ERIE CANAL HARBOR DEVELOPMENT CORPORATION
at the offices of
Empire State Development – Buffalo Regional Office
95 Perry Street, Suite 500
Buffalo, NY 14203

Meeting of the Directors

Monday
September 12, 2016 – 10:30 AM

PROPOSED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of the February 8, 2016, March 14, 2016 and May 20, 2016 Directors' Meetings

2. ECHDC Procurements Guidelines – Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

3. Proposed Acquisition of the First Buffalo Marina by the Erie Canal Harbor Development Corporation – Authorization to Acquire Real Property; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

4. Procurement of Consulting Services - Authorization to Enter into an Agreement for Consulting Services Regarding Insurance Matters and to Take Related Actions

5. Buffalo Outer Harbor Access & Activation Civic Improvements Project – Authorization to Enter into a Consultant Agreement for Architectural and Engineering Services; and Authorization to Take Related Actions

FOR INFORMATION

6. President's Report – Oral Report

Item #1

Minutes of the February 8, 2016 Directors' Meeting

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

February 8, 2016

MINUTES

In Attendance Directors:	Robert D. Gioia – Chairman Julie Bargnesi David Colligan Michael DiVirgilio Sam Hoyt Mayor Byron W. Brown (Non-Voting Director)
ECHDC Staff:	Maria Cassidy, Deputy General Counsel (via video conference) Christopher Catanzaro, Assistant Project Manager Thomas P. Dee, President Elizabeth R. Fine, General Counsel (via videoconference) Debbie Royce, Corporate Secretary (via videoconference) Kevin Smith, Project Assistant Bryan Watson, Executive Assistant
ESD Staff: (Attending via videoconference unless otherwise noted)	Julia Borukhov, Financial Project Manager Thomas Brennan, Senior Vice President – Internal Audit Stephen Gawlik, ESD - VP Capital Projects & Senior Counsel and ECHDC - Assistant Secretary (attending in Buffalo) Kathleen Mize, Deputy Chief Financial Officer and Controller Max Padden, Director, Subsidiary Finance Robert White, Assistant Vice President – Internal Audit
Also Present: (Attending in Buffalo)	Thomas Dearing, Commissioner – Erie County Department of Environment and Planning Chris Fahey – Office of Congressman Brian Higgins JoAnn Mecca - LWVBIN Kathleen Peterson, City of Buffalo – Office of City Planning Members of the Media Members of the Public

The meeting of the Erie Canal Harbor Development Corporation (the "Corporation"), was called to order at approximately 10:34 a.m. It was noted for the record that the meeting

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

Before beginning with the substantive portion of the meeting, Chairman Gioia asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the proposed Agenda. Hearing none, Chairman Gioia then entertained a motion to conduct an Executive Session pursuant to Paragraph (d) of the Subdivision one of Section 105 of the New York State Open Meetings Law which relates to discussions regarding proposed, pending or current litigations.

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

EXECUTIVE SESSION - Pursuant to Paragraph (d) of the Subdivision 1 Section 105 of the New York State Open Meetings Law

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RESOLVED, that the Directors conduct an Executive Session to consider matters pertaining to paragraph (d) of Subdivision 1 of Section 105 of the New York State Open Meetings Law.

* * *

The Directors' meeting was temporarily adjourned to conduct an Executive Session and the Directors and members of senior staff excused themselves from the meeting room. The Executive Session concluded and once back in Open Session, Chairman Gioia noted for the

record that no votes were taken during the Executive Session. He then asked for a motion to approve Item #1 on the Agenda, the affirmation and ratification of the actions of the President in the administration of the contract regarding the construction of the historically aligned canals, as presented in Executive Session by Steve Gawlik.

Upon motion duly made and seconded, and with Director Bargnesi abstaining from the vote the following resolution was unanimously adopted:

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Canalside Litigation – Formal Ratification of Actions of the President Relating to Pending Litigation - Affirmation and Ratification of the Actions of the President in the Administration of the Contract Regarding Construction of the Historically Aligned Canals; and to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Erie Canal Harbor Development Corporation (the "Corporation"), the Corporation hereby affirms the authority of the President of the Corporation to manage the contracts of the Corporation including the provisions regarding termination; and be it further

RESOLVED, that the Corporation does hereby affirm, approve and ratify the President's action in terminating the contract with DiPizio Construction Corporation for construction of the historically aligned canals and all actions taken by the President of the Corporation or his designee, regarding the subsequent litigation and completion of the historically aligned canals and be it further

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

* * *

Chairman Gioia then called for a motion to approve the Minutes of the Directors' meetings of April 27, 2015 and June 8, 2015. Noting no corrections and upon motion duly

made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE APRIL 27, 2015 AND JUNE 8, 2015 MEETINGS OF THE DIRECTORS OF THE ERIE CANAL HARBOR DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the Meetings of the Corporation held on April 27, 0215 and June 8, 2015 as presented to this meeting, are hereby approved and all actions taken by the Directors presented as such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of this Corporation.

* * *

Chairman Gioia then called upon Mr. Gawlik to present an item relating to a request for authorization for the Corporation to acquire the Port Terminal Complex.

Mr. Gawlik explained that when the Corporation acquired 400 acres out at the Outer Harbor, property that went from Gallagher Pier all the way to Wilkeson Pointe, it did not acquire the terminal buildings in the middle. He noted that the Niagara Frontier Transportation Authority ("NFTA") had issued a Request for Proposal for the Port Terminal Complex property which has since been cancelled and the Corporation negotiated a deal where it is going to acquire the terminal properties which include the two big warehouses, Terminal A and Terminal B, and two smaller buildings.

