

CONVENTION CENTER DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

Wednesday

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

633 Third Avenue, 37th Floor Board Room

Tuesday

May 18, 2016 – 11:00 a.m.

New York, New York

AGENDA

I. CORPORATE ACTION

- A. Approval of the Minutes of the February 9, 2016 and March 15, 2016 Meeting of the Directors

II. FOR INFORMATION

- A. President's Report – Oral Report

III. FOR CONSIDERATION

- A. New York Convention Center Development Corporation – Jacob K. Javits Convention Center Renovation and Expansion Civic Project – Capital Expense Authorization for Fiscal Year 2015-2016 – Authorization to Retroactively Increase the Capital Expense Authorization for Fiscal Year 2015-2016 (FYE 2016), and to Take Related Actions
- B. New York Convention Center Development Corporation (“NYCCDC” or the “Corporation”) – Procurement Guidelines – Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts
- C. New York Convention Center Development Corporation – Establishment of Pre-Qualified Real Estate Development and Planning Related Consultants List – Approval of Pre-Qualified Real Estate Development and Planning Consultants and Authorization to Take Related Actions

- D. New York Convention Center Development Corporation (NYCCDC) – Jacob K. Javits Convention Center Expansion and Renovation Civic Project and Land Use Improvement Project – Affirmation of Proposed Modifications to General Project Plan (GPP); Recommendation to the New York State Urban Development Corporation d/b/a Empire State Development Directors to (1) Affirm the Proposed Modifications to the GPP with Respect to the Proposed Modifications; and (2) Determine that No Supplemental Environmental Impact Statement is Required; and (3) Authorization to Take Related Actions
- E. New York (New York County) - Jacob K. Javits Convention Center – Authorization to Retain Lehrer, LLC (“Lehrer”) for Project Advisory Services and to Take Related Actions
- F. New York Convention Center Development Corporation (“NYCCDC” or the “Corporation”) New York (New York County) - Jacob K. Javits Convention Center – Authorization to Increase Contract Amount and Extend the Term Previously Authorized for a Contract for Construction Advisory Services with Tishman Construction and to Take Related Actions
- G. New York (New York County) - Jacob K. Javits Convention Center – Authorization to Retain Tishman Construction Corporation for Construction Management Services and to Take Related Actions
- H. New York (New York County) - Jacob K. Javits Convention Center – Authorization to Retain Langan Engineering, LLC for Civil and Geotechnical Advisory Services and to Take Related Actions
- I. Procurement of Legal Services – Nixon Peabody LLP – Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation (“CCDC” or the “Corporation”) in Connection with Issuing Bonds (“Bonds”) to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the “Convention Center”) and to Take Related Actions
- J. Procurement of Legal Services – D. Seaton and Associates, P.A., P.C. – Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation (“CCDC” or the “Corporation”) in Connection with Issuing Bonds (“Bonds”) to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the “Convention Center”) and to Take Related Actions
- K. Procurement of Legal Services – Law Offices of Joseph C. Reid, P.A. – Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation (“CCDC” or the “Corporation”) in Connection with Issuing Bonds (“Bonds”) to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the “Convention Center”) and to Take Related Actions

ITEM I. A

DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION

Meeting of the Directors
633 Third Avenue
New York, New York 10017

February 9, 2016

MINUTES

In Attendance

Directors:

Henry Silverman, Chairman
Michael G. Carey
David Emil
Bryan Grimaldi
Vincent Iannelli
George M. Little
Carl Lowenson, Jr.
Peter Wertheim
William Wheeler

NYCCDC Officers:

Sarah Saint-Amand, President

Attending for ESD:

Jonathan Beyer, Senior Counsel
Tom Brennan, Senior Vice President, Internal Audit
Joseph Chan, Executive Vice President, Real Estate Development
Daniel DaSilva, Financial Project Manager
Elizabeth Fine, Executive Vice President and General Counsel
Eunice Jackson, Senior Counsel
Nicole Jordan, Manager, Community Relations
Rose-Marie Mahase, Acting CCDC Secretary
Kathleen Mize, Controller
Alexis Offen, Vice President, Real Estate Development
Maxwell Padden, Director, Subsidiary Finance
Debbie Royce, Paralegal/Project Assistant
Goldie Weixel, Senior Counsel

Also Present:

Convention Center Operating Corporation
Tony Sciafani, Senior VP, Chief Communications Officer
Alan Steel, President and CEO

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The Public
The Press

The Meeting of the Board of Directors of the New York Convention Center Development Corporation (“CCDC”) was called to order at 11:01 a.m. by Chairman Silverman. It was noted for the record that the time and place of the meeting had been given in compliance with the New York State Open Meetings Law. A quorum was present.

The Chair then set forth the guidelines for public comment as well as the guidelines regarding any conflicts of interest the Directors may have with regard to items on the Agenda.

Next, Chair Silverman called for the approval of the Minutes of the November 12, 2015 CCDC Directors’ meeting.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE NOVEMBER 12, 2015 MEETING OF THE DIRECTORS OF THE NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on November 12, 2015, as presented to this meeting, are hereby approved as revised and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

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Mr. Silverman then stated that Sarah Saint-Amand, President of the corporation will be presenting the next four items on the agenda: the first being her President's report, which is a non-voting item followed by three voting items. The first of the three voting items will be requesting a change in delegation of authority to sign contracts, the second is for authorization to increase the fiscal year end 2016 capital budget and the last item is for authorization to fund a capital improvement project in an amount not to exceed \$7.8 million.

Ms. Saint-Amand began by giving a short update and bringing the board up to speed on the exciting Javits expansion that the Governor announced earlier in January of this year. After providing an overview of the first phase of the project, Ms. Saint-Amand continued to explain the four components of the phase two expansion for Javits, which includes a four-story truck marshalling facility, approximately 100,000 square feet of new expo space, the largest ballroom on the east coast and about 35,000 square feet of new meeting space.

Ms. Saint-Amand then gave an overview of the four components to the phase 2 expansion, part of which consisted of a Power Point presentation.

Chairman Silverman then asked Ms. Saint-Amand to begin with the presentation of the three items on the agenda which require board approval.

Ms. Saint-Amand began with the first voting item, where the corporation is seeking a change in delegation of authority to sign contracts. She said back in 2006 the Directors

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delegated the President or Vice President of the corporation to enter into contracts not to exceed \$50,000.00 without coming to the board. Furthermore, she stated that the corporation is seeking to increase that amount to \$250,000.00 which is to be consistent with the UDC rules.

Hearing no questions and/or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – Delegation of Authority to Enter into Contracts - Change in Delegation of Authority to Sign Contracts

BE IT RESOLVED, that the President or his or her designee(s), who shall be one or more officers of the Corporation designated by the President by a written designation filed with the Secretary of the Corporation be, and each of them hereby is, authorized to enter into contracts, in amounts not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000), on behalf of the Corporation and with such persons, firms and corporations as he or she may deem necessary to exercise the powers, duties and functions of the Corporation as prescribed by law; and be it further

RESOLVED, that the President shall, from time to time, advise the Directors of contracts which have been entered into pursuant to this authority.

* * *

Chairman Silverman then asked Ms. Saint-Amand to present the second voting item which is for authorization to increase the fiscal year 2016 capital budget.

Ms. Saint-Amand stated that CCDC has approximately \$4.4 million in capital spending authority for the fiscal year 2016 budget. Furthermore, to date, invoices processed totaled approximately \$2.4 million and there is \$1.4 million in pending payments.

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Ms. Saint-Amand said there are a number of new capital improvement projects and in relation to the work, increasing the budget to cover a few of the items, such as the fire alarm system and work on the east egress to bring that up to code, would be ideal.

Ms. Saint-Amand then asked the board to increase the fiscal year 2016 capital budget by \$4.6 million, which would bring it to an amount not to exceed \$9 million for the work.

Hearing no questions and/or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

New York (New York County) – Jacob K. Javits Convention Center – Authorization to Increase the FYE2016 Capital Budget of New York Convention Center Development Corporation (“NYCCDC”)

RESOLVED, that in accordance with the materials presented to this meeting and a copy of which is ordered to be filed with the records of the Corporation, the Corporation be, and hereby is, authorized to increase the FYE16 Capital Budget of NYCCDC to an amount not to exceed \$9,000,000 for the performance of capital improvements to the Jacob K. Javits Center; and be it further

RESOLVED, that the President and Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver any and all documents and to take all actions as may be necessary or proper to effectuate the foregoing.

* * *

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Mr. Silverman then asked Ms. Saint-Amand to present the final item on the agenda, which is for authorization to fund a capital improvement project in an amount not to exceed \$7.8 million.

Ms. Saint-Amand stated that she is asking for authorization to move ahead with the eastern egress work; which is comprised of a new canopy for the taxi drop, improved drainage for the interior roadway and landscaping, as well as expanded scope of previously approved incidental facility improvements and some life safety work that incorporates advances in technology that is critical to ensure the safety of employees and visitors to the Convention Center.

Chairman Silverman asked if there are any questions or comments on the item Ms. Saint-Amand just presented and Director Loewenson asked, “what is the life safety work that is referred to?” Ms. Saint-Amand replied, “it is egress really.”

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

New York (New York County) – Jacob K. Javits Convention Center - Authorization to Fund a Capital Improvement Project in an amount not to exceed \$7.8 Million; Authorization to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting (the “Materials”) and a copy of which is ordered to be filed with the records of the Corporation, the

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Corporation be, and hereby is, authorized to fund a capital improvement project at the Convention Center to be managed by New York Convention Center Operating Corporation

RESOLVED, that the President and Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver any and all documents and to take all actions as may be necessary or proper to effectuate the foregoing.

* * *

There being no further business, the meeting was adjourned at 11:30 a.m.

Respectfully submitted,

Rose-Marie Mahase
Acting CCDC Secretary

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NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION

Meeting of the Directors
633 Third Avenue
New York, New York 10017

March 15, 2016

MINUTES

In Attendance

Directors:

Henry Silverman, Chairman
Michael G. Carey
David Cornstein
David Emil
Bryan Grimaldi
Vincent Iannelli
Peter Wertheim
William Wheeler

NYCCDC Officers:

Sarah Saint-Amand, President

Attending for ESD:

Eunice Jackson, Senior Counsel
Rose-Marie Mahase, Acting CCDC Secretary
Kathleen Mize, Controller
Alexis Offen, Vice President, Real Estate Development
Maxwell Padden, Director, Subsidiary Finance
Jennifer Rivera, AVP, Community Relations
Regina Stephens, Paralegal

Also Present:

Convention Center Operating Corporation
Alan Steel, President and CEO

The Public
The Press

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The Meeting of the Board of Directors of the New York Convention Center Development Corporation (“CCDC”) was called to order at 3:30 p.m. by Chairman Silverman. It was noted for the record that the time and place of the meeting had been given in compliance with the New York State Open Meetings Law. A quorum was present.

The Chair then set forth the guidelines for public comment as well as the guidelines regarding any conflicts of interest the Directors may have with regard to items on the Agenda.

Next, Chair Silverman requested Sarah Saint-Amand, president of CCDC, to present the next five items on the agenda: the first being her President’s report, which is a non-voting item followed by four voting items. The first of the four voting items is for authorization to adopt an annual operating budget and capital expense authorization for fiscal year 2016-17; the second is for authorization to enter into a contract for legal services related to the proposed expansion of the Jacob K. Javits Convention Center (“Javits”); the third is for the authorization to amend the contract with Javits II Architecture, LLC to extend the term; and the last item is for authorization to retain Tishman Construction Corporation (“Tishman”).

Ms. Saint-Amand began her president’s report by giving a short update and bringing the board up to speed on the broader expansion project that the Governor announced in January. She stated that the expansion project was kicked off in two ways: the first is to move ahead with the two early construction works, namely the relocation of the transformer yard, and the

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second is the relocation of a number of utilities that are located under 39th street. These two projects are moving ahead of schedule.

Ms. Saint-Amand further stated in addition to the early construction works, we've assembled a multi-disciplinary team to advance the bridging of documents has been assembled, assuming the expansion project will advance pursuant to a design-build RFP. Ms. Saint-Amand then gave a brief overview of how she expects this process to work.

Chairman Silverman then asked Ms. Saint-Amand to walk the board through the documents in their package, and with that the presentation of the first item.

Ms. Saint-Amand stated that the directors are being asked to approve the fiscal year 2016-17 operating and capital budgets; and that the operating budget shows a nine percent decrease compared to last year's budget due to a decrease in salary associated with CCDC staff, i.e., her salary. Furthermore, with regard to the capital budget, Ms. Saint-Amand stated that the budget includes what is expected to be spent with regard to capital improvements.

Chairman Silverman then called for questions or comments from the Directors regarding the first item; to which Director Cornstein asked, "you are the half person?" and Ms. Saint-Amand replied, "I am the half person, yes." Director Cornstein followed up by asking, "so what does that mean?" and "what do you do with the other half?"

