standard terms and conditions to which the successful bidder will be expected to agree. This will generally be ESD's Schedule A - Standard Terms and Conditions (For [Materials and Services](#) or for [Law Firms](#)).  
IMPORTANT: ESD's standard terms and conditions must be sent to potential vendors as early in the process as possible, to avoid later disputes about terms.
- (x) VENDREP Form where needed (See Section 8.13);
- (xi) Proof that the vendor is authorized to do business in New York State, if services are to be performed in New York State. Generally, this will require NYS Department of State Registration, which can be checked [here](#).
- (xii) Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.6).

A template for informal solicitation language can be viewed in the below link.

<https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>

## **7. Types of Solicitations**

### **7.1. General Information**

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

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

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

Clarity: Procurement documents should clearly convey to vendors what ESD wants to buy;

Fairness: No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria (note that vendors must submit a statement of non-collusion (see s. 7.2 below)

Openness: All relevant vendors should have an equal opportunity to respond to the offering.

Disclosure of Selection Criteria: The criteria for awards should be developed before bids/proposals are received. Vendors should know generally the basis upon which their offers are being judged. Note that if cost is weighted below 20%, a written justification for such weighting should be prepared and included in the Procurement Record;

Efficiency: The process should be efficient, fair and able to withstand public scrutiny.

### **7.2. Requests for Proposals ("RFP")**

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

- Description of program objectives and background;
- Scope of services to be provided;

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

Please see below link to view ESD's standard RFP template.

[http://intranet.empire.internal/Finance/2019/RFP\\_Template-June2019v2.docx](http://intranet.empire.internal/Finance/2019/RFP_Template-June2019v2.docx)

### **7.3. Requests for Statements of Qualification ("RFQ")**

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

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

After ESD has established a list of pre-qualified vendors, staff may enter into open retainer contracts (sometimes called "Term Contracts") with one or more vendors on the list, for no set dollar amount but, in the case of personal services, not to exceed a term of three years. This process facilitates the use of purchase orders against the contract, and Board or President/CEO approval, if required, can be obtained at such time as a scope of services and dollar amount are identified, or if the term will be extended beyond one year. All transactions executed as part of a Term Contract will follow standard approval procedures as per sections 9 and 10 of these guidelines. Please consult with Procurement and Legal if you wish to enter into such an arrangement.

Please see below link to view ESD's standard RFQ template.

<http://intranet.empire.internal/Finance/2023/RFQ-Template-Feb-23.docx>

### **7.4. Requests for Expressions of Interest ("RFEI")**

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

## **7.5 Invitation to Bidders ("ITB")**

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

Upon receipt of bids submitted on or before the deadline

Please see below link to view ESD's standard ITB template and a sample bid form.

<http://intranet.empire.internal/Finance/2022/ITB-Template-10-2022.docx>

<http://intranet.empire.internal/Finance/2022/ITB-Bid-Form-sample.docx>

## **7.6 Requests for Applications ("RFA")**

RFA are often used for grant and loan disbursements. It is not considered as a Procurement. Although, some of the procurement forms are included in an RFA.

Please see below link to view ESD's standard RFA template.

<http://intranet.empire.internal/Finance/2022/RFA-Template-10-2022.docx>

# **8. Compliance with Other Laws**

## **8.1. Compliance with State Finance Law 4 139-i and 139-k (Lobbying)**

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

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

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

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

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

In addition, ESD staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL § 139-j and 139-k do not prohibit an offeror from communicating with a member of the State legislature or legislative staff about a government procurement, provided such member of the State legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

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

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

lobbying and must be reported as such. The caller should be informed that the call will be reported and asked to communicate directly with the designated contact person in the future.

## **8.2. Compliance with State Tax ST-220 or Law 5-a (Sales Tax Registration)**

State Tax Law § 5-a prohibits ESD and its subsidiaries from approving any contract valued at more than \$100,000 with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

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

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. However, the vendor or respondent should be given an opportunity to [cure such failure](#), because some agencies do not require the form until contract signing, and vendors may not realize that ESD practice is different. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor's sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the sub-contractors.

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

## **8.3. Compliance with Executive Order 177 (Prohibiting Contracts with Entities that Fail to Address Discrimination)**

EO 177, issued on February 3, 2018, directs all State agencies, including public authorities, to amend their procurement procedures to prevent contracting with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, Military status, sex, marital status, disability, or other protected basis. As of June 1, 2018, all ESD contracts must contain a representation that the vendor's policies or practices do not fail to address harassment and discrimination.



#### **8.4. Compliance with Executive Law Articles 15-A & 17-B: Contractor and Supplier Diversity**

##### **Background**

All Procurement Contracts must comply with the requirements of New York Executive Law Article 15-A, which governs the New York State MWBE Program. The purpose of the MWBE Program is to eliminate historic barriers to participation by minority and women-owned business enterprises in State contracting. The MWBE Program contributes significantly to ESD's mission of promoting a growing State economy; encouraging business investment and job creation; and supporting diverse, prosperous local economies across the State. Staff should be familiar with the [MWBE Operations Primer](#) published by the Division of Minority and Women's Business Development to ensure compliance with MWBE-related laws and requirements.

All Procurement Contracts must also comply with the requirements of New York Executive Law Article 17-B, which acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Staff should familiarize themselves with the [SDVOB Operations Guidance and the Guidelines for the Use of Set Aside Contracts with SDVOBs](#) published by the Office of General Services ("OGS"), Division of Service-Disabled Veterans' Business Development to ensure compliance with SDVOB-related laws and requirements.

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

[https://esd.ny.gov/sites/default/files/rfp/MWB\\_E%20BGA%202019%20Listing%20of%20Certified%20Firms%20Expressing%20Interest.pdf](https://esd.ny.gov/sites/default/files/rfp/MWB_E%20BGA%202019%20Listing%20of%20Certified%20Firms%20Expressing%20Interest.pdf)

##### **Executive Order 162**

Pursuant to Executive Order Number 162 ("EO 162"), all New York State contracts, agreements and procurements issued and executed on or after June 1, 2017 require contractors to submit detailed workforce utilization reports that include the job title and gross wages of each employee of a contractor and subcontractor performing work on a State contract either or each employee in the contractor's and subcontractor's entire workforce, if the individuals working directly on a State contract cannot be identified. A State contract includes all agreements in excess of \$25,000 for services and commodities, and all agreements in excess of \$100,000 for construction. Contractors and subcontractors performing work on construction contracts with a total value in excess of \$100,000 are required to submit workforce utilization reports to on a monthly basis, within ten (10) days of the end of that month. Contractors and subcontractors performing work on commodities and service contracts with a total value in excess of \$25,000 are required to submit workforce utilization reports to on a quarterly basis within ten (10) days of the end of that quarter.

## **Goal setting**

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

OCSD is responsible for ensuring ESD's compliance with the MWBE and SDVOB Programs. OCSD works with ESD program staff (project managers, program directors, originators and procurement officers) to determine if a contract is eligible for MWBE and SDVOB goal setting, exempted<sup>2</sup> from goal setting, or excluded<sup>3</sup> from goal setting.

It is important to know multi programs projects cannot be assessed on a single goal rather individual contracts must be assessed for goals.

OCSD may determine that an MWBE goal below the agency-specific goal of 30% is appropriate because there are limited or no subcontracting opportunities and/or limited or no availability of certified MWBEs to perform or provide specific good or services. All goals of less than 30% MWBE participation, must be forwarded to the Executive Chamber for review and must include documentation to reflect the reason for goal reduction.

## **Waiver Requests**

A firm responding to a solicitation or already engaged on an ESD contract, after making good faith efforts to achieve the maximum feasible portion of an MWBE and/or SDVOB participation goal, may submit a [Waiver Request Form](#) to OCSD with appropriate information documenting its "good faith efforts"<sup>4</sup> to meet its goals. The waiver process includes reviews by: OCSD Compliance Manager and the OCSD Director. The Executive Chamber must approve MWBE waiver requests before a waiver can be issued.

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

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

<sup>3</sup> "Exclusions" are contracts that either do not have subcontracting opportunities or no availability of certified MWBEs or SDVOBs to perform or provide specific goods or services. In cases where a contract is awarded by a means other than an RFP, including, but not limited to discretionary purchases and single source contracts, **DMWBD/OGS will only grant an exclusion if MWBEs**

**or SDVOBs are solicited to participate as prime contractors or no MWBEs or SDVOBs are available to participate as prime contractors.**

<sup>4</sup> "Good Faith Efforts" are the actions that all contractors must demonstrate to certify they have performed their due diligence to solicit MWBE and SDVOB participation in support of their State contract goals. Good Faith Efforts requirements are outlined in 5 NYCRR §142.8 (MWBEs) and 9 NYCRR § 252.2(n) (SDVOBs). A waiver of MWBE or SDVOB goals will not be granted unless the contractor has provided documentation of good faith efforts. In addition to completing a waiver request form, the contractor shall also provide OCSD with supporting information including, but not limited to:

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

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

Where practical, feasible and appropriate, ESD shall promote and encourage participation by MWBEs and SDVOBs in the selection and award of all contracts. Such MWBE and SDVOB participation shall be documented in a regular supplement, prepared by OCSD, for inclusion in the quarterly and annual reports made by Contracts Administration to the Board. To assist in the gathering of this information, the originator must provide OCSD with a completed Utilization Plan of MWBE and, separately, SDVOB Participation, from the potential contract awardee, for OCSD's review and approval, prior to contract award. The required forms are accessible at: <https://esd.ny.gov/office-contractor-and-supplier-diversity> (scroll down to "Non-Discrimination and Contractor & Supplier Diversity Forms").

### **8.5. Compliance with Iran Divestment Act of 2012**

Every bid or proposal made to ESD pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State finance law. The list in question is maintained by OGS and is available here:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestiture Act (contact the Legal Department for guidance in such a case).

### **8.6. Encouragement of use of New York Businesses as sub-contractors and suppliers.**

The Secretary to the Governor has issued a directive that provides that all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts must be encouraged (but not required) to use New York State businesses. All procurement solicitations of any kind must include specific language aimed at such encouragement. The model language can be found at <http://intranet.empire.intemal/Finance/USEOFNYSBUSINESSES.pdf>

### **8.7. Project Sunlight**

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

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

## **8.8. Publication on ESD Website**

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

## **8.9. Contract Reporter Advertising Process**

As stated above, ESD must advertise in the New York State Contract Reporter all contracts for the acquisition of goods and services of \$50,000 or more, unless an exemption is granted. In order to access the online system and place the advertisement, the initiator should contact Contracts Administration.

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

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate MWBEs, listed at <https://ny.newnycontracts.com/FrontEndNendorSearchPublic.asp>, as well as any appropriate SDVOBs, listed at <https://online.ogs.nv.gov/SDVOB/search>

## **8.10. Selection Criteria**

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

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

Starting in January 2020, for MWBE prime contractors, a ten percent bidding credit was established for low-bid construction projects subject to public buildings law §8 that are up to \$1.4 million in value.

### **8.11. Bid Opening Procedures**

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

Although Mini-bids are handled by the originating department, Procurement should be informed before the solicitation process starts to ensure compliance. Procurement will conduct audits of ESD mini-bids process on a quarterly basis.