In response to a call from the Directors for questions or comments, Director Hoyt thanked Mr. Gawlik for his patience, skill and perseverance in making this deal happen. He noted that the entire Buffalo Outer Harbor, with small exceptions, is under the control of the

Corporation and while that is an extraordinary undertaking and enormous responsibility, he thinks it is in the right hands.

Chairman Gioia wanted to note that the quick ability to call for a vote is not an indication of the time and efforts put in to get the Corporation to this day.

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

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Proposed Acquisition of the Port Terminal Complex by the Erie Canal Harbor Development Corporation - Authorization to Acquire Real Property; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

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RESOLVED, that based on the materials presented to this meeting and ordered filed with the records of the Erie Canal Harbor Development Corporation (the "Corporation") relating to the Port Terminal Complex, the Corporation is hereby authorized to enter the necessary agreements to effectuate the transfer of the Property and to acquire the Property, as stated in these Board materials; and (ii) take all related actions; and be it further

RESOLVED, that on the basis of the materials submitted to the Directors, the Corporation hereby determines that the proposed action will not have a significant adverse effect on the environment; and be it further

RESEOLVED, that on the basis of the materials submitted to the Directors, the Corporation hereby finds that because there are no specific future plans for the subject property, the environmental review of the proposed disposition is not being "segmented" from the review of any such plan and that to the extent the requested authorization may be deemed to be "segmented", that such "segmentation" is permissible pursuant to 6 NYCRR Part 617.3(g) due to the relevant circumstances of the project, specifically: (i) that it is not possible to consider future plans for project site in the absence of a plan; (ii) that any such future plan(s) will be subject to review under SEQRA; and (iii) that the review of the requested authorization to acquire the site is no less protective of the environment than any present review of any future plan, and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designees 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.

* * *

Chairman Gioia then asked Mr. Dee to proceed with his President's Report. Mr. Dee stated that 2016 has started with the ice and winter pavilion having event programming every day on the ice or inside the pavilion for groups of all ages. He noted that the Holiday Celebration brought an additional 10,000 visitors over the course of the weekend with great weekend weather and excellent reviews on social media.

Mr. Dee noted that Canalside received national attention on Yahoo.com when Katie Couric toured Buffalo and spent quite a bit of time learning the developments and extraordinary progress of the City and Canalside.

Further, Mr. Dee noted that with over 58,000 visitors to the ice, the Corporation is on track to pass the 60,000 paid attendance for the entire season last year.

Lastly, he advised everyone to visit the Canalside website at canalsidebuffalo.com for updates on activities and welcomed everyone to come down and enjoy some fun.

Hearing no further business, the meeting adjourned at 11:30 a.m.

Respectfully submitted,

Debbie Royce
Corporate Secretary

Item #1

Minutes of the March 14, 2016 Directors' Meeting

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

March 14, 2016

MINUTES

In Attendance Directors:	Robert D. Gioia – Chairman Julie Bargnesi David Colligan Gary Ginsberg (via videoconference) Sam Hoyt Mayor Byron W. Brown (Non-Voting Director)
ECHDC Staff:	Thomas P. Dee, President Christopher Catanzaro, Assistant Project Manager Kaitlin Chmura, Project Manager Jill Clark, Assistant Project Manager Elizabeth R. Fine, General Counsel (via videoconference) Debbie Royce, Corporate Secretary (via videoconference) Kevin Smith, Project Assistant Bryan Watson, Executive Assistant
ESD Staff: (Attending via videoconference unless otherwise noted)	Julia Borukhov, Financial Project Manager Thomas Brennan, SVP - Internal Audit Stephen Gawlik, ESD - VP Capital Projects & Senior Counsel and ECHDC - Assistant Secretary (attending in Buffalo) Kevin Hansen, Director, Real Estate Development Pamm Lent, Director of Communications (attending in Buffalo) Kathleen Mize, Deputy Chief Financial Officer and Controller Max Padden, Director, Subsidiary Finance Robert White, AVP - Internal Audit
Also Present: (Attending in Buffalo)	Thomas Dearing – Commissioner, Erie County Department of Environment and Planning Chris Fahey – Office of Representative Brian Higgins Kathleen Peterson – City of Buffalo – Office of Strategic Planning Members of the Media Members of the Public

The meeting of the Erie Canal Harbor Development Corporation (the "Corporation"), was called to order at approximately 10:34 a.m. It was noted for the record that the meeting was being webcast, and that the Directors had received all written material in advance of the meeting. Chairman Gioia then noted for the record the Corporation's policy which welcomes public comments on the items on the current Agenda.

Before beginning with the substantive portion of the meeting, Chairman Gioia asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the proposed Agenda. Hearing none, Chairman Gioia then called for a motion to approve the Minutes of the Directors' meetings of September 16, 2015 and November 9, 2015. Noting no corrections and upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE SEPTEMBER 16, 2015 AND NOVEMBER 9, 2015 MEETINGS OF THE DIRECTORS OF THE ERIE CANAL HARBOR DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the Meetings of the Corporation held on September 16, 2015 and November 9, 2015 as presented to this meeting, are hereby approved and all actions taken by the Directors presented as such meetings as set forth in such Minutes, are hereby in all respects ratified and approved as actions of this Corporation.

* * *

Chairman Gioia then called upon Tom Dee to present the Corporation's operating and capital expense budgets for fiscal year 2016-2017. Mr. Dee explained the operating budget proposes a total of $1,140,104 in personal services and $237,000 for non-personal for a total of

$1,377,381. He noted the capital projects would have to come back to the Directors for approval as the individual projects advanced. He noted in general this would include the remaining costs of construction and design of the Explore & More Museum, extensions and improvements on the Central Wharf, activation of the South and North Aud Block, Canalside events, programming, site operations, maintenance and utility costs. He added that the Corporation is funding various projects at the Outer Harbor, including but not limited to, operation, maintenance, utility costs and access and activation, design and construction.