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Ms. Saint-Amand replied, “I am a full-time ESD employee: part of my time is spent on another project of ESD’s, Moynihan Station.” Director Emil then asked if this was the setting to discuss whether it makes sense to have Ms. Saint-Amand serve on a part-time basis: to which Director Carey said no.

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

NEW YORK (NEW YORK COUNTY) – Jacob K. Javits Convention Center Expansion and Renovation Civic Project – Annual Operating Budget and Capital Expense Authorization for FY 2016-2017 – Authorization to Adopt an Annual Operating Budget and Capital Expense Authorization for FY 2016-2017 and to Take Related Actions

RESOLVED, that, in accordance with the materials presented at this meeting and ordered filed with the records of the Corporation (the “Materials”), the Corporation hereby adopts the Annual Operating Budget and Capital Expense Authorization for FY 2016-2017 presented to this meeting and included in the Materials, subject to the availability of funds; and be it further

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

* * *

Chairman Silverman then asked Ms. Saint-Amand to present the second voting item which is for authorization to enter into a contract with Hawkins, Delafield & Wood to serve as

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outside counsel on the project, advising specifically on the design-build procurement and construction activities.

Ms. Saint-Amand said that the corporation is seeking authorization from the board to enter into a contract with Hawkins, Delafield & Wood to serve as outside counsel on the project, advising specifically on the design-build procurement and construction activities.

Ms. Saint-Amand further stated that after interviewing the four firms, based on the firm's expertise and successful track record with large scale construction, specifically their prior experience in advising in connection with more than a hundred design-build projects both in New York and throughout the U.S. uniquely qualify them for this project, which is expected to be built using a design-build approach. They also have significant experience acting as counsel for government sponsors on projects similar to this one and their scope of services will include assistance in the preparation of the RFQ and RFP, drafting the form of contract that will be attached to the RFP, and any other attachments or legal documents: they will also negotiate with the RFP respondents, preparation of final project agreements and representation in resolving post contract execution issues.

Additionally, she stated that the contract is for an amount not to exceed \$2,000,000 and Hawkins will work at the standard ESD rates, currently capping partners at \$400 an hour, and fees will be paid from the CCDC 2015 Bond Series revenue.

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After a discussion regarding the retention of Hawkins, Delafield & Wood among Directors, president of CCDC Sarah Saint-Amand and ESD’s senior attorney Eunice Jackson, it was decided that the minutes of this board meeting will be noted as follows, “the CCDC Board may interview and/or select additional consultants and law firms to help in the process.”

Hearing no questions and/or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK (NEW YORK COUNTY) – Jacob K. Javits Convention Center Expansion and Renovation Civic Project and Land Use Improvement Project – Authorization to Enter Into a Contract with Hawkins, Delafield and Wood LLP

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Hawkins, Delafield and Wood LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Hawkins, Delafield and Wood LLP for the purposes and services, and substantially on the terms and conditions as set forth in the Materials; and be it further

RESOLVED, that the President, or other Officer of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions. Any actions previously taken by the Corporation consistent with this authorization are hereby ratified and affirmed.

* * *

Chairman Silverman then asked Ms. Saint-Amand to present the next voting item on the agenda which is for authorization to amend the contract with Javits II Architecture, LLC to extend the term.

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Ms. Saint-Amand explained that the corporation, is seeking approval to extend the term of the contract to continue work with J2A in their capacity as the project architect for the expansion, scope of services in the contract. She said that their scope will include the following: finalizing the construction drawings related to the early construction works; performing construction administration related to those works; producing bridging documents; and assisting with the preparation of any design-build RFP and help in the evaluation of the responses.

Ms. Saint-Amand further explained that, compensation under the contract extension will be consistent with the original contract, which is 4.8% of the project construction costs, which will prorate to reflect a percentage of design completion, with a not to exceed cap of \$15.8 million; and fees will be paid from the CCDC 2015 Bond Series revenue.

After Ms. Saint-Amand's presentation of this item, Chairman Silverman stated, "it's my understating that there are other contemplated architects on this project after the preliminary phase is done," and Ms. Saint-Amand replied, "that's correct."

After a brief overview of this item by Ms. Saint-Amand, and an in depth discussion by members of the board; and upon hearing no further questions and/or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

New York (New York County) - Jacob K. Javits Convention Center - Authorization to Amend the Agreement For Architectural, Engineering and Other Consultant Services between Javits II

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Architecture LLC and New York Convention Center Development Corporation to Extend the Term; Ratification of the Seventh Amendment to the Agreement For Architectural, Engineering and Other Consultant Services between Javits II Architecture LLC and New York Convention Center Development Corporation; Authorization to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting (the “Materials”) and a copy of which is ordered to be filed with the records of the Corporation, the Corporation be, and hereby is, authorized to amend the Agreement For Architectural, Engineering and Other Consultant Services between Javits II Architecture LLC and New York Convention Center Development Corporation and Take Related Actions; and be it further,

RESOLVED, that the Corporation ratifies nunc pro tunc the Seventh Amendment to the Agreement For Architectural, Engineering and Other Consultant Services between Javits II Architecture LLC and New York Convention Center Development Corporation; and be it further,

RESOLVED, that the President and Chief Executive Officer or her designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver on behalf of the Corporation any and all documents and to take all actions as may be necessary or proper to effectuate the foregoing.

* * *

Mr. Silverman then asked Ms. Saint-Amand to present the last item on the agenda, which is for authorization to retain Tishman.

Ms. Saint-Amand stated that she is asking for approval from the board to enter into a contract with Tishman for the construction advisory services: approval is sought for a single source procurement of Tishman services because of their unique qualifications to perform the requested services.

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Furthermore, Ms. Saint-Amand said, under the contract Tishman will assist in the preparation of the bridging documents; perform cost estimation services related to the project; and assist CCDC in evaluating a project-specific insurance policy.” Additionally, she stated “the contract is for \$640,000 which will be paid from the 2015 Bond Series, and it is expected to run through the end of September.

In response to Chairman Silverman’s call for any questions or comments on the item Ms. Saint-Amand just presented, Director Cornstein asked, was there any negotiation at all on the pricing, since it’s a single source? Ms. Saint-Amand replied, there was some transparency into how they price: they basically mark-up staff time, and gave me an estimate of hours and man hours that they will make.

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

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – Authorization to Enter into a Contract with Tishman Construction Corporation and All Related Matters, and to Take All Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Tishman Construction Corporation to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into contracts with Tishman Construction Corporation for the purposes and services, and substantially on the terms and conditions as set forth in the Materials; and be it further

DRAFT – SUBJECT TO REVIEW AND REVISION

RESOLVED, that the President, or other Officer of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions. Any actions previously taken by the Corporation consistent with this authorization are hereby ratified and affirmed.

* * *

There being no further business, the meeting was adjourned at 4:05 p.m.

Respectfully submitted,

Rose-Marie Mahase
Acting CCDC Secretary

ITEM III. A



FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: New York Convention Center Development Corporation – Jacob K. Javits Convention Center Renovation and Expansion Civic Project – Capital Expense Authorization for Fiscal Year 2015-2016

REQUEST FOR: Authorization to Retroactively Increase the Capital Expense Authorization for Fiscal Year 2015-2016 (FYE 2016), and to Take Related Actions

I. BACKGROUND

At present, New York Convention Center Development Corporation (“NYCCDC”) has \$9,000,000 in capital spending authority for the full FYE 2016 (April 1, 2015- March 31, 2016). To date, NYCCDC has processed invoices totaling approximately \$9 million and has approximately \$4.5 million in pending payments, for a committed amount of \$13.5 million.

All of the aforementioned payment obligations were incurred in furtherance of previously approved capital projects related to (1) life safety, as discussed in board meetings in November 2015 and January 2016, and (2) early design and construction work and site preparation related to the expansion project, all of which were approved as part of the 2006 GPP.

II. REQUEST

NYCCDC is requesting authorization to retroactively increase the FYE 2016 Capital Expense Authorization by \$4.5 million in order to meet the payment obligations it has to both the Convention Center Operating Corporation and to the design and construction advisors we have engaged to prepare for the design-build RFP for the expansion project. To be clear, all spending is for previously approved projects, which all remain within pre-established budgets; however, as we have ramped up our spending rate to meet our aggressive timeline to issue a design-build RFP, payment obligations have arisen correspondingly sooner than originally anticipated.

NYCCDC will continue to fund these payment obligations with both unrestricted corporate funds and proceeds from the Hotel Unit Fee Secured Bond Series 2015.

III. AFFIRMATIVE ACTION

The New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) non-discrimination and affirmative action policy will apply to this initiative. ESD, on behalf of the NYCCDC, has established a project goal of 30 percent Minority/Women-owned Business Enterprise contractor and/or subcontractor participation during development of the Project, which includes the preconstruction and construction phases, and an overall goal of 30 percent minority and female workplace participation during construction.

IV. ENVIRONMENTAL REVIEW

ESD staff, on behalf of the NYCCDC, has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

V. REQUESTED ACTION

The Directors are requested to approve a retroactive increase of \$4.5 million to the FYE 2016 Capital Expense Authorization and to delegate authority to the appropriate officers to take related actions.

VI. ATTACHMENTS

Resolution

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – Jacob K. Javits Convention Center Renovation and Expansion Civic Project – Capital Expense Authorization for Fiscal Year 2015-2016 – Authorization to Retroactively Increase the Capital Expense Authorization for Fiscal Year 2015-2016 (FYE 2016), and to Take Related Actions

RESOLVED, that, in accordance with the materials presented at this meeting and ordered filed with the records of the Corporation (the “Materials”), the Corporation hereby authorizes the retroactive increase to the Capital Expense Authorization for Fiscal Year 2015-2016 presented to this meeting and included in the Materials, subject to the availability of funds; and be it further

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

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ITEM III. B



FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: New York Convention Center Development Corporation ("NYCCDC" or the "Corporation") – Procurement Guidelines

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

I. BACKGROUND

At its March 30, 2015 meeting, the NYCCDC Directors adopted revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "Guidelines"). There have been no substantive changes to relevant laws, Executive Orders and directions to authorities, in the past year, however there have been some important internal procedural initiatives that impact the 2015 Guidelines. Accordingly, the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") Procurement Director and staff from the Legal Department, supported by representatives of the Contracts Administration and Finance Departments, engaged in a revision of the Guidelines. A copy of the revised Guidelines is attached.

On March 24, 2016, the ESD Board adopted the revised Guidelines (the "2016 Guidelines"), which are designed to govern procurements by ESD and its subsidiaries, such as NYCCDC. Approval is sought for the adoption by the Board of the 2016 Guidelines.

II. PROCUREMENT CONTRACTS GUIDELINES SUMMARY

The 2016 Guidelines attached to this memorandum set forth the policies and procedures to be followed by NYCCDC when seeking to contract for goods or services. 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 the guidelines have not been followed.

The 2016 Guidelines define the universe of procurement transactions that 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 2016 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the ESD Bid Opening Guidelines and the compilation of a Procurements Record for every covered Procurement Contract.

The 2016 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all state agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

The 2016 Guidelines include procedural changes, notably reflecting the Board's determination at its February 9, 2016 meeting that procurement contracts in an amount up to and including \$250,000 may be approved by the President of the Corporation or her or his duly appointed designee, and do not require formal Board approval. An exception to this procedure is that contracts for personal services that will have a term of one year or more continue to require Board approval (as well as annual review), pursuant to § 2879.3(b)(ii) of the Public Authorities Law.

The 2016 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. Many changes from the 2015 Guidelines are the result of efforts to make them more readable and coherent.

Sources of help and information are included as clickable links, and virtually all required forms and ESD policy and procedure documents can also be accessed from within the document by hyperlinks. The hard copy of the proposed 2016 Guidelines presented to the Directors for approval cannot contain these links, but they are shown in highlight form.

III. RECOMMENDATION AND REQUESTED ACTION

The Directors are requested to adopt the 2016 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of the date of approval.

IV. Attachments

Resolution
Proposed 2016 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement
Contracts

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – Procurements Guidelines -
Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of
Procurement Contracts

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 (the “Materials”), the proposed 2016 Guidelines, for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, , and the President or her designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

Revised Procurement Guidelines 2016

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 24, 2016

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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 24, 2016

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. 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 Public Authorities Law § 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 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) 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, see Section 2.1 below or consult the Procurements Manager.

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 legal, accounting, management consulting, investment banking, 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. (See Section 7: Types of Solicitations).

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 under \$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, SDVO or a NYS Small Business. See Section 2.6.



If ESD's needs cannot be met by the above mentioned options, you may elect 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 of 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 a OGS centralized contractor is available, it is recommended that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, unless a compelling justification exists (e.g., experience with a particular project).

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

ESD may purchase services or commodities from small business concerns or those certified pursuant to Article 15-A and 15-B of the Executive Law (Minority and Women-Owned Businesses and Service-Disabled Veteran Owned Businesses), 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. The award of a discretionary purchase contract should be notified in the Contract Reporter. For more information on discretionary purchases see <http://www.ogs.ny.gov/Bu/PC/docs/PnpDiscretionaryThresholds.pdf>.