However, there might be circumstances under which, because of the size of the expected proposals or other reasons, ESD reverts back to the old model of having proposals/bids submitted via hard copies. In such case, bidders will have to adhere to the below format. Proposals should be received by the Procurement Department (unless the Procurements Senior Director in charge of the solicitation directs otherwise), and immediately should be stamped with the date and time of receipt. **Do not open any bid packages for any reason before the formal bid opening.** ESD staff members representing Contracts Administration, Procurements, Legal and the initiating Department/Subsidiary should be present at bid openings in person or by teleconference. Bids shall be opened by the Procurement Senior Director or his/her designee, and the time and date of receipt shall be entered into the Bid Log, which must be signed by all staff members present. Teleconference participants must confirm their presence by email to the Procurements Director. The Bid Log shall also record the presence of SFL 139j-k and ST-220 forms in the bid.

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

### **8.12. Bid Evaluation and Vendor Selection**

The initiating Department Head should establish, as early as practicable prior to bid opening, a team of at least three ESD staff members with relevant knowledge and experience of the goods and/or services being procured. One member should come from Contracts Administration or Finance. The Procurement Department controls and monitors the integrity of the entire procurement process. The Procurement Director must be present at the first meeting held for planning an RFP through the

approval of the selected bidder by ESD's Board of Directors; In order to maintain transparency, the Procurement Director will serve as the only liaison between the Procurement Department and Potential bidders. As such, the primary and secondary contact names on the RFP should be those of the Procurement Directors. At times, the Procurement Director can serve on the Review Committee, but must always be present to monitor the integrity of the procurement process. The Procurement Director will assign staff if there is a conflict and the Procurement Director is unable to attend. It is possible to have one or more non-ESD team members join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. This involvement of non-ESD persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as ESD to "take into consideration the views and policies of any elected official or body, or other person" in the exercise of its powers and duties, provided that ESD must "apply independent judgment in the best interest of the authority, its mission and the public." If non-ESD staff is included in the review team, the team must be expanded in number such that a majority will always be ESD staff members.

Analysis of the proposals and/or bids submitted, and the award of the contract shall be documented in reasonable detail. Award to anyone other than the low bidder must include in the documentation the reason the low bidder was not selected ESD always seeks to award the best value proposal.

In an effort to streamline and bring a level of uniformity to the process, both the Q&A matrix and the scoring matrix will be provided and maintained by the Procurement Director, All members of the Review Committee must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must not include anything other than numerical ratings (i.e., no comments/opinions/notes, etc.). Original scoring sheets must be signed and submitted to only the Procurement Director as part of the Procurement Record.

### **8.13. Determination of Responsibility — "DOR" and the VendRep Form**

Pursuant to State Finance Law § 139-j (7), ESD or the Subsidiary Board must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. In any event, whether or not a formal Determination of Responsibility is sought from the relevant Board, the initiator should ensure that all vendors are "responsible." **For all procurements, the initiator must submit a memo to the Procurements Director attesting that the initiator conducted both a DOR and a thorough review of the VendRep.** View [Determination of Responsibility form](#). In addition to consulting the resources listed on the Determination of Responsibility form, staff may find it useful to consult OSC's list of suggested resources, at <http://www.osc.State.ny.us/vendrep/webresources.htm>, or review OGS's bulletin of [best practices](#) for determining vendor responsibility.

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

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



- b) Legal Authority: Authority to do business in New York State, licenses, and registrations.
- c) Integrity: Criminal indictments or convictions, civil fines and injunctions imposed by other agencies, anti-trust investigations, ethical violations, tax delinquencies, or debarment by federal, State or local governments.
- d) Previous Contract Performance: Report of less satisfactory performances, early contract termination for cause, contract abandonment, court determination of breach of contract.

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

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

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a meeting. Consult the ESD Legal Department in such cases, after having reviewed the Information at <https://ny.spro.ogs.ny.gov/sites/default/files/uploaded/OSCBestPracticeforVendorResponsibility.pdf>.

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

### **8.13.1. Cancellation of a Solicitation**

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



## **8.14. Procurement Record**

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

### **8.14.1 Post Proposal Submission Activities - Debriefing of Unsuccessful Respondents**

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

## **8.15 Conflicts of Interest**

Respondents must have read, understood and comply with the provisions of the conflict of interest attestation found here: <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pcf>

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

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

director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

**b. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with 15 any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

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

## **9. Contract Approval**

Procurement Contracts in amounts of **\$250,000 and under** that will be completed within one year (for services contracts) must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts, but contracts **between \$50,000 and \$250,000** (or for subsidiaries, whatever the board approval threshold is) must be approved by the President of the ESD (or subsidiary) Board or his or her designee.

Procurement Contracts priced at **over \$250,000**, as well as contracts for any amount involving personal services to be rendered over a period in excess of one year, must be approved by the ESD (or subsidiary) Board.

Note that **insurance policies, warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases and software support services)** are not considered personal service contracts and do not require approval by the Board unless the amount of the contract is over \$250,000 in aggregate through its term. All contracts with a technology component must be approved by ESD's Information Security Officer or designee prior to execution or Board approval.

### **9.1. Board Materials**

The initiator writes a memorandum from the respective Department Head to the Officer(s) specified in Attachment A to these Guidelines, explaining the need for the contract. View [Model Directors' Materials for Procurement Contracts](#) (these materials can also be used for obtaining approval of the President or his or her designee by adding a [CEO/Designee Approval Cover Memo](#)).

The Board materials must set out:

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

**9.2. ESD Contract and Approval - Contracts Over One Year.**

- a. If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted. If a contract has already been presented to the board and it needs to be extended because the work took longer than expected; A No Cost Time Extension can be provided as long as sufficient funds remain to cover the work that needs to be done.
- b. **Contracts for personal services** to be rendered over a period of more than one year, regardless of the amount of the contract, which must have been approved by the Board, must in addition be reviewed annually by the ESD (or subsidiary) Directors, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.
- c. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, and before Board or President approval if required, the officer named in Attachment A to these Guidelines may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents ("**Notice to Proceed**"), provided that:
  - i. the contract is not subject to OSC approval (See Section 10.5); and

- ii. the authorization contained in the Notice to Proceed is (a) \$250,000 or less and (b) does not exceed 20% of the total contract value; and
- iii. the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of the Officer(s) specified in Attachment A to these Guidelines.
- iv. Notice to Proceed can be used prior or after board approval and has a lifespan of just one year. No more than one Notice to Proceed can be used per contract.

**d. Contract Amendments**

- i. **Amendments to existing contracts** generally follow the same process as new contracts, i.e., any amendment over \$50,000 needs to be advertised in the Contract Reporter, exempted, or awarded to a firm on a pre-qualified list after soliciting bids from three other firms including at least one MWBE firm and one SDVOB firm. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated. If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of SFL §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed \$1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds. If the proposed amendment will be for a different scope of work, the process for a new contract should be followed
- ii. Amendments that increase the **contract amount** to more than \$250,000 must be approved by the ESD (or subsidiary) Directors. Amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the ESD officer named in Attachment A to these Guidelines without further Board approval, unless the amendment increases the contract to an amount above \$250,000 and Directors' approval has not been previously obtained.

- iii. If a proposed amendment to a contract for personal services will increase the **term** of the contract to more than one year, Board approval is necessary, and Contract Reporter advertising is necessary unless (i) as discussed in paragraph (a) above, the original contract contained a clause specifically permitting extension; or (ii) the amendment is awarded to a vendor on a pre-qualified list following wherever practicable the receipt of three quotes from other vendors on the list including at least one from a certified MWBE or SDVOB firm; or (iii) the amendment increases the term of the contract by not more than three months, and approval for the extension is given by the person named in Attachment A to these Guidelines. If the amendment will increase the amount of time or other terms of the contract but **will not increase the contract amount**, the initiator need not submit a new Commitment Request Package.
- iv. In the case of contracts for more than \$1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and/or the Chief Financial Officer of the corporation. Note that such an amendment may require OSC review and approval (see section 10.5). If in doubt, consult the Legal Department.

**Example A:** Original contract for \$100,000 was awarded competitively. The initiator wishes to amend the contract for an additional \$5,000. Because the amendment is for less than \$50,000 it does not require advertisement or an exemption, and because it will not increase the total contract amount to more than \$250,000\* and is less than 10% of the original contract amount, it does not require Board approval. This example also assumes that the amendment will not extend personal services beyond one year, and so will not require Board approval.

\*Some subsidiaries have lower monetary thresholds for board approval.

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

**Example C:** Original contract for \$5 million was awarded competitively and approved by the Board and by OSC. The Board also approved the power to amend the contract to reflect an increase in the scope of services/goods, in an amount not to exceed 10% of the original approved amount, with the amendment to be approved by the CEO/CFO. The initiator wishes to amend the contract for an additional \$300,000. Because the amendment is less than 10%, and the contract has previously been

approved by the Board, no further Board approval is necessary, but Contract Reporter advertising is still necessary, unless an exemption is granted (see section 3.2 above).

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

## **10. Steps After Contract Approval Is Obtained**

### **10.1. Commitment Request Process (for contracts of \$50,000 or amendments that bring the total revised amount over the threshold of \$50,000)**

- a. The contract initiator should assemble and submit via Peoplesoft a Commitment Request Package containing the following documents:
  1. A [Commitment Request Form](#) (composed in Peoplesoft).
  2. A [Contract Summary/Justification Memorandum](#) (composed in PeopleSoft) explaining the need for the procurement and the method of procurement used.

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

- the scope and purpose of the contract;
- the description of the services to be performed;
- the location where the work is to be performed;
- the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
- the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
- the projected starting date and the contract period;
- the finished product or the services to be delivered;

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

## **10.2. Contract Reporter Award Notification**

A contract is considered awarded when it is executed (signed) by all parties. If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of MWBE and SDVOB Participation (and/or Disadvantaged Business Enterprise Participation, where applicable), must be posted on the Contract Reporter system. This posting will be done by Contracts Administration.

## **10.3. [INTENTIONALLY OMITTED]**

## **10.4. Division of Budget ("DoB") Approval**

Under DOB Bulletin B-1184, approval for certain procurements over \$500 is required. In general, if a State or legislative appropriation is the source of funds, approval is needed. A web-based application known as the "Agency Spending Controls Application" process is used to obtain prior

approval. DOB approval is not required when the funding source for the procurement comes from a non-State source (e.g., a developer of an ESD project), where at least 75% of the procurement cost will be reimbursed by federal funds, or when the procurement is needed to address an immediate threat to public health and/or safety. DOB mandated forms are used in cases where approval is required. ESD has implemented the cost control measures described in Bulletin B1184. All spending not involving Federal reimbursement of at least 75 percent, presenting an immediate threat to public health and/or safety or whose funding source is from a Third Party is subject to the preapproval process specified in the Budget Bulletin utilizing forms established by

DOB known as Attachment A. An Attachment B form was also created for spending involving Federal reimbursement of at least 75% or presenting a public health and/or safety issue.

For instructions and forms, see the ESD Employee Intranet: [Financial Resources](#). If in doubt, contact the ESD Controller's Department for guidance.

### **10.5. OSC Jurisdiction Over Contracts in Excess of \$1 Million**

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

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

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

- ESD must annually report to OSC all Eligible Contracts/Amendments that it anticipates in the next fiscal year and revise such report within 30 days of learning of any significant changes to the annual report.
- ESD must give OSC 10 days' notice before (i) publishing a solicitation that ESD expects will result in an Eligible Contract/Amendment that was not previously reported to OSC or (ii) executing a noncompetitive Eligible Contract/Amendment that was not previously reported to OSC.
- ESD must file all Eligible Contracts/Amendments that are not subject to OSC approval (see following paragraph) with OSC within 60 days of execution. Certain Eligible Contracts/Amendments that are the subject of a written notice must also be approved by OSC within 90 days after the contract is signed. A list of active



written notices can be viewed [here](#). If approval by OSC has not been obtained, the signed contract "shall not be a valid enforceable contract."