Director Colligan asked if the increases in the insurance lines in the Operating Budget and in the Capital Budget could be explained and Mr. Dee replied that insurance costs are going up in general and that taking on more responsibility for the Outer Harbor is also a reason.

Before calling for a motion, Chairman Gioia commented that the amount of work accomplished by the Corporation's staff given its small headcount is incredible.

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

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – ECHDC FY 2016/2017 Operating Budget and Capital Expense Authorization Proposal – Approval of the Corporation's Operating Budget and Capital Expense Authorization for Fiscal Year 2016/2017 (April 1, 2016 – March 31, 2017)

BE IT RESOLVED, based on the materials at this meeting and ordered filed with the Corporation (the "Materials"), the Corporation's proposed FY 2016/2017 Operating Budget and Capital

Expense Authorization are hereby approved, and adopted in all respects, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the Officers of the Corporation and/or appropriate designees, and each of them, hereby authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Corporation's Budget; and be it further

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

* * *

Mr. Dee then presented a request for authorization for the Corporation to approve the FY15/16 budget for Canalside to take related actions regarding the Corporation's contract with Spectra, LLP ("Spectra"), formally known as Global Spectrum. As a reminder, he noted the previously approved contract was for three years and this action is to approve the budget for year three with the funding source coming from the New York Power Authority.

As a way of background, Mr. Dee noted that in part due to Spectra's efforts the summer season at Canalside exceeded all expectations for the 2015 Summer and he also pointed out great success and improvements for the Winter at the Ice at Canalside.

Mr. Dee explained that in addition to site management, Spectra also began to bring in Corporate sponsorships to generate revenue for the site and help move forward the future sustainability of Canalside.

Mr. Dee advised that the contract entered into between the Corporation and Spectra requires ECHDC to fund the operation at Canalside pursuant to an established budget prepared by Spectra and approved by ECHDC. He noted that the budget is lower than last year.

Director Hoyt commented that he was happy to hear that following discussions with Spectra that diversity was being increased and enhanced in terms of both the product being offered and the strives being made towards the 30 percent MWBE participation.

Mr. Dee in response to an inquiry by Mayor Brown explained that accomplishing the goal of reducing the budget every year is accomplished by increasing revenues and Corporate sponsorships. Mr. Dee also noted that the MWBE participation from a staffing standpoint stands at about 55 percent. Mayor Brown asked that in the future the numbers on MWBE staffing should be reported separately because it's not the same category.

Mr. Dee noted at the end of the contract period, it would be rebid with an RFP. Hearing no further questions or comments from the Directors and no comments from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Canalside – Public Space Management – Authorization to Approve the 2016-2017 Budget; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation is hereby authorized to approve the FY 2016-2017 budget contained in the Management Agreement ("Agreement") with Spectra, LP, for an amount not to exceed

$2,029,930 ($1,479,930 – Operating Support + $350,000 – Capital Expenses + $200,000 – Contingency) (TWO MILLION TWENTY NINE THOUSAND NINE HUNDRED THIRTY DOLLARS) in accordance with the terms and conditions set forth in the materials; and be it further

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

* * *

Mr. Dee then presented the request for the Corporation to enter into a Memorandum of Understanding ("MOU") with the New York State Office of Parks, Recreation and Historic Preservation ("OPRHP") regarding operations and maintenance of property at Buffalo's Outer Harbor. He stated the term of the MOU would be from April 1st through November 1st for a an amount not exceed $158,092 and the funding source is the New York Power Authority.

Mr. Dee advised that OPRHP would provide cleaning and routine maintenance at Wilkeson Pointe, maintain restrooms, maintain lawns, collect trash and they will maintain their equipment.

Mayor Brown asked if OPRHP is the direct provider of these services or if they were sub contracted and Mr. Dee replied that they were direct services supplied by OPRHP. Director Hoyt thanked ECHDC staff member Chris Catanzaro for his efforts in negotiating this arrangement with OPRHP.

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

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Buffalo Outer Harbor – Operations and Maintenance Memorandum - Authorization to Enter into a Memorandum of Understanding for Operations and Maintenance of Property at Buffalo's Outer Harbor and to Take Related Actions

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RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Erie Canal Harbor Development Corporation (the "Corporation"), the Corporation is hereby authorized to enter into a memorandum of understanding with the New York State Office of Parks, Recreation and Historic Preservation in an amount not to exceed ONE HUNDRED FIFTY EIGHT THOUSAND NINETY TWO AND 0/100 DOLLARS ($158,092) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

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

* * *

Chairman Gioia then asked Mr. Dee to proceed with his President's Report. Mr. Dee noted that winter at Canalside was great so far with a current total count of 77,000 paid visitors which is a 30 percent increase from last year. He noted that Spring planning was taking place and the ice would be closing down next weekend.

Mr. Dee noted that "Canalside Connect" was launched which is a new e-mail database to let the community know about new things happening at Canalside. He also reminded

everyone to check on the Spring activities being planned on Canalside's Facebook page and on its website at CanalsideBuffalo.com.

Hearing no further business, the meeting adjourned at 11:07 a.m.