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 www.ogs.ny.gov/BU/PC/SFL.asp. 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 an 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.
- (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 notified in the Contract Reporter (Economic Development Law, §143 (4)).

3.2. Authorization for Exemptions

The initiator of the proposed contract must obtain a written Contract Reporter exemption authorization. This is done by means of a memorandum to the Officer(s) specified in Attachment A to these Guidelines.

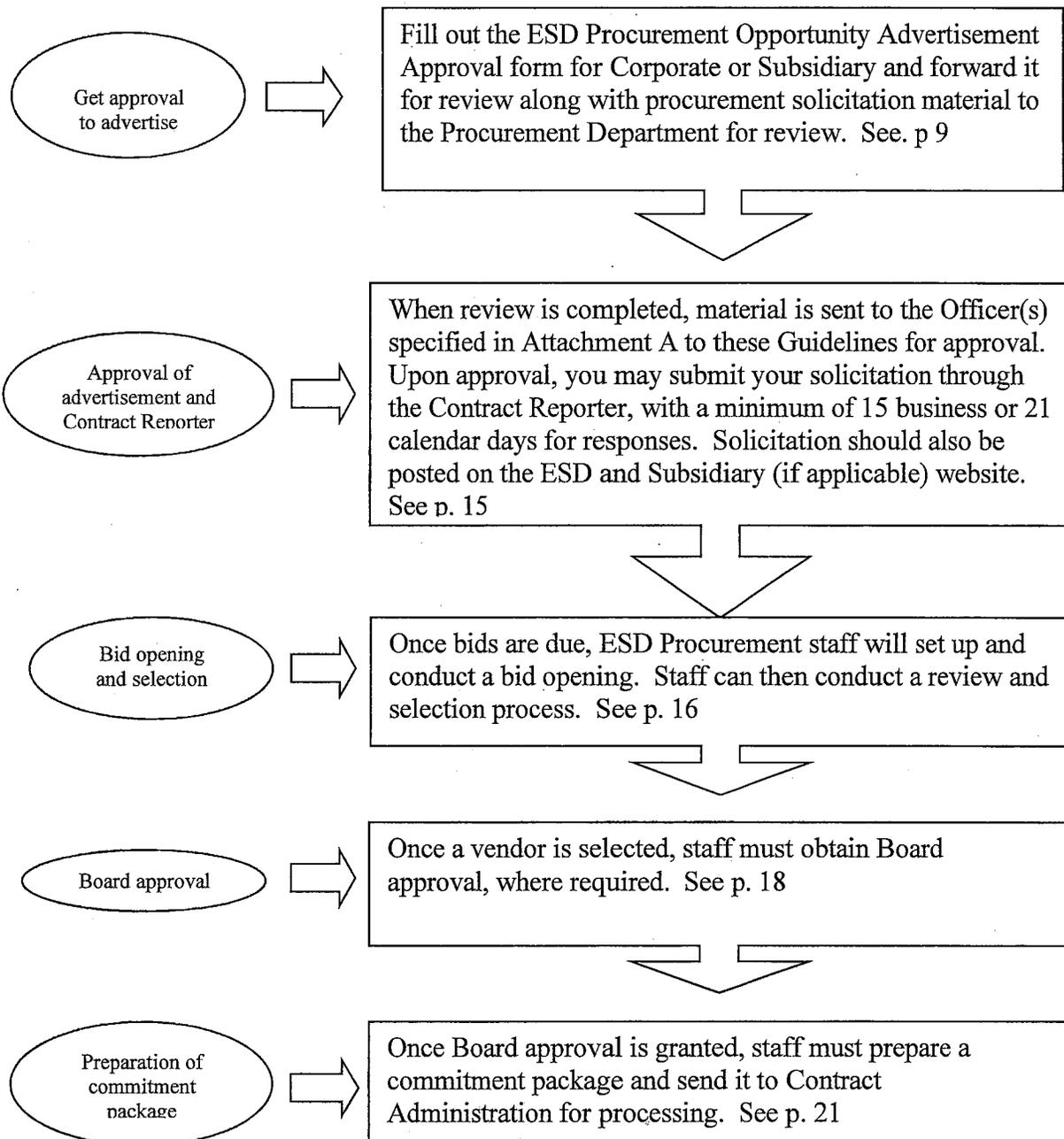
The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances. A template Exemption Memo is 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's 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 or SDVOB for up to \$200,000) 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, past history of government contracts, references/testimonials;
- (iv) Where known, the maximum price that ESD is prepared to pay for the goods or services;
- (v) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings held, etc);
- (vi) ESD’s insurance requirements (obtained from Contract Administration for all solicitations);
- (vii) ESD’s required diversity, minority and service disabled veteran owned businesses participation goals (M/WBE and SDVOB);
- (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 that the successful vendor will be expected to agree to. This will generally be ESD's Schedule A (For Consultants or for Law Firms and Special Consultants) - Standard Terms and Conditions. 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 Sections 8.3);

(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).

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’s 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.

7.3. Requests for Statements of Qualification (“RFQ”)

RFQ’s 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; or to select professional services to be rendered at pre-established rates. 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.

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. Use of the Vendrep Form and Determination of Vendor Responsibility

As required by Executive Order, all vendors must be found to be “responsible”, and remain so through the term of the contract. The Office of the State Controller has developed a useful resource, the VENDREP form, which should be requested from all bidders for contracts where a Vendor Responsibility determination will be needed (most contracts, and all which will require Board approval). See Section 9.4 below for further guidance on vendor responsibility. The Vendrep forms can be accessed at www.osc.state.ny.us/vendrep/webresources.htm.

8.4. Compliance with Executive Law Article 15-A: Contractor and Supplier Diversity

All Procurement Contracts must comply with the requirements of Executive Law Article 15-A, which promotes employment and business opportunities for minorities and women on State contracts “to encourage and assist State agencies in their efforts to increase participation by minority and women-owned business enterprises (“MWBEs”) on State contracts so as to facilitate the award of a fair share of such contracts to MWBEs.”

All Procurement Contracts must also comply with the requirements of Executive Law Article 17-B, which acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, respondents for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

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 ESD’s Office of Contractor and Supplier Diversity (“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 here and can be found at the bottom of the RFP page.

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. 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

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). View the Contract Reporter's daily publication schedule.

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 minority and women-owned business maintained by ESD's Office of Contractor & Supplier Diversity.

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 Manager 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 Manager 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 Manager. 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 State Finance Law § 144. 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). 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, 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 Manager as part of the Procurement Record.

8.13. Determination of Responsibility – “FLIP Review” and the Vendrep form

Pursuant to State Finance Law § 163, 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.”

Vendor responsibility is generally accomplished by “FLIP” review. FLIP review involves assessment of four factors: (i) Financial and organizational capacity; (ii) Legal authority to do business in the state; (iii) Integrity of the owners/officers/principals; and (iv) Past performance on prior government contracts.

The Office of the State Controller has developed a useful resource, the VENDREP form, that should be used wherever possible. 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 can be accessed here: www.osc.state.ny.us/vendrep/webresources.htm. See also Section 8.3 above.

For more information, including links to forms used in a determination of responsibility, see Best Practices on the OGS website. Note that FLIP review is not needed for procurements from the OGS Centralized Contracts list.

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 www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf.

8.14. Procurement Record

The ESD department head or his or her designee 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 Manager 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.

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)** are not considered personal service contracts and do not require approval by the Board unless the amount of such contract is \$250,000 or more in aggregate through the life of the contract.

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.

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. Contracts in amounts \$250,000 and under must be approved by the Officer(s) specified in Attachment A to these Guidelines.
- b. Contracts (i) in amounts over \$250,000 or (ii) contracts for any amount involving services to be rendered over a period in excess of one year must be approved by the ESD (or Subsidiary) Directors.
- c. 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.
- d. 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.
- e. 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, 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 Office of the State Comptroller (“OSC”) approval (See Section 10.5); and
- ii. the authorization contained in the Notice to Proceed is less than \$250,000; 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.

f. **Amendments to existing contracts** follow the same process as new contracts, i.e., the amendment needs to be advertised in the New York State Contract Reporter or exempted. 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.

g. Contract 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. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). If a proposed amendment will increase the term of the contract to more than one year, Contract Reporter advertising is necessary unless, as discussed in paragraph (c) above, the original contract contained a clause specifically permitting extension.

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.

10. Steps After Contract Approval Is Obtained

10.1. Commitment Request Package

- a. For contracts of \$50,000 or more, the contract initiator completes the required information on the Commitment Request Form.
- b. The contract initiator completes the Standard Form Contract - Short Form for Goods/Services or Standard Form Amendment or Modification of Contract.

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;
- c. Written explanation of the responsibility determination/FLIP Review and/or formal Determination of Responsibility, where required.
 - d. ESD/Subsidiary Board of Directors Approval, if applicable. View sample Board materials.
 - e. New York State Contract Reporter Form, approved exemption letter, or NYS OGS Centralized Contract.

- f. 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.
- g. Three (3) original sets of the contract package or amendment with: (i) Schedule A (conditions applicable to consultant or legal agreements); (ii) Schedule B (scope of work and compensation terms); (iii) Schedule C (Non-Discrimination and Affirmative Action Provisions and Schedule of Minority/Women Business Participation and Compliance with Executive Law Article 15-A); (iv) Schedule D (ST-220 Contractor Certification Form pursuant to Tax Law § 5-a); (v) Schedules E-1 (Compliance with SFL § 139-j and 139-k, the Offerer's Affirmation of Understanding and Agreement pursuant to SFL §§ 139-j (3) and 60 (b), the Offerer Disclosure of Prior Non-Responsibility Determinations under SFL § 139-k(2); and (vi) the Encouragement of NY sub-contractors and suppliers form.
- h. 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. The commitment package must be accompanied by a completed Commitment Package Checklist.
- i. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various ESD Departments.
- j. Upon obtaining in-house approvals, Contract Administration sends all three (3) sets of the contract or amendment package to the vendor for signature(s).
- k. 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.
- l. One original copy of the fully-executed contract 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 Minority/Women Business Participation, must be posted on the Contract Reporter system. This posting will be done by Contracts Administration.

10.3. Extension/Amendment of Contracts

If a Procurement Contract is entered into after a Contract Reporter solicitation, the contract and solicitation can provide that there may be an extension of the contract or amendment to the scope of work. If so, then extensions and/or amendments do not need to be advertised in the Contract Reporter again. However, if the contract requires approval by the ESD Board, the possibility of extension or amendment must be included in the original Board materials and Resolution. When in doubt, provide for extension or amendment to minimize future problems.

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 Post-Contract Approval of \$1,000,000+ Contracts

Under Public Authorities Law § 2879-a (effective March 1, 2010), proposed contracts in excess of one million dollars that either: (i) are to be paid for in whole or in part by state appropriations; or (ii) are not to be awarded after a competitive process (regardless of the funding source), must be approved by the Office of the State Comptroller (“OSC”) after the contract is signed. If § 2879-a applies and approval by OSC has not been obtained, the signed contract “shall not be a valid enforceable contract.” 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:



Comptroller review
of Contracts Memo_F

Note that loan and grant contracts may be covered by the OSC review process.

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

11. 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, 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.

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, 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, and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

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.

12. Procurement Contracts Involving Former Officers of ESD

ESD shall not enter into Procurement Contracts with its former officers or employees, or with firms employing such officers or employees, except as permitted by applicable provisions of law and by ESD's Guidelines Regarding Conflicts of Interest and Ethical Standards.

13. 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.

14. Reporting

14.1. Quarterly Reports

ESD's VP/Contract Administration shall prepare for presentation by the Office of Contractor and Supplier Diversity to the ESD Directors, quarterly reports of new and amended Procurement Contracts and required Schedules of MWBE Participation. For each Procurement Contract, the report shall include the contract amount, reason for award, initial scope of services and the selection process used. Such reports shall include information related to amendments approved on contracts during the reporting period.

14.2. 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.

15. 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 III. C



FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: New York Convention Center Development Corporation – Establishment of Pre-Qualified Real Estate Development and Planning Related Consultants List

REQUEST FOR: Approval of Pre-Qualified Real Estate Development and Planning Consultants and Authorization to Take Related Actions

I. PROJECT BACKGROUND

The size, nature, complexity and timing of New York Convention Center Development Corporation's ("NYCCDC" or the "Corporation") projects typically require the Corporation to call on the assistance of outside consultants in various areas of expertise. The New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), which has a similar need for assistance, maintains two prequalified lists of outside real estate development and planning related consultant firms (together "Pre-Qualified Real Estate and Planning Firms") in various practice areas. These lists were adopted by the ESD Directors on August 22, 2013 and September 19, 2013 and are included in these materials as Attachment A. It is recommended that NYCCDC adopt the ESD's Pre-Qualified Real Estate and Planning Firms list. It is also recommended that the term of the Pre-Qualified Real Estate and Planning Firms list be coterminous with the terms of the ESD's lists, which currently expire on August 31, 2017 and September 30, 2017, respectively.