**All submissions to and communications with OSC are to be handled by Contracts Administration only. Submit nothing to OSC directly.**

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

## **11. INTENTIONALLY OMMITTED**

## **12. Monitoring of Procurement Contracts**

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

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

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

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

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

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

All MWBE and SDVOB performance should be reported to OCSD.

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

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

### **13. Ethical Considerations**

#### **13.1 Procurement Contracts Involving Former Employees of ESD**

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

#### **13.2 Conflicts of Interest**

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

#### **13.3 Unfair Advantage Prohibited**

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

### **14. Implementation of These Guidelines**

ESD's Legal Department, in conjunction with the Contracts Administration Department, shall be responsible for preparing for approval by the CEO such supplemental procedures as may be

required to effectively implement these Guidelines, as well as preparing proposed amendments to the Guidelines for approval by the CEO and the ESD Directors when and as required.

## **15. Reporting**

### **15.1. Annual Reports**

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

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

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

## **16. Effect on Awarded Contracts**

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. These Guidelines reflect best and customary practice but are not intended to be rules of law. Note, however, that certain contracts may not be "valid or enforceable" without OSC approval. (See Section 10.5)

# Item 2



FOR CONSIDERATION

April 17, 2023

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: Canalside Land Use Improvement Project – Real Property Transaction

REQUEST FOR: Authorization to Acquire Real Property from the City of Buffalo; Authorization to Dispose of Real Property to the City of Buffalo; and Authorization to Take Related Actions

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I. Background

The Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), proposes the acquisition and sale of land parcels to allow the ECHDC to undertake the upcoming North Aud Block Redevelopment Project (the “Project”) at Canalside in the City of Buffalo, Erie County, New York. Refer to the Title Surveys, dated August 31, 2022 in the Attachments.

The overall North Aud Block site, also referred to as “Parcel A1”, is currently bounded on the north by the I-190; on the east by Main Street; on the west by Commercial/Pear Street; and on the south by the Main Canal. The North Aud Block has been used for back-of-house operations related to events, programming, and nearby construction, while ECHDC staff has planned for its eventual development.

The two parcels, totaling 0.133-acres, to be acquired by the ECHDC are currently part of the City of Buffalo’s right-of-way for Commercial/Pearl Streets. An excessively wide right-of-way, due to historical issues, the eastern side of this parcel would allow the ECHDC to maximize private redevelopment of the area while continuing the State’s investment in the Gateway Building and maintenance of the Main Canal.

The 0.164-acre parcel to be disposed by the ECHDC is a primarily vacant parcel, part of a former superblock that once contained the War Memorial Auditorium, a professional sports venue that was demolished by ECHDC in 2009. The parcel contains a significant City of Buffalo waterline, sewer lines, and other infrastructure best situated under the City’s ownership and control.

These real property transactions would allow the ECHDC to finalize the redevelopment of the North Aud Block, while allowing the City to maintain its streets and utilities without unnecessary relocations.

The City has agreed to allow the ECHDC to maintain control of, and sole access to, the 0.164-acre parcel through the completion of the Gateway Building and North Aud Block construction. The ECHDC has agreed to incur the cost of the sanitary sewer relocation along Commercial/Pearl Street necessary to allow for the 0.133-acre parcels to be developed.

In February 2022, the ECHDC and ESD Boards affirmed a Modified General Project Plan (“MGPP”) which described the development plan for the North Aud Block Redevelopment Project (“Project”) as including several privately developed mixed-use buildings within the reimagined historic street grid and structured parking, as well as a State-owned building. The ECHDC’s Gateway Building is currently being advertised for construction and is expected to break ground in June 2023.

To facilitate the remainder of the plan adopted by the Board for the North Aud Block, ECHDC advertised a Request for Proposals for the private development of the Project. It is expected that ECHDC will name a Preferred Developer for the North Aud Block project in the coming months.

II. City of Buffalo – ECHDC Agreement

Staff requests the Board’s approval to enter into any necessary agreements with the City for the acquisition of two parcels, totaling 0.133-acres, for an amount not to exceed \$1.00, and the disposal of a 0.164-acre parcel for an amount not to exceed \$1.00, as generally described above.

III. Compliance with the Public Authorities Law

Pursuant to the provisions of the Public Authorities Law (“PAL”), ESD and its subsidiaries are required to dispose of property through a competitive bid process and for fair market value unless a specific statutory exception applies.

In the present case, the property disposal complies with the PAL because the parcel is being transferred to another government entity which will remain the government entity and because the transfer supports the purpose and mission of ECHDC, namely, development of Canalside.

With respect to the property to be transferred to the municipality, the consideration paid by the City of Buffalo will be \$1.00. As the purchase price is for less than fair market value, the PAL requires the following information to be provided to support the below market transfer:

- A full description of the asset: The site consists of a vacant parcel on approximately 0.164 acres on Lower Exchange Street in the City of Buffalo.
- An appraisal of the fair market value of the asset and other information establishing fair market value sought by the Board:

Pursuant to an appraisal received in April 2022, the appraised value of the disposed property is \$270,878.

The ECHDC would in turn receive two parcels totaling 0.133 acres, assuming a similar appraised value for this adjacent property, with an estimated value of \$219,675.

The “net loss” of these transfers to the ECHDC is \$51,203.

The estimated cost to ECHDC to relocate sanitary sewer along Commercial/Pearl Street is \$850,000.

- A description of the purpose of the transfer, and a reasonable statement of the kind and amount

of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any to the communities in which the asset is situated as are required by the transfer:

As more fully described above, these transfers are being made to permit the maximum redevelopment of the vacant parcels and to promote the overall goals of the Canalside project, while minimizing utility relocation costs the City would have incurred. The community will benefit from the transfer as a result of the redevelopment of largest site remaining in the Canalside district, an initiative aimed at appealing to a wide demographic of residents and visitors, providing strong public spaces in Buffalo, and further establishing a vibrant, urban neighborhood.

- A statement of the value to be received compared to the fair market value: The ECHDC's "net loss" is \$51,203 compared to the appraised value of the transferred parcels. The resulting North Aud Block Redevelopment Project will represent a major new development to continue efforts to enhance the Canalside neighborhood.
- The names of private parties participating in the transfer: ECHDC expects to retain the services of outside legal counsel and title insurance to assist in the real estate transactions.
- The names of the private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used: No other offers were received for disposal of the parcel to the City. As stated above, due to the significant utility infrastructure contained on the site, ownership by the City is the best use of the parcel.

Moreover, as described above, the disposal of the Property will allow ECHDC to acquire property it needs to develop the Canalside project and allow City ownership of a parcel containing significant City infrastructure, as such, there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

### III. Environmental Review

ESD, as lead agency, completed an environmental review of the Canalside Project, pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This review, which was coordinated with all involved agencies due to the Project's Type I classification, involved the preparation of a draft and final generic environmental impact statement ("DGEIS" and "FGEIS"). The ESD Board of Directors issued SEQRA findings for the Project on March 26, 2010. The 2010 SEQRA documents included a full assessment of a Preferred Alternative that involved the anticipated level of development that was presented in the original 2010 GPP for Canalside (i.e., inclusive of a proposed Bass Pro store on the Aud block).

In accordance with SEQRA regulations and the thresholds set forth in the FGEIS, ESD has evaluated the potential environmental effects of five MGPPs for the Canalside Project to date, most recently on January 20, 2022, which included an evaluation of the North Aud Block Development Project implementation and other updates to the Project. This evaluation concluded that the projected scale of impacts and associated mitigation measures already in place from the 2010 FGEIS are still reasonable and applicable for this most recent MGPP. Therefore, no further environmental review is required in connection with this action.

IV. Non-Discrimination and Contractor and Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority-and women-owned business enterprises (MWBES) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD contracts. The Office of Contractor and Supplier Diversity has reviewed the Canalside Land Use Improvement Project – Real Property Transaction and has determined that MWBE and SDVOB participation goals need not be applied.

V. Requested Action

The Directors are requested to: 1) authorize the Corporation to acquire the real property described in these materials in an amount not to exceed One Dollar (\$1.00); 2) authorize the Corporation to dispose of real property described in these materials in an amount not to exceed One Dollar (\$1.00); and 3) to take all related actions.

V. Recommendation

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

VI. Attachments

Resolution

Alta/NSPA Land Title Surveys (2)



April 17, 2023

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Canalside Land Use Improvement Project – Real Property Transaction - Authorization to Acquire Real Property from the City of Buffalo; Authorization to Dispose of Real Property to the City of Buffalo; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Erie Canal Harbor Development Corporation (the “Corporation”), the Corporation is hereby authorized to acquire real property described in these materials from the City of Buffalo for an amount not to exceed One Dollar (\$1.00) on the terms and conditions set forth in the materials; and be it further

RESOLVED, that the Corporation is hereby authorized to dispose of real property described in these materials to the City of Buffalo for an amount not to exceed One Dollar (\$1.00) on the terms and conditions set forth in the materials; and be it further

RESOLVED, that on the basis of the materials submitted to the Directors, the Directors hereby find that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer, and be it further

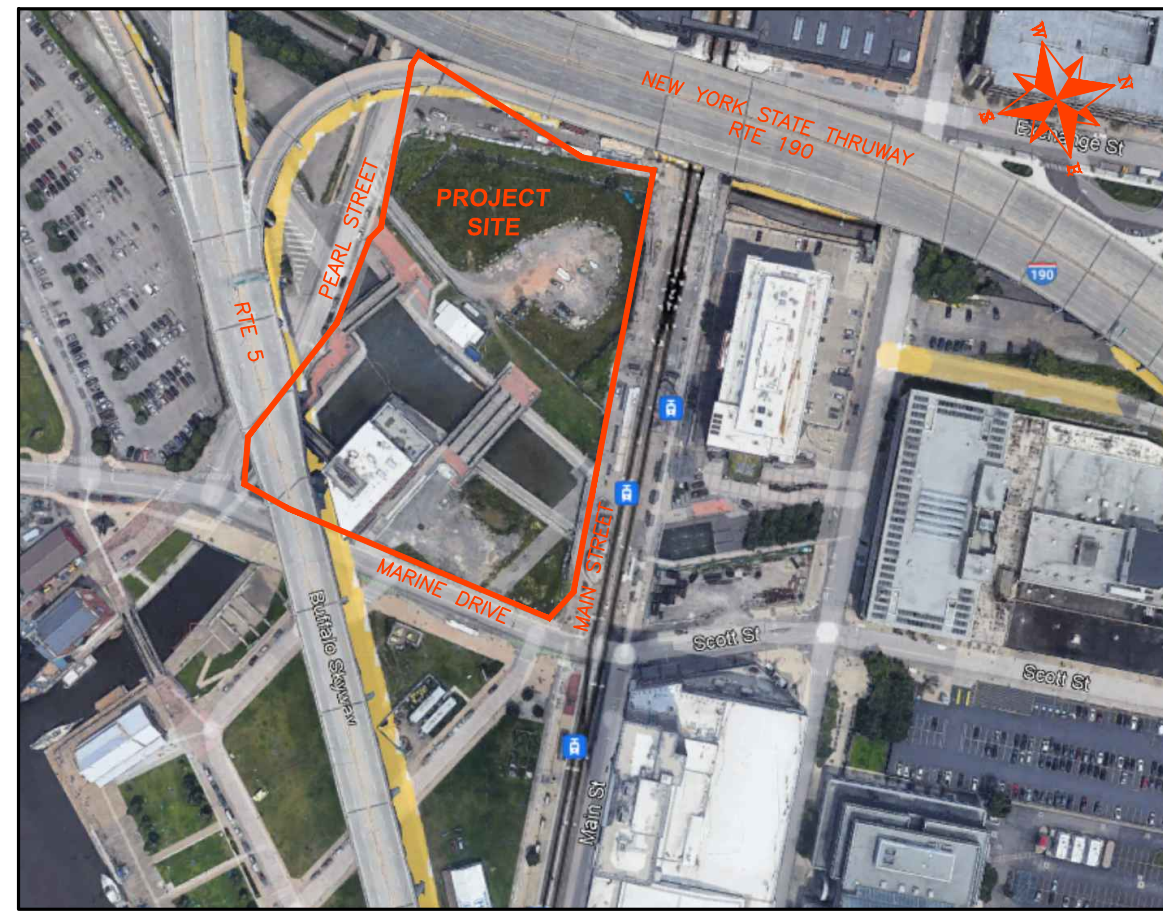
RESOLVED, that the President of the Corporation or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