Respectfully submitted,

Debbie Royce
Corporate Secretary

Item #1

Minutes of the May 20, 2016 Directors' Meeting

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

May 20, 2016

MINUTES

In Attendance Directors:	Robert D. Gioia – Chairman Julie Bargnesi David Colligan Michael DiVirgilio Sam Hoyt
ECHDC Staff:	Thomas P. Dee, President Elizabeth R. Fine, General Counsel (via videoconference) Debbie Royce, Corporate Secretary (via videoconference)
ESD Staff: (Attending via videoconference unless otherwise noted)	Julia Borukhov, Financial Project Manager Stephen Gawlik, ESD - VP Capital Projects & Senior Counsel and ECHDC - Assistant Secretary (attending in Buffalo) Kevin Hansen, Vice President, Strategy, Operations & Policy Benson Martin, Director of Compliance Max Padden, Director, Subsidiary Finance Robert White, Assistant Vice President - Internal Audit
Also Present: (Attending in Buffalo)	Thomas Hersey, Commissioner – Erie County Department of Environment and Planning Kathleen Peterson, City of Buffalo – Office of City Planning Members of the Media Members of the Public

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

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

Before beginning with the substantive portion of the meeting, Chairman Gioia asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the proposed Agenda. Hearing none, Chairman Gioia then called for a motion to approve the Minutes of the Directors' meeting of December 14, 2015. Noting no corrections and upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE DECEMBER 14, 2015 MEETING OF THE DIRECTORS OF THE ERIE CANAL HARBOR DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the Meeting of the Corporation held on December 14, 2015 as presented to this meeting, are hereby approved and all actions taken by the Directors presented as such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of this Corporation.

* * *

Chairman Gioia then called upon Tom Dee to present a request for authorization for the Corporation to enter into a contract for construction management services in connection with the Explore & More Children's Museum ("EMCM").

Mr. Dee explained that the contract was with LeChase Construction Services, LLC ("LeChase") and would be broken down into two-phases, a pre-construction phase for an

amount not to exceed $254,000 and a construction phase for $9 million dollars which would be the Corporation's contribution in addition to the funding being provided by EMCM. He noted both ECHDC amounts would be funded with New York Power Authority funds.

Mr. Dee stated that the scope of work for pre-construction has to do with typical pre-construction projects which are among other things value analysis, cost estimating, and scoping the Project. He noted that would enable LeChase to provide a guarantee so that if the Corporation moves to the construction phase it will know exactly what the Project will cost.

Mr. Dee advised that the contract term would be through September 2018.

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

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – South Aud Block Redevelopment – Construction Management Services - Authorization to Enter into a Contract for Construction Management Services of the South Aud Block Redevelopment – Children's Museum Core & Shell Building; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds the LeChase Construction Services, LLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with the LeChase Construction Services, LLC for a base contract amount of TWO HUNDRED ELEVEN THOUSAND SEVEN HUNDRED THREE DOLARS ($211,703) plus a contingency in the amount of FORTY-TWO THOUSAND TWO HUNDRED NINETY-SEVEN DOLLARS ($42,297) for a total contract amount not

to exceed TWO HUNDRED FIFTY-FOUR THOUSAND DOLLARS ($254,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that upon acceptance by the Corporation of a Guaranteed Maximum Price, the Corporation is authorized to enter into a construction contract with LeChase Construction Services, LLC provided the Corporation's contribution for the work does not exceed NINE MILLION DOLLARS ($9,000,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

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

* * *

Before calling for a motion to adjourn so those in the room could attend the ribbon cutting ceremony for the extension of the Central Wharf, Chairman Gioia took a moment to commend ECHDC staff and Explore & More folks on getting the Corporation to this important date and time in moving the Project forward.

Hearing no further business, the meeting adjourned at 11:41 a.m.

Respectfully submitted,

Debbie Royce
Corporate Secretary

Item #2

FOR CONSIDERATION
September 12, 2016

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: ECHDC Procurements Guidelines

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

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I. Background

At its April 2015 meeting, the Erie Canal Harbor Development Corporation ("ECHDC") Directors adopted updated and revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "Guidelines"). While there have been no substantive changes to relevant laws and regulations in the past year, the New York State Urban Development d/b/a Empire State Development ("ESD") Procurement Manager and staff from the ESD Legal Department, supported by representatives of the ESD Contracts Administration and Finance Departments, engaged in a revision to the Guidelines to make them more coherent. One substantive change was made to the Guidelines: the ESD Board now is required to formally approve contracts over $250,000. Below that sum, the ESD President or his duly appointed designee is authorized to approve the contract. The previous amount which required Board approval was $50,000.

At its March meeting, the ESD Board adopted the revised Guidelines (the "2016 Guidelines") which are designed to govern procurements by ESD and its subsidiaries such as ECHDC. Accordingly, the directors are asked to approve the 2016 Guidelines, a copy is attached, with one exception described below.

II. Procurement Contracts Guidelines Summary

The 2016 Guidelines attached to this memorandum set forth the policies and procedures to be followed by ESD and its subsidiaries including ECHDC, when seeking to contract for goods or services. It is required that each ESD subsidiary approve its own Procurement Guidelines in terms virtually identical to the proposed 2016 Guidelines, with any departure therefrom fully explained by the subsidiary Board. Due the type of contracts and their amounts typically entered into by ECHDC, staff believe that the appropriate contract amount requiring ECHDC Board approval should be increased to $100,000, not the $250,000 reflected in the 2016 Guidelines. This amount will permit the Corporation to efficiently approve

and move contracts forward but provides appropriate oversight of contract review to the ECHDC Board. It should be noted that these Guidelines do not have the force of law, and are intended as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The proposed 2016 Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by the Corporation must be competitive, except where State law provides for non-competitive sourcing (e.g., goods purchased from approved non-profit agencies for the blind, and procurements from the Office of General Services Centralized Contracts List). Based on the expected cost of procured goods and/or services, procurement contracts must be obtained after advertisement in the NYS Contract Reporter, except in limited instances where an exemption is obtained, generally for sole or single source procurements when only one vendor offers the desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process. The proposed 2016 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the Corporation's Bid Opening Guidelines and the compilation of a Procurements Record for every covered Procurement Contract.

