



**ERIE CANAL HARBOR DEVELOPMENT CORPORATION**

at the offices of  
Empire State Development – Buffalo Regional Office  
95 Perry Street, Suite 500  
Buffalo, NY 14203

**Meeting of the Directors**

Monday  
April 23, 2018 – 10:30 AM

PROPOSED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of the December 11, 2017 Directors' Meeting
2. ECHDC Revised Procurement Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts
3. Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 1B - Authorization to Enter into a Contract for Construction of the Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 1B; and Authorization to Take Related Actions
4. Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 2 - Authorization to Enter into a Consultant Amendment for Architectural and Engineering Services; and Authorization to Take Related Actions
5. Terminal B Capital Improvements Project - Authorization to Enter into a Consultant Agreement for Architectural and Engineering Services; and Authorization to Take Related Actions
6. First Buffalo River Marina Capital Improvements Project - Authorization to Enter into a Consultant Agreement for Architectural and Engineering Services; and Authorization to Take Related Actions

FOR INFORMATION

7. State Parks MOU – Oral Report
8. President's Report – Oral Report

**Item #1**

Erie Canal Harbor Development Corporation  
Meeting of the Directors  
Held at the Offices of Empire State Development  
– Buffalo Regional Office  
95 Perry Street – Suite 500  
Buffalo, New York 14203

December 11, 2017

MINUTES

In Attendance

Directors:

Robert D. Gioia – Chairman  
Michael DiVirgilio  
Constance L. Lydon  
Makau Mutua  
Mayor Byron Brown (Non-Voting Director)

ECHDC Staff:

(Attending in Buffalo  
unless otherwise noted)

Thomas P. Dee - President  
Elizabeth R. Fine - General Counsel (via videoconference)  
Elaine A. Kloss - Chief Financial Officer (via videoconference)  
Debbie Royce - Corporate Secretary (via videoconference)  
Bryan Watson - Executive Assistant

ESD Staff:

(Attending via video  
conference unless  
otherwise noted)

Julia Borukhov - Financial Project Manager  
Daniel DaSilva - Director, Subsidiary Finance  
Eugene Kwiatkowski - Senior Director of Budgeting  
Holly Leicht - EVP, Real Estate Development and Planning  
Chanel Maddigan - Senior Counsel (via video conference)  
Kathleen Mize - Deputy CFO and Controller  
Robert White - Assistant Vice President, Internal Audit

Also Present:

(Attending in Buffalo)

Thomas Hersey – Commissioner, Erie County Department of  
Environment and Planning

Members of the Media

Members of the Public

The meeting of the Erie Canal Harbor Development Corporation (the “Corporation”),  
was called to order at 10:35 a.m. It was noted for the record that the meeting was being

webcast. Chairman Gioia stated that the Directors had received all written material in advance of the meeting and noted for the record the Corporation's policy which welcomes public comments on the items on the current Agenda.

Prior to the substantive portion of the meeting, Chairman Gioia asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the proposed Agenda. Hearing none, Chairman Gioia then called for a motion to approve the Minutes of the Directors' meetings of August 14, 2017 and September 18, 2017 and asked if there were any comments or questions.

Noting no corrections and upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE AUGUST 14, 2017 AND SEPTEMBER 18, 2017 MEETINGS OF THE DIRECTORS OF THE ERIE CANAL HARBOR DEVELOPMENT CORPORATION

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RESOLVED, that the Minutes of the Meetings of the Corporation held on August 14, 2017 and September 18, 2017 as presented to this meeting, are hereby approved and all actions taken by the Directors presented at such meetings as set forth in such Minutes, are hereby in all respects ratified and approved as actions of this Corporation.

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Next, Chairman Gioia called upon Thomas Dee, ECHDC's President to present a request for authorization to enter into an agreement for professional environmental services on ECHDC Property on Buffalo's Outer Harbor.



Mr. Dee indicated that the contract was being sought with the intention of protecting the public. He explained that the contract is for a three-year term with a two-year renewal option and laid out the contract term amounts.

Mr. Dee added that the hope is that the Corporation does not spend into any overage allowances; however, regarding public safety matters, the Corporation wants to ensure that there are enough funds to address matters that may require swift action.

In terms of background, Mr. Dee stated that Wilkeson Pointe was opened in 2013, and subsequently, 340 acres were acquired a year later. He further stated that the Corporation acquired 2 Fuhrman Boulevard and 32 Fuhrman Boulevard.

Mr. Dee explained that the Corporation has worked diligently with various professional agencies to identify and assess remedial measures associated with the acquisition. While discussing the selection process regarding the contractors, Mr. Dee stated that a pre-selected list of qualified vendors was used and stated that LiRo presented a staff with specific technical qualifications, scored very well and stood out above the two other proposals.

Next, Mr. Dee explained the scope of the work needed: (i.) an underground storage tank at 901 Fuhrman must be removed; (ii.) constant inspection of the Greenbelt shoreline trail and bank stabilization as required by DEC and regulatory permit review for 901 Fuhrman; and (iii.) modification and maintenance of existing documents associated with the Stormwater Pollution Prevention Plan & Spill Prevention, Control and Countermeasures.

Mr. Dee further explained that the Corporation needs to hire a qualified firm that is able to be on call in the event an issue should arise.

Lastly, Mr. Dee requested that the Directors make a determination of responsibility with respect to the proposed consultant, authorize the Corporation to enter into an agreement with the consultant on the terms contained in the Board materials and take all related action.

Following a call for a motion for approval, Chairman Gioia asked Mayor Byron Brown if he had a question.

Mayor Byron Brown responded that he was trying to understand the nature of the concern regarding public safety. Mayor Brown then asked if there is anything that should be done immediately to protect the public.

Mr. Dee provided the underground storage tank as an example, explained that a cap was placed as Wilkeson Pointe was built and stated that there are places where the cap is visible. Mr. Dee then characterized this occurrence as abnormal.

Mr. Dee further explained that the Corporation receives guidance regarding engineering decisions to reconcile any problems that may arise.

Mayor Brown asked if the public will be limited in access to the areas mentioned by Mr. Dee. Mr. Dee said yes; however, he added that he was unsure if the area was roped off. He further stated that a solution must be designed to remove the underground storage tank.

While referencing the other items that were previously mentioned, Mr. Dee stated that he does not believe that there is any imminent danger to the public. Mr. Dee also stated that he did not believe these areas are currently roped off.

Mr. Dee explained that the Corporation needs to be proactive, recognize that there needs to be a fix, change the issue and remain abreast of the situation.

Mayor Brown asked how long the remediation process will take and Mr. Dee responded that there will be no requirement for a shutdown of any sort of duration and added that a solution can be designed and completed within a week or two, with the exception of the bidding process. Mayor Brown thanked Mr. Dee for his response.

Chairman Gioia asked if there were any additional questions. Director Lydon asked who receives the reports of conditions submitted by the engineers. Mr. Dee explained that the reports of conditions are received by the Corporation and added that one of the Corporation's Vice Presidents, a professional engineer, can read the reports and monitor them as needed.

Hearing no further questions or comments from the Directors and no comments from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:



ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Authorization to Enter into an Agreement for Professional Environmental Services on ECHDC Property on Buffalo’s Outer Harbor; and to Take Related Actions

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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 LiRo Engineers, Inc., to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into an agreement with LiRo Engineers, Inc., or its affiliate 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.

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Next, Chairman Gioia called upon Mr. Dee to present a request for the adoption of a general project plan for the Canalside Interpretive Structures Civic Project.

Mr. Dee stated that the Board previously approved the hiring of HHL as the Corporation’s design architect and added that the project is in the schematic drawings phase.

Furthermore, Mr. Dee stated that the Corporation is considering a general project plan where the project, budget, schedule and funding are explained. Mr. Dee further explained that the following step would consist of holding a public meeting.



Mr. Dee stated that a full environmental assessment was previously conducted by WSP, a consultant group, in 2017 and determined that there would be no significant impacts on the environment.

Mr. Dee explained that the estimated project cost is \$12 million and reiterated that architects have been hired for the project.

Next, Mr. Dee explained that the Corporation is focusing on two projects along the commercial slip, the pavilion and the union block, both of which provide restrooms and stated that requests for permanent restrooms are one of the most frequently received comments from the public.

Mr. Dee further explained that the Corporation has stated that there is a need to have a centralized public information area. He added that one of the buildings will provide this as well.

Mr. Dee stated that the public also frequently comments about the need to pay homage to the area's history and confirmed that the buildings will do so.

Mr. Dee explained that the buildings will be the first enclosed space at Canalside and stated that there is additional green space for development.

Mr. Dee further stated that another common complaint from the public involves lack of protection from the sun. He added that the project provides an opportunity to have root

structures that will provide protection from the sun, wind and rain. He explained that these structures will provide an opportunity for sheltered programming and extension of the seasons.

