



**Erie Canal Harbor
Development
Corporation**

A Subsidiary of Empire State Development

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
May 13, 2019 – 10:30 AM

PROPOSED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of the December 10, 2018 Directors' Meeting
2. ECHDC Procurement Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

FOR CONSIDERATION

3. Proposed Acquisition of the Longshed Parcel - Authorization to Enter into Agreements Regarding the Acquisition of Real Property; and Authorization to Take All Related Actions
4. Canalside – Construction of the Longshed Building - Authorization to Enter into a Contract for Construction Services; and Authorization to Take Related Actions
5. Canalside Interpretive Structures – Longshed Building - Authorization to Enter into a Consultant Amendment for Architectural and Engineering Services; and Authorization to Take Related Actions

Item 1

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

December 10, 2018

MINUTES

In Attendance

Directors:	Robert D. Gioia – Chairman Julie Bargnesi Michael DiVirgilio Constance L. Lydon Mayor Byron W. Brown (Non-Voting Director) County Executive Mark Poloncarz
ECHDC Staff:	Steven P. Ranalli, Vice President – Waterfront Development Elizabeth R. Fine, General Counsel (via videoconference) Loul Rizek, Executive Assistant Debbie Royce, Corporate Secretary (via videoconference) Paul Tronolone, Vice President
ESD Staff: (Attending via video conference unless otherwise noted)	Julia Borukhov, Financial Project Manager Daniel DaSilva, Director – Subsidiary Finance Eugene Kwiatkowski, Director of Budgeting Holly Leicht, Executive Vice President, Real Estate and Planning Chanel Maddigan, Senior Counsel Kathleen Mize, Deputy Chief Financial Officer and Controller
Also Present: (Attending in Buffalo)	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 10:40 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 took a moment to recognize Director DiVirgilio who announced he would be leaving the Board after 10 years of service. The Chairman thanked him for his years of service and all he did to help bring the Project to where it is today. Director DiVirgilio thanked the Chairman and his fellow Board members, including County Executive Poloncarz and Mayor Brown, and the ECHDC and ESD staff for all they do to support the Corporation and Western New York.

Chairman Gioia then called upon Steve Ranalli to present the request for authorization to designate a Canalside Design Committee member. Mr. Ranalli explained that there are several Canalside design projects underway and that more are planned for the near future. He noted those include, the exterior signage of the Children’s Museum, Heritage Point Development by Sinatra & Company, and the remaining parcel on the southern end of the Donovan Block as well as the North Aud Block. He noted all of these projects, as well as future ones, are required to meet the Canalside Design Guidelines.

Mr. Ranalli advised that the Canalside Design Guidelines (“Guidelines”) were prepared in July 2009 and revised March 2010 and apply to all development parcels within Canalside. He stated the emphasis of the Guidelines is on public spaces and the goals are to provide high quality, attractive and active spaces that employ contemporary techniques but connect to the unique history of the site and Buffalo as a whole. He further stated that the purpose of the Guidelines is to give direction and help provide an efficient review and response to proposed development actions.

Mr. Ranalli explained that to facilitate the process, the Corporation established a Design Review Committee in 2010, which is composed of local professionals with specific training and/or expertise in urban/architectural/landscaping, design, construction, and development to review and make recommendations to the Corporation’s Board of Directors on the design of private development proposals at Canalside with regard to their consistency with the Guidelines. He further explained that the purpose of the Canalside Design Committee is to assist the Corporation’s Board of Directors with the development, adoption and implementation of the Guidelines. He advised that the Committee’s role is to help ensure that the Guidelines and all development at Canalside promote a cohesive atmosphere that is inspired by the architecture of Buffalo’s historic canal district.

Mr. Ranalli further advised as originally drafted, the Guidelines anticipated that the Committee would be comprised of three members appointed by, and serving at the discretion of, the Board. He noted the Committee currently consists of two members, Rishawn Sonubi

and Audrey Ross Sanders and at this time, the Board is being requested to appoint one new member to the Committee. He stated that Mark Mistretta was requested to be designated as a member of the Committee.

Mr. Ranalli advised that Mr. Mistretta is currently the Director of the Western District, New York State Office of Parks, Recreation and Historic Preservation and that he graduated from Rutgers University, State University of New Jersey, with a B.S. in Landscape Architecture and is a registered Landscape Architect in New York State.

It was noted that Mr. Mistretta was the initial Project Landscape Architect working for Wendel and that he was very instrumental in implementing various projects for the Regional Initiatives and Historic Landscapes which include the Niagara River Greenway Plan and GEIS; Olmsted Park and Parkway system Master Plan and Phased Improvements; and the Erie County Parks System Wide Master Plan.