The proposed 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.

III. Recommendation and Requested Action

The Directors are requested to adopt the 2016 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, except that the all contracts entered into by the Corporation that exceed $100,000 shall require approval by the Directors.

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

September 12, 2016

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

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, 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, with the exception that any contracts entered into by the Corporation that exceed a contract amount of $100,000 shall require approval by the Corporation's directors; and the President or her designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

* * *

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, SDVOB or a NYS Small Business. See Section 2.6.

If ESD's needs cannot be met by the above mentioned options, you may elect 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 17-B of the Executive Law (Minority and Women-Owned Business Enterprises 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 pubic 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.

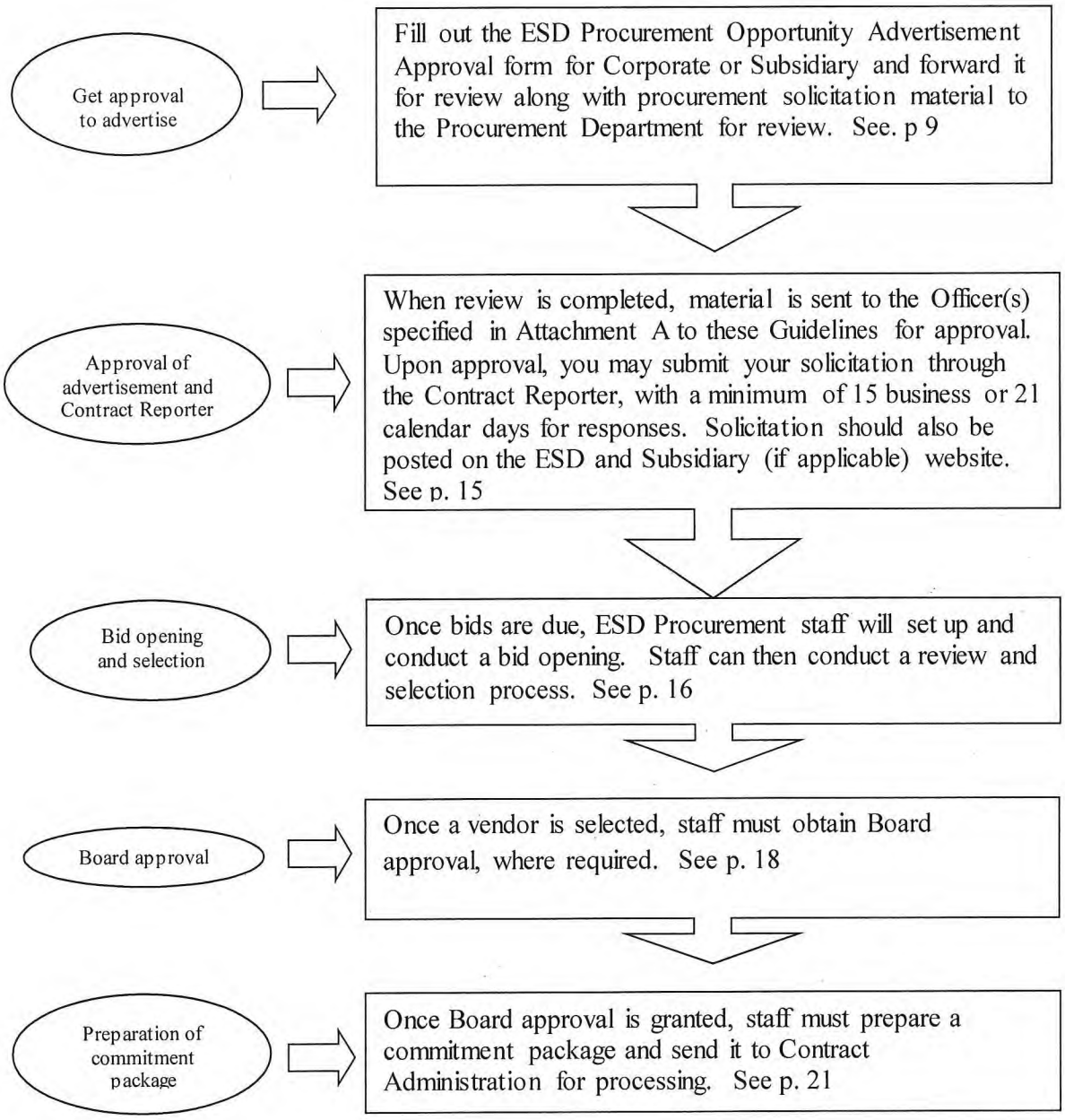
The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that 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 contractor and supplier diversity requirements: Minority and Women-owned Business Enterprise and Service-Disabled Veteran-Owned Business 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 & 17-B: 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 the 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 the contract is over $250,000 in aggregate through its term.

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 $250,000 or less; 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.