Next, Mr. Dee referred to the Board materials, identified the Pavilion as Figure 2 and explained that the structure is approximately 5,000 square feet and offers all of the benefits he previously discussed.

Mr. Dee explained that the Corporation is trying to create a space with a roof for an artisan market, protection from the weather, events and programming. He added that the building of an outdoor deck allows customers to see the water at an elevated view.

Mr. Dee stated that this project follows the path of what was established in the 2004 plan where the Corporation builds on the waters' edge and provides hard construction of a multifaceted building that provides for programming opportunities.

Mr. Dee then described Building 3, located in the union block, as a much narrower building that sits on a parcel of land adjacent to the naval and military park. He explained that the building pays homage to the area's history.

Mr. Dee stated that the Corporation has met with approximately 20 to 40 groups regarding the functionality of the buildings. He explained that the view from Marine Drive and commercial streets towards Canalside will look very similar to the 1800's and stated that the

building is being designed with assistance from a historic group and an advisory group. He noted that that the Corporation is working with HHL and an experienced architect.

Mr. Dee stated that the Corporation listed the building's function and reiterated that it provides the benefit of the restrooms, information station and an opportunity for enclosed space. He added that there is approximately 1,300 square feet of space on the ground floor where multiple things can be done.

Mr. Dee stated that the Corporation enjoys having different groups show displays and enjoys the discussion regarding the history of Buffalo, Canalside and the commercial slip.

Next, Mr. Dee explained that on the top of the building, there will be an outdoor roof deck to provide protection from the wind; however, the Corporation likes the idea of an open deck due to the following: (i.) popularity; (ii.) looks over the water and Canalside; and (iii.) building is a 19<sup>th</sup> century building that is very functional programmatically.

Mr. Dee explained that the land is owned by the City and stated that the Corporation envisions working with the City to negotiate an agreement and possibly the current management agreement in place, including a lease, to the proposed project area or transfer of land to the Corporation.

Mr. Dee further explained that the Corporation has been working with the Mayor and has meetings scheduled with the New York State Department of Transportation and DPW.

Mr. Dee stated that the transfer of land will be dealt with at some point in the future and reiterated that the Corporation has been working with the City who have been great partners.

Next, Mr. Dee explained that from a statutory basis based on the information set forth in the GPP and other investigation conducted by the Corporation, there were four findings listed in the Board materials. He added that these findings, listed on page four of the Board materials, confirm the public benefit.

Mr. Dee further explained that the Corporation conducted an environmental review of the Canalside Interpretive Structures Project, pursuant to the requirements of SEQRA and implementing regulations of the New York State Department of Environmental Conservation.

Mr. Dee stated that the review found that the proposed project was an unlisted action that would not result in significant adverse impacts on the environment; therefore, ESD staff recommended that the Directors make a determination of no significant impact on the environment.

Mr. Dee then requested that the Directors make findings of determination pursuant to sections 10 (d) and 10 (g) of the New York State Urban Development Corporation Act, adopt the Canalside Interpretive Structures Civil Project general project plan, authorize a public hearing to be held, and make the determination of no significant impact on the environment.



In response to a call for questions or comments, Mayor Brown stated that Mr. Dee met with a diverse group of stakeholders, preservationists and historians. He also stated that the public's reception of the project has been favorable.

Next, Mayor Brown inquired if the preservation community that Mr. Dee met with is in favor of the structures in the manner they've been laid out. Mr. Dee stated that all of the comments received so far have been positive.

Mayor Brown stated that he's aware that the committee will be looking at the history of the site and further stated that Mr. Dee has put together a diverse group of people to serve on the committee and from the City's perspective, they feel very good about what the Corporation has done.

Furthermore, Mayor Brown stated that the depth and breadth of the meetings that have been held with the public and the extensive outreach that has been done will be an asset to Canalside. Chairman Gioia thanked Mayor Brown for his comments.

Next, Director Matua asked if an agreement should be concluded with the City before proceeding with the issue regarding land. Mr. Dee responded that the path is concurrent and explained that the Corporation has been working with the City for the last eight years, all of which have been great. He further explained that the Corporation is currently working on the agreement with the Mayor's staff and stated that he's confident that there will be a \$10 million or \$12 million benefit to the citizens of Buffalo.

Mr. Dee stated that he recognizes this process as a benefit and acknowledged that there must be an agreement. He added that after the upcoming public hearing, barring any issues that may arise, a construction manager will be hired.

Mr. Dee reiterated that the Corporation has an architect for the project, is working concurrently with the Mayor's office regarding the agreement and is confident that an agreement will be reached.

Director Matua characterized the project as a high cost project. He then inquired if any studies have been done regarding what kind of traffic is expected after the project's completion. Mr. Dee stated that a study has not been done in terms of the generation of revenue; however, he also stated that a study has been done regarding traffic in the environmental study.

Mr. Dee explained that the building is part of the infrastructure at Canalside and pays homage to the area's history. He then stated that it replicates a building built in the 1800's and follows the principles of the 2004 plan.

Mr. Dee explained that he does not know the exact number of traffic that will flow into the building. He further stated that the building will offer more comfort to other buildings.

Mr. Dee explained that he does not know if the building will cause a jump in traffic because at some point, there's a limit as to how many people the Corporation would like to see there. He added that the Corporation does not want to see the area overcrowded.

Mr. Dee stated that the building will add comfort and convenience to the people visiting the site. He explained that he does not know if a traffic study is needed to indicate that there will be more visitors and stated that the visitors that are there will be treated to a better experience.

Chairman Gioia stated that the project aims to enhance the experience of the current visitor rate. He further stated that he hopes that it will continue to grow; however, there will be some level of concentration that will be reached.

Chairman Gioia explained that restrooms and places where people can assemble outside of the environment are needed, which is consistent with the master plan developed in 2010. He further explained that these things tend to happen concurrently and stated that the Corporation needs to hear from the public to hear their comments. Lastly, he explained that working concurrently will be the best option to move as quickly as possible.

Mr. Hersey prefaced his comment by stating that he was not indicating a lack of support for the project; however, stated that a minor concern was raised by the Naval Park regarding their line of view with a 3-story building in front of them, between them and the waterfront.

Mr. Hersey explained that the Naval Park will most likely state their concerns at the public hearing. He further stated that the Corporation needs to analyze how the 3-story building is going to impact the Naval Park and should address the issue through the review process.



Mr. Hersey explained, while referencing the schematic, that the Corporation is putting a lot of money into the hanger building and other things at the Naval Park. He further stated that the Naval Park is one of the best attractions and explained that the Corporation does not want visitors looking for the Naval Park and not being able to see where it is and locate it.

Mr. Dee responded that the Corporation has always been a good partner to the Naval Park and will continue to be going forward. Mr. Dee explained that despite some view obstruction, the main building of the Naval Military Park and boats will always be visible.

Mr. Dee explained that having a neighborhood is a positive thing and stated that if more visitors can be attracted to the area, a higher amount of visitors will attend the naval and military park.

Mr. Dee stated that if a person travels from north to the south, they will see exactly what is seen at the naval and military park. He added that if a person travels from south to north, the main building will still be visible; however, the hanger building cannot be seen as directly. He further explained that when a person turns the corner, the building will act as a beacon, and once at the corner, the military park is visible.

Mr. Hersey responded that this was a concern that was brought to the County Executive by the naval park.

Mr. Dee responded that he met with the naval park's representatives and explained that the Corporation will work with them in order to improve the park. Chairman Gioia explained



that the Corporation intends to make sure that conversations with the military park occur and stated that some have taken place.

Next, Chairman Gioia asked if there were any additional questions from the Directors.

Director Lydon characterized the best projects as landscape architecture and architecture being completed simultaneously. She acknowledged that she's aware the project is in the early schematic phases and explained that she would like to see how the green spaces around the buildings will evolve.

Mr. Dee stated that adjustments are being made and provided an example. He further stated that wayfinding has been established and agrees that they need to be consistent with signage. He then stated that the building will tell a story both on the outside and inside.

Hearing no further questions or comments from the Directors and no comments from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Canalside Interpretive Structures Civic Project - Civic Project Findings Pursuant to Sections 10(d) and (g) of the New York State Urban Development Corporation Act (the "Act"); Adoption of a General Project Plan; Authorization to Hold a Public Hearing Under Section 16 of the Act; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

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RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Canalside Interpretive

Structures Civic Project (the "Project"), the Corporation hereby finds pursuant to Section 10 of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"):

(1) that there exists in the area in which the Project is to be located a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the project;

(2) that such Project shall consist of a building or buildings which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes;

(3) that such Project will be leased to or owned by the State or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been, or will be made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of this project;

(4) that the plans and specifications assure adequate light, air, sanitation and fire protection; and be it further

RESOLVED, that on the basis of the materials presented to this meeting relating to the Project indicating that there are no families or individuals to be displaced from the Project area, the Corporation hereby finds that the requirements of Section 10(g) of the Act are satisfied; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the "Plan") for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing; and be it further

RESOLVED, that the Directors make a Determination of No Significant Effect on the Environment, in accordance with the terms and conditions set forth in the materials presented to the Directors at this meeting; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.