\* \* \*









VICINITY MAP  
(NOT TO SCALE)

**TRANSFER PARCEL**  
FROM ERIE CANAL HARBOR DEVELOPMENT CORPORATION  
TO CITY OF BUFFALO

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot No. 85 in Township 10, Range 8 of the Holland Land Company's Survey, being further described as follows:

BEGINNING at the point of intersection of the southerly line of The Terrace and the easterly line of Pearl Street (width varies) as realigned by Resolution No. 267 of the Common Council Proceedings on February 7, 1939; thence South 35°32'55" West and along the said easterly line of Pearl Street a distance 18.10 feet to a point; thence South 13°54'48" West and continuing along the said easterly line of Pearl Street a distance of 65.87 feet to a point; thence easterly through the lands conveyed to Erie Canal Harbor Development Corporation by deed recorded in the Erie County Clerk's Office in Liber 11141 of Deeds at page 780, and along a curve having an arc length of 19.01' and radius of 25.00 feet, said curve having a chord length of 18.55 feet and a chord bearing of North 81°30'42" East to a point; thence South 76°42'32" East and continuing through the property of Erie Canal Harbor Development Corporation by deed aforesaid, a distance of 170.11 feet to the southerly line of the said Terrace; thence North 54°27'05" West a distance of 240.04 feet to the point of beginning, containing 0.164 acres.

REFERENCE DEED: LIBER 11141, PAGE 780  
EXCEPTIONS IN LIBER 11141, PAGE 780:

EXCEPTING THEREFROM, and subject to, the rights of the BUFFALO SEWER AUTHORITY to permanently own, possess, operate and maintain an underground drainage culvert commonly known as the Hamburg Drain, Measuring approximately twenty feet (20') in breadth, and occupying a pad approximately thirty feet (30') in breadth, in the former lands of the Erie Canal, as shown on the survey of Nussbaumer and Clark dated January 7, 2008. Location of the drain is subject to actual site investigation to determine the precise route through the premises. The Grantee will convey to the BUFFALO SEWER AUTHORITY a permanent utility easement based upon field examinations and any necessary survey of said HAMBURG DRAIN. Under no circumstance shall the Grantee do any act in interference with the continued operation of the Hamburg Drain absent the express approval and authorization of the Grantor or the BUFFALO SEWER AUTHORITY.

EXCEPTING THEREFROM, and subject to, the rights of the BUFFALO WATER AUTHORITY to permanently own, possess, operate and maintain a water line having an approximate diameter of forty-eight inches (48") lying generally northerly and westerly in and near the conveyed premises. Location of the water line is subject to actual site investigation to determine the precise route through the premises. The Grantee will convey to the BUFFALO WATER AUTHORITY a permanent utility easement based upon field examinations and any necessary survey of said water main. Under no circumstance shall the Grantee do any act in interference with the continued operation of the water line absent the express approval and authorization of the Grantor or the BUFFALO WATER AUTHORITY.

**TABLE A NOTES:**

ITEM NO. 2: ADDRESSES  
ADDRESSES NOTED ON MAP

ITEM NO. 4: PARCEL AREA:  
AREA = 0.164± ACRES

**UTILITIES CONTACTED:**

- ATAI 800-253-1133
- BCE NEXIX CORPORATION 877-735-7366
- BUFFALO SEWER AUTHORITY 585-733-1748
- CITY OF BUFFALO 716-851-5647
- CITY OF BUFFALO WATER AUTHORITY 716-851-4747 x124
- ELANTIC TELECOM, INC 800-285-901
- GAS NITEC WEST 518-362-6060
- GAS SECURE INTEGRATION LLC 518-362-6060
- LEVEL 3 COMMUNICATIONS 877-366-8344 x2
- LIGHTWAVE FIBER TECHNOLOGIES 978-264-6022
- MCI 716-845-9258
- NATIONAL FUEL GAS | BUFFALO - NF0101 716-857-7431
- NATIONAL GRID / WEST / ELECTRIC 315-428-6319
- NYS DOT BUFFALO REGION 5 716-847-3173
- NYS THRUWAY AUTHORITY | BUFFALO 716-635-6224
- OFFICE OF COURT ADMINISTRATION NEW YORK 212-428-2554
- SPRINT NEXTEL 413-237-2598
- SUNY BUFFALO OFFICE OF PLANNING & DESIGN 716-645-3347
- TIME WARNER CABLE - BUFFALO 800-262-8600 x1
- VERIZON | BUFFALO 716-840-6165

NOTE: THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED. THE SURVEYOR DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

NOTE: WHEN ANY DESIGN OR RECONSTRUCTION INVOLVES A NEW CONNECTION TO EXISTING STORM OR SANITARY STRUCTURE AS SHOWN ON THIS DRAWING IT IS STRONGLY ADVISED THAT THE ENGINEER OR ARCHITECT CONTACT THE APPROPRIATE OPERATING AUTHORITY TO VERIFY THAT THE STRUCTURE BEING CONNECTED TO IS APPROPRIATE FOR ANY SUCH STORM OR SANITARY CONNECTION PRIOR TO PROCEEDING WITH DESIGN.

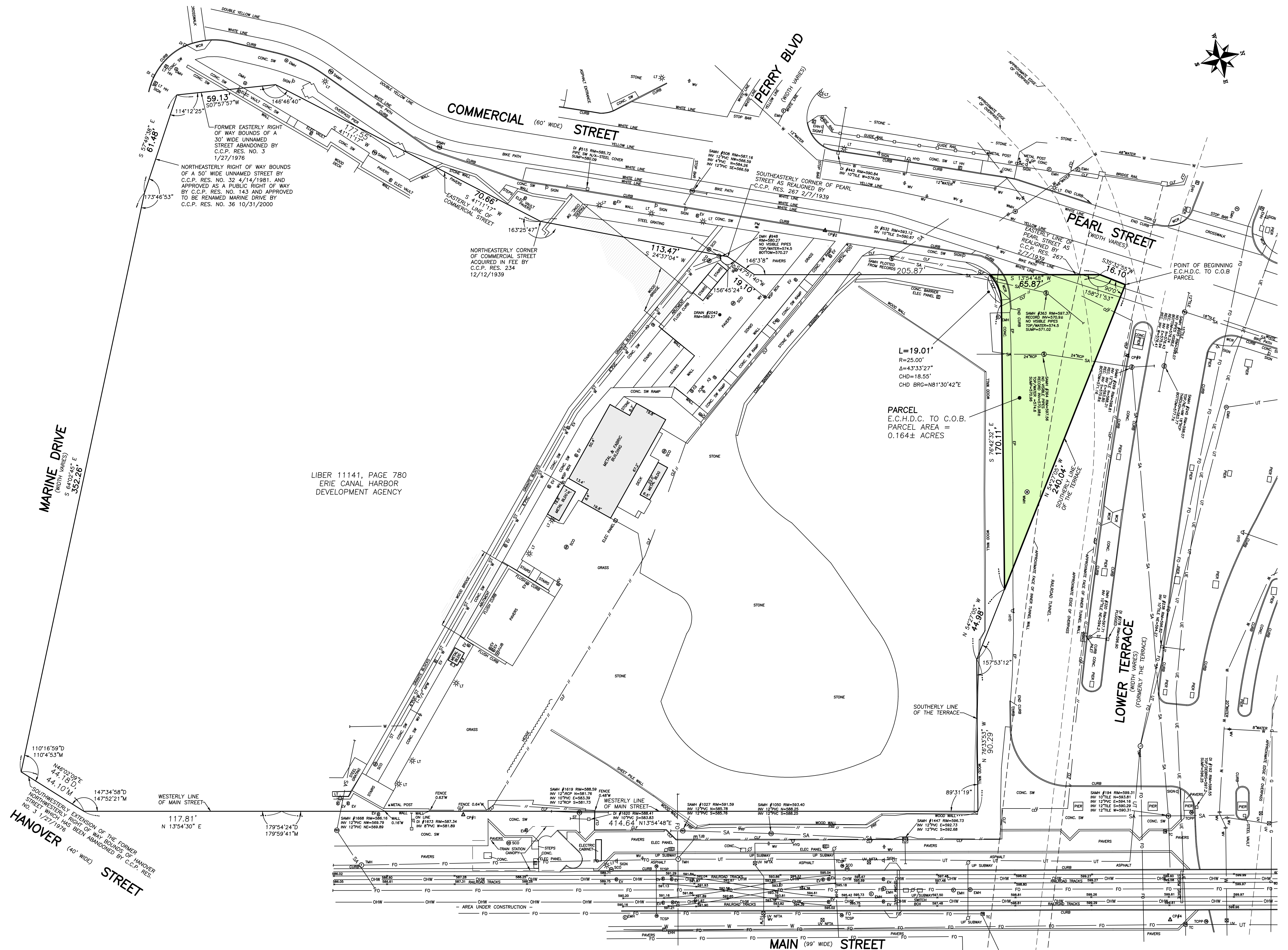
NOTE: UNITS USED TO PREPARE THIS MAP ARE BASED ON THE U.S. SURVEY FOOT.

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATEMENT OF FACTS THAT MAY BE REVEALED BY AN EXAMINATION OF SUCH.

WARNING: ALTERING THIS DOCUMENT IS IN VIOLATION OF THE LAW EXCEPTING AS PROVIDED IN SECTION 7209, PART 2 OF THE NEW YORK STATE EDUCATION LAW.