II. THE SOLICITATION

On May 20, 2013, ESD staff placed an advertisement in the New York State Contract Reporter requesting proposals from real estate development and planning related consultants with expertise in the following practice areas: 1) land use and zoning analysis; 2) market and financial feasibility studies; 3) urban design and master planning; 4) historic preservation and adaptive reuse; 5) transportation planning and traffic analysis; 6) community outreach and engagement; 7) environmental assessment under the New York State Environment Quality Review Act ("SEQRA"); 8) Phase 1 environmental site assessments; 9) construction cost estimation; and 10) civil, mechanical and structural engineering. In addition, ESD staff contacted by email all firms referred to it by ESD regional offices and subsidiaries.

Ninety-two firms responded to the solicitation. The responses were evaluated by committees consisting of three judges assigned to each individual practice area, including staff from ESD's Design and Construction, Planning and Environmental Review, and Real Estate departments. Staff from ESD's upstate offices was also included to evaluate regional representation. The submissions were evaluated on the basis of, among other things: relevant experience in practice area; qualifications and experience of staff in the practice area; diversity and commitment to M/WBE in the practice area; clear presentation of rates and costs in the practice area; and overall organization and completeness of the submission.

Based on the review and ESD staff recommendation, on August 22, 2013 ESD Directors adopted a pre-qualified list of real estate consultants for the following three practice areas: 1) land use and zoning analysis; 2) market and financial feasibility; and 3) urban design and master planning. On September 22, 2013, the ESD Directors adopted a pre-qualified list for the remaining seven practice areas: 1) historic preservation and adaptive reuse; 2) community outreach and engagement; 3) SEQRA; 4) transportation planning and traffic analysis; 5) Phase 1 environmental site assessments; 6) construction cost estimation; and 7) civil, mechanical and structural engineering. Adoption of the Pre-Qualified Real Estate and Planning Firms list by the Corporation will enable NYCCDC staff to respond to real estate project needs more expeditiously and efficiently.

III. FINANCIAL COMMITMENT AND SELECTION FROM THE LIST

The Directors are not now being asked to authorize the retention of any firm listed in the Pre-Qualified Real Estate and Planning Firms in connection with any matter. Instead, the requested approval and adoption would serve to make available to the Corporation a panel of candidate firms that have been through a broad solicitation process and determined to meet qualification standards. Going forward, when the need for outside consultants arises in connection with a particular project or initiative, staff will conduct a limited solicitation among the prequalified firms and from that group select one or more firms and, in accordance with the CCDC procurement guidelines when required, recommend to the Directors retention of a consultant in connection with that particular project or initiative. Implementing this procurement process, which included advertising in the Contract Reporter, will save for each project the two or more months that is normally needed to conduct individual solicitations including publication in the Contract Reporter for each engagement, to perform the necessary review and formulate a recommendation.

IV. TERM OF THE LIST

The Pre-Qualified Real Estate and Planning Firms List would become effective immediately and the terms for the effectiveness of the list with respect to consultants would be coterminous with the applicable ESD list that includes the consultant.

V. ENVIRONMENTAL REVIEW

ESD staff, on behalf of NYCCDC, has determined that the requested authorization to approve a list of pre-qualified consultants constitutes a Type II action as defined by SEQRA and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

VI. REQUESTED ACTIONS

The Board is requested to approve and adopt the ESD 2013 Pre-Qualified Real Estate Consultants List as pre-qualified consultants in the areas of expertise therein identified.

VII. RECOMMENDATION

Based on the foregoing, I recommend approval and adoption of the ESD 2013 Pre-Qualified Real Estate Consultants List.

VIII. ATTACHMENTS

Resolution
Attachment A

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – Establishment of Pre-Qualified Real Estate Development and Planning Related Consultants List – Approval of Pre-Qualified Real Estate Development and Planning Consultants and Authorization to Take Related Actions

BE IT RESOLVED, that on the basis of the materials presented at this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the New York State Urban Development Corporation d/b/a Empire State Development Pre-Qualified Real Estate and Planning Firms Lists, copies of which are attached to the materials, be and hereby are approved and adopted as of the date hereof, and the President or her designee is authorized to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

* * *

ATTACHMENT A:

PRE-QUALIFIED-REAL ESTATE AND PLANNING FIRMS

Land Use and Zoning Analysis

AECOM

AKRF

Behan Planning and Design

Bergmann Associates, Inc.

BFJ Planning, Urbanomics, 4Ward Planning Inc, GEI Consultants, PACO, Page Ayres

Cowley Architects, LLC, and RSG, a joint venture

Cameron Engineering & Associates, LLC

Clough Harbour & Associates (CHA)

Environmental Design and Research, Landscape Architecture and Engineering, P.C. (EDR)

Elan Planning, Design & Landscape Architecture, PLLC, and Nagle, Tatich, Cranston, LLC

d/b/a/ Elan.3 Consulting, a joint venture

Fisher Associates, and Ram-Tech Engineering, a joint venture

Holzmacher, McLendon and Murell, P.C. (H2M)

HKS Urban Design Studio

Ismael Leyva Architects, PC

LaBella Associates, PC

LHP Architects, LLC, dba Lee Harris Pomeroy Architects (LHPA)

Perkins & Will

Peter J. Smith & Company, Inc.

Planning 4 Places, LLC

rePlace Urban Studio and Majora Carter Group, a joint venture

STV Incorporated (STV)

Tim Miller Associates, Inc.

VHB Engineering, Surveying and Landscape Architecture, PC

Audubon Architecture, Engineering, Surveying and Landscape Architecture, PC (Wendel)

Market and Financial Feasibility

AECOM

AKRF

Alvarez & Marsal Real Estate Advisory Services, LLC

BFJ Planning, Urbanomics, 4Ward Planning Inc, GEI Consultants, PACO, Page Ayres

Cowley Architects, LLC, and RSG, a joint venture

BJH Advisors, LLC, James Lima Planning + Development, LLC, Encher Consulting, LLC, a joint venture

Camoin Associates Economic Development and Maverick and Boutique, a joint venture

C.J. Law & Associates, LLC

Clough Harbour & Associates (CHA)

Crawford and Associates Engineering and Land Surveying, PC, The Hudson Group, LLC,

Landmark Consulting, Inc. and T.R. Johnson Engineering, PLLC, a joint venture

Nagle, Tatich, Cranston, LLC d/b/a Elan.3 Consulting and Elan Planning, Design and

Landscape Architecture, PLLC, a joint venture

Ernst & Young LLP

Fairweather Consulting

HR&A Advisors

HVS Consulting & Valuation and Carolyn J. Law & Associates, a joint venture

Jones Lang LaSalle Americas, Inc.

LaBella Associates, PC

Newmark Grubb Knight Frank

Peter J. Smith & Company, Inc.

The Louis Berger Group, Inc.

The Weitzman Group, Inc.

Urban Partners

Urban Strategies Inc, Watts A/E, Foit Albert Associates, C.J Law and Associates, and

Singleton Consultants, a joint venture

Urbanomics, Inc.

Washington Square Partners

Urban Design and Master Planning

AECOM

AKRF

Ove Arup & Partners, PC (Arup)

Behan Planning and Design

Bergmann Associates, Inc.

BFJ Planning, Urbanomics, 4Ward Planning Inc, GEI Consultants, PACO, Page Ayres

Cowley Architects, LLC, and RSG, a joint venture

Cameron Engineering & Associates, LLC

Clough Harbour & Associates (CHA)

Cooper, Robertson & Partners

Davis Brody Bond Architects and Planners, LLC

Environmental Design and Research, Landscape Architecture and Engineering, P.C. (EDR)

Elan Planning, Design & Landscape Architecture, PLLC, and Nagle, Tatich, Cranston, LLC

d/b/a/ Elan.3 Consulting, a joint venture

Fisher Associates, and Ram-Tech Engineering, a joint venture

Flynn/Battaglia Architects, PC

FX Fowle Architects, LLP

Grimshaw Architects LLP

H3 Hardy Collaboration Architecture

HKS Urban Design Studio

Kohn Pedersen Fox Associates (KPF)

LaBella Associates, PC

LHP Architects, LLC, dba Lee Harris Pomeroy Architects (LHPA)

Perez Architecture, Inc.

Perkins & Will

Peter J. Smith & Company, Inc.

Planning 4 Places, LLC

rePlace Urban Studio and Majora Carter Group, a joint venture

Rogers Marvel Architects, PLLC

Stantec Consulting Services, Inc.

Starr Whitehouse Landscape Architects and Planners, PLLC

Tim Miller Associates, Inc.

Trautman Associates

Trowbridge Wolf Michaels Landscape Architects (TWMLA)

Turner Miller Group

Urban Matrix Architecture & Planning, PC

Urban Strategies Inc, Watts A/E, Foit Albert Associates, C.J Law and Associates, and

Singleton Consultants, a joint venture

Audubon Architecture, Engineering, Surveying and Landscape Architecture, PC (Wendel)

Historic Preservation and Adaptive Reuse

AKRF, Inc.

Audubon Architecture, Engineering, Surveying and Landscape Architecture, PC (Wendel)

Bergmann Associates, Inc.

BFJ Planning, Urbanomics, 4Ward Planning Inc, GEI Consultants, PACO, Page Ayres
Cowley

Architects, LLC, and RSG, a joint venture

Building Conservation Associates, Inc. (BCA)

Clough Harbour & Associates (CHA)

Crawford and Associates Engineering and Land Surveying, PC, The Hudson Group, LLC,
Landmark Consulting, Inc. and T.R. Johnson Engineering, PLLC, a joint venture

Clinton Brown Company Architecture, PC

Davis Brody Bond Architects and Planners, LLC

Environmental Design and Research, Landscape Architecture and Engineering, PC (EDR)

Flynn/Battaglia Architects, PC

FX Fowle Architects, LLP

H3 Hardy Collaboration Architecture

Ismael Leyva Architects, PC

Li/Saltzman Architects, PC

LHP Architects, LLC, dba Lee Harris Pomeroy Architects (LHPA)

The Louis Berger Group, Inc.

Panamerican Consultants, Inc.

Perez Architecture, Inc.

Rogers Marvel Architects, PLLC

Spring Line Design

Stephen B Jacobs Group, PC

STV Incorporated (STV)

Studios Architecture

Urban Matrix Architecture & Planning, PC

Urban Partners

Urban Strategies Inc, Watts A/E, Foit Albert Associates, C.J Law and Associates, and
Singleton Consultants, a joint venture

Trautman Associates

Trowbridge Wolf Michaels Landscape Architects (TWMLA)

Urban Architectural Initiatives, RA, PC

WSP

Community Outreach and Engagement

Arch Street Communications (ASC)
BJH Advisors, LLC, James Lima Planning + Development, LLC, Encher Consulting, LLC, a joint venture
Cameron Engineering & Associates, LLC
Ecology and Environment, Inc.
Elan Planning, Design & Landscape Architecture, PLLC, and Nagle, Tatich, Cranston, LLC d/b/a/ Elan.3 Consulting, a joint venture
InGroup, Inc.
Parsons Brinckerhoff, Inc.
Peter J. Smith & Company, Inc.
Starr Whitehouse
Washington Square Partners

SEQRA

AECOM
AKRF, Inc.
Audubon Architecture, Engineering, Surveying and Landscape Architecture, PC (Wendel)
Bergmann Associates, Inc.
BFJ Planning, Urbanomics, 4Ward Planning Inc, GEI Consultants, PACO, Page Ayres
Cowley Architects, LLC, and RSG, a joint venture
Cameron Engineering & Associates, LLC
Clough Harbour & Associates (CHA)
Crawford and Associates Engineering and Land Surveying, PC, The Hudson Group, LLC, Landmark Consulting, Inc. and T.R. Johnson Engineering, PLLC, a joint venture
D&B Engineers & Architects, P.C. (D & B)
Environmental Design and Research, Landscape Architecture and Engineering, PC (EDR)
Fisher Associates, and Ram-Tech Engineering, a joint venture
Holzmacher, McLendon and Murell, PC (H2M)
Labella Associates P.C
The Louis Berger Group, Inc.
Parsons Brinckerhoff, Inc.
Peter J. Smith & Company, Inc.
STV Incorporated (STV)
Tim Miller Associates, Inc.
TVGA Consultants
URS Corporation – New York (URS)
VHB Engineering, Surveying and Landscape Architecture, PC

Transportation Planning and Traffic Analysis

AECOM
AKRF, Inc.
Audubon Architecture, Engineering, Surveying and Landscape Architecture, PC (Wendel)
Bergmann Associates, Inc.
BFJ Planning, Urbanomics, 4Ward Planning Inc, GEI Consultants, PACO, Page Ayres
Cowley Architects, LLC, and RSG, a joint venture
Cameron Engineering & Associates, LLC
Clough Harbour & Associates (CHA)
Creighton Manning Engineering, LLP
Fisher Associates, and Ram-Tech Engineering, a joint venture
Labella Associates P.C
LiRo Engineers, Inc. (LiRo)
The Louis Berger Group, Inc.
Ove Arup & Partners, PC (Arup)
Parsons Brinckerhoff, Inc.
STV Incorporated (STV)
Tim Miller Associates, Inc.
TVGA Consultants
URS Corporation – New York (URS)
VHB Engineering, Surveying and Landscape Architecture, PC