Next, Chairman Gioia asked Mr. Dee to present his President's Report.

Mr. Dee explained that 2017 started off well for the Corporation and provided the following examples of such events: (i.) ice and winter pavilion are on-going; (ii.) topping off ceremony on November 30<sup>th</sup> occurred at Explore and More; (iii.) Holiday celebration occurred on December 1<sup>st</sup>; and (iv.) USS Little Rock and its scheduled commissioning on December 16<sup>th</sup>.

Furthermore, Mr. Dee stated that ice skating will be set up in the future. He also stated that there is better crowd control and a lodge that provides warmth to visitors.

Mr. Dee also explained that one of the Corporations partners, the Sabres, will hold the World Juniors event from December 26<sup>th</sup> to January 5<sup>th</sup>. He stated that there is excitement for the event and that there will be hockey fans coming into town.

Mr. Dee further stated that there is on-going progress being made at the Explore and More Children's Museum.

Next, Mr. Dee stated that there is an RFP for the South Aud Block with a proposal due in mid-January. He explained that the Corporation is reviewing proposals and are having an ongoing dialogue.

Mr. Dee explained that conversations regarding the carousel and site utilities are also ongoing.

Mr. Dee stated that the Outer Harbor Buffalo Billion One is in design development phase and that Buffalo Billion Two is in the pre-concept phase. Mr. Dee further stated that the signage contract is near completion and that the Corporation expects that the signage will be visible this summer.

Mr. Dee stated that another incredible winter is planned at Canalside. He added that everyone should remain abreast regarding winter activities on Facebook and Canalsidebuffalo.com.

Mr. Dee further stated that Canalside will continue to improve as a year-round destination that embraces the winters and explained that the Corporation is excited to see the responses of visitors that return for the holidays.

Lastly, Mr. Dee stated that the Corporation looks forward to more days of winter activities and urged everyone to review the events listed on Canalside's website.

Mayor Brown, while referencing the temporary building located in close proximity to the ice skating rink, asked if there is revenue being generated in the building. Mr. Dee identified the building as the lodge or pavilion near the curling area and explained that the curling was moved from one edge of the ice to another location to make the lodge more customer-friendly.



Mr. Dee further explained that Be Our Guest recognized that visitors that curl usually attend in groups, stand side by side, watch their friends curl and usually stand there in the cold. By moving the curling area near the lodge, Mr. Dee stated, it allows the opportunity for friends to go inside, remain warm and purchase merchandise. Additionally, Mr. Dee stated that food and refreshments are available for purchase.

Mayor Brown stated that the area looks good and explained that the lodge was well attended during the Christmas tree lighting. He then asked regarding the financial projections for the lodge. Mr. Dee responded that he did not know due to the Corporation's contract and explained that the Bisons hold all of the risk. He further explained that the Corporation has a contract with them, in which they are in charge of managing the site, creating the revenue and their own expenses.

Mr. Dee stated, while referencing Be Our Guest ("BRG"), that the goal is to get their number down every year. He further stated that this has been done successfully and he wants to continue this practice in the future.

Mr. Dee explained that the more revenue that BRG can make in the lodge, the lower their fee will be every year.

Mr. Dee stated that the following will help the Corporation with sustainability: (i.) opportunities afforded to BRG to make money; (ii.) make customers happy; and (iii.) give customers more opportunities.

Mayor Brown asked if the revenue is audited and if that is taken into consideration with contract negotiations the following year.

Mr. Dee said yes and explained that the Corporation has a five-year contract with BRG. He added that they also have a dedicated staff person that works with the reports that come in from BRG and works with audits with the ESD Financial Division to ensure that the revenue received and the expenses make sense.

Mr. Dee reiterated that the Corporation's goal is long term sustainability and stated that they like the way that BRG is operating because they are thinking more realistically about sustainability.

Mayor Brown stated that he's impressed with BRG and stated that they are doing a great job.

Chairman Gioia commended Mr. Dee and his team for getting the skating rink up and running despite the construction of Explore and More. He added that the next couple of years will be fun, interesting and challenging.

Prior to adjourning the meeting, Chairman Gioia thanked everyone for their participation and wished all attendees a happy and safe Holiday season.

Hearing no further business, the meeting adjourned at 11:10 a.m.

Respectfully submitted,

Debbie Royce  
Corporate Secretary



**Item #2**



FOR CONSIDERATION

April 23, 2018

TO: The Directors

FROM: Thomas P. Dee

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 12, 2017 meeting, the Erie Canal Harbor Development Corporation (“ECHDC”) 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 “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 year. However, in the past year the Governor has issued Executive Orders requiring pay equity by State contractors (EO 162) and prohibiting State contracts with entities that do not maintain adequate policies to address discrimination (EO 177). In addition, the Authorities Budget Office released Policy Guidance 17-02 which recommends, among other things, that public authority guidelines describe their prompt payment procedures. Accordingly, the 2017 Guidelines have been revised to incorporate these directives, as well as other non-substantive changes for clarity. Approval of these Guidelines (the “proposed 2018 Guidelines”) is sought.

II. Procurement Contracts Guidelines Summary

On March 29, 2018, the ESD Board of Directors adopted the proposed 2018 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. Accordingly, the Directors are asked to approve the attached proposed 2018 Guidelines attached to this memorandum.

It is required that each ESD subsidiary approve its own Procurement Guidelines in terms virtually identical to the proposed 2018 Guidelines, with any departure therefrom fully explained by the subsidiary Board. 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 2018 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 2018 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.

One deviation from the 2018 Guidelines adopted by the ESD Board is being recommended. As the ESD adopted guidelines require Board approval of contracts over \$250,000, due the type of contracts and their amounts typically entered into by ECHDC, staff believe that the appropriate contract amount requiring ECHDC Board approval should be to \$100,000, not the \$250,000 reflected in the 2018 Guidelines. This identical amount was approved last year by the ECHDC Board and will permit the Corporation to efficiently approve and move contracts forward but provide appropriate oversight of contract review to the ECHDC Board.

The proposed 2018 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.

Notable changes from the 2017 Guidelines include:

- Prohibition of contracting with entities that fail to maintain policies that address discrimination;
- Links to updated workforce utilization report forms to comply with EO 162; and
- Guidance about ESD's prompt payment procedures.

The proposed 2018 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 2018 Guidelines presented to the Directors for approval.

III. Environmental Review

ESD staff has determined that approval of the proposed 2018 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 2018 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of the date of approval.

V. Recommendation

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

Attachments

Resolution

Proposed 2018 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

April 23, 2018

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 2018 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, with the exception that any contracts entered into by the Corporation that exceed a contract amount of \$100,000 shall require approval by the Corporation’s directors; 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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Revised Procurement Guidelines 2018

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

Effective March 29, 2018



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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 March 29, 2018

**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”), including subsidiary Boards.

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 “**offerer**” or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming an ESD vendor, a “**respondent**.”

**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. For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see p. 12), Procurement Contracts also include the purchase, lease or grant of any other 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.

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 Procurements Director.

## **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.

### **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 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.

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. Procurements \$5,000 to \$50,000

If ESD's procurement needs can be met by a preferred source vendor, you must use this option. See next page.



If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.



If ESD's needs cannot be met by the above mentioned options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business. See Section 2.6.



If ESD's needs cannot be met by the above mentioned options, you may elect to use an informal solicitation. 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 has to justify the need to Single Source or Sole Source this request in the justification memo.

#### II. Procurements \$50,000 +

If ESD's procurement needs can be met by a preferred source vendor, you must use this option. See next page.



If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.



If ESD's needs cannot be met by the above mentioned 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 \$200,000. See Section 2.6.



If ESD's needs cannot be met by the above mentioned, 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.



If this is an emergency situation or only one vendor can meet the needs required, obtain a Contract Reporter Exemption from the Legal Department using Single Source or Sole Source exemption as appropriate.



## **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 competitive procurement, through centralized contracts held by OGS. Information about centralized contract offerings can be obtained from the [list of approved State contractors](#) maintained by OGS.

Note that even if an OGS centralized contractor is available, it is required where feasible that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, including at least one MWBE or SDVOB certified firm, unless a compelling justification exists (e.g., experience with a particular project). Staff should confirm that a firm is certified on either the MWBE directory (<https://ny.newnycontracts.com>) or SDVOB directory ([http://ogs.ny.gov/Core/Docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf)).

## **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), ESD may purchase services or commodities from small business concerns or those certified pursuant to Article 15-A of the Executive Law (MWBEs), or commodities or technology products that are recycled or remanufactured, in an amount up to two hundred thousand dollars (\$200,000) 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. Recommended language for such advertisements can be found at <http://www.ogs.ny.gov/procurecounc/pdfdoc/DiscretionaryPurchasingGuidelines.pdf>. 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.