**LEGEND**

CLF	CHAIN LINK FENCE
—	DOUBLE SIGN
□	SIGN
GP	GUARD POSTS
—G—	GAS LINE
GAS	GAS METER
GV	GAS VALVE
GLM	GAS LINE MARKER
DI	DRAINAGE INLET
DMH	STORM DRAINAGE MANHOLE
—ST—	STORM SEWER LINE
SAMH	SANITARY MANHOLE
SCO	SEWER CLEANOUT
—SA—	SANITARY SEWER LINE
INV	INVERT ELEVATION
TC	TRAFFIC CONTROL POLE
TCSP	TRAFFIC SIGNAL POLE
TCPP	TRAFFIC PEDESTRIAN POLE
LIGHT	LIGHT STANDARD
EV	ELECTRIC VAULT
EHH	ELECTRIC HANDHOLE
EMH	ELECTRIC MANHOLE
UP	UTILITY POLE
UPL	UTILITY POLE W/ LIGHT
—OHW—	OVERHEAD WIRES
—UE—	UNDERGROUND ELECTRIC
FLT	FLOOD LIGHT
FB	FIRE BOX
—UT—	UNDERGROUND TELEPHONE
TJB	TELEPHONE JUNCTION BOX
TLM	TELEPHONE LINE MARKER
TMH	TELEPHONE MANHOLE
—CATV—	BURIED CABLE TV LINE
—W—	WATER LINE
INV	WATER VALVE
HYD	HYDRANT
NPW	NON POTTABLE WATER
WCV	IRRIGATION CONTROL VALVE
FC	FILL CAP
ULUV	UNKNOWN VALVE
ULUB	UNKNOWN JUNCTION BOX
WCR	WHEEL CHAIR RAMP
□	HANDICAP PARKING SPACE
□	PARKING METER
CONC	CONCRETE
TC	TOP OF CURB
SW	SIDEWALK
EP	EDGE OF PAVEMENT
FF	FINISHED FLOOR
EPS	EDGE OF PAVED SHOULDER
FA	FIRE ALARM
REC.	RECORD
D&M	DEED AND MEASURED
BLDG	BUILDING
Sq.Ft.	SQUARE FEET
CP	PRIMARY CONTROL POINT



SURVEY CONTROL  
VERTICAL DATUM = NAVD88  
HORIZONTAL DATUM = NAD83

Point	Northing	Eastng	Elevation	Description
1	1048747.4002	1069563.1417	587.76	CP#1 SET MAGNAIL
2	1049040.0944	1069277.4437	591.44	CP#2 SET MAGNAIL
3	1049332.9834	1069587.1485	596.72	CP#3 SET MAGNAIL
4	1049140.9514	1069725.0167	599.87	CP#4 SET MAGNAIL

NOTE: CONTROL USED FOR THIS PROJECT IS BASED ON CONTROL POINT NO. 10 AS SHOWN ON INNER HARBOR DEVELOPMENT PHASE 3A - CANAL SIDE BY C&S ENGINEERS, INC., SHEET NO. CS104 DATED 11/16/2011.

ALL UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE. BEFORE YOU DIG, DRILL, OR BLAST, CALL DIG SAFELY NEW YORK AT 1-800-962-7962

LIBER 11141, PAGE 780  
ERIE CANAL HARBOR DEVELOPMENT AGENCY

**CERTIFICATION:**

This is to certify that this map or plot and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 2 and 4 Table A thereof. The field work was completed on 5/18/2022.

Date of Plot or Map: 9/7/2022  
Signed: Rosanne Frandina  
Rosanne Frandina, PLS, PE  
New York State License No. 50510

DATE OF SURVEY	DATE OF REVISION	COMMENT	INT.



130 MAIN STREET  
SBL 111.17-14-1

**ALTA/NSPS LAND TITLE SURVEY**  
PART OF OUTER LOT 85, TWP 10, RGE 8  
OF THE HOLLAND LAND COMPANY'S SURVEY  
CITY OF BUFFALO  
COUNTY OF ERIE - STATE OF NEW YORK

**FRANDINA ENGINEERING and LAND SURVEYING, PC**  
CIVIL ENGINEERS and LAND SURVEYORS  
1701 Hertel Avenue, Buffalo, New York 14216  
Phone: (716) 883-1299  
www.FRANDINA.com

DATE: 8/31/2022 SHEET: 1 OF 1 DWN BY: M. CHILDS  
JOB NO.: 4531 SCALE: 1" = 30' CHK'D BY: RF



# Item 3



FOR CONSIDERATION

April 17, 2023

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: North Aud Block – Canalside Gateway Building

REQUEST FOR: Design Approval of Canalside Gateway Building Architectural Design; and Authorization to Takes Related Actions

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I. Background

In January 2021, The Erie Canal Harbor Development Corporation Board adopted a Modified General Project Plan (“MGPP”) which described the development plan for the North Aud Block Redevelopment as a multiple building development with reference to the historic street grid, including a subgrade parking structure.

To facilitate the development plan adopted by the Board for the North Aud Block, ECHDC retained a consultant team to design the Canalside Gateway Building (the “Project”), the smallest building within the development plan. The program required certain mandatory design features be included; such as public access through the ground floor (towpath level), public restrooms, ADA accessibility from street level to ground floor, and canal lighting. The program will include retail, security office, office and meeting rooms. Additionally, the building was designed to comply with the Canalside Design Guidelines and help establish an exterior aesthetic for North Aud block development while complementing the buildings along the South Aud Block.

II. Description of Project Design

The Project is a single building of approximate 12,000 total gross square feet (“GSF”). The building is sited in the southwest corner of the North Aud Block, confined by Pearl Street to the west and the Main Canal to the south. The Commercial Street bridge landing will be at the east end of the building with the associated towpath stair to remain.

The building will be four (4) stories in height, which a ground floor level at the canal towpath level. The building exterior will have a stone veneer base that will run continuous from the towpath level to the first floor window sills, terminating at a stone banding. The stone will be gray to match the granite stone utilized for the Main Canal walls. The exterior of the upper floors of the buildings will be a brick masonry veneer. The brick veneer would be set back in select locations to provide some depth to the elevation, including brick corbelling below the third floor and creating a cornice at the top of the building. The entrance to the building is at the northwest corner, facing the interior portion of the development parcel. The entrance will be more distinguishable being framed with more contemporary materials such as scored

concrete panels and aluminum storefront. The second and third floor each have a projecting balcony above the entrance. The windows be aluminum-clad wood windows. The balconies will be black metal.

Renderings of the Canalside Gateway Building are attached hereto as **Exhibit A**.

### III. Compliance of Project with MGPP Objectives and Canalside Design Guidelines

The Project has been formally reviewed by the Canalside Design Review Committee (the “DRC”) to determine it consistency with the Canalside Design Guidelines. During the technical review, the committee made a recommendation for approval on the exterior with the following conditions:

- Review of exterior light fixtures.
- Final detail of the raised planter, located east of the building.

Signage for the Gateway Building was not reviewed at this time.

A copy of the DRC’s recommendation for approval letter is attached hereto as **Exhibit B**.

The Project Plans were also referred to a public meeting of the City of Buffalo Planning Board on January 17, 2023 to review consistency with the Design Guidelines prior to the ECHDC accepting the plans as complete and authorizing construction. Based upon consideration of both the DRC’s recommendation and Planning Board’s courtesy review, ECHDC staff finds that the Project is consistent with the Canalside Design Guidelines.

### IV. Environmental Review

ESD, as lead agency, completed an environmental review of the Canalside Project, pursuant to the requirements of the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. This review, which was coordinated with all involved agencies due to the Project’s Type I classification, involved the preparation of a draft and final generic environmental impact statement (“DGEIS” and “FGEIS”). The ESD Board of Directors issued SEQRA findings for the Project on March 26, 2010. The 2010 SEQRA documents included a full assessment of a Preferred Alternative that involved the anticipated level of development that was presented in the original 2010 GPP for Canalside (i.e., inclusive of a proposed Bass Pro store on the Aud block).

In accordance with SEQRA regulations and the thresholds set forth in the FGEIS, ESD has evaluated the potential environmental effects of five MGPPs for the Canalside Project to date, most recently on January 20, 2022, which included an evaluation of the Gateway Building and other updates to the Project. This evaluation concluded that the projected scale of impacts and associated mitigation measures already in place from the 2010 FGEIS are still reasonable and applicable for this most recent MGPP. Therefore, no further environmental review is required in connection with this action.

### V. Requested Action

The Directors are requested to authorize the Corporation to: 1) based on the recommendations of the ECHDC’s Design Review Committee and the City of Buffalo Planning Board, find that the Project is

consistent with the Design Guidelines established by the Corporation as part of the MGPP for the Canalside Land Use Improvement Project without modification thereof; 2) to take all related actions.

VIII. Recommendation

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

Attachments

Resolution

Exhibit A – Project Renderings (2)

Exhibit B – Canalside Design Review Committee Recommendation Letter

April 17, 2023

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – North Aud Block – Design Approval of Canalside Gateway Building Architectural Design; and Authorization to Takes Related Actions

---

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Erie Canal Harbor Development Corporation (the “Corporation”), and based on the recommendations of the Corporation’s Design Review Committee and the City of Buffalo Planning Board, the North Aud Block – Canalside Gateway Building is found, without modification thereof, to be consistent with Design Guidelines established by the Corporation as part of the Modified General Project Plan for the Canalside Land Use Improvement Project; and be it further

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

\* \* \*









Mr. Steve P. Ranalli, P.E.  
President  
Erie Canal Harbor Development Corporation  
95 Perry Street  
Buffalo, NY 14203

***RE: North Aud Block Gateway Building - Recommendation Letter***

Dear Steve,

The Design Review Committee has reviewed the North Aud Block Gateway Building based on the November 17, 2022 presentation of the building shell final design and follow-up revised rendering forwarded on December 6, 2023 that incorporated DRC presentation comments. We offer our recommendation for approval with the following condition:

- Review of exterior light fixtures.
- Final detail of the raised planter, located east of the building.

Exterior signage will be reviewed at a later presentation.

Sincerely,

***Design Review Committee:***

***Rishawn Sonubi, AIA***

***Audrey Ross Sanders, RA***

***Mark Mistretta, RLA***

***Elaine Chow, RA***

***Deborah Pease, AIA***

# Item 4



FOR CONSIDERATION

April 17, 2023

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: Canalside Gateway Building - General Construction

REQUEST FOR: Authorization to Enter into a Contract for General Construction Services; and  
Authorization to Take Related Actions

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CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Contractor: Manning Squires Hennig Company, Inc.  
8426 Seven Springs Road  
Batavia, NY 14020

Scope of Services: General Construction Services

Contract Term: May 1, 2023 through February 28, 2025

Total Amount: \$14,250,000 (\$13,315,000 Base Bid with \$935,000 contingency)

Funding Source: New York Power Authority Industrial Incentive Award

II. Background

The principal goal of Canalside is to transform the vacant and underutilized Project Area into a vibrant mixed-use, year-round setting for family-oriented uses, including sports, entertainment, cultural, residential, commercial and recreational uses. Canalside will build upon the public development framework established through recent and committed public infrastructure investments such as the Commercial Slip, construction of the Longshed Building, Explore & More Children's museum, and the private development project Heritage Point. Also, Canalside will enhance public access and use of the downtown waterfront, including multimodal connections to transit, bicycle, pedestrian and waterborne networks.

In addition to creating a densely developed area with a mix of amenities and open space on parcels that have been vacant and underutilized for decades, the Canalside development, and this Project specifically,



aims to provide for the following public uses and purposes described in the Canalside Modified General Project Plan (MGPP):

- Providing ample, visually interesting, and diverse public spaces encouraging year-round use.
- Creating an urban, mixed-use setting that builds upon and complements the 2004 ECHMP urban design guidelines set forth in the City’s Waterfront Urban Renewal Plan, as amended.
- Promoting and incorporating architectural elements that celebrate and interpret the historical significance of the Erie Canal and its terminus on the 12.5-acre Erie Canal Harbor Project site, as provided for in the 2004 ECHMP.