Phase 1 Site Assessment

AECOM
AKRF, Inc.
Bergmann Associates, Inc.
BFJ Planning, Urbanomics, 4Ward Planning Inc, GEI Consultants, PACO, Page Ayres
Cowley Architects, LLC, and RSG, a joint venture
Brinkerhoff Environmental Services, Inc.
C.T. Male & Associates Engineering, Surveying, Architecture and Landscaping
Architecture, P.C.
Clough Harbour & Associates (CHA)
Crawford and Associates Engineering and Land Surveying, PC, The Hudson Group, LLC,
Landmark Consulting, Inc. and T.R. Johnson Engineering, PLLC, a joint venture
D&B Engineers & Architects, P.C. (D & B)
Dewberry Engineers, Inc.
Environmental Design and Research, Landscape Architecture and Engineering, PC (EDR)
Fisher Associates, and Ram-Tech Engineering, a joint venture
Greenman-Pedersen, Inc. (GPI)
Grimshaw Architects LLP
Holzmacher, McLendon and Murell, PC (H2M)

Labella Associates P.C.
Langan Engineering, Environmental, Surveying and Landscape Architecture, D.P.C
(Langan)
LiRo Engineers, Inc. (LiRo)
Nussbaumer & Clarke, Inc.
Panamerican Environmental, Inc.
Strategic Environmental, LLC
STV Incorporated (STV)
The Louis Berger Group, Inc.
Tim Miller Associates, Inc.
Urban Strategies Inc, Watts A/E, Foit Albert Associates, C.J Law and Associates, and
Singleton Consultants, a joint venture
URS Corporation – New York (URS)
Washington Square Partners
Woodard & Curran Engineering PA, PC
WSP

Construction Cost Estimation

AECOM
Alvarez & Marsal Real Estate Advisory Services, LLC
BFJ Planning, Urbanomics, 4Ward Planning Inc, GEI Consultants, PACO, Page Ayres
Cowley Architects, LLC, and RSG, a joint venture
Cameron Engineering & Associates, LLC
C.T. Male & Associates Engineering, Surveying, Architecture and Landscaping
Architecture, P.C.
Clough Harbour & Associates (CHA)
Economic Project Solutions, Inc.
Holzmacher, McLendon and Murell, P.C. (H2M)
Labella Associates P.C
LBK Construction Management LLC
Nussbaumer & Clarke, Inc.
SourceOne, Inc.
STV Incorporated (STV)
Tectonic Engineering & Surveying Consultants, P.C.
LiRo Engineers, Inc. (LiRo)
The Louis Berger Group, Inc.
Urban Strategies Inc, Watts A/E, Foit Albert Associates, C.J Law and Associates, and
Singleton
Consultants, a joint venture
URS Corporation – New York (URS)
Washington Square Partners

Civil, Mechanical and Structural Engineering

AECOM

AKRF, Inc.

Audubon Architecture, Engineering, Surveying and Landscape Architecture, PC (Wendel)

Bergmann Associates Inc.

Cameron Engineering & Associates, LLC

C.T. Male & Associates Engineering, Surveying, Architecture and Landscaping
Architecture, P.C.

Clough Harbour & Associates (CHA)

Crawford and Associates Engineering and Land Surveying, PC, The Hudson Group, LLC,
Landmark Consulting, Inc. and T.R. Johnson Engineering, PLLC, a joint venture

Creighton Manning Engineering, LLP

D&B Engineers & Architects P.C. (D & B)

Dewberry Engineers, Inc.

Environmental Design and Research, Landscape Architecture and Engineering, P.C. (EDR)

Fisher Associates, and Ram-Tech Engineering, a joint venture

Greenman-Pedersen, Inc. (GPI)

Holzmacher, McLendon and Murell, P.C. (H2M)

Labella Associates P.C.

Langan Engineering, Environmental, Surveying and Landscape Architecture, D.P.C
(Langan)

LiRo Engineers, Inc. (LiRo)

M.J. Engineering and Land Surveying, PC

Nussbaumer & Clarke, Inc.

Ove Arup & Partners, PC (Arup)

Parsons Brinckerhoff, Inc.

SourceOne, Inc.

Spring Line Design Architecture + Engineering, LLP (SLD)

STV Incorporated (STV)

Tectonic Engineering & Surveying Consultants, PC

Trautman Associates

TVGA Consultants

Urban Strategies Inc, Watts A/E, Foit Albert Associates, C.J Law and Associates, and
Singleton Consultants, a joint venture

URS Corporation – New York (URS)

Woodard & Curran Engineering PA, PC

WSP

ITEM III. D



FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION (NYCCDC) – Jacob K. Javits Convention Center Expansion and Renovation Civic Project and Land Use Improvement Project

REQUEST FOR: Affirmation of Proposed Modifications to General Project Plan (GPP); Recommendation to the New York State Urban Development Corporation d/b/a Empire State Development Directors to (1) Affirm the Proposed Modifications to the GPP with Respect to the Proposed Modifications; and (2) Determine that No Supplemental Environmental Impact Statement is Required; and (3) Authorization to Take Related Actions

I. Background and Overview

On July 18, 2006 the Directors of both the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and of ESD’s subsidiary Convention Center Development Corporation (“CCDC”) adopted a General Project Plan (“GPP”) for the Jacob Javits Convention Center (“Convention Center”) Expansion and Renovation Civic and Land Use Improvement Project (the “Project”). The approved Project contemplated the renovation and expansion of the Convention Center, including: construction of a ballroom and additional exhibition and meeting room space; and construction of a multi-level truck marshaling facility. The 2006 GPP approved project also included residential and commercial development on a site between 33rd and 34th Streets and the development of a Convention Center Hotel at a site on the east side of Eleventh Avenue between 35th and 36th Street. The Project contemplated the sale or long term lease of these development sites as partial funding sources for the 2006 GPP renovation and expansion scope.

In April 2007, an extensive analysis of the 2006 GPP Project scope indicated a potentially significant understatement of estimated Project costs, for which the projected funding was insufficient. As a result, CCDC Directors elected to proceed with critical repairs to the then existing facility, to perform a more modest temporary expansion, and to defer start of

permanent expansion. CCDC implemented this reinvestment in the existing facility, including substantial renovations and the completion of an 80,000 square foot temporary exhibition space, all of which was completed in 2014.

Since the adoption of the 2006 GPP and completion of the initial Project renovations to the existing facility, efficiencies have been realized that would allow for CCDC to provide a more competitive and functional Convention Center. CCDC and ESD staff now proposes modifications to the 2006 GPP approved expansion plan ("Proposed Modifications") which incorporate these efficiencies in a more compact expansion of the Convention Center with a smaller, but more efficient, truck marshaling facility than that outlined in the 2006 GPP approved Project. The Proposed Modifications would result in an expansion that better serves CCDC's goal of creating a more competitive, world-class convention center. The Proposed Modifications would result in a truck marshaling facility that will remove tractor trailers from parking at grade on the block south of the Convention Center and queuing on local streets and allows all trailers to be kept in an enclosed facility on site, greatly increasing the efficiency of loading/unloading operations.

On April 1, 2016, the State authorized an appropriation of \$1 billion for use in funding the Project and passed legislation enabling CCDC to advance the expansion under the design-build ("D-B") delivery method. This appropriation, together with bond proceeds and cash on hand, are anticipated to provide sufficient funding for the payment of the Design-Build price for the remainder of the expansion, as modified by the Proposed Modifications.

Certain related work that is part of the proposed modified expansion scope will be performed by CCDC outside the scope of the overall expansion to be completed by a Design Build development team. The funding described above is expected to be sufficient to pay for the cost of this related work as well.

II. Proposed Modifications

Convention Space

An approximately 940,000 square foot ("sf") reduction in proposed additional convention center space (from approximately 1.5 million sf reduced to approximately 570,000 sf).

Truck Marshaling

The construction of a new, above-grade, multi-level truck marshaling facility located along Twelfth Avenue south of West 40th Street. The 2006 GPP Approved Project proposed a 580,000 sf marshaling facility containing seven levels. The Proposed Modifications result in a 4-level, approximately 480,311 sf marshaling facility. This revised facility, because of its more efficient design and increased loading dock capacity, will actually accommodate more trucks in less time compared with the 2006 plan while eliminating the need for curbside holding lanes and will provide the added efficiency of an additional exit point toward the north opposite the Quill Bus Depot on West 40th Street.

Facility Planning and Design

Creation of a new entry pavilion to provide access and entry from the Level 2 inner roadway/plaza. This area, an extension of the existing Level 2 concourse, would house or connect to all of the pre-function and registration space required by the new exhibition, meeting room, and ballroom functions. The entry pavilion would be accessed through a new vestibule as well as existing vestibules that were created as part of the main building's renovation, thereby dispersing pedestrian traffic.

Financing

The proceeds from the sale of the block bounded by 33rd and 34th Street and 11th and 12th Avenues will no longer be a funding source for the expansion project. Funding is anticipated to be provided through an appropriation of \$1 billion, CCDC cash on hand and bond proceeds.

III. Environmental Review

The renovation and expansion of the Convention Center was included as a component of the Proposed Action in the 2004 Final Generic Environmental Impact Statement ("FGEIS") for the No. 7 Subway Extension-Hudson Yards Rezoning and Development Program for which ESD was an involved agency. In connection with the project that was approved as part of the 2006 General Project Plan, ESD had prepared a Technical Memorandum that concluded no Supplemental Environmental Impact Statement ("EIS") was needed. In order to adequately assess whether the Proposed Modifications set forth herein would result in any potential significant adverse environmental impacts not previously identified, ESD has had a new Technical Memorandum prepared. The Technical Memorandum concludes that the Proposed Modifications would not result in any significant adverse environmental impacts not previously

identified. Therefore, a Supplemental EIS is not warranted, and no further environmental review is required in connection with these requested modifications to the GPP.

IV. Staff Recommendations

CCDC and ESD staff has reviewed the Proposed Modifications and have determined that the modifications conform to the project design goals and objectives and purpose and need and do not constitute a material change to the GPP. Staff recommends that the Proposed Modifications be affirmed by the NYCCDC Directors.

V. Requested Action

The Directors are requested to affirm the Proposed Modifications, and to recommend that the ESD Directors: (1) affirm the Proposed Modifications and (2) make a Determination that the Proposed Modifications would not result in the need for a supplemental EIS.

VI. Attachments

Resolutions
Modified General Project Plan

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION (NYCCDC) – Jacob K. Javits Convention Center Expansion and Renovation Civic Project and Land Use Improvement Project – Affirmation of Proposed Modifications to General Project Plan (GPP); Recommendation to the New York State Urban Development Corporation d/b/a Empire State Development Directors to (1) Affirm the Proposed Modifications to the GPP with Respect to the Proposed Modifications; and (2) Determine that No Supplemental Environmental Impact Statement is Required; and (3) Authorization to Take Related Actions

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 (the “Materials”), the Corporation hereby affirms the proposed modifications to the General Project Plan (GPP); and be it further

RESOLVED, that the Corporation recommends that the Directors of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and affirm the proposed modifications; and be it further

RESOLVED, that the Corporation recommends that the ESD Directors Make a Determination that no Supplemental Environmental Impact Statement is required; and be it further

RESOLVED, that the President of the Corporation or her designee(s) be, and each of them hereby is, authorized to take such action or execute such agreements as he or she may consider necessary or appropriate to effectuate the foregoing resolutions.

CONVENTION CENTER DEVELOPMENT CORPORATION

JACOB K. JAVITS CONVENTION CENTER
EXPANSION AND RENOVATION
CIVIC PROJECT AND LAND USE IMPROVEMENT PROJECT

Amendment Modifying the General Project Plan

May 2016

Except as modified below, the General Project Plan for the above-referenced Project, affirmed and dated July 18, 2006, remains unchanged and in full force and effect. The Modifications are described below.

Convention Space

The Convention Center expansion of up to seven levels with a maximum height of approximately 210 feet will be modified to a smaller, more efficient design which will expand the Convention Center to 5 levels, with a maximum height of approximately 179 feet, and which will result in an approximately 940,000 sf reduction in proposed additional convention center space, from an approximately 1.5 million sf expansion to an approximately 570,000 sf expansion. In addition, approximately 0.6 acres of passive open space will be included along Eleventh Avenue.

Truck Marshaling

The new, above-grade, multi-level truck marshaling facility located along Twelfth Avenue south of West 40th Street will be modified from a 580,000 sf marshaling facility containing seven levels to a 4-level, approximately 480,311 sf marshaling facility.

Facility Planning and Design

A new entry pavilion will be created to provide access and entry from the Level 2 inner roadway/plaza. This area, an extension of the existing Level 2 Concourse, will house or connect to all of the pre-function and registration space required by the new exhibition, meeting room, and ballroom functions. The entry pavilion will be accessed through a new vestibule as well as existing vestibules that were created as part of the main building's renovation, thereby dispersing pedestrian traffic.