## 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://nyspro.ogs.ny.gov/sites/default/files/uploaded/PSPiggybackGuide\\_2.2015.pdf](https://nyspro.ogs.ny.gov/sites/default/files/uploaded/PSPiggybackGuide_2.2015.pdf). 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.



### 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 particular vendor is preferable because of specific factors such as, without limitation, past experience with a particular issue; familiarity with ESD's operations; experience with similar projects of ESD, other agencies or at other levels of government; demonstrated expertise; or capacity and willingness to respond to the situation. An example would be a competitively-procured environmental consultant who worked on an EIS for a project and now a Supplemental EIS is required for the same project; many consultants could do the work, but the original consultant's familiarity with the project justifies selection as a single source. Where a vendor's past experience or familiarity with ESD was gained through a non-competitively awarded contract, staff are strongly encouraged to conduct a competitive solicitation rather than pursue a single source exemption for that vendor to perform additional work. *In general, the Corporation's policy is to minimize the use of single source contracts and to maximize the use of competitive procurement methods.*
  
- (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.

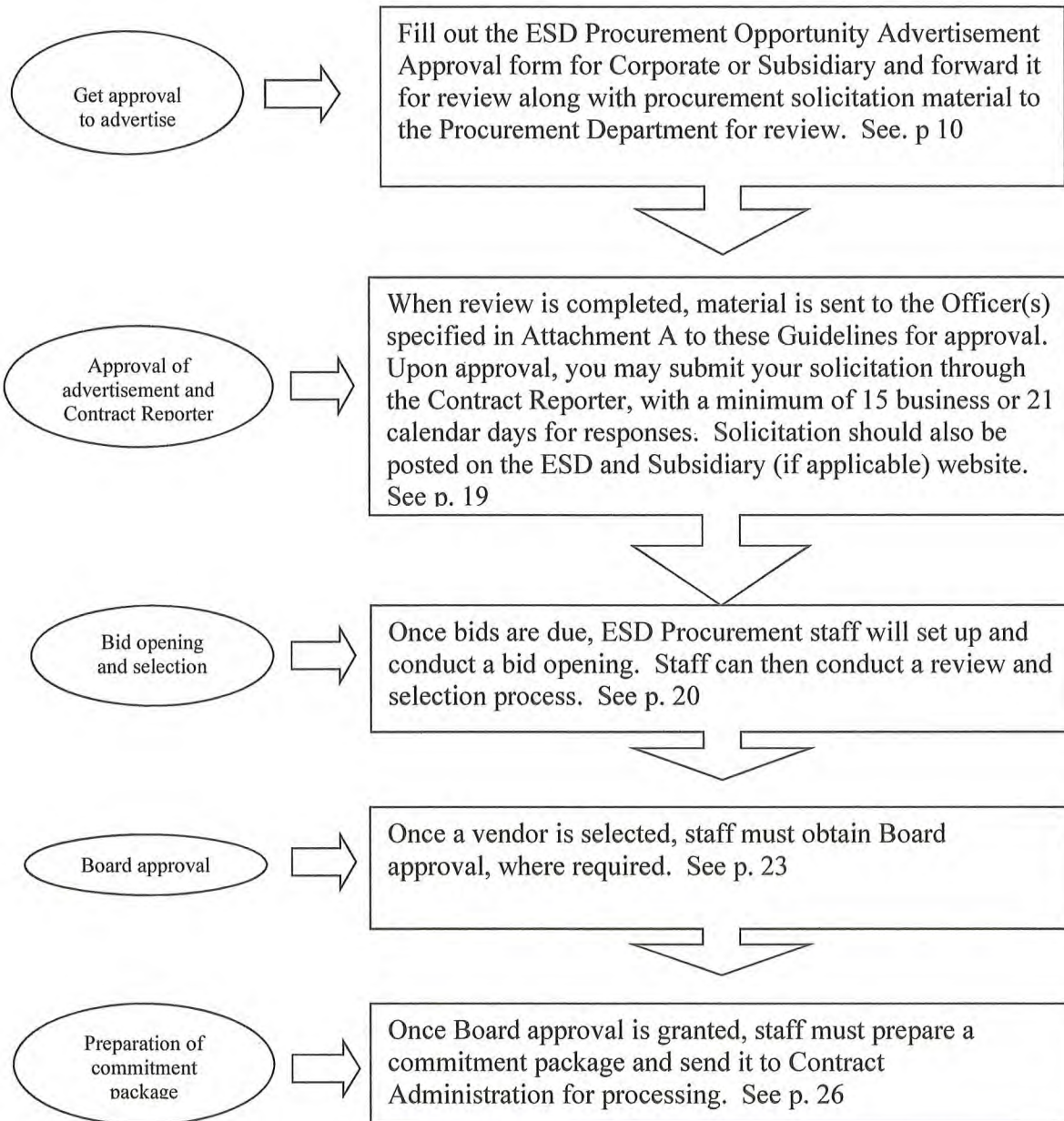
The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances. The Contract Reporter Exemption form can be found [here](#).

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 139-k (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





## **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 for up to \$200,000, 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 who 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.

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<sup>1</sup> 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;

(ix) 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 [here](#).

## 7. Types of Solicitations

### 7.1. General

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;

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.

Click [here](#) to view ESD’s standard RFP template.



### **7.3. Requests for Statements of Qualification (“RFO”)**

RFOs 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 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. Please consult with Procurement and Legal if you wish to enter into such an arrangement.

### **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.

## **8. Compliance with Other Laws**

### **8.1. Compliance with State Finance Law § 139-j 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 Offerer’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 § 139-j and § 139-k as part of their proposals: 1) [the Offerer’s Affirmation of Understanding and Agreement](#); and 2) the Offerer’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 offerer or retained, employed or designated by the offerer. 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 offerer 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.

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 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 § 5-a 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 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 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 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](#) published by OGS 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 potential opportunities for MWBEs: <http://www.panynj.gov/business-opportunities/pdf/OBDCR-LGA-MWBE-Flyer-16-F4%20.pdf>.

##### **Executive Order Number 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 exceeding \$25,000 for commodities 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 note that whole projects cannot be assessed for goals; 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, other than a zero goal determination, 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 an [MWBE Waiver Request Form](#) or [SDVOB 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 and the OCSD Counsel. The Executive Chamber must approve a waiver before it can be issued.

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.

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<sup>2</sup> "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 §142.7 (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 Firms](#) 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 <http://intranet.empire.internal/Resources/FinanceResources.html> (scroll down to "MWBE/SDVOB/DBE 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.internal/Resources/Data/Procurement/03042014\\_NYS\\_Subcontractorsandsuppliers.pdf](http://intranet.empire.internal/Resources/Data/Procurement/03042014_NYS_Subcontractorsandsuppliers.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 maintained by OCSD, as well as any appropriate SDVOBs, listed at [http://ogs.ny.gov/Core/Docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf).

## **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 taken into account. 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%.

## **8.11. Bid Opening Procedures**

All proposals should be received by the Procurement Department (unless the Procurements Director 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 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.

#### **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. In some cases, one or more non-ESD team members may 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.

In reviewing bids, all members of the team 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 retained by the Procurements Director as part of the Procurement Record.

#### **8.13. Determination of Responsibility – “CLIP Review” 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.”

There are two methods of ascertaining vendor responsibility:

- “CLIP” review. This review involves an assessment of responsibility in four categories:



Category	Factors to be considered include, but not are limited to:
Financial and Organizational <u>C</u> apacity	Assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, and proper auditing and accounting controls.
<u>L</u> egal Authority	Authority to do business in New York State, licenses, and registrations.
<u>I</u> ntegrity	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.
Previous Contract <u>P</u> erformance	Reports of less than satisfactory performances, early contract termination for cause, contract abandonment, court determinations of breach of contract.

*For all procurements, the initiator must submit a memo to the Procurements Director attesting that the initiator conducted a CLIP review and finds the vendor to be responsible and indicating what steps were taken to make that determination.* 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.

CLIP review is not needed for procurements from the OGS Centralized Contracts list.

- 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://nyspro.ogs.ny.gov/sites/default/files/uploaded/OSCBestPracticeforVendorResponsibility.pdf>.

### **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.

### **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 **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 source.

**9.2. ESD Contract and Amendment Approval**

- 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.
- b. Contracts for services to be rendered over a period in excess of 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.

An NTP template is available [here](#).

**d. Contract Amendments**

- i. **Amendments to existing contracts** 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.
- 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. 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 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/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 is less than \$50,000, it too can be procured via purchase order. However, staff should carefully examine future needs to avoid repeated awards of small noncompetitive amendments.

**Example C:** Original contract for \$5 million was awarded competitively and approved by the Board. 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 (or exemption) is still necessary.