This project will be the first building within the North Aud Block site. The Project will erect a masonry and steel frame structure at the northeast corner of the Commercial Strip. The building will have direct access from the canal towpath level and rise three stories above street level. The interior program will include public restrooms, ADA accessible route from street level to the towpath, commercial space, and a security office. On the upper two floors will be office and conference rooms for Erie Canal Harbor Development Corporation. At the exterior, the building will include site lighting for the canal and perimeter pedestrian paths.

III. Contractor Bid Process

On February 9, 2023, the ECHDC solicited bids for the *Canalside Gateway Building* Project in the New York State Contract Reporter. A total of three (3) bids were received on March 16, 2023 and read aloud publicly through a conference call:

<b>Contractor</b>	<b>Base Bid Amount</b>	<b>Alternate #1</b>	<b>Alternates Accepted</b>	<b>Adjusted Amount</b>
Manning Squires Hennig Co. Inc.	\$13,315,000	- \$7,000	Yes	\$13,308,000
Huber Construction, Inc.	\$14,888,000	+ \$3,000	Yes	\$14,918,000
Savarino Companies, Inc.	\$16,980,000	+ \$3,600	Yes	\$16,983,600
TY Lin (i.e., Architect’s Estimate)	\$13,040,044		N/A	

ECHDC and Buffalo Construction Consultants (BCC) de-scoped Manning Squires Hennig, the apparent low bidder, and Huber Construction on March 22, 2023. BCC recommends awarding the Contract to Manning Squires Hennig who was found by ECHDC to be the lowest responsible bidder. The low bid is within the allocated project budget. The base bid submission includes the relocation of an existing sanitary line that runs through the project site. This was requested by the Buffalo Sewer Authority as new construction cannot be constructed over an active discharge line. The line is located 27-feet below grade, requiring deep excavation and shoring. The base bid also includes furniture fit out for the office and conference rooms.

For nearly 65 years, Manning Squires Hennig has been in the business of providing Western New York and beyond with service in the construction industry. The company, which began in the 1958 provides a wide variety general construction services and performance oversight. Manning Squires Hennig is located on Seven Springs Road in Batavia. They have worked on a number of private and public projects in the City

of Buffalo, including the Buffalo Zoo and the Buffalo Bills Training Facility. They have also worked for various state agencies such as the State University Construction Fund.

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

#### IV. Scope of Work

Working within an approximate 4,000 sf site along the Commercial Canal and Pearl Street, the project will bring public amenities to Canalside and begin the commercial development of the vacant North Aud Block. The building exterior will be comprised of a masonry and stone veneer, operable windows, decorative concrete panels, and aluminum storefront. The existing exterior stairs to the towpath and landing of the Commercial Bridge will remain, with an enclosed ADA public route within the building. There will be limited site work adjacent to the building that will include concrete sidewalks, curbing, and paver streets. The building will be connected to the existing perimeter public and private utilities.

Manning Squires Hennig scope of services will include new steel framing, exterior veneers, window installation, roofing, aluminum storefront, metal stud framing, wallboard, building enclosures, interior finishes, select site work adjacent to the building, and mechanical, electrical and plumbing systems.

#### V. Contract Term, Price and Funding

The Project is slated to begin May 1, 2023 and expected to be completed by February 28, 2025.

This Contract is a lump sum contract in an amount not to exceed \$14,250,000 (\$13,315,000 Base Bid with \$935,000 contingency) as delineated in the projects plans and specifications dated February 9, 2023 along with four (4) addenda that were provided during the bidding period.

ECHDC intends to issue a Notice to Proceed to Manning Squires Hennig in the amount of \$50,000 to begin to submit material information based on long lead items.

The project funding source shall be the New York Power Authority Industrial Incentive Award.

#### VI. Non-Discrimination & Contractor and Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this contract. The Contractor shall be required to solicit and utilize Minority and Women-owned Business Enterprise ("MWBEs") and Service-Disabled-Veteran-owned Business Enterprises (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30% and an SDVOB Participation Goal of 6%. The aforementioned goal shall include a Minority Business Enterprise ("MBE") Participation Goal of 15% and a Women Business Enterprise ("WBE") Participation Goal of 15% related to the total value of ESD's funding.

Subcontractors on the Manning Squires Hennig Construction team at the time of bid, to comply with MWBE and SDVOB are as follows:

- MBE Modern Custodial Services, Inc; Buffalo, NY
- MBE Rodriguez Construction Group, Inc.; Buffalo, NY
- MBE Iroquois Bar Corp.; Lackawanna, NY
- MBE Montanosa Restoration, LLC; Rochester, NY
- MBE Precision Concrete Pumping, Inc.; Albany, NY
- MBE Kim Industries, Inc.; Danbury, CT
- MBE Eaton Associates, Inc; Buffalo, NY
- WBE Interstate Steel Sales, Inc.; Orchard Park, NY
- WBE ELK Specialty Flooring, Inc.; Hamburg, NY
- WBE Huntress Painting, Inc.; Niagara Falls, NY
- WBE Cooper Neon Sign Co., Inc.; Niagara Falls, NY
- WBE Susquehanna Sheet Metal Erection Service, Inc.; Eden, NY
- WBE Midcity Office Equipment, Inc.; Buffalo, NY
- WBE Electrical Service & Systems Installation, Inc.; Buffalo, NY
- WBE Dig It of New York LLC; Cheektowaga, NY
- WBE Bison Contracting & Builders Supply Corp.; Buffalo, NY
- SDVOB Frontline Construction & Supply; Buffalo, NY
- SDVOB Fire Safety Systems, Inc.; Buffalo, NY

VII. Environmental Review

ESD, as lead agency, completed an environmental review of the Canalside Project, pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This review, which was coordinated with all involved agencies due to the Project's Type I classification, involved the preparation of a draft and final generic environmental impact statement ("DGEIS" and "FGEIS"). The ESD Board of Directors issued SEQRA findings for the Project on March 26, 2010. The 2010 SEQRA documents included a full assessment



of a Preferred Alternative that involved the anticipated level of development that was presented in the original 2010 GPP for Canalside (i.e., inclusive of a proposed Bass Pro store on the Aud block).

In accordance with SEQRA regulations and the thresholds set forth in the FGEIS, ESD has evaluated the potential environmental effects of five MGPPs for the Canalside Project to date, most recently on January 20, 2022, which included an evaluation of the Gateway Building implementation and other updates to the Project. This evaluation concluded that the projected scale of impacts and associated mitigation measures already in place from the 2010 FGEIS are still reasonable and applicable for this most recent MGPP. Therefore, no further environmental review is required in connection with this action.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed Contractor; (2) authorize the Corporation to enter into a Construction Contract with Manning Squires Hennig Company, Inc. for an amount not to exceed \$13,315,000 plus a \$935,000 contingency for a total contract amount of \$14,250,000; and (3) to authorize the Corporation to take all related actions.

IX. Recommendation

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

X. Attachments  
Resolution

April 17, 2023

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Canalside Gateway Building Project - Authorization to Enter into a Contract for General Construction Services; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Manning Squires Hennig Company, Inc. to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Manning Squires Hennig Company, Inc. for a base contract amount of THIRTEEN MILLION THREE HUNDRED FIFTEEN THOUSAND DOLLARS (\$13,315,000), plus a contingency in the amount of NINE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$935,000) for a total contract amount not to exceed FOURTEEN MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$14,250,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

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

\* \* \*

# Item 5



FOR CONSIDERATION

April 17, 2023

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: North Aud Block Development Project – Preferred Developer

REQUEST FOR: Determination of Responsibility with Respect to Proposed North Aud Block Preferred Developer; Authorization to Designate a Preferred Developer to Undertake the North Aud Block Development Project; and Authorization to Take All Related Actions

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I. Background

Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), proposes the designation of a Preferred Developer to undertake the North Aud Block Development Project (the “Project”) at Canalside in the City of Buffalo, New York.

In January 2021, The ECHDC Board adopted a Modified General Project Plan (“MGPP”) which described the development plan for the North Aud Block as containing multiple buildings with reference to the historic street grid, mixed-uses and structured parking. At nearly 2-acres, the vacant parcel would include a mix of commercial, retail and residential uses that acknowledge portions of the 19th century street grid while allowing for the site to blend into the current 21st century surroundings and infrastructure. As adopted, the estimated development plan for the North Aud Block parcel included nearly 425,000 GSF with residential units, commercial and retail spaces, as well as up to 450 parking spaces in a structured ramp that could be constructed both below and above grade.

II. Preferred Developer Selection Process

ECHDC advertised a Request for Proposals (“RFP”) in the *New York State Contract Reporter* on May 11, 2022. On September 22, 2022, ECHDC received and opened three (3) proposals. These proposals were reviewed and scored by the Selection Committee before interviews with all three teams were held in January 2023.

A Selection Committee consisting of representatives from ECHDC and ESD reviewed the responses to the RFP against evaluation criteria measuring various aspects of each proposal, including but not limited to: the proposed development program; the proposed purchase price for the Property; the team’s experience in undertaking similar projects; the quality of the Development Plan and the ability to complete the Project in the most expeditious manner; the quality/reasonableness of the financial plan; and the extent to which each team proactively undertakes diversity practices in its work.

The Selection Committee recommends the development team of Pennrose NY Developer LLC with GSD Urban Solutions LLC d/b/a MSquared and the Westminster Economic Development Initiative, Inc. as the Preferred Developer to undertake the North Aud Block development.

Pennrose NY Developer LLC (“Pennrose”) located in Brooklyn, NY, is a national leader in the development and operation of market-rate, mixed-income, and mixed-use communities. The firm has expertise in the development of highly complex mixed-use and environmentally sustainable luxury housing developments, including Gateway Transit Village / The Vue, and the New Brunswick Performing Arts Center. Additionally, Pennrose focuses on creating affordable housing and is currently working with the Buffalo Municipal Housing Authority on the Commodore Perry Revitalization efforts, less than one mile away from the Site. These developments respond to myriad nuanced requirements driven by layered residential and commercial programs, including apartments, office, theater and cultural facilities, and parking.

Pennrose has teamed with GSD Urban Solutions LLC d/b/a MSquared (“MSquared”) located in New York, NY, a women-owned and managed social impact real estate company focused on building new mixed-income housing projects that promote affordability, sustainability, and diversity. To achieve this goal, MSquared leverages their extensive experience in urban development and financing to invest in and co-develop mixed-income projects in cities across the country. In addition to mixed-income projects underway in Newark, NJ and New York City, MSquared has raised and currently manages MSquared Development Partners Fund I, Equitable Housing Solutions Fund I and MSquared Impact Partners Fund I— and anticipates not only being a co-developer, but an equity partner in the project.

Pennrose has also teamed with the Westminster Economic Development Initiative, Inc. (“WEDI”), whose vision is that all residents of Western New York can succeed and thrive in a culturally inclusive community. WEDI’s dual focus areas of *Education* and *Economic Development* work in tandem to tackle systemic inequities that affect Buffalo’s underserved residents, many of whom are people of color. By supporting youth to succeed in school and powering entrepreneurs to launch, sustain, and grow small businesses, WEDI is helping to create a more equitable Buffalo.

Following the designation of Pennrose with MSquared and WEDI as the Preferred Developer, ECHDC will promptly negotiate the principal terms and conditions of a Development Agreement. These terms and conditions, as well as a Modified General Project Plan if necessary, would then be presented to the Directors for their approval. No binding agreement will be entered into until further approval is received by the ECHDC Board detailing the terms of the Project.