Mr. Ranalli stated that Mr. Mistretta's dedication, architectural insight and outstanding leadership are paramount to the array of projects he has done and continues to envision, providing new and improved access to public lands within Western New York. He has also received prestigious awards and accolades from Business First, Leadership of Buffalo, and is a recipient of the Frederick Law Olmsted Award.

Director Lydon noted she thought Mr. Mistretta would be a tremendous asset to the Committee because he understands the big picture and the historical significance.

County Executive Poloncarz stated he thought Mr. Mistretta would be perfect for the position and asked if there was a term to the appointment or if he could stay as long as he wanted to stay and the Board wanted him. Mr. Ranalli confirmed that he could stay as long as he and the Board wanted him to remain on the Committee.

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 Design Committee –
Authorization to Designate Canalside Design Committee Member and to Take Related Actions

BE IT RESOLVED, based on the materials at this meeting and ordered filed with the Corporation (the “Materials”), Mark Mistretta is hereby appointed to the Canalside Design Committee to assist the Erie Canal Harbor Development Corporation Board of Directors with the development, adoption and implementation of the Canalside Design Guidelines; and be it further

RESOLVED, that the Vice President of Development of the Corporation or his designee be, and each of them hereby is, authorized and directed to take any and all action necessary to carry out the foregoing resolution and to carry out any authority or delegation granted to the Corporation with such authorizations, including, but not limited to, the preparation and execution of any agreements, instrumentation and/or documents as may deem necessary or appropriate.

Mr. Ranalli provided an update on the South Aud Block Redevelopment. He advised that an error in the August 20th Board materials regarding the project which came to the Corporation's attention after the meeting took place.

Mr. Ranalli noted the amount of the bid that was reported for Savarino & Company offered \$1 for the property. Noting that while this was correct, it was a bid that was proposed in 2017 and was not updated to include their final and best offer received in January which was \$280,950 and was fully incorporated into the selection process at that figure. He further assured the Board that the staff's recommendation to select Sinatra & Company Real Estate remained valid.

County Executive Poloncarz noted for the record that this was being discussed today because he had requested to see the proposals that were submitted by all of the interested parties. In reviewing the proposals, he noted the highest and best offer that was ultimately submitted by Savarino & Company subsequent to the original bid of 2017.

While noting that he and the Mayor are not voting members of the Board but that they do have a responsibility to serve the community, the County Executive reiterated his request that the Board be provided with scoring sheets prior to votes being taken in order to help ensure that this type of error would not be made in the future. He also noted that delivery time of the materials for meetings needs to be improved.

Chairman Gioia noted that any Board member has the right and opportunity to see any and all documentation on any issue that is being discussed and the challenge is deciding at what level the Board gets into in reading the volumes of documents being submitted to the Corporation. He further noted that in the future the Board will be provided with information that is comfortable for each member in a timely manner.

Director Lydon advised that since August the Board has been receiving updates from the Corporation on items that are moving forward and that while it's not the final information, the Board is being updated on upcoming decisions that may need to be made.

Director Bargnesi noted that the Board was assured this was the best offer that was bid and that the full criteria was reviewed and that while there was an error on what was reported, there wasn't an error on the decision and that the staff still feels comfortable that an appropriate decision was made even after the County Executive brought this to the Corporation's attention. Mr. Ranalli stated yes and that the Corporation stands by its recommendation.

Mr. Ranalli then gave an update on a few of the ongoing projects, including the North Aud Block, the long shed Building, and the Outer Harbor Project.

A discussion was then had on the need for the signing of waivers for people who skate at Canalside. Mr. Ranalli advised that the concern would be reviewed and taken into consideration with current insurance needs and requirements.

Hearing no further business, the meeting adjourned at 11:40 a.m.

Respectfully submitted,

Debbie Royce
Corporate Secretary

Item 2



FOR CONSIDERATION

May 13, 2019

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: ECHDC Procurement Guidelines

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

I. Background

At its April 16, 2018 meeting, the Erie Canal Harbor Development Corporation (“ECHDC” or “the Corporation”) Directors adopted updated and revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the “2018 Guidelines”). The Guidelines are designed to govern procurements by Empire State Development (“ESD”) and its subsidiaries such as ECHDC. There have been no substantive changes to relevant laws and regulations in the past year. However, in the past year the Governor has issued an important Executive Order requiring all State contractors to be and remain “responsible” throughout the term of their contract with state entities, including ESD and its subsidiaries (E.O. 192). Accordingly, the 2018 Guidelines have been revised to incorporate these directives, as well as other non-substantive changes for clarity and efficiency.

Approval of these Guidelines (the “proposed 2019 Guidelines”) is sought.