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 #3

FOR CONSIDERATION
September 12, 2016

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Proposed Acquisition of the First Buffalo Marina by the Erie Canal Harbor Development Corporation

REQUEST FOR: Authorization to Acquire Real Property; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

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I. Background

The New York Power Authority ("NYPA") is the owner of property located on Furhmann Boulevard along the Buffalo River in the City of Buffalo's Outer Harbor consisting of approximately 14.2 +/- acres (the "Property"). The Property includes the Connecting Terminal grain elevator that is lighted by ECHDC as a harbor attraction, the bike ferry stop and a recreational marina operated by a private entity, Brand-On First Buffalo Marina, Inc. ("Brand-On"), under contract with NYPA (the "Brand-On Agreement"). The Property was originally acquired by NYPA to serve as its mooring and work area for NYPA's barge, tugboat and ice-breaking vessel which are used to install, maintain and remove the Lake Erie ice boom. Since acquiring the property in 2010, NYPA has relocated its mooring facilities to the extreme north end of the site and will retain ownership of approximately one acre of the overall site. As the remaining 14.2 acres are no longer needed by NYPA, it has agreed to transfer the Property to the Erie Canal Harbor Development Corporation ("ECHDC" or the "Corporation"). A map of the Property is included as Attachment A.

As NYPA no longer has use for the Property, the transfer will place ownership of the Property in control of the agency responsible for waterfront development and will further bolster ECHDC's efforts to revitalize and transfer the Inner and Outer Harbors. Moreover, as ECHDC already has a presence on the Property via permits with NYPA, namely to operate the bike ferry stop and illumination of the Connecting Terminal grain elevator, ownership of the site will make is easier for ECHDC to operate and maintain its current facilities.

II. Proposed Transaction

ECHDC will acquire the Property from NYPA for $1. NYPA has had the property appraised at $3,597,540. As a condition to the transfer to ECHDC for nominal consideration, ECHDC will be required to release, defend and indemnify NYPA for any environmental issues

associated with the Property. Furthermore, as part of the transaction, ECHDC will accept assignment of the Brand-On Agreement and will also acquire the equipment owned by NYPA for $1 that is used by Brand-On for operation of the site. This equipment includes docks, assorted lifts and boat stands, a 1973 Ford Backhoe, a 1972 GMC Crane Truck, a fork lift and various other tools and equipment.

The Brand-On Agreement requires the contractor to operate and maintain the Property and to pay over to NYPA, 12.25% of gross revenues which represents approximately $40,000 of revenue annually to NYPA. Upon acquisition of the Property by ECHDC, any revenues generated as a result of the Brand-On Agreement will be retained by ECHDC. Currently, the Brand-On Agreement expires on February 28, 2017. As such, it is expected the ECHDC will issue a request for proposals seeking an operator to continue the operations and maintenance of the Property in accordance with NYPA's past practices.

III. Environmental Review

The New York State Power Authority, as lead agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This review found that the project would not have significant effect on the environment. ECHDC staff have reviewed the supporting materials and concurs. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

IV. Requested Action

The Directors are requested to: (1) authorize the Corporation to enter into the necessary agreements to effectuate the transfer of the Property as stated in these materials; (2) acquire the Property in accordance with these materials; (3) make a determination of no significant effect on the environment; and (4) authorize the Corporation to take all related actions.

V. Recommendation

Based on the foregoing, I recommend approval of the attached resolution.

Attachments

Resolution
Attachment A - Property Map

September 12, 2016

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Proposed Acquisition of the First Buffalo Marina by the Erie Canal Harbor Development Corporation - Authorization to Acquire Real Property; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

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RESOLVED, that based on the materials presented to this meeting and ordered filed with the records of the Erie Canal Harbor Development Corporation (the "Corporation") relating to the First Buffalo Marina, the Corporation is hereby authorized to enter the necessary agreements to effectuate the transfer of the Property and to acquire the Property, as stated in these Board materials; and take all related actions; and be it further

RESOLVED, that on the basis of the materials submitted to the Directors, the Corporation hereby determines that the proposed action will not have a significant adverse effect on the environment; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designees 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.

* * *

New York Power Authority
Niagara Power Project
EXHIBIT A
Delineating Portions of Former First Buffalo Marina To Be Transferred to ECHDC and To Be Retained by NYPA
City of Buffalo
Erie County

Legend

- Boundary of Retained Parcel
- Proposed Improvements
- NYPA-Owned Lands
- Interstate Highway
- Primary Highways
- Other Roads

Date of Aerial Photo: April 2011

N
W E
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1 inch = 300 feet

0 75 150 300 450 600
Feet

NPP Marina Transfer.PDF JGW 09/8/14

Item #4

NEW YORK STATE OF OPPORTUNITY. | Erie Canal Harbor Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
September 12, 2016

TO:	The Directors
FROM:	Thomas P. Dee
SUBJECT:	Procurement of Consulting Services
REQUEST FOR:	Authorization to Enter into an Agreement for Consulting Services Regarding Insurance Matters and to Take Related Actions

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Contract Need and Justification

I. Project Summary

Recipient:	Keville Insurance Agency (the "Contractor") Waterford, NY 12188
Scope of Services:	Provide consulting services with respect to insurance matters effecting Erie Canal Harbor Development Corporation ("ECHDC").
Contract Term:	Two years (8/2015 through 8/2017)
Contract Amount:	Contract amount: $25,000
Funding Source:	NYPA Relicensing Settlement Agreement

II. Background

In August of 2015, ECHDC entered into a one year agreement with the Contractor to provide consulting services with respect to ECHDC's insurance needs. As the agreement did not exceed $50,000 nor did the term extend beyond one year, no Board approval was required. Over the past year, the Contractor has provided valuable input and advice to ECHDC regarding its insurance needs, including but not limited to the types and limits needed for ECHDC's various projects. While the Contract has billed approximately $17,000 to date, in order for ECHDC to extend the agreement beyond one year, per ECHDC's procurement guidelines, Board approval is required.