### III. Responsible Vendor Determination

Pursuant to State Finance Law Section 139-j and 139-k and ESD’s policy related thereto, ESD/ECHDC staff have (a) considered the ability of Pennrose, MSquared and WEDI to perform the services as set forth in these materials, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services.

Based on the foregoing, staff finds Pennrose, MSquared and WEDI to be responsible.

### IV. Non-Discrimination And Contractor & Supplier Diversity

ESD’s Non-Discrimination and Contractor Supplier Diversity policy will apply to this initiative. The Preferred Developer shall be required to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of ECHDC’s

funding. The aforementioned goal shall include Minority-owned Business Enterprise (MBE) Participation and Women-owned Business Enterprise (WBE) participation totaling 15% and 15%, respectively.

The Preferred Developer shall be required to solicit and utilize Service-Disabled Veteran-Owned Business for any contractual opportunities generated in connection with the project and shall be required to use Good Faith Efforts (pursuant to 9 CRR-NY GI 252) to achieve an SDVOB Participation Goal of 3% related to the total value of ECHDC's funding.

V. Environmental Review

ESD, as lead agency, completed an environmental review of the Canalside Project, pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This review, which was coordinated with all involved agencies due to the Project's Type I classification, involved the preparation of a draft and final generic environmental impact statement ("DGEIS" and "FGEIS"). The ESD Board of Directors issued SEQRA findings for the Project on March 26, 2010. The 2010 SEQRA documents included a full assessment of a Preferred Alternative that involved the anticipated level of development that was presented in the original 2010 GPP for Canalside (i.e., inclusive of a proposed Bass Pro store on the Aud block).

In accordance with SEQRA regulations and the thresholds set forth in the FGEIS, ESD has evaluated the potential environmental effects of five MGPPs for the Canalside Project to date, most recently on January 20, 2022, which included an evaluation of the North Aud Block Development Project implementation and other updates to the Project. This evaluation concluded that the projected scale of impacts and associated mitigation measures already in place from the 2010 FGEIS are still reasonable and applicable for this most recent MGPP. Therefore, no further environmental review is required in connection with this action.

VI. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to Pennrose with MSquared and WEDI as the proposed Preferred Developer; (2) authorization to designate Pennrose NY Developer LLC with GSD Urban Solutions LLC d/b/a MSquared and the Westminster Economic Development Initiative, Inc. as the Preferred Developer to undertake the North Aud Block Development; and (3) take all related actions.

VII. Recommendation

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

VIII. Attachments

Resolution  
Site Plan  
Renderings (3)

April 17, 2023

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – North Aud Block Development Project — Preferred Developer — Determination of Responsibility with Respect to the Proposed North Aud Block Preferred Developer; Authorization to Designate a Preferred Developer to Undertake the North Aud Block Development Project; and Authorization to Take All Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Erie Canal Harbor Development Corporation (the “Corporation”), the Corporation hereby finds Pennrose with MSquared and WEDI to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to designate Pennrose NY Developer LLC with GSD Urban Solutions LLC d/b/a MSquared and the Westminster Economic Development Initiative, Inc. as the Preferred Developer for the proposed North Aud Block Development Project located at Canalside in Buffalo, NY; and be it further

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

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# Item 6



FOR CONSIDERATION

April 17, 2023

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: Erie Canal Bicentennial at Canalside

REQUEST FOR: Authorization to Designate a Premiere Museum Partner for the Erie Canal Bicentennial at Canalside; Authorization to Enter into a Contract for Museum Support Services; and Authorization to Take Related Actions

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CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Museum Operator: Buffalo & Erie County Historical Society d/b/a The Buffalo History Museum  
1 Museum Court  
Buffalo, New York 14216

Scope of Services: Museum Support Services during Visitor Experience Design and Fabrication Phases

Contract Term: May 1, 2023 through May 31, 2025

Contract Amount: \$275,000 (no contingency)

Funding Source: New York Power Authority Industrial Incentive Award

II. Background

For more than a decade, the Erie Canal Harbor Development Corporation (“ECHDC”), has spearheaded projects along Buffalo’s waterfront to help Buffalo and Western New York realize a vision of renewed prosperity. The Canalside project sits on the historic western terminus of the Erie Canal. In its heyday Buffalo, known as America’s “Gateway to the West”, was one of the world’s greatest business centers, teeming with canal and rail traffic passing from the Atlantic seaboard across the Great Lakes.

The Canalside History Advisory Group (CHAG) was formed to help guide ECHDC on projects and programming in order to ensure the historical relevance of Canalside continues to be woven into the fabric of the site. The group is made up of approximately 15 volunteer members and is chaired by ECHDC Board Member Mike Vogel. The bicentennial of the opening of the Erie Canal will occur in 2025 and,

while celebrations will likely occur across New York State, CHAG was been tasked to support ECHDC staff with planning a celebration at Buffalo’s Canalside.

### III. Consultant Selection Process

The Buffalo History Museum (“TBHM”) is Western New York’s premier historical organization, in existence since 1862. The Museum began collaborating with the Erie Canal Harbor Development Corporation in 2010, when ECHDC established the “Canalside Cultural Committee” to explore opportunities for incorporating cultural institutions, assets, and stories into the development. This Committee ended its work with the recommendation for ECHDC to develop a Children’s Museum and Carousel at Canalside, resulting in the Ralph C. Wilson Jr. Explore and More Children’s Museum opening in 2019 and the Buffalo Heritage Carousel opening in 2021.

The Museum currently advises ECHDC from its position on the Canalside History Advisory Group. This Group voluntarily assisted with the development of our Erie Canal Bicentennial Visitor Experience Plan and Exhibit Briefs. These high-level documents have shaped ECHDC’s approach to our Bicentennial Commemoration in 2025, including our focus on three, keynote “experiences” that will tell the story of the Erie Canal’s impact on Buffalo. These long-term “experiences” will activate Canalside, informing residents and attracting visitors for years to come.

Last month, the Directors awarded a consultant contract for the design, fabrication and installation of these keynote “experiences” (the “Project”). However, historical research to support the “experiences” remains to be completed. The Museum is uniquely qualified to provide accurate historical research, including collaboration and coordination with underrepresented communities, and identification of appropriate artifacts will not only inform these keynote “experiences” but be the basis for the Story we tell. As our Premiere Museum Partner, the professionalism and integrity of TBHM will ensure the public’s trust in the Bicentennial Commemoration at Canalside.

A Contract Reporter Exemption was approved by Empire State Development.

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

### V. Scope of Work

The Buffalo History Museum will provide necessary services including, but not limited to, the scope of work described generally below:

Task 1: Contract with outside vendors, hire new staff, and/or designate existing staff members as necessary for the Project Term to complete the following:

- Provide assistance to ECHDC throughout the Consultant(s) advertisement and selection process
- Provide assistance to ECHDC and the Consultant(s) throughout the design, fabrication, and installation process, including but not limited to:
  - Research of historical events, people, documents, and/or artifacts associated with Buffalo’s part in the Erie Canal.

- Collaboration and coordination with underrepresented communities including the local Indigenous and ethnic communities.
- Provide documents and/or artifacts (original or copies to be determined) at no cost for use in the Project.

Task 2: In consultation with ECHDC and the Consultant(s), determine appropriate staffing required during the Testing/Training/Soft Opening dates and to operate the Project between the Open and Close dates, and

Task 3: Support and assist ECHDC with efforts to fundraise and/or solicit donations that would be contributed toward the actual Project Costs and/or staffing required to operate the Project during 2025.

VI. Contract Term, Price and Funding

The Contract will cover fees and expenses through May 31, 2025.

The Contract amount with the Buffalo History Museum shall not exceed \$275,000 (no contingency).

Given that the keynote experiences Project will be approved in phases, and the possibility that the first two tasks could result in modifications to the final two tasks, ECHDC reserves the right to amend this Contract as necessary in order to complete the Project, subject to future Board approvals.

The total contract fee will be payable in releases based on the percentage of the work that is completed. The fee is based on approved estimates and includes an allowance for incidental out of pocket project expenses (i.e., travel, reproduction costs, postage and delivery charges, management and miscellaneous fees). Labor and expenses will be reimbursed upon submission of acceptable receipted documentation.

The project funding source shall be the New York Power Authority Industrial Incentive Award.

VII. Non-Discrimination & Contractor and Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority- and women-owned business enterprises (MWBES) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that MWBE and SDVOB participation goals need not be applied to this project.

VIII. Environmental Review

Empire State Development staff has determined that the action, which involves entering into a contract for design and implementation of temporary/seasonal interpretative and educational features within the existing Longshed building and around the existing building ruins display area, constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required at this time.

IX. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed consultant; (2) authorize the Corporation to designate the Buffalo History Museum as the Premiere Museum Partner for the Erie Canal Bicentennial at Canalside; (3) authorize the Corporation to enter into a Contract with the Buffalo History Museum for an amount not to exceed \$275,000; and (4) authorize the Corporation to take all related actions.

X. Recommendation

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

XI. Attachment  
Resolution

April 17, 2023

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Erie Canal Bicentennial at Canalside - Authorization to Designate a Premiere Museum Partner for the Erie Canal Bicentennial at Canalside; Authorization to Enter into a Contract for Museum Support Services; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds the Buffalo History Museum to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with the Buffalo History Museum as the Premiere Museum Partner for the Erie Canal Bicentennial at Canalside for TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

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

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# Item 7



FOR CONSIDERATION

April 17, 2023

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 2

REQUEST FOR: Authorization to Enter into a Contract Amendment with Fisher Associates, P.E., L.S., L.A., D.P.C. for Architectural and Engineering Services; and Authorization to Take Related Actions

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CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Consultant: Fisher Associates, P.E., L.S., L.A., D.P.C.  
*Formerly Trowbridge Wolf Michaels Landscape Architects LLP*  
1001 West Seneca Street, Suite 201  
Ithaca, New York 14850

Scope of Services: Architectural and Engineering Design Services

Original Contract Term: November 2016 through December 31, 2018  
Original Contract Amount: \$1,560,000

Term w/ Amendments: Through March 31, 2026  
Amount w/ Amendments: \$4,114,860

Amendment 4 Term: Through March 31, 2026  
Amendment 4 Amount: \$360,024 (no contingency)

Total Contract Amount: Not to exceed \$4,474,884

Original Funding Source: Buffalo Regional Innovation Cluster Grant (“Buffalo Billion 1”)  
Previous Amendment: New York Power Authority Relicensing Agreement  
Funding Source

Amendment 4 Funding Source: New York Power Authority Relicensing Agreement

## II. Background

In September 2013, a dramatic vision was unveiled by New York State to transform largely dormant state-owned property on the City of Buffalo's Outer Harbor waterfront. This has included the transfer of approximately 350 acres of waterfront land from the Niagara Frontier Transportation Authority ("NFTA") to the Erie Canal Harbor Development Corporation ("ECHDC"), whose mission and resources will better enable it to support and expedite the land's redevelopment.

Historically created through land filling along the Lake Erie shoreline, the NFTA (then the Niagara Frontier Port Authority) had used the northern portion of this property since the late 1950s for outdoor storage of sand, salt, gravel, and other bulk materials, as well as similar industrial port-related activities; these all ceased in the late 1990s. The southern portion of the property has operated as the "NFTA Boat Harbor", a marina for small private boats. In addition, over the last decade, an NFTA-owned inlet south of the marina was progressively improved by NFTA and became known as "Gallagher Beach", which largely facilitated wind surfing and personal watercraft use.