Financing

Proceeds from the sale of the block bounded by 33rd and 34th Street will no longer be a funding source for the expansion project and those sites are not part of the expansion project. Funding is anticipated to be provided through an appropriation of \$1 billion, New York Convention Center Development Corporation cash on hand and bond issues proceeds.

ITEM III. E



**New York
Convention Center
Development
Corporation**

A Subsidiary of Empire State Development

FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: New York (New York County) - Jacob K. Javits Convention Center

REQUEST FOR: Authorization to Retain Lehrer, LLC ("Lehrer") for Project Advisory Services and to Take Related Actions

I. CONTRACT SUMMARY

Firm: Lehrer, LLC

Scope of Services: Project advisory services related to the expansion plan for the Jacob K. Javits Convention Center

Anticipated Term: April 1, 2016 through December 31, 2016

Contract Amount: Not to exceed \$750,000

Funding Source: 2015 Bond Series (Hotel Unit Fee Secured)

Project Number: Not applicable

II. PROJECT BACKGROUND

On July 18, 2006, the Directors of both the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the New York Convention Center Development Corporation ("NYCCDC" or the "Corporation") adopted a modified General Project Plan ("GPP") for the Jacob K. Javits Convention Center Expansion and Renovation Civic Project and Land Use Improvement Project (the "Project"). The approved Project as modified contemplated an a renovation of the existing facility as well as an expansion that includes design and construction of additional exhibition and meeting room space, a ballroom and the construction of a multi-level truck marshalling facility. Implementation of the complete Project scope was deferred at that time because there was insufficient funding and the decision was made to proceed initially with the renovation work and to defer the start of the expansion related work.

On April 1, 2016, the State passed legislation enabling NYCCDC to advance this project under the design-build ("D-B") delivery method and authorized an appropriation of \$1 billion for use in funding the Project. Given this additional funding source NYCCDC anticipates undertaking the deferred expansion and issued a Request for Qualifications ("RFQ") for Design-Build services on April 12, 2016.

NYCCDC is now in the planning stage to move ahead with the expansion work scope of the Project, which is comprised of:

- A new 480,000 SF truck marshaling facility that will accommodate all of the trucks servicing the convention center
- A new 58,000 SF ballroom
- Approximately 92,000 SF of new exposition space (12,000 SF net new)
- Approximately 40,000 SF of new meeting room space
- Approximately 22,000 SF of new outdoor space

III. PROJECT ADVISORY SERVICES

Given that this will be NYCCDC and ESD's first experience executing a large-scale construction project under a design-build approach, staff has identified a consulting team to bolster our knowledge of the procurement process, to identify critical steps and also potential pitfalls, and to assist us in the negotiation of a design-build contract that will result in an optimal outcome for the State. More specifically, NYCCDC needs a firm that can help lead the architectural team in the preparation of plans and technical specifications that clearly articulate the Corporation's design criteria and performance standards. NYCCDC also seeks a firm that can probe the project schedule through the lens of the market, in order to know how far staff can credibly push while still being reasonable.

IV. CONTRACTOR SELECTION

NYCCDC is seeking a single source exemption from the Contract Reporter competitive bidding process for Lehrer's services. Lehrer is uniquely qualified to advise NYCCDC because of its unrivaled experience in construction consultation for large scale, complex, multi-billion dollar, early stage projects. Lehrer staff has been involved with major public private partnership projects since the 1960s and have extensive professional experience with many of the permitting agencies that will be critical to the Project's success. Lehrer's experience with design-build strategies includes the LaGuardia Airport redevelopment, the 1996 Atlanta Olympics and the White Plains courthouse. This background will enable Lehrer to provide market insights from the industry leaders with whom NYCCDC will need to generate interest and bids for the design-build Request for Qualifications ("RFP"). Finally, Lehrer has a strong record of success in working with the New York State government on large scale public projects, including the LaGuardia Airport redevelopment, the State House renovation, and the reconstruction of the Interstate 287.

V. SCOPE OF WORK

The scope of work is anticipated to be completed on or about December 31, 2016 and will include:

Project understanding / best practices:

- Attend all meetings related to the Project as reasonably directed by the Owner.
- Scrutinize proposed scheduling, identifying areas where we can save time or money
- Assist CCDC to drive the Convention Center Operating Corporation, the design team and construction manager to prioritize work items to keep the Project on schedule

Construction approach for early works:

- Scrutinize fast-track approach to identify areas where NYCCDC can save time and money
- Participate in discussions with the Dormitory Authority of the State New York with regard to expediting permitting for the Project
- Participate in discussions with relevant agencies (e.g., the Port Authority of New York and New Jersey, New York City Department of Environmental Protection, New York City Department of Transportation, New York State Department of Transportation, Con Ed) to work through design issues and also to elevate any decisions to the Executive Chamber if / when it becomes necessary to maintain schedule

Design-Build procurement:

- Work with NYCCDC, ESD Legal, and outside counsel to lay out a road map for the procurement process
- Provide an architectural review to ensure project plans and specifications are consistent with project goals
- Assist lawyers and technical advisors in connection with the RFQ and RFP
- Assist in assessing and appealing to the designer/builder marketplace to maximize interest in the competition
- Review and comment, as a non-legal advisor, on substantive content of D-B contract and of other addenda, to be included in the RFP
- Assist in identifying key members of review teams and selection committees
- Advise and assist in establishing organization structure to provide meaningful oversight of the Project work, while keeping the risk and responsibility with the D-B team

VI. CONTRACT TERM, PRICE AND FUNDING

It is anticipated that the contract will run from April 1, 2016 and will end December 31, 2016. Compensation will be in accordance with the Contract terms for construction advisory services and

shall not exceed \$750,000. This amount can include a sub-contract in conjunction with the above-referenced services, subject to the NYCCDC approval.

In addition, the contract will allow for Lehrer, LLC to propose an additional salaried staff person, subject to prior approval from NYCCDC.

VII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises (“MWBES”) in the performance of the Corporation’s contracts. ESD’s Non-Discrimination and Contractor & Supplier Diversity policy will apply to this initiative.

VIII. ENVIRONMENTAL REVIEW

ESD staff, on behalf of NYCCDC, has determined that the requested authorization to enter into a contract to provide project advisory services constitutes a Type II action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

IX. REQUESTED ACTIONS

It is requested that the Directors determine that Lehrer, LLC is a responsible vendor and that the Directors authorize the Corporation to enter into a contract with Lehrer, LLC for the scope of services described in these materials with compensation in accordance with the Contract not to exceed \$750,000 substantially upon the terms set forth in the Materials; and (3) to take all related actions.

X. RECOMMENDATION

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

XI. ATTACHMENTS

Resolutions

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – New York (New York County) - Jacob K. Javits Convention Center – Authorization to Retain Lehrer, LLC (“Lehrer”) for Project Advisory Services and to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Lehrer, LLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Lehrer, LLC for the purposes and services and substantially on the terms and conditions as set forth in the Materials; and be it further

RESOLVED, that the President, or other Officer of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions. Any actions previously taken by the Corporation consistent with this authorization are hereby ratified and affirmed.

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ITEM III. F



**New York
Convention Center
Development
Corporation**

A Subsidiary of Empire State Development

FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: New York Convention Center Development Corporation ("NYCCDC" or the "Corporation") New York (New York County) - Jacob K. Javits Convention Center

REQUEST FOR: Authorization to Increase Contract Amount and Extend the Term Previously Authorized for a Contract for Construction Advisory Services with Tishman Construction and to Take Related Actions

I. CONTRACT SUMMARY

Contractor: Tishman Construction Corporation of New York ("Tishman")

Scope of Services: Construction advisory services to assist in the preparation of bridging documents for a proposed Design-Build Request for Proposals ("RFP") and related services for the expansion of the Convention Center

Authorized Contract Term: February 1, 2016 through September 30, 2016

New Proposed Amendment To Authorize Contract Term: February 1, 2016 through December 31, 2016

Authorized Contract Amount: Not to exceed \$640,000

New Proposed Total Contact Amount: Not to exceed \$775,000

Funding Source: 2015 Bond Series (Hotel Unit Fee secured)

II. BACKGROUND

On March 15, 2016 the NYCCDC Board authorized the Corporation to enter into a contract with Tishman for the scope of work described in these materials for a term of eight months beginning February 1, 2016 through September 30, 2016 and for an amount not to exceed \$640,000. Since that authorization, NYCCDC and Tishman have identified additional work that must be performed to complete the scope of services. The additional work will require adding two months to the approved term and \$135,000 to the contract amount. The March 15, 2016 board authorization therefore needs to be modified to authorize a contract with a term of ten months, beginning February 1, 2016 and extending through December 31, 2016 at an amount not to exceed \$775, 000 instead of the previously authorized \$640,000.

NYCCDC has not yet entered into a contract with Tishman.

III. CONTRACTOR SELECTION PROCESS

On March 15, 2016, NYCCDC obtained a single source exemption from the Contract Reporter competitive bidding process for Tishman's services. The exemption request was for a contract value not to exceed \$640,000. An amended exemption request is now pending for the full amount of this amended authorization, i.e. \$775,000.

The basis for the single source exemption is as follows. In 2005, Tishman was engaged to provide construction management services for the renovation of the convention center and provided exemplary services managing and coordinating the renovation without interrupting or adversely affecting the convention center's ongoing operations. Tishman's familiarity with the convention center's structural elements and its mechanical, fire safety and technological system uniquely qualifies the firm to conduct the necessary services in a timely and cost efficient manner.

IV. SCOPE OF WORK

The current scope of work may include:

1. Construction advisory services to assist in preparation of bridging documents for the Phase 2 Design-Build RFP, including assistance with the bidding packages and award recommendations;
2. Cost estimation services and related work with respect to the design-build scope; and
3. Assistance to NYCCDC in evaluating a project specific insurance policy

V. CONTRACT TERM, PRICE AND FUNDING

The proposed changes to the NYCCDC authorization will extend the authorized term by two months for a term running from February 1, 2016 through December 31, 2016. The proposed changes also increase the authorized contract amount by \$135,000 for a total contract price not to exceed \$775,000. The contract will be funded from 2015 Bond Series (Hotel Unit Fee secured) revenue.

VI. NON-DISCRIMINATION AND CONTRACTOR AND SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, NYCCDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises ("MWBES") in the performance of its contracts. NYCCDC's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this initiative.

VII. ENVIRONMENTAL REVIEW

ESD staff, on behalf of NYCCDC, has determined that the requested authorization to increase the contract compensation to perform consulting services constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

VIII. REQUESTED ACTION

The Directors are requested to authorize NYCCDC to enter into a contract with Tishman substantially upon the terms set forth in these Materials; and to take all related actions.

IX. RECOMMENDATION

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

XI. ATTACHMENTS

Resolution

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – New York (New York County) - Jacob K. Javits Convention Center – Authorization to Increase and Extend Prior Authorization for Construction Advisory Services by Tishman Construction Corporation of New York (“Tishman”) and to Take Related Actions

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

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Tishman Construction Corporation for the purposes and services, and substantially on the terms and conditions as set forth in the Materials; and be it further

RESOLVED, that the President, or other Officer of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions. Any actions previously taken by the Corporation consistent with this authorization are hereby ratified and affirmed.

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ITEM III. G



FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: New York (New York County) - Jacob K. Javits Convention Center

REQUEST FOR: Authorization to Retain Tishman Construction Corporation for Construction Management Services and to Take Related Actions

I. CONTRACT SUMMARY

Firm: Tishman Construction Corporation ("TCC" or "Tishman")

Scope of Services: Construction management services related to the relocation of the transformer yard and a number of utilities at the Jacob K. Javits Center.

Anticipated Term: May 15, 2016 through December 31, 2018

Contract Amount: Not to exceed \$8,000,000

Funding Source: 2015 Bond Series (Hotel Unit Fee Secured)

Project Number: Not applicable

II. PROJECT BACKGROUND

On July 18, 2006, the Directors of both the New York State Urban Development Corporation, d/b/a Empire State Development ("ESD") and New York Convention Center Development Corporation ("NYCCDC") adopted a modified General Project Plan ("GPP") for the Jacob Javits Convention Center Expansion and Renovation Civic Project and Land Use Improvement Project (the "Project"). The approved Project as modified contemplated an expansion that includes design and construction of additional exhibition and meeting room space, a ballroom and the construction of a multi-level truck marshalling facility. Implementation of the complete Project scope was deferred at that time because there was insufficient funding and the decision was made to proceed initially with the renovation work and to defer the start of the expansion related work.