The principal of the Consultant is Rose Keville. Ms. Keville has considerable experience in the insurance industry with over 25 years of experience in all lines of property and casualty risk management and insurance placement services and of that, 20 years providing assistance to ESD in one capacity or another. As former Director of the Bureau of Risk and Insurance Management for the State of New York, Ms. Keville has extensive experience in placing large property and casualty programs for the State as well as for public benefit corporations and public authorities such as the State University Construction Fund, Jacob Javit's Convention Center, the New York State Thruway Authority and ESD. In addition, Ms. Keville was a member of the World Trade Center Insurance Task force and responsible for the placement of the wrap up insurance program for the WTC Debris Removal Project.

Considering the wide range of projects ECHDC is engaged in and its increased property portfolio, the services provide valuable protection to ECHDC through its insurance needs. As such, the Board is requested to approve a contract extension through August 2017 (effective August 4, 2015). No additional funding is being requested.

III. Scope of Work

The Contractor will provide advice to ECHDC as needed regarding all insurance matters regarding the Corporation. In addition, the Consultant will act as the Corporation's liaison with ESD's insurance broker to identify the appropriate insurance requirements necessary for ECHDC's projects.

IV. Terms and Conditions

The Contractor shall be paid on a time and material basis. The contact terms shall be two years effective August 4, 2015 in an amount not to exceed $25,000.

V. Non-Discrimination/Affirmative Action

The Contractor is a New York Certified Women Owned Business.

VI. Environmental Review

ESD staff 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.

VII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed Contractor; (2) authorize the Corporation to enter into an agreement with the Contractor on the terms contained in these materials and (3) take all related actions.

VIII. Recommendation

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

IX. Attachment

Resolution

September 12, 2016

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Procurement of Consulting Services - Authorization to Enter into an Agreement for Consulting Services Regarding Insurance Matters and to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Erie Canal Harbor Development Corporation (the "Corporation"), the Corporation hereby finds the Keville Insurance Agency (the "Contractor") to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to amend a contract with the Contractor in an amount not to exceed Twenty Five Thousand Dollars ($25,000) for a two year term effective August 4, 2015, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

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

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Item #5

FOR CONSIDERATION
September 12, 2016

TO:	The Directors
FROM:	Thomas P. Dee
SUBJECT:	Buffalo Outer Harbor Access & Activation Civic Improvements Project
REQUEST FOR:	Authorization to Enter into a Consultant Agreement for Architectural and Engineering Services; and Authorization to Take Related Actions

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CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Consultant:	Trowbridge Wolf Michaels Landscape Architects LLP 1001 West Seneca Street, Suite 201 Ithaca, New York 14850
Scope of Services:	Architectural and Engineering Design Services
Contract Term:	Through December 31, 2018
Contract Amount:	Not to exceed $1,560,000 ($1,295,534 plus $264,466 contingency)
Funding Source(s):	Buffalo Regional Innovation Cluster Grant

II. Background

In September 2013, Governor Andrew Cuomo presented his vision for a dramatic transformation of the City of Buffalo's largely vacant Outer Harbor waterfront. This has included the transfer of approximately 350 acres of waterfront land from the Niagara Frontier Transportation Authority ("NFTA") to the Erie Canal Harbor Development Corporation ("ECHDC"), whose mission and resources will better enable it to support and expedite the land's redevelopment.

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

of the marina was progressively improved by NFTA and became known as "Gallagher Beach", which largely facilitated wind surfing and personal watercraft use.

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

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

Nevertheless, there are a number of relatively low-disturbance activities that would enhance access and facilitate greater public use/enjoyment of the Outer Harbor pending the implementation of the Blueprint land uses and its subsequent environmental review process under the City of Buffalo. The subject lands have already undergone a number of incremental trail access, clean-up/remediation, and recreational improvements over the last decade while in NFTA ownership, including shore stabilization, new trail systems along the water's edge and along public roads in the area, remediation of former disposal sites, clearance of blighting structures, and periodic programming of activities such as concerts.

The actions under this proposed Project intend to build upon these prior incremental improvements using a "Lighter, Quicker, Cheaper" or "LQC" approach. They would fill in existing access gaps, expand public usage of this great resource, and provide for additional activities that, while transient/seasonal, would open public awareness of this seldom-visited part of the City.

III. Project Description

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

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

The Project will consist of several capital improvements and investments which allow for increased public access and activation of the Outer Harbor:

Improvement 1: Create Visitor Center/Hub at Bell Slip with a modular installation, including pedestrian and bicycle amenities (i.e., bike racks, benches, trash cans, Adirondack chairs, etc.) to take advantage of

the existing parking lot and views. Install electric service and/or renewable energy source for power requirements.

Improvement 2: Complete bike path, including railing, pedestrian and bicycle amenities (i.e., bike racks, benches, trash cans, Adirondack chairs, etc.) along Terminals A & B property, thereby completing the southern end of the Greenbelt loop. The northern end of the Greenbelt loop was completed in July 2015.

Improvement 3: Redevelop the Michigan Pier into a multi-use flex space and build on the success of Wilkeson Pointe. Clear, cap, and re-grade the approximate 8-acre site to accommodate Adult Playground, Workout Area, Ropes Course, foot/bicycle paths (doubling as x-country ski trails), cantilevered trail section (doubling as fishing pier), install railing and perimeter walkway along entire edge (doubling as setback), deck, beach, beer garden area, and adult games zone (i.e., horse shoes, bocce courts, pétanque, shuffleboard, volleyball, etc.). Install electric service and/or renewable energy source for power requirements. Include recreational fields, pollinator fields, seasonal floating docks, safety ladders and life rings.