Approximately 190 acres of the transferred Outer Harbor lands, including the NFTA Boat Harbor and Gallagher Beach, is now being operated by the NYS Office of Parks, Recreation and Historic Preservation ("OPRHP") and has been designated "Buffalo Harbor State Park". OPRHP advanced a series of efforts to enhance services and activities in this, the first state park ever established within the City of Buffalo.

The remaining approximately 160 acres of land north of Buffalo Harbor State Park, together with Wilkeson Pointe (acquired by ECHDC in 2008 and 2012) and other nearby public lands, will ultimately be improved and used in accordance with a community-driven Buffalo Outer Harbor Blueprint (the "Blueprint"), a long-term plan that was developed in accordance with ECHDC's guiding principles and significant public input. The Blueprint, which describes future land uses and areas for future development/redevelopment, was accepted by the ECHDC Board of Directors in 2015 and incorporated into the City of Buffalo's Unified Development Ordinance ("Green Code") in 2017.

ECHDC completed *Buffalo Outer Harbor Access & Activation Civic Project, Phase 1* construction in May 2019, consisting of several improvements that enhance access and facilitate greater public use/enjoyment of 30-acres at the southern end of the Outer Harbor. These improvements, including the extension of a multi-use waterfront trail system, an events lawn, an urban bike park and off-road trails, and habitat restoration areas, are known as the Lakeside Complex.

After a series of public and stakeholder meetings between 2018 and 2019, ECHDC developed a Preferred Plan for the Outer Harbor, which was filed by the Board of Directors in June 2019. The Preferred Plan became the Buffalo Outer Harbor Civic and Land Use Improvements General Project Plan ("GPP") on November 9, 2020 and included several Phase 1 capital improvements to be completed over the next few years.

## III. Project Description

The Consultant for the Contract Amendment under consideration was originally part of the team for the Buffalo Outer Harbor Access & Activation Civic Project, consisting of several capital improvements that would enhance access and facilitate greater public use/enjoyment of 30-acres at the southern end of the Outer Harbor. These improvements, including the extension of a multi-use waterfront trail system, an

events lawn, an urban bike park and off-road trails, and habitat restoration areas, have been known as the Lakeside Complex since their opening in 2018.

Given their extensive knowledge of the site and work with stakeholders, the Consultant was then contracted to analyze the existing conditions of the entire 200-acre site, engage the public through a series of Open House and stakeholder meetings, and develop a Preferred Plan for the Outer Harbor, including the preliminary design of several additional capital investments. The Contract Amendments to date capture the scope of work changes that have allowed several capital improvements, now adopted by the Board of Directors as Phase 1 improvements under the Buffalo Outer Harbor Civic and Land Use Improvements General Project Plan, to progress to various stages of design.

This Contract Amendment would allow the Consultant to provide construction administration over the final improvement projects at Bell Slip and Wilkeson Pointe improvements.

#### IV. Consultant Selection Process

The Consultant was originally selected by ECHDC as part of a competitive procurement advertised in the *New York State Contract Reporter on June 21, 2016*. After considering six proposals, on September 12, 2016 the Directors authorized ECHDC to enter into a contract with Trowbridge Wolf Michaels Landscape Architects LLP (“TWMLA”), a NYS-certified WBE. TWMLA’s team also includes Chiang O’Brien (MBE), Ravi Engineering and Land Surveying (MBE), WSP/Parsons Brinckerhoff, the LiRo Group, Biohabitats, RSM Design (WBE), Dixon Schwabl (WBE), and RJR Engineering (SDVOB).

On August 9, 2021 Fisher Associates, P.E., L.S., L.A., D.P.C (“Fisher Associates” or the “Consultant”) acquired Trowbridge Wolf Michaels Landscape Architects LLP. Work under the subject Contract Amendment would continue to be directed by team leader Kathryn Wolf and project manager Margot Chiuten, both principals with the former TWMLA.

The Consultant has already completed oversight of the construction for Phase 1 of the Project (Original Contract) and completed the planning and preliminary design work for Phase 2 (Amendments 1 and 2) of the Project. The Consultant has unique familiarity with the history of the Project as well as the complex coordination between the public, stakeholders, the City of Buffalo and ECHDC. As a result of ECHDC receiving additional funding for further construction improvements, extension of the Consultant’s services is needed and increasing the current contract amount is required. A Contract Reporter Exemption (“CRE”) was approved by Empire State Development on April 5, 2018 for Amendment 1, on July 31, 2019 for Amendment 2, on September 13, 2021 for Amendment 3. A CRE was also approved for Amendment 4.

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

#### V. Scope of Work

The Consultant will provide necessary services including, but not limited to, the scope of work described generally below for the next phase of improvements, including at the Lakeside Complex, Wilkeson Pointe and Bell Slip. The scope of work for the tasks are below:

**Task B: Schematic Design**

Task Completed.

**Task C: Design Development**

Task Completed.

**Task D: Construction Documents – Wilkeson Pointe and Bell Slip**

Task Completed.

**Task E: Signature Submittal - Wilkeson Pointe and Bell Slip**

Task Completed.

**Task F: Bidding and Awarding –Wilkeson Pointe and Bell Slip**

1. The Consultant will be responsible to provide assistance during the contract(s) advertising and award process, including assistance in pre-qualifying potential bidders, attendance at pre-bid meetings, reviewing and providing responses to bidder inquiries, preparing and issuing addendums as needed, responding to Requests for Information submitted by potential bidders, and assistance in reviewing bids.
2. The Consultant will be responsible to provide a written recommendation as to the low bid submission and contract award.

**Task G: Construction Administration–Wilkeson Pointe and Bell Slip**

1. The Consultant will be responsible to provide construction contract administration services in conformance with ECHDC’s construction schedule.
2. The Consultant Team shall be a representative of, and shall advise and consult with, the ECHDC during the construction phase.
3. The Consultant will be responsible to provide Office Engineering services, including:
  - a. Check detailed construction drawings, shop and erection drawings, and substitutions submitted by the Contractor for compliance with permits and contract documents.
  - b. Review specific non-routing laboratory, shop, and mill test reports of materials and equipment as directed by the ECHDC.
  - c. Address Request for Information (RFIs) from the Contractor and Building and Safety inspectors.
  - d. Prepare record (as-built) drawings on original contract documents as per the data supplied by Contractor via the ECHDC’s Construction Monitor (CM).
  - e. Prepare preliminary and final punchlists for substantially completed construction work.
  - f. The Consultant shall review and prepare responses to requests for information from the Contractor or Construction Monitor (CM).
4. The Consultant will be responsible to provide Field Engineering services, including:
  - a. Make periodic visits to the site to observe the work in progress and provide appropriate reports, including attendance at weekly progress meetings. Provide written reports from site visits.
  - b. Observe and report to the ECHDC on any performance test required by contract documents.
  - c. Attend final inspections of Project’s completed construction contracts.

**Task H: Construction Inspection–Wilkeson Pointe and Bell Slip**

1. The Consultant will be responsible to provide construction inspection services in conformance with ECHDC’s construction schedule.



2. The Consultant will be responsible to provide Inspection services, including:
  - a. Performing daily site inspection to determine if facilities are complete and being constructed in compliance with the Contract Documents, approved contract change orders, and any other permit requirements.
  - b. Performing field inspection and other quality control activities including necessary materials testing.
  - c. Preparing punch-list and inspection of punch-list corrective actions and review redlined record drawing (As-Built) plans of all aspects (mechanical, electrical, etc.) of project.
  - d. Participating in all required conferences and progress meetings on a weekly basis.
  - e. Reviewing and inspecting Contractor's work for compliance with Contract Documents on a daily basis, and with approved contract change orders.
  - f. Monitoring of corrective actions taken by the Contractor needed to fix work that is not in compliance with Contract Documents.
  - g. Reviewing and approving Contractor's survey layouts, line, grade, elevation, etc. of all work.
  - h. Keep daily dairies (log), fill out Incident (accident) Reports, and take pictures of the project. A daily Inspection Report identifying work done by the Contractor and pay items worked on shall be completed by the next business day for review and filing.
  - i. Reviewing Contractor's compliance with all regulatory permits (including NPDES, SWPPP, etc.) and mitigation measures.
  - j. Reviewing Contractor's compliance with workplace safety and health standards and notification to ECHDC of noncompliance.
  - k. The Consultant shall be responsible for providing services during construction close-out. Within one year of a Notice of Completion perform a site inspection, check all warranty items and provide punch list to ECHDC.

The Scope of Services may be amended at any time by ECHDC to reflect changes in the scope of work, duration of work, and/or changes in the project budget.

#### VI. Contract Term, Price and Funding

The Contract Amendment will cover fees and expenses from September 1, 2021 through March 31, 2026. The added amount to complete the above scope of work shall not exceed \$360,024, including reimbursables, for a total amended contract amount of \$4,474,884 including prior approved contingency.

The total contract fee will be calculated on a "hourly plus reimbursables" basis, payable in releases as the work is completed. The fee is based on approved level-of-effort hour estimates and salary schedules, and includes an allowance for incidental out of pocket project expenses (i.e., travel, reproduction costs, postage and delivery charges, permits and miscellaneous fees). Labor and expenses will be reimbursed upon submission of timesheets and acceptable receipted documentation.

The funding source shall be the New York Power Authority Relicensing Agreement.

#### VII. Non-Discrimination & Contractor and Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this contract. The Contractor shall be required to solicit and utilize Minority and Women-owned Business Enterprise ("MWBES") and Service-Disabled-Veteran-owned Business Enterprises (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts

(pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30% and an SDVOB Participation Goal of 3%. The aforementioned goal shall include a Minority Business Enterprise (“MBE”) Participation Goal of 15% and a Women Business Enterprise (“WBE”) Participation Goal of 15% related to the total value of ESD’s funding. MWBE and SDVOB consultants on the team are as follows:

Trowbridge Wolf Michaels Landscape Architects (*former WBE*)  
*Ithaca NY 14850*

Chiang|O’Brien Architects (MBE)  
*Ithaca NY 14850*

Ravi Engineering and Land Surveying (MBE)  
*Rochester NY 14618*

Dixon Schwabl (WBE)  
*Rochester NY 14564*

Encorus (formerly RJR Engineering, P.C.) (SDVOB)  
*Springville NY 14141*

VIII. Environmental Review

The Directors made a Determination of No Significant Effect on the Environment for the Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 2 at their meeting of February 8, 2021. This determination addressed all aspects of the proposed Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 2, inclusive of the construction bidding, administration, and inspection activities cover under this proposed amendment. Therefore, no further environmental review is required in connection with this action.

IX. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed consultant; (2) authorize the Corporation to enter into a Contract Amendment with Fisher Associates for an amount not to exceed \$360,024 for a total contract amount of \$4,474,884; and (4) authorize the Corporation to take all related actions.

X. Recommendation

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

XI. Attachment  
Resolution

April 17, 2023

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 2 - Authorization to Enter into a Contract Amendment with Fisher Associates, P.E., L.S., L.A., D.P.C. for Architectural and Engineering Services; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Fisher Associates to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract amendment with Fisher Associates for THREE HUNDRED SIXTY THOUSAND TWENTY FOUR DOLLARS (\$360,024) for a total contract amount not to exceed FOUR MILLION FOUR HUNDRED SEVENTY FOUR THOUSAND EIGHT HUNDRED EIGHTY FOUR DOLLARS (\$4,474,884) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

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

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