NYCCDC is now in the planning stage to move ahead with the expansion work scope of the Project, which is comprised of:

- A new 480,000 SF truck marshaling facility that will accommodate all of the trucks servicing the convention center
- A new 58,000 SF ballroom
- Approximately 92,000 SF of new exposition space (12,000 SF net new)
- Approximately 40,000 SF of new meeting room space
- Approximately 22,000 SF of new outdoor space

III. RELATED CONSTRUCTION WORK

To facilitate the expansion project, prior to entering into a contract with a designated Design-Build consortium for the expansion NYCCDC seeks to undertake related work that will facilitate the expansion project construction. This work involves:

- Elevating the existing transformer yard onto a three-story platform structure in order to bring it out of the flood plain, and upgrading the transformers to meet the capacity needs of the expanded convention center
- Relocating a sewer pipe and a water main that currently run under the decommissioned West 39th Street, over which the expansion project will be built
- Rerouting electrical feeders belonging to the Port Authority of New York New Jersey
- Rerouting ConEd service off of West 39th Street
- Test borings for geotechnical exploration

IV. CONTRACTOR SELECTION

On April 4, 2016, NYCCDC issued a Request for Proposals (“RFP”) for Construction Management Services for this related work. The RFP asked respondents to demonstrate their relevant experience, propose a project management team, describe their diversity practices and explain how they will meet the State’s MWBE goals, and also requested a firm price proposal.

On April 25, 2016, CCDC received four proposals in response to the RFP. The Selection Committee ranked the proposals based on technical merit and price and after a review of the financial and organizational capacity, legal authority, integrity and past performance on prior governmental contracts experience of the four firms, staff has designated Tishman, subject to approval of the NYCCDC Directors.

Pursuant to State Finance Law Sections 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 Firm to be responsible.

V. SCOPE OF WORK

The scope of work is anticipated to be completed on or about December 31, 2018. Under this contract, TCC will be responsible for overseeing the construction work on behalf of the Owner (NYCCDC). They will review and comment on all construction documents, including selection of materials and equipment, methods of project delivery and feasibility. They will also prepare and update construction cost estimates and advise on possible ways to maintain the budget. They will be responsible for obtaining permits and developing a site safety and security plan, as well as an MWBE participation plan. They will oversee test borings for geotechnical exploration across the site.

During construction, TCC will coordinate the activities and responsibilities of the contractors in accordance with the project budget, schedule and contract documents. They will also develop procedures for reviewing and verifying the construction progress and payments. TCC will be responsible for inspecting the work to ensure it is being performed in conformance with the project documents through close-out.

VI. CONTRACT TERM, PRICE AND FUNDING

It is anticipated that the contract will run from May 15, 2016 and will end on or before December 31, 2018. Compensation will be in accordance with the Contract terms, which is a 2.5% of the cost of work, with a not to exceed maximum of \$8,000,000.

Tishman will be precluded from participating as part of a team that bids in response to a Request for Qualifications or Request for Proposals for Design Build Services for the Project.

VII. NON-DISCRIMINATION AND CONTRACTOR AND SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, NYCCDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises ("MWBEs") in the performance of its contracts. NYCCDC's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this contract.

VIII. ENVIRONMENTAL REVIEW

ESD staff, on behalf of NYCCDC, has determined that the requested authorization to enter into a contract to provide construction management services constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

IX. REQUESTED ACTIONS

It is requested that the Directors determine that TCC is a responsible vendor and that the Directors authorize the Corporation to enter into a contract with Tishman for the scope of services described in these materials with compensation in accordance with the Contract not to exceed \$8,000,000, substantially upon the terms set forth in the Materials; and (3) to take all related actions.

X. RECOMMENDATION

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

XI. ATTACHMENTS

Resolutions

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – New York (New York County) - Jacob K. Javits Convention Center – Authorization to Retain Tishman Construction Corporation for Construction Management Services and to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Tishman Construction Corporation to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Tishman Construction Corporation for the purposes and services, and substantially on the terms and conditions as set forth in the Materials; and be it further

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

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ITEM III. H



**New York
Convention Center
Development
Corporation**

A Subsidiary of Empire State Development

FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: New York (New York County) - Jacob K. Javits Convention Center

REQUEST FOR: Authorization to Retain Langan Engineering, LLC for Civil and Geotechnical Advisory Services and to Take Related Actions

I. CONTRACT SUMMARY

Firm: Langan Engineering, LLC ("Langan")

Scope of Services: Geotechnical advisory services and design work related to the relocation of the transformer yard and a number of utilities and the overall expansion project at the Jacob K. Javits Center.

Anticipated Term: February 1, 2016 through December 31, 2018

Contract Amount: Not to exceed \$750,000

Funding Source: 2015 Bond Series (Hotel Unit Fee Secured)

Project Number: Not applicable

II. PROJECT BACKGROUND

In preparation for a Request for Proposals ("RFP") for Design-Build services, New York Convention Center Development Corporation ("NYCCDC" or the "Corporation") has engaged a multi-disciplinary team of architectural and design consultants to advance our early conceptual design into bridging documents. The bridging documents comprise detailed design criteria and performance standards as well as drawings.

Langan Engineering, LLC, has been selected to advance the civil and geotechnical aspects of the bridging documents.

III. CONTRACTOR SELECTION

Langan has been selected on a single-source basis, with an exemption from advertising in the Contract Reporter. The firm has been involved in the Javits expansion project for many years, starting with the original renovation project, and continuing through the conceptual design work we did from the end of 2014 until the end of 2015. The geotechnical conditions below Javits are complex, as there are multiple utilities, the three tubes that comprise the Lincoln Tunnel, and the new 7 line extension. As such, it was extremely important that we maintain the institutional knowledge within the project team in order to produce high quality bridging documents and accurate information for the RFP, without compromising our aggressive schedule or duplicating work that has already been incurred and invoiced. The selection of Langan was the most economical and also the most efficient.

IV. SCOPR OF WORK

Under this contract, Langan will perform geotechnical investigation and engineering services. This includes:

- Preliminary geotech engineering report
- Preliminary Site-Specific Seismic Study
- Subsurface Investigation Special Inspections
- Laboratory Testing of Soils and Rock
- Final Site-Specific Seismic Study
- Final Geotechnical Engineering Report
 - Discussion of existing and proposed site conditions;
 - Discussion of existing building foundations based on review of record drawings;
 - Discussion of available historic subsurface data;
 - Results of the subsurface investigation, including field boring logs, as-drilled boring location plan, and preliminary representative soil profiles;
 - Seismic parameters for design based on the results of the final site-specific seismic study;
 - Discussion of feasible foundation support and foundation recommendations for the development;
 - Discussion of feasible excavation support, and construction and permanent groundwater control methods;
 - Design parameters for lateral earth pressure;
 - Discussion of required monitoring;
 - Construction procedures to protect the Lincoln Tunnel;
 - Recommendations for additional NYCBC required subsurface investigation and detailed analytical studies necessary for final design of the proposed building, as required.
- Preliminary Support of Excavation Design

- Caisson Design and Detailing – evaluation of structural and geotechnical capacities of caissons and prepare supporting calculations, as required. Preparation of all necessary caisson details and notes for inclusion into the foundation plans prepared by others. Design caissons according to loading parameters provided by the structural engineer. This scope of services assumes up to two revisions of the details and calculations where such revisions stem from changes by others. This effort is necessary in order to develop design criteria that are satisfactory to PANYNJ and MTACC/NYCT. The design will be used to establish guidelines for the design-build contractor.
- Tie-down Design and Detailing
- PANYNJ Agency Support and Geotechnical Consulting
- MTA/NYCT Agency Support and Geotechnical Consulting

V. CONTRACT TERM, PRICE AND FUNDING

It is anticipated that the contract will run from February 1, 2016 and will end on or before December 31, 2018. Compensation will be in accordance with the Contract terms, which is a lump sum, percent complete basis, with a not to exceed maximum of \$750,000. Expenses are included. Filing fees, if applicable, are separate and payable directly by NYCCDC. Contract will be funded from 2015 Bond Series (Hotel Unit Fee Secured) revenue.

VI. NON-DISCRIMINATION AND CONTRACTOR AND SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, NYCCDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises (“MWBES”) in the performance of its contracts. NYCCDC’s Non-Discrimination and Contractor & Supplier Diversity policy will apply to this contract.

VII. ENVIRONMENTAL REVIEW

ESD staff, on behalf of NYCCDC, has determined that the requested authorization to enter into a contract to geotechnical advisory and design work services constitutes a Type II action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested authorization.

VIII. REQUESTED ACTIONS

It is requested that the Directors determine that Langan is a responsible vendor and that the Directors authorize the Corporation to enter into a contract with Langan for the scope of

services described in these materials with compensation in accordance with the Contract not to exceed \$750,000, substantially upon the terms set forth in the Materials; and (3) to take all related actions.

IX. RECOMMENDATION

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

X. ATTACHMENTS

Resolutions

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION – New York (New York County) - Jacob K. Javits Convention Center – Authorization to Retain Langan Engineering, LLC for Civil and Geotechnical Advisory Services and to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Langan Engineering, LLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Langan for the purposes and services, and substantially on the terms and conditions as set forth in the Materials; and be it further

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

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ITEM III. I



**New York
Convention Center
Development
Corporation**

A Subsidiary of Empire State Development

FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: Procurement of Legal Services – Nixon Peabody LLP

REQUEST FOR: Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation (“CCDC” or the “Corporation”) in Connection with Issuing Bonds (“Bonds”) to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the “Convention Center”) and to Take Related Actions

I. CONTRACT SUMMARY

Counsel: Nixon Peabody LLP (“Counsel” or “Nixon”)

Scope of Services: Counsel would serve as co-bond counsel (together with the Law Office of Joseph C. Reid, P.A. (“Joe Reid”) which will be authorized separately) to provide legal services to CCDC in connection with the issuance of bonds to fund the continuing expansion and renovation of the Jacob K. Javits Convention Center.

Contract Amount: All fees charged by any counsel to CCDC, including Nixon, shall be payable only up to an aggregate amount equal to 2% of the proceeds of the Bonds and will be subject to a maximum rate structure described below. In addition the amount payable to Counsel will be subject to an allocation of 50% of billings to co-bond counsel, Joe Reid, under a separate retainer.

Funding Source: The contract is expected to be funded in its entirety by bond proceeds which are repaid by a collection of a \$1.50/unit /per day Convention Center Hotel Unit Fee imposed by the Tax Law.

II. BACKGROUND

In 2005 the Corporation issued \$700,000,000 of bonds (the "Initial Bonds") to finance a project consisting of the expansion and renovation of an existing convention center and exhibition facility located in The City of New York and known commonly as the Jacob K. Javits Convention Center. The Initial Bonds were issued by the Corporation under the "Revenue Bond (Hotel Unit Fee Secured) Resolution" adopted on November 3, 2005 (the "General Resolution"), as amended and supplemented. The Initial Bonds were refunded in 2015 (the "Refunding") under the same General Resolution. In view of favorable interest rates and increasing Hotel Unit Fee collections, the Corporation now intends to issue additional bonds under the General Resolution to fund further renovation and expansion of the Convention Center.

In separate items regarding the Bonds, either for submission to the Board, or to the President within his delegated authority, staff of the CCDC will seek the approval of co-bond counsel, disclosure counsel, underwriters and an application for Public Authorities Control Board approval.

Staff of the CCDC will seek the consent of the Directors to the form of Bond documents, as well as the approval by the Directors of the terms of the transaction, at a subsequent meeting.

III. COUNSEL SELECTION PROCESS

In April 2012, staff of New York State Urban Development Corporation d/b/a Empire State Development ("ESD") advertised for legal counsel in the following areas: real estate and land use, environmental, construction, condemnation, bankruptcy, labor, taxation, bond financing, foreclosure and, in each case, related litigation. Sixty-six firms responded (including Counsel), the responses were evaluated, and in September 2012 ESD approved a Pre-Qualified Counsel List. Counsel was pre-qualified in the area of bond financing. On January 31, 2013, CCDC adopted the ESD slate of pre-qualified counsel.

It is recommended that Nixon serve as co-bond counsel for this transaction. Counsel is on the Corporation's pre-qualified list of bond counsel and served as co-bond counsel on the Refunding in 2015. Selection of this firm for the Refunding was based on staff solicitation of Nixon and two other firms in the Senior Tier of pre-qualified bond counsel to participate in separate conference calls to discuss their qualifications for the Refunding. All three firms were more than qualified, but Nixon not only served as underwriter counsel on the issuance of the Initial Bonds, but demonstrated the most aggressive response to accommodate all corporate policies, including MWBE participation. Accordingly staff recommends the retention of Counsel for the Bonds based on: a) the recent selection process, b) Counsel's specific and necessary expertise, c) Counsel's performance with distinction on the Refunding, (d) Counsel's rate proposal; and (e) the ESD pre-qualification process.

The appointment of this firm also represents an equitable distribution of work among the Corporation's and ESD's rotating slate of Senior and Junior Tier law firms and MWBE firms to handle ESD's and the Corporation's debt in terms of size of transaction, fees received, length of time since their last engagement and total number of transactions. Finally, Counsel is a national firm with experience in all facets of bonds and related matters.

IV. SCOPE OF WORK

Counsel would advise the CCDC in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the following types of documents: sale contracts, resolutions, amendments, disclosure documents and tax opinions.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

In accordance with Federal tax law an opinion from bond counsel is required to opine upon tax exempt bonds. In addition bond counsel expertise is necessary to ensure compliance with applicable securities laws, and market practices.