**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 more)

- a. The contract initiator should assemble a Commitment Request Package containing the following documents:
  1. A completed [Commitment Request Form](#).
  2. A [Contract Summary/Justification Memorandum](#) explaining the need for the procurement and the method of procurement used.
  3. 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 Offerer's Affirmation of Understanding and Agreement pursuant to SFL §139-j; and (vii) Appendix C (Offerer 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 more clear and 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;
4. Written explanation of the responsibility determination/CLIP 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.
  5. ESD/Subsidiary Board of Directors or CEO/designee approval, if applicable. View [sample Board materials](#) and [CEO/Designee Approval Cover Memo](#).
  6. 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.
  7. 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.
  8. A completed [Commitment Package Checklist](#).
    - b. The initiator signs and obtains the Department Head approval on the Commitment Request form and forwards the commitment package (all documents listed above) to Procurement for compliance review and approval. When approved, Procurement will route the commitment package to Contract Administration.
    - c. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various ESD departments.

- d. Upon obtaining in-house approvals, Contract Administration sends all three (3) sets of the contract or amendment package to the vendor for signature(s).
- e. After receiving three (3) signed sets from the vendor, Contract Administration sends all three sets to the Officer(s) specified in Attachment A to these Guidelines for signature.
- f. One original copy of the fully-executed contract or amendment is sent by Contract Administration to the vendor.

#### **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. Department 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 B-1184. 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.

## **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 Procurement/Contract Administration Department, shall be responsible for:

- a. Preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines.
- b. 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 #3**



**FOR CONSIDERATION**

April 23, 2018

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 1B

REQUEST FOR: Authorization to Enter into a Contract for Construction of the Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 1B; and Authorization to Take Related Actions

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**CONTRACT NEEDS AND JUSTIFICATION**

I. Contract Summary

Consultant: Pinto Construction Services  
1 Babcock Street  
Buffalo, New York 14210

Scope of Services: Construction

Contract Term: May 2018 - June 2019

Contract Amount: Not to exceed \$3,950,000 (\$3,419,467.00 Base Bid with \$530,533 contingency)

Funding Source(s): \$ 3,440,000 Buffalo Regional Innovation Cluster Grant ("Buffalo Billion")  
\$ 510,000 New York Power Authority Relicensing Agreement

II. Background

In September 2013, Governor Andrew Cuomo presented his vision for a dramatic transformation of the City of Buffalo's largely vacant 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 is currently advancing 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 was incorporated into the City of Buffalo’s Unified Development Ordinance (“Green Code”) in 2017.

The subject lands have already undergone a number of incremental trail access, clean-up/remediation, and recreational improvements over the last decade while in NFTA ownership, including shore stabilization, new trail systems along the water’s edge and along public roads in the area, remediation of former disposal sites, clearance of blighting structures, and periodic programming of activities such as concerts. The construction of this proposed Project (defined hereafter) will build upon these prior incremental improvements by filling in existing access gaps, expand public usage of this great resource, and provide for additional activities that would open public awareness of this seldom-visited part of the City.

### III. Project Description

The goals/objectives of the Project are directly connected with ECHDC’s guiding principles, including:

- Improving seasonal, recreational and tourist access, use and enjoyment of the Outer Harbor;
- Enhancing pedestrian and bicycle access along the Outer Harbor, as well as connecting segments of the existing regional trails network along the Lake Erie waterfront;
- Minimize adverse impacts on communities and the environment by avoiding an inequitable distribution of impacts and maintaining neighborhood and community cohesion.

The Project will consist a completed multi-use Greenbelt Trail, including pedestrian and bicycle amenities (i.e., bike racks, benches, trash cans, Adirondack chairs, etc.) through the Terminals A & B property, thereby completing the southern end of the Greenbelt loop with Fuhrmann Boulevard; two (2) "overlook" locations; an urban bike park with skills features and off-road trails; an events lawn for passive and active recreational purposes; and three habitat restoration areas (collectively, the “Project”). The property being used by the public will also include environmental mitigation features mainly consisting of a soil cap and/or fencing.

IV. Consultant Selection Process

On February 6, 2018 ECHDC advertised for the *Buffalo Outer Harbor Access & Activation Civic Improvements, Phase 1B* Project in the New York State Contract Reporter. A total of three (3) bids were received on March 13, 2018 and read aloud publicly.

ECHDC and Trowbridge, Wolf, Michaels Landscape Architects (“Trowbridge”) interviewed bidders and de-scoped the apparent low bidder on March 20, 2018. It was the recommendation of Trowbridge to award the Contract to Pinto Construction Services, Inc. who was found to be the lowest responsible bidder. The following are the bid results (arranged by highest to lowest bidder):

<b>Contractor</b>	<b>Base Bid Amount</b>	<b>Alternates Accepted</b>
Mark Cerrone, Inc.	\$4,756,250	None
Scott Lawn Yard, Inc.	\$4,175,900	None
Pinto Construction Services, Inc.	\$3,419,467	None
Trowbridge (i.e., Architect’s Estimate)	\$3,475,578	N/A

For over 80 years, the Panepinto family has been in the business of providing Western New York and beyond with service in the construction industry. The company began in the 1920s as Pinto Trucking Services, expanded in the 30s and 40s, and became Pinto Equipment Rental in 1972. Eventually, the third generation became involved with the business, and in 1985, James and his siblings opened Pinto Construction Services, Inc. developing the company into what it is today. Pinto Construction Services is located on Babcock Street in the City of Buffalo, and is familiar with the ECHDC having worked on the Queen City Bike Ferry Landing and Children’s Museum.

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.

V. Scope of Work

The construction consists mainly of site/civil and landscaping work to install the multi-use Greenbelt Trail, create two "overlook" locations, an urban bike park with skills features and off-road trails and an events lawn for passive and active recreational purposes, as well as landscaping and fencing of three habitat restoration areas. The construction also includes environmental mitigation features mainly consisting of a soil cap, fencing and/or paving, as well as signage.

VI. Contract Term, Price and Funding

This contract is a lump sum contract as delineated in the projects plans and specifications dated January 31, 2018 along with three (3) addenda that were provided during the bidding period.



The project is slated to begin in May 2018, with substantial completion by May 1, 2019 and completion by June 30, 2019.

The funding sources shall be a \$3,440,000 Buffalo Regional Innovation Cluster Grant ("Buffalo Billion") and \$510,000 from 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 2%. 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. Consultants on the team, listed by MWBE and SDVOB percentages, are as follows:

Consultants on the team, listed by MWBE percentages, are as follows:

- 9.7% Iroquois Bar (MBE)  
*Buffalo NY 14218*
  
- 4.8% Rodriguez Construction (MBE)  
*Buffalo NY 14203*
  
- 1.8% Iyer Environmental (MBE)  
*Orchard Park NY 14217*
  
- 9.4% B. Pariso Transport (WBE)  
*Grand Island NY 14072*
  
- 1.9% Ideal Concrete (WBE)  
*Cheektowaga NY 14227*
  
- 1.6% CVF, Inc. (WBE)  
*Buffalo NY 14216*
  
- 1.5% Eastwood Industries (WBE)  
*Colden NY 14033*
  
- 1.0% ASI Signs (WBE)  
*Grand Island NY 14072*
  
- 2.0% TBD (SDVOB)

Overall, the consultant team has achieved a combined MWBE involvement of 34.7%.

VIII. Environmental Review

ECHDC completed a coordinated environmental review of the Buffalo Outer Harbor Access & Activation Civic Project, pursuant to the requirements of SEQRA and the implementing regulations of the New York State Department of Environmental Conservation and made a Determination of No Significant Effect on the Environment on November 9, 2015. 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 enter into a construction contract with Pinto Construction Services, Inc. for an amount not to exceed \$3,419,467 plus a \$530,533 contingency for a total contract amount of \$3,950,000; and (3) to take all related actions.

X. Recommendation

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

XI. Attachments  
Resolution



April 23, 2018

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 1B - Authorization to Enter into a Contract for 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 Pinto Construction Services, Inc. to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Pinto Construction Services, Inc. for a base contract amount of THREE MILLION FOUR HUNDRED NINETEEN THOUSAND FOUR HUNDRED SIXTY-SEVEN DOLLARS (\$3,419,467), plus a contingency in the amount of FIVE HUNDRED THIRTY THOUSAND FIVE HUNDRED THIRTY-THREE DOLLARS (\$530,533) for a total contract amount not to exceed THREE MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS (\$3,950,000) 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 #4





**FOR CONSIDERATION**

April 23, 2018

TO: The Directors

FROM: Thomas P. Dee

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

REQUEST FOR: Authorization to Enter into a Consultant Amendment for Architectural and Engineering Services; and Authorization to Take Related Actions

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**CONTRACT NEEDS AND JUSTIFICATION**

I. Contract Summary

Consultant: 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: Not to exceed \$1,560,000

Amendment Term: January 1, 2018 through February 1, 2019

Amendment Amount: \$550,000

Total Contract Amount: Not to exceed \$2,110,000

Funding Source(s): Buffalo Regional Innovation Cluster Grant (aka "Buffalo Billion") and New York Power Authority Relicensing Agreement

II. Background

In September 2013, Governor Andrew Cuomo presented his vision for a dramatic transformation of the City of Buffalo's largely vacant 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 is currently advancing 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 was incorporated into the City of Buffalo's Unified Development Ordinance ("Green Code") in 2017.