Improvement 4: Develop two (2) "overlook" locations adjacent the Bell Slip. Design shall be such that birding, painting, photography, and astronomy (publicly desired activities) could occur at these locations.

Improvement 5: Install comprehensive signage package from Gallagher Beach to Lighthouse based on the Erie County Shoreline Standards, including ancillary pedestrian and bicycle amenities (i.e., bike racks, benches, etc.) and landscaping features. Highlight key public locations as well as distances. Trail signage will be placed along NY Route 5 multi-use pathway (western side only) and the "Greenbelt" pathway along the Lake Erie edge, for a total of approximately 4.0 miles of signed trails.

Improvement 6: After discussion with Erie County officials, the ECHDC has agreed to not install an Osprey Platform in Times Beach Nature Preserve. Although this project is listed in the GPP, ***Improvement 6 is <u>not</u> included in the scope of work.***

Improvement 7: Develop a mountain bike course(s) within an 6-acre area bounded by the Bell Slip, Lake Erie, and Fuhrman Blvd. Given the site's features and proximity to existing paved pathways, a series of unpaved trails (each less than 5 miles in length) and a pump track would be constructed to take advantage of the mature trees and small gently-rolling hills.

IV. Consultant Selection Process

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

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

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

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

TWLA is well suited for this project, having completed the "nodal improvements" along Fuhrmann Boulevard and the recent improvements at Buffalo Harbor State Park. They are also very familiar with several open space, pathway and landscape architecture projects within the City of Buffalo and other agencies in the immediate area. In addition to TWLA's experience, nearly all sub-consultants on the proposed team have worked on projects for ECHDC, OPRHP and/or the New York Power Authority along Buffalo's waterfront.

The team will be directed by team leader Kathryn Wolf and project manager Margot Chiuten. The team clearly understands the complexity of the project, the key stakeholders and issues, and the time constraint of providing a bid package prior to the end of 2017.

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

V. Scope of Work

The TWLA team will complete detailed environmental studies, structural and building surveys, and architectural and engineering design services in order to prepare a construction bid package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the Project to construction, as well as construction administration and inspection. Tasks include the following:

Task 1: Concept Design
Task 2: Schematic Design
Task 3: Design Development
Task 4: Construction Document
Task 5: Signature Submittal
Task 6: Bidding and Awarding
Task 7: Construction Administration
Task 8: Construction Inspection

The estimated project schedule is as follows:

Advertisement	June 21, 2016
Proposals Due	July 28, 2016
Review/Short-list	July 29 - August 4, 2016
Interviews	August 18, 2016
ECHDC Board Approval:	September 12, 2016
Design Start:	December 2016*
Design End:	November 2017
Construction Advertisement:	Q4 2017
Construction Begins:	Q2 2018
Construction Ends:	Q4 2018

**Due to the fact that the topographic survey will be completed using aerial photography, and that this photography is very sensitive to the weather, ECHDC staff recommends a limited Notice to Proceed for the survey work so that the design work can begin once a full contract is in place.*

VI. Contract Term, Price and Funding

The Consultant Agreement will cover fees and expenses over an approximate 24-month period (December 2016 – December 2018).

The Contract amount with the Trowbridge Wolf Michaels Landscape Architects team to complete the above scope of work shall not exceed $1,560,000, including a contingency of $264,466.

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

The funding source shall be a Buffalo Regional Innovation Cluster Grant.

VII. Non-Discrimination & Contractor and Supplier Diversity

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

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

38.0% Trowbridge Wolf Michaels Landscape Architects (WBE)
Ms. Kathryn Wolf, Ithaca NY 14850

6.6% Ravi Engineering and Land Surveying (MBE)
Mr. Nagappa Ravindra, Rochester NY 14618

5.4% RJR Engineering, P.C. (SDVOB)
Mr. Bob Runge, Springville NY 14141

Overall, the consultant team has achieved a combined MWBE involvement of 44.6%.

VIII. Environmental Review

ECHDC completed a coordinated environmental review of the Buffalo Outer Harbor Access & Activation Civic Project, pursuant to the requirements of SEQRA and the implementing regulations of the New York State Department of Environmental Conservation and made a Determination of No Significant Effect on the Environment. No further environmental review is required at this time.

IX. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed consultant; (2) authorize the Corporation to enter into a contract with Trowbridge Wolf Michaels Landscape Architects for an amount not to exceed $1,295,534 plus a $264,466 contingency for a total contract amount of $1,560,000; (3) authorize the Corporation to enter into a Notice to Proceed with Trowbridge Wolf Michaels Landscape Architects for an amount not to exceed $65,000 to immediately begin survey work; and (4) to take all related actions.

X. Recommendation

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

XI. Attachments

Resolution

September 12, 2016

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Buffalo Outer Harbor Access & Activation Civic Improvements Project - Authorization to Enter into a Consultant Agreement for Architectural and Engineering Services; and Authorization to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Trowbridge Wolf Michaels Landscape Architects to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Trowbridge Wolf Michaels Landscape Architects for a base contract amount of ONE MILLION TWO HUNDRED NINETY-FIVE THOUSAND FIVE HUNDRED THIRTY-FOUR DOLLARS ($1,295,534), plus a contingency in the amount of TWO HUNDRED SIXTY-FOUR THOUSAND FOUR HUNDRED SIXTY-SIX DOLLARS ($264,466) for a total contract amount not to exceed ONE MILLION FIVE HUNDRED SIXTY THOUSAND DOLLARS ($1,560,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a notice to proceed with Trowbridge Wolf Michaels Landscape Architects for an amount not to exceed SIXTY-FIVE THOUSAND DOLLARS ($65,000); and be it further and be it further

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

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