B. CONTRACT PRICE AND FUNDING

All CCDC counsel costs and expenses with respect to the Bonds are expected to be paid from bond proceeds on or about the closing on the Bonds. All fees charged by such counsel, including Nixon, shall be payable only up to an aggregate amount equal to 2% of the Bonds and will charge their usual rates subject to a maximum rate structure as follows: Partner/of Counsel \$600; Senior Associate \$550; Mid-level Associate \$500; Junior Associate \$425; Law Clerk \$325; Legal Assistant/Paralegal \$150.

VI. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and the Authority's policy related thereto, staff has: (a) considered Counsel'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. Base on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to achieve an overall MWBE participation goal of 50% related to the total amount of CCDC's co-bond counsel fees. A separate retainer with an MWBE (Joe Reid) to act as co-bond counsel will be entered into to meet these requirements.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of Nixon as co-bond counsel to the CCDC for such legal services as are described in these materials subject to an allocation of fees for co-bond counsel, Joe Reid, who will be authorized under separate materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolutions

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION ("CCDC") – Procurement of Legal Services – Nixon Peabody LLP – Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation ("CCDC" or the "Corporation") in Connection with Issuing Bonds ("Bonds") to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the "Convention Center") and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the CCDC (the "Materials"), the CCDC hereby finds the law firm of Nixon Peabody LLC ("Counsel") to be responsible; and be it further

RESOLVED, that the CCDC is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the CCDC to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the CCDC or Counsel consistent with this authorization are hereby ratified and affirmed.

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ITEM III. J



**New York
Convention Center
Development
Corporation**

A Subsidiary of Empire State Development

FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: Procurement of Legal Services – D. Seaton and Associates, P.A., P.C.

REQUEST FOR: Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation (“CCDC” or the “Corporation”) in Connection with Issuing Bonds (“Bonds”) to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the “Convention Center”) and to Take Related Actions

I. CONTRACT SUMMARY

Counsel: D. Seaton and Associates, P.A., P.C. (“Counsel” or “Seaton”)

Scope of Services: Counsel would serve as disclosure counsel to provide legal services to CCDC in connection with issuance of bonds to fund the continuing expansion and renovation of the Jacob K. Javits Convention Center.

Contract Amount: All fees charged by any counsel for the Bonds, including Seaton, shall be payable only up to an aggregate amount equal to 2% of the proceeds of the Bonds and will be subject to a maximum rate structure described below.

Funding Source: The contract is expected to be funded in its entirety by bond proceeds which are repaid by a collection of a \$1.50/unit /per day Convention Center Hotel Unit Fee imposed by the Tax Law.

II. BACKGROUND

In 2005 the Corporation issued \$700,000,000 of bonds (the "Initial Bonds") to finance a project consisting of the expansion and renovation of an existing convention center and exhibition facility located in The City of New York and known commonly as the Jacob K. Javits Convention Center. The Initial Bonds were issued by the Corporation under the "Revenue Bond (Hotel Unit Fee Secured) Resolution" adopted on November 3, 2005 (the "General Resolution"), as amended and supplemented. The Initial Bonds were refunded in 2015 (the "Refunding") under the same General Resolution. In view of favorable interest rates and increasing Hotel Unit Fee collections, the Corporation now intends to issue additional bonds under the General Resolution to fund further renovation and expansion of the Convention Center.

In separate items regarding the Bonds, either for submission to the Board, or to the President within his delegated authority, staff of the CCDC will seek the approval of co-bond counsel, underwriters and an application for Public Authorities Control Board approval.

Staff of the CCDC will seek the consent of the Directors to the form of Bond documents, as well as the approval by the Directors of the terms of the transaction, at a subsequent meeting.

III. COUNSEL SELECTION PROCESS

In April 2012, staff of New York State Urban Development Corporation d/b/a Empire State Development ("ESD") advertised for legal counsel in the following areas: real estate and land use, environmental, construction, condemnation, bankruptcy, labor, taxation, bond financing, foreclosure and, in each case, related litigation. Sixty-six firms responded (including Counsel), the responses were evaluated, and in September 2012 ESD approved a Pre-Qualified Counsel List. Counsel was pre-qualified in the area of bond financing. On January 31, 2013, CCDC adopted the ESD slate of pre-qualified counsel.

It is recommended that Seaton serve as disclosure counsel for this transaction. Counsel is on the Corporation's pre-approved list of bond counsel, is an MWBE firm and has recently served as disclosure counsel for the NY Transportation Development Corporation. Accordingly staff recommends the retention of Counsel for the Bonds based on: a) Counsel's specific and necessary expertise, b) Counsel's performance with distinction as disclosure counsel on complex airport financing transactions, c) Counsel's rate proposal; and d) the ESD pre-qualification process.

The appointment of this firm also represents an equitable distribution of work among the Corporation's and ESD's rotating slate of Senior and Junior Tier law firms and firms that are New York State certified as Minority and Women-Owned Business Enterprises ("MWBE") to handle ESD's and the Corporation's debt in terms of size of transaction, fees received, length of time since their last engagement and total number of transactions.

IV. SCOPE OF WORK

Counsel would advise the CCDC in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds with a focus on disclosure matters. Such work may include, but not be limited to, drafting, negotiating, and finalizing the following types of documents: sale contracts, resolutions, amendments, disclosure documents and tax opinions.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

As a result of recent changes to Federal securities laws, in particular the Dodd-Frank Act, there are an increasing number of rules and an increasing amount of oversight with respect to disclosure for issuers of tax exempt bonds. In order to fully address these requirements many issuers are retaining separate disclosure counsel. This additional expertise will help ensure compliance with applicable securities laws, and market practices.

B. CONTRACT PRICE AND FUNDING

All CCDC counsel costs and expenses with respect to the Bonds are expected to be paid from bond proceeds on or about the closing on the Bonds. All fee charged by such counsel, including Seaton, shall be payable only up to an aggregate amount equal to 2% of the proceeds of the Bonds and will charge their usual rates subject to a maximum rate structure as follows: Partner/of Counsel \$600; Senior Associate \$550; Mid-level Associate \$500; Junior Associate \$425; Law Clerk \$325; Legal Assistant/Paralegal \$150.

VI. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and the Authority's policy related thereto, staff has: (a) considered Counsel'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. Base on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing

regulations for the New York Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize MWBEs for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to achieve an overall MWBE participation goal of 30% related to the total amount of CCDC's legal fees.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of Seaton as counsel to the CCDC for such legal services as are described in these materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolutions

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION ("CCDC") – Procurement of Legal Services – D. Seaton and Associates, P.A., P.C. – Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation ("CCDC" or the "Corporation") in Connection with Issuing Bonds ("Bonds") to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the "Convention Center") and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the CCDC (the "Materials"), the CCDC hereby finds the law firm of D. Seaton and Associates, P.A., P.C. ("Counsel") to be responsible; and be it further

RESOLVED, that the CCDC is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the CCDC to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the CCDC or Counsel consistent with this authorization are hereby ratified and affirmed.

* * *

ITEM III. K



FOR CONSIDERATION

May 18, 2016

TO: The Directors

FROM: Sarah Saint-Amand

SUBJECT: Procurement of Legal Services – Law Offices of Joseph C. Reid, P.A.

REQUEST FOR: Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation (“CCDC” or the “Corporation”) in Connection with Issuing Bonds (“Bonds”) to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the “Convention Center”) and to Take Related Actions

I. CONTRACT SUMMARY

Counsel: Law Offices of Joseph C. Reid, P.A. (“Counsel” or “Joe Reid”)

Scope of Services: Counsel would serve as co-bond counsel (together with Nixon Peabody LLP (“Nixon”) which will be authorized separately) to provide legal services to CCDC in connection with issuance of bonds to fund the continuing expansion and renovation of the Jacob K. Javits Convention Center.

Contract Amount: All fees charged by any counsel, including Joe Reid, shall be payable only up to an aggregate amount equal to 2% of the proceeds of the Bonds and will be subject to a maximum rate structure described below. In addition the amount payable to Counsel will be subject to an allocation of 50% of billings to co-bond counsel, Nixon, under a separate retainer.

Funding Source: The contract is expected to be funded in its entirety by bond proceeds which are repaid by a collection of a \$1.50/unit /per day Convention Center Hotel Unit Fee imposed by the Tax Law.

II. BACKGROUND

In 2005 the Corporation issued \$700,000,000 of bonds (the "Initial Bonds") to finance a project consisting of the expansion and renovation of an existing convention center and exhibition facility located in The City of New York and known commonly as the Jacob K. Javits Convention Center. The Initial Bonds were issued by the Corporation under the "Revenue Bond (Hotel Unit Fee Secured) Resolution" adopted on November 3, 2005 (the "General Resolution"), as amended and supplemented. The Initial Bonds were refunded in 2015 (the "Refunding") under the same General Resolution. In view of favorable interest rates and increasing Hotel Unit Fee collections, the Corporation now intends to issue additional bonds under the General Resolution to fund further renovation and expansion of the Convention Center.

In separate items regarding the Bonds, either for submission to the Board, or to the President within his delegated authority, staff of the CCDC will seek the approval of co-bond counsel, disclosure counsel, underwriters and an application for Public Authorities Control Board approval.

Staff of the CCDC will seek the consent of the Directors to the form of Bond documents, as well as the approval by the Directors of the terms of the transaction, at a subsequent meeting.

III. COUNSEL SELECTION PROCESS

In April 2012, staff of New York State Urban Development Corporation d/b/a Empire State Development ("ESD") advertised for legal counsel in the following areas: real estate and land use, environmental, construction, condemnation, bankruptcy, labor, taxation, bond financing, foreclosure and, in each case, related litigation. Sixty-six firms responded (including Counsel), the responses were evaluated, and in September 2012 ESD approved a Pre-Qualified Counsel List. Counsel was pre-qualified in the area of bond financing. On January 31, 2013, CCDC adopted the ESD slate of pre-qualified counsel.

It is recommended that Joe Reid serve as co-bond counsel for this transaction. Counsel is on the Corporation's pre-qualified list of bond counsel and Counsel served as co-bond counsel on the Refunding in 2015. Selection of this firm for the Refunding was based on the fact that Joe Reid's firm is a certified Minority and Women-Owned Business Enterprise ("MWBE") and previously served as co-counsel with Nixon on a Dormitory Authority bond transaction and an Empire State Development transaction. Staff reached out to Joe Reid and five other firms in the Junior Tier of pre-approved bond counsel who were asked to participate in separate conference calls to discuss their qualifications. Joe Reid's experience and robust New York staffing made his firm the first choice. Accordingly staff recommends the retention of Counsel for the Bonds based on: a) the recent selection process, b) Counsel's specific and necessary expertise, c) Counsel's performance with distinction on the Refunding, (d) Counsel's rate proposal; and (e) the ESD pre-qualification process.

The appointment of this firm also represents an equitable distribution of work among ESD's rotating slate of Senior and Junior Tier law firms and MWBE firms to handle ESD's and the Corporation's debt in terms of size of transaction, fees received, length of time since their last engagement and total number of transactions.

IV. SCOPE OF WORK

Counsel would advise the CCDC in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the following types of documents: sale contracts, resolutions, amendments, disclosure documents and tax opinions.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

In accordance with Federal tax law an opinion from bond counsel is required to opine upon tax exempt bonds. In addition bond counsel expertise is necessary to ensure compliance with applicable securities laws, and market practices.

B. CONTRACT PRICE AND FUNDING

All CCDC counsel costs and expenses related to the Bonds are expected to be paid from bond proceeds on or about the closing on the Bonds. All fees charged by such counsel, including Joe Reid, shall be payable only up to an aggregate amount equal to 2% of the Bonds and will charge their usual rates subject to a maximum rate structure as follows: Partner/of Counsel \$600; Senior Associate \$550; Mid-level Associate \$500; Junior Associate \$425; Law Clerk \$325; Legal Assistant/Paralegal \$150.

VI. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and the Authority's policy related thereto, staff has: (a) considered Counsel'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. Base on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize MWBE's for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to achieve an overall MWBE participation goal of 50% related to the total amount of CCDC's co-bond counsel fees. A separate retainer with a majority firm, Nixon, to act as co-bond counsel will be entered into and Nixon has agreed to the 50% allocation of legal fees.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of Joe Reid as co-bond counsel to the CCDC for such legal services as are described in these materials subject to an allocation of fees for co-bond counsel, Nixon, who will be authorized under separate materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolutions

May 18, 2016

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION ("CCDC") – Procurement of Legal Services – Law Offices of Joseph C. Reid, P.A. – Authorization to Enter into a Contract to Provide Legal Services for the New York Convention Center Development Corporation ("CCDC" or the "Corporation") in Connection with Issuing Bonds ("Bonds") to Fund the Continuing Expansion and Renovation of the Jacob K. Javits Convention Center (the "Convention Center") and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the CCDC (the "Materials"), the CCDC hereby finds the law firm of Law Offices of Joseph C. Reid, P.A. ("Counsel") to be responsible; and be it further

RESOLVED, that the CCDC is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the CCDC to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the CCDC or Counsel consistent with this authorization are hereby ratified and affirmed.

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