Using \$5 million of Buffalo Billion 1 funding, ECHDC will begin construction in May 2018 of several improvements that would enhance access and facilitate greater public use/enjoyment of 20-acres at the southern end of the Outer Harbor. These improvements include the extension of a multi-use waterfront trail system, an events lawn, an urban bike park and off-road trails, and habitat restoration areas.

### III. Project Description

The actions proposed as part of the *Buffalo Outer Harbor Access & Activation Civic Project, Phase 2* Project intend to build upon the first round of Buffalo Billion improvements at the southern end of the Outer Harbor, as well as improvements being evaluated for the First Buffalo River Marina at the northern end. The Buffalo Billion 2 improvements would further fill in existing access gaps, expand public usage of this great resource, and provide for additional amenities and activities that would open public awareness.

The goals/objectives of the Project are directly connected with ECHDC's guiding principles, including:

- Improving year-round, recreational and tourist access, use and enjoyment of the Outer Harbor;
- Enhancing pedestrian and bicycle access along the Outer Harbor, as well as connecting segments of the existing regional trails network along the Lake Erie waterfront;
- Minimize adverse impacts on communities and the environment by avoiding an inequitable distribution of impacts and maintaining neighborhood and community cohesion.

The Project will consist of several capital improvements and investments which allow for increased public access and activation of the Outer Harbor. While the final improvements will be determined with



stakeholder and agency involvement, they will likely include environmental remediation, active and passive open space, habitat restoration, a restored and accessible Michigan Pier, food and beverage opportunities, signage and wayfinding, and coordination with long-term in-water improvements by the USACOE/NYSDEC. These improvements will occur over acres of land that remains largely vacant and underutilized.

#### IV. Consultant Selection Process

On June 21, 2016 ECHDC advertised for the *Buffalo Outer Harbor Access & Activation Civic Improvements Project* in the New York State Contract Reporter. The Request for Proposals (RFP) sought to retain professional architecture, engineering, landscape architecture, and/or land surveying consultant firms and/or teams to provide design and construction services for the Project. On July 28, 2016, ECHDC received and opened six (6) proposals, all consisting of consultant teams. These proposals were reviewed and scored by the Selection Committee and a top ranked team was selected.

The final rankings of the Selection Committee are as follows (*only prime consultant shown*):

1. Trowbridge Wolf Michaels Landscape Architects
2. Wendel
3. Fisher Associates
4. The LiRo Group
5. Foit-Albert Associates
6. LaBella Associates

Trowbridge Wolf Michaels Landscape Architects (“TWMLA” or the “Consultant”) is a NYS-certified WBE. Their team also includes Ravi Engineering and Land Surveying (MBE), WSP/Parsons Brinkerhoff, the LiRo Group, Biohabitats, Tououkian Touloukian, and RJR Engineering (SDVOB).

The team will be directed by team leader Kathryn Wolf and project manager Margot Chiuten. The team clearly understands the complexity of the project, the key stakeholders and issues, and the time constraint of providing a Capital Plan by February 1, 2019.

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 proposed contractor to be responsible.

The original Consultant scope of work was to design and provide construction inspection of seven (7) capital improvements on ECHDC’s 160-acre Outer Harbor properties. However, after environmental testing and discovery, and stakeholder involvement, the scope of the original project was adjusted and scaled back to meet the Buffalo Billion 1 total project budget.

Currently, the Consultant team is assisting with the bidding phase and will shortly be engaged with on-site inspections, reviews and architectural directives, as well as quality assurance/oversight of the construction phase services of the Project. The consultant has unique familiarity with the history of the Project as well as its complex environmental conditions and highly involved public participation, and continued assistance by the consultant team is vital through the next round of capital improvements. The

next round of capital improvements will include many of those improvements identified in the original RFP that were dropped from the scope due to budget constraints. As a result, extension of the Consultant's services is needed and increasing the original contract amount is required. A Contract Reporter Exemption was approved by Empire State Development.

V. Scope of Work

The TWMLA team will provide necessary services including, but not limited to, the scope of work described generally below. ECHDC is awarding a contract for Task A only at this time. The scope of work for Task A is below as:

Task A: Capital Planning

1. The Consultant will be responsible for working with ECHDC, its partners (i.e., City of Buffalo, Outer Harbor Management Group, etc.) and stakeholders to further define the programming requirements for the various improvements.
  - a. Two-day Kickoff Meeting
  - b. Monthly, two-day long Stakeholder Meetings
  - c. Three (3) Open House Meetings
2. The Consultant shall review the property conditions assessments and environmental screenings of the Outer Harbor properties from the Bell Slip to, and including, Wilkeson Pointe.
3. The Consultant shall confirm existing data and complete additional investigations and services as necessary.
4. The Consultant shall conduct meetings with regulatory agencies as necessary to identify necessary permits.
5. The Consultant will be responsible to prepare a Use/Space Program.
6. The Consultant will be responsible to develop three (3) Site Alternatives, each including the USACOE's possible habitat restoration plan at Slip No. 3.
  - a. The Consultant shall coordinate with the "South End" Project (Buffalo Billion 1) that begins construction this year.
  - b. The consultant shall coordinate with the Terminal B Capital Improvements Project to the extent necessary.
  - c. The consultant shall coordinate with the First Buffalo River Marina Capital Improvements Project.
7. The Consultant will be responsible to provide a concept-level estimate of probable costs for each Site Alternative.
8. The concept designs shall be synthesized to a single, Preferred Capital Plan that will be used to develop the overall Project. The Preferred Capital Plan shall optimize the arrangement of the programmatic elements and take advantage of adjacencies with other planned projects.

Once a Preferred Capital Plan and a construction budget have been accepted by the ECHDC Board of Directors, ECHDC and the Consultant shall negotiate a final scope of work and fees for Tasks B through H. The Consultant contract would then be amended to complete the work, as follows: Task B: Schematic Design; Task C: Design Development; Task D: Construction Document; Task E: Signature Submittal; Task F: Bidding and Awarding; Task G: Construction Administration; and Task H: Construction Inspection.



The estimated project schedule is as follows:

Advertisement	June 21, 2016
Original Board Approval:	September 12, 2016
Board Approval of Contract Amendment:	April 23, 2019
Capital Plan Start:	June 2018
Capital Plan End:	January 2019
Amendment/Begin Task B-H:	Q2 2019

VI. Contract Term, Price and Funding

The Consultant Agreement will cover fees and expenses over an approximate 7-month period (June 2018 – February 2019).

The Contract Amendment amount with the Trowbridge Wolf Michaels Landscape Architects team to complete the above scope of work shall not exceed \$550,000, while the Total Contract Amount shall not exceed \$2,110,000.

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 manhour 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 sources shall be a Buffalo Regional Innovation Cluster Grant (aka “Buffalo Billion”) and 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. Consultants on the team, listed by MWBE and SDVOB percentages, are as follows:

Consultants on the team, listed by MWBE percentages, are as follows:

- 75.0% Trowbridge Wolf Michaels Landscape Architects (WBE)  
*Ms. Kathryn Wolf, Ithaca NY 14850*

- 7.5% Ravi Engineering and Land Surveying (MBE)  
*Mr. Nagappa Ravindra, Rochester NY 14618*
- 7.5% Watts Engineers & Architects (MBE)  
*Mr. Edward Watts, Buffalo NY 14203*
- 3.0% Encorus (formerly RJR Engineering, P.C.) (SDVOB)  
*Mr. Bob Runge, Springville NY 14141*

Overall, the Consultant team has achieved a combined MWBE involvement of 92.0%.

VIII. Environmental Review

Empire State Development staff has determined that the action, which involves entering into a contract for the purposes of engaging a design consultant team to undertake planning, detailed architectural design and engineering of the Project without committing the agency to undertake any future project, 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 enter into a contract amendment with Trowbridge Wolf Michaels Landscape Architects for an amount not to exceed \$550,000 for a total contract amount of \$2,110,000; and (4) to take all related actions.

X. Recommendation

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

XI. Attachments  
Resolution



April 23, 2018

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Buffalo Outer Harbor Access & Activation Civic Improvements Project, Phase 2 - Authorization to Enter into a Consultant Amendment 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 Trowbridge Wolf Michaels Landscape Architects to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract amendment with Trowbridge Wolf Michaels Landscape Architects for FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000) for a total contract amount not to exceed TWO MILLION ONE HUNDRED TEN THOUSAND DOLLARS (\$2,110,000) 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 23, 2018

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Terminal B Capital Improvements Project

REQUEST FOR: Authorization to Enter into a Consultant Agreement for Architectural and Engineering Services; and Authorization to Take Related Actions

**CONTRACT NEEDS AND JUSTIFICATION**

I. Contract Summary

Consultant: Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, DPC LLP  
40 LaRiviere Drive, Suite 150  
Buffalo, New York 14202

Scope of Services: Architectural and Engineering Design Services

Contract Term: June 1, 2018 through February 1, 2019

Contract Amount: Not to exceed \$375,000 (\$309,740 plus \$65,260 contingency)

Funding Source(s): New York Power Authority Relicensing Agreement

II. Background

In September 2013, Governor Andrew Cuomo presented his vision for a dramatic transformation of the City of Buffalo’s largely vacant 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 is currently advancing 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 is being incorporated into the City of Buffalo’s Unified Development Ordinance (“Green Code”).

As part of ECHDC’s first steps on the Outer Harbor, a series of recreational activity areas will begin construction this year and be opened in May of 2019. These improvements are located on nearly 30 acres of land just north and east of the Terminal B warehouse facility. An urban bike park, events lawn, multi-use trails, and habitat enhancements are expected to increase the use and visibility of this section of Buffalo’s Outer Harbor. The proximity, and generally good condition, of Terminal B to these planned amenities make an investment in this existing building a logical next step for Outer Harbor activation.

### III. Project Description

The goals/objectives of the Project (defined hereafter) are directly connected with ECHDC’s guiding principles, including:

- Improving seasonal, recreational and tourist access, use and enjoyment of the Outer Harbor;
- Enhancing pedestrian and bicycle access along the Outer Harbor, as well as connecting segments of the existing regional trails network along the Lake Erie waterfront;
- Minimize adverse impacts on communities and the environment by avoiding an inequitable distribution of impacts and maintaining neighborhood and community cohesion.

The Project will review various capital improvement options for the Terminal B building and surrounding site (the “Project”) that could result in demolition, partial, or full rehabilitation as determined by ECHDC.

### IV. Consultant Selection Process

On November 16, 2017 ECHDC advertised for the *Terminal B Capital Improvements* Project in the New York State Contract Reporter. The Request for Proposals (RFP) sought to retain professional architecture, engineering, landscape architecture, and/or land surveying consultant firms and/or teams to provide planning, design and construction services for the Project. On January 16, 2018, ECHDC received and opened nine (9) proposals, all consisting of consultant teams. These proposals were reviewed and scored by the Selection Committee of ECHDC and ECHDC staff and a top ranked team was selected.



The final rankings of the Selection Committee are as follows (*only prime consultant shown*):

1. Bergmann Associates
2. nArchitects
3. Architectural Resources
4. LaBella Associates
5. Flynn-Battaglia
6. BHNT Architects
7. Cannon Design
8. Kideney Architects
9. TRM Architects

Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, DPC LLP (“Bergmann Associates”) is a New York State full-service design firm with an office in Buffalo. Their team also includes Watts Architecture and Engineering (MBE), Trowbridge Wolf Michaels Landscape Architects (WBE), Touloukian Touloukian, Studio NYL, Johnson Consulting, and Global Urban Enterprises LLC (SDVOB).

The Bergmann team is well suited for this Project, having been involved with the first phase of the Access & Activation Civic Improvements, the “nodal improvements” along Fuhrmann Boulevard, and the recent improvements at Buffalo Harbor State Park. They are also very familiar with several open space, pathway and landscape architecture projects within the City of Buffalo and other agencies in the immediate area. In addition to Bergmann’s experience, nearly all sub-consultants on the proposed team have worked on projects for ECHDC, OPRHP and/or the New York Power Authority along Buffalo’s waterfront.

The team will be directed by team leader Andy Raus and project manager Steven Kushner. The team clearly understands the complexity of the Project, the key stakeholders and issues, and the timeline to provide a preferred Concept Plan by February 1, 2019.

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.

#### V. Scope of Work

ECHDC is seeking a Consultant to provide necessary services including, but not limited to, the scope of work as described in the RFP. ECHDC is awarding a contract for Task A only at this time. The scope of work for Task A is described below:

##### Task A: Concept Design

1. The Consultant will be responsible for working with ECHDC, its partners (i.e., City of Buffalo, Outer Harbor Management Group, etc.) and stakeholders to further define the programming requirements for the various improvements.
2. The consultant shall review the property conditions assessments and environmental screenings of Terminal B.
3. The Consultant shall confirm existing data and complete additional investigations and services as necessary.

4. The Consultant shall conduct meetings with regulatory agencies as necessary to identify necessary permits.
5. The Consultant will be responsible to prepare a Building Concept Program.
6. The Consultant will be responsible to develop three (3) building concept designs each for the Project.
7. The Consultant will be responsible to prepare a Site Concept Program.
8. The Consultant will be responsible to develop three (3) site concept designs, including one with a semi-permanent outdoor stage at the northeast corner nearest the planned Great Lawn.
9. The Consultant will be responsible to provide a concept design estimate of probable costs for each concept developed.
10. The concept designs shall be synthesized to a single, Preferred Concept Plan that will be used to develop the overall Project. The Preferred Concept Plan shall optimize the arrangement of the programmatic elements. (Addendum 2)
11. The Consultant will be responsible to conduct a market analysis of the area to understand the types and sizes of potential tenants, as well as event spaces that are likely to be supportable during the next five to ten years. (Addendum 3)

Once a Preferred Concept Plan and a construction budget have been accepted by the ECHDC Board of Directors, ECHDC and the Consultant shall negotiate a final scope of work and fees for Tasks B through H. The Consultant contract would then be amended to complete the work. Task B: Schematic Design; Task C: Design Development; Task D: Construction Document; Task E: Signature Submittal; Task F: Bidding and Awarding; Task G: Construction Administration; and Task H: Construction Inspection.

The estimated Project schedule is as follows:

Advertisement	November 16, 2017
Proposals Due	January 16, 2018
Interviews	February 15, 2018
ECHDC Board Approval:	April 23, 2018
Design Start:	June 2018
Design End:	January 2019
Amendment/Begin Task B-H:	Q2 2019

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

The Consultant Agreement will cover fees and expenses over an approximate 8-month period (June 2018 – January 2019). The Contract amount with the Bergmann team to complete the above scope of work shall not exceed \$375,000, including a contingency of \$65,260.

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 manhour 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 2%. 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. Consultants on the team, listed by MWBE and SDVOB percentages, are as follows:

- 15.0% Trowbridge Wolf Michaels Landscape Architects (WBE)  
*Ms. Kathryn Wolf, Ithaca NY 14850*
- 15.0% Watts Architecture & Engineering (MBE)  
*Mr. Edward Watts, Buffalo NY 14203*
- 2.0% Global Urban Enterprises (SDVOB)  
*Mr. Albert Urban, Victor NY 14564*

Overall, the consultant team has achieved a combined MWBE involvement of 30.0%.

VIII. Environmental Review

Empire State Development staff has determined that the action, which involves entering into a contract for the purposes of engaging a design consultant team to undertake master planning, detailed architectural design and engineering of the Project without committing the agency to undertake any future project, 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 enter into a contract with Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, DPC LLP for an amount not to exceed \$309,740 plus a \$65,260 contingency for a total contract amount of \$375,000; and (3) to take all related actions.

X. Recommendation

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

XI. Attachments  
Resolution

April 23, 2018

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Terminal B Capital Improvements Project -  
Authorization to Enter into a Consultant Agreement 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 Bergmann Associates, Engineers, Landscape Architects & Surveyors, DPC LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, DPC LLP for a base contract amount THREE HUNDRED NINE THOUSAND SEVEN HUNDRED FOURTY DOLLARS (\$309,740), plus a contingency in the amount of SIXTY-FIVE THOUSAND TWO HUNDRED SIXTY DOLLARS (\$65,260) for a total contract amount not to exceed THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000) 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 #6



**FOR CONSIDERATION**

April 23, 2018

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: First Buffalo River Marina Capital Improvements Project

REQUEST FOR: Authorization to Enter into a Consultant Agreement for Architectural and Engineering Services; and Authorization to Take Related Actions

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**CONTRACT NEEDS AND JUSTIFICATION**

I. Contract Summary

Consultant: Olin Partnership, Ltd dba OLIN  
150 South Independence Mall West, Suite 1123  
Philadelphia, Pennsylvania 19106

Scope of Services: Architectural and Engineering Design Services

Contract Term: June 1, 2018 through February 1, 2019

Contract Amount: Not to exceed \$550,000 (\$478,545 plus \$71,455 contingency)

Funding Source(s): New York Power Authority Relicensing Agreement

II. Background

In September 2013, Governor Andrew Cuomo presented his vision for a dramatic transformation of the City of Buffalo's largely vacant 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 is currently advancing 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 is being incorporated into the City of Buffalo’s Unified Development Ordinance (“Green Code”).

The ECHDC has engaged a consultant team to master plan and design a number of relatively low-disturbance, recreational activities that are expected to be built over the next two to three years as part of the second round State investments. Many of these improvements are located on land immediately west and south of the First Buffalo River Marina. An enhanced Wilkeson Pointe and redeveloped Michigan Pier, food/beverage and rental facilities, open space, trails, and habitat enhancements are expected to increase the use and visibility of this section of Buffalo’s Outer Harbor. Times Beach Nature Preserve is also planning a for upgrades to their entrance and public edge across from the Marina.

The proximity to the other planned improvements, recent upgrades to the property (new docks and offices), and the ECHDC’s desire to open this space to the public while retaining boat dockage make an investment in this property a logical next step for Outer Harbor investment.

### III. Project Description

The goals/objectives of the Project are directly connected with ECHDC’s guiding principles, including:

- Improving seasonal, recreational and tourist access, use and enjoyment of the Outer Harbor;
- Enhancing pedestrian and bicycle access along the Outer Harbor, as well as connecting segments of the existing regional trails network along the Lake Erie waterfront;
- Minimize adverse impacts on communities and the environment by avoiding an inequitable distribution of impacts and maintaining neighborhood and community cohesion.

ECHDC is considering the following preliminary water-dependent programmatic elements to be incorporated into the Marina Master Plan:

- Overall entrance, marina circulation and parking for vehicles based on type of general public/marina user
- Relocated boat launch and related circulation
- Relocated Queen City Bike Ferry landing and related circulation
- Site access and control for various types of users
- Pedestrian and bicycle circulation

- Landscape and public site amenity plan
- Public space programming including:
  - Concessions
  - Rental Opportunities
- Future Development Parcel Plan including locations for:
  - Marina Restaurant
  - Dry Stack Storage Building
  - Entrance Station/Marina Office
  - Mixed Use Development parcels
  - ECHDC Maintenance Facility in the current Marina Office Building
- Site utilities, lighting and signage
- Connecting Terminal Grain Elevator rehabilitation/reuse
- Outdoor/Winter boat storage layout

#### IV. Consultant Selection Process

On January 11, 2018 ECHDC advertised for the *Terminal B Capital Improvements* Project in the New York State Contract Reporter. The Request for Proposals (RFP) sought to retain professional architecture, engineering, landscape architecture, and/or land surveying consultant firms and/or teams to provide planning, design and construction services for the Project. On February 27, 2018, ECHDC received and opened seven (7) proposals, all consisting of consultant teams. These proposals were reviewed and scored by the Selection Committee of ECHDC and ESD staff and a top ranked team was selected.

The final rankings of the Selection Committee are as follows (*only prime consultant shown*):

1. OLIN
2. LaBella Associates
3. Bermello Ajamil & Partners
4. DiDonato Associates
5. AECOM
6. Fisher Associates
7. Trautman Associates

Olin Partnership, Ltd dba OLIN (“OLIN” or the “Consultant”) is a full-service design women-owned business firm with over 40 years of experience in successful placemaking, including the design of multi-functional public landscapes and vibrant urban waterfronts. Their team also includes nArchitects (MBW & WBE), Ravi Engineering & Land Surveying (MBE), VJ Associates (MBE), Encorus Group (SDVOB) and WSP.

The OLIN team is well suited for this project, having been involved with waterfront Master Plans and design projects in Philadelphia, New York City and Connecticut. They are also very familiar with open space and activation projects, having worked on Bryant Park, Dilworth Plaza in Philadelphia and the Denver Transit Mall. In addition to OLIN’s experience, nearly all sub-consultants on the proposed team have worked on projects for ECHDC, NYSOPRHP and/or the New York Power Authority along Buffalo’s waterfront.



The team will be directed by Partner-in-Charge Lucinda Sanders and Project Manager Michael Miller. The team clearly understands the complexity of the project, the key stakeholders and issues, and the timeline to provide a preferred Master Plan by February 1, 2019.

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 proposed contractor to be responsible.

#### V. Scope of Work

The Consultant will provide necessary services including, but not limited to, the scope of work as described in the RFP. The ECHDC is awarding a contract for Task A only at this time. The scope of work for Task A is as follows:

##### Task A: Master Planning Phase

1. The Consultant will be responsible for working with ECHDC, its partners (i.e., City of Buffalo, Safe Harbor Management, etc.) regulatory agencies, and stakeholders to further define the programmatic elements for the various improvements.
  - a. A day-long Kickoff Meeting with ECHDC, partners and stakeholders is anticipated.
  - b. Monthly, two-day long Stakeholder Meetings
    - i. Day 1 – First Buffalo River Marina Operator, Queen City Bike Ferry Operator, Outer Harbor Management Group, and Slipholders Association
    - ii. Day 2 – Buffalo Niagara Waterkeeper, Times Beach Nature Preserve, Our Outer Harbor Lighthouse Association, Industrial Heritage Committee, Campaign for a Greater Buffalo (others as necessary)
    - iii. Regulatory Agency meetings will be conducted during Day 1 and/or Day 2 as appropriate.
  - c. Three (3) Open House Meetings
    - i. Meeting 1 – Information Gathering/Listening Session
    - ii. Meeting 2 – Concept Alternative Presentation (refer to Task A.6)
    - iii. Meeting 3 – Preferred Alternative Presentation (refer to Task A.7)
2. The consultant shall review the existing property surveys, conditions assessments and environmental reports.
3. The Consultant shall confirm existing data and identify additional investigations and services as necessary.
4. The Consultant shall conduct meetings with regulatory agencies as necessary to identify necessary permits.
5. The Consultant will be responsible to prepare a final Marina Program.
6. The Consultant will be responsible to develop three (3) Concept Alternatives that look at the arrangement of final Marina Program elements.
7. The concept alternatives shall be consolidated into a Preferred Alternative that will be developed into the overall Master Plan. The Master Plan shall optimize the arrangement of the programmatic elements.
8. The Consultant will be responsible to provide a design estimate of probable cost for each of the Concept Alternatives identified in Task A.6 and a design estimate of probable cost for the Preferred Alternative identified in Task A.7.

Once a Preferred Concept Plan and a construction budget have been accepted by the ECHDC Board of Directors, the ECHDC and Consultant shall negotiate a final scope of work and fees for Tasks B through H. The Consultant contract would then be amended to complete the work, as follows: Task B: Environmental Review Phase; Task C: Redevelopment Management Plan; Task D: Design Phase; Task E: Bidding and Awarding; Task F: Permitting; Task G: Construction Administration; and Task H: Construction Inspection.

The estimated project schedule is as follows:

Advertisement	January 11, 2018
Proposals Due	February 27, 2018
Interviews	March 19, 2018
ECHDC Board Approval:	April 23, 2018
Design Start:	June 2018
Design End:	January 2019
Amendment/Begin Task B-H:	Q2 2019

VI. Contract Term, Price and Funding

The Consultant Agreement will cover fees and expenses over an approximate 8-month period (June 2018 – January 2019). The Contract amount with the OLIN team to complete the above scope of work shall not exceed \$550,000, including a contingency of \$71,455.

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 manhour 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 2%. 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. Consultants on the team, listed by MWBE and SDVOB percentages, are as follows:

Consultants on the team, listed by MWBE and SDVOB percentages, are as follows:

40.6% OLIN (WBE)  
*Philadelphia PA 19106*



- 23.1% *nArchitects (MBE)*  
*Brooklyn NY 11201*
  
- 2.1% *Ravi Engineering & Land Surveying (MBE)*  
*Rochester NY 14618*
  
- 5.9% *VJ Associates (MBE)*  
*Hicksville NY 11801*
  
- 4.2% *Encorus Group (SDVOB)*  
*Springville NY 14141*

Overall, the Consultant team has achieved a combined MWBE involvement of 71.7%.

VIII. Environmental Review

Empire State Development staff has determined that the action, which involves entering into a contract for the purposes of engaging a design consultant team to undertake master planning, detailed architectural design and engineering of the Project without committing the agency to undertake any future project, 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 enter into a contract with Olin Partnership, Ltd dba OLIN for an amount not to exceed \$478,545 plus a \$71,455 contingency for a total contract amount of \$550,000; and (3) to take all related actions.

X. Recommendation

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

XI. Attachments  
Resolution

April 23, 2018

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – First Buffalo River Marina Capital Improvements Project - Authorization to Enter into a Consultant Agreement 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 Olin Partnership, Ltd dba OLIN to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Olin Partnership, Ltd dba OLIN for a base contract amount of FOUR HUNDRED SEVENTY-EIGHT THOUSAND FIVE HUNDRED FOURTY-FIVE DOLLARS (\$478,545), plus a contingency in the amount of SEVENTY-ONE THOUSAND FOUR HUNDRED FIFTY-FIVE DOLLARS (\$71,455) for a total contract amount not to exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000) 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.

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