II. Procurement Contracts Guidelines Summary

On March 28, 2019, the ESD Board of Directors adopted the proposed 2019 Guidelines which set forth the policies and procedures to be followed by ESD and its subsidiaries, including ECHDC, when seeking to contract for goods or services. It is required that each ESD subsidiary approve its own Procurement Guidelines in terms virtually identical to the proposed 2019 Guidelines, with any departure therefrom fully explained by the subsidiary Board. Accordingly, the ECHDC Directors are asked to approve the attached proposed 2019 Guidelines.

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

The proposed 2019 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 2019 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the Corporation's Bid Opening Guidelines and the compilation of a Procurements Record for every covered procurement contract.

One deviation from the 2019 Guidelines adopted by the ESD Board is being recommended. As the ESD adopted guidelines require Board approval of contracts over \$250,000, due the type of contracts and their amounts typically entered into by ECHDC, staff believe that the appropriate contract amount requiring ECHDC Board approval should be to \$150,000, not the \$250,000 reflected in the 2019 Guidelines. This identical amount was approved last year by the ECHDC Board and will permit the Corporation to efficiently approve and move contracts forward but provide appropriate oversight of contract review to the ECHDC Board.

The proposed 2019 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all state agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

The proposed 2019 Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements.

Sources of help to users and information are included as clickable links, and virtually all required forms and ESD policy and procedure documents also can be accessed from within the document by hyperlinks. These links appear in blue font in the hard copy of the proposed 2018 Guidelines presented to the Directors for approval.

III. Environmental Review

ESD staff has determined that approval of the proposed 2019 Guidelines does not constitute an action as defined by the New York State Environmental Quality Review Act and its

implementing regulations. No further environmental review is required in connection with the requested approval.

IV. Requested Action

The Directors are requested to adopt the proposed 2019 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, except that the all contracts entered into by the Corporation that exceed \$150,000 shall require approval by the Directors.

V. Recommendation

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

Attachments

Resolution

Proposed 2019 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

May 13, 2019

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

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (“Materials”), the proposed 2019 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts (“Guidelines”), a copy of which is attached to the Materials, be and hereby is approved and adopted as of the date hereof, with the exception that any contracts entered into by the Corporation that exceed a contract amount of \$150,000 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.

* * *

Revised Procurement Guidelines 2019

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

Effective March 29, 2019

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT (“ESD”)

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

Effective March 29, 2019

1. Overview and Requirements

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

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

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

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

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

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

property which involves an estimated annualized expenditure by ESD in excess of fifteen thousand dollars (\$15,000).

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

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

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

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

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

1.2. Types of Procurement Contracts

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

Procurements of personal services include but are not limited to legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, temporary employees, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or

technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of ESD.

Reasons for procuring personal services include:

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

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

1.3. General Procurement Principles

ESD’s procurement process is designed to:

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

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


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. Over \$5,000 and below \$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 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 options, you may elect to use an informal solicitation. Contact the Procurement Unit for further assistance if needed.




If this is an emergency situation or only one vendor can meet the needs required for service, the initiating department head must justify the need to Single Source or Sole Source this request in the justification memo.

II. \$50,000 and over


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 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 options, use a Request for Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI"), and **advertise in the Contract Reporter** if this is not an emergency situation and ESD's needs can be met by more than one vendor.



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

2.2. NYS Preferred Sources

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

2.3. OGS Centralized Contracts

Goods and services needed by ESD may be available, without the need for a competitive procurement, through Centralized Contracts held by OGS. Information about centralized contract offerings can be obtained from the list of approved State contractors maintained by OGS.

Note that even if an OGS centralized contractor is available, it is required where feasible that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, including at least one MWBE or SDVOB certified firm (see s. 2.6), unless a compelling justification exists (e.g., experience with a particular project). Staff should confirm that a firm is certified on either the MWBE directory (<https://ny.newnycontracts.com>) or SDVOB directory (http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf).

2.4. Commodities Contracts

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

2.5. Service Contracts

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

2.6. Discretionary Purchases

Pursuant to PAL § 2879(3)(b)(i), ESD may purchase services or commodities from small business concerns or those certified pursuant to Article 15-A of the Executive Law (MWBES), or commodities or technology products that are recycled or remanufactured, in an amount up to \$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.

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

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

- review the Preferred Source list and OGS Centralized Contracts to determine whether the desired goods or services are available to meet ESD’s needs;
- ensure that the commodities, services or technology acquired meet ESD’s form, function and utility needs;
- document and justify the selection of the vendor;
- document and justify the reasonableness of the price; and
- ensure that ESD buys from responsible vendors.

2.7. Piggyback Contracts

ESD may find it efficient to establish a contract based on another governmental entity’s contract. This is known as “piggybacking” and may be used in accordance with the criteria established by OGS in the Contract Piggybacking Guidelines under State Finance Law § 163(10)(e), available at https://nyspro.ogs.ny.gov/sites/default/files/uploaded/PSPIggybackGuide_2.2015.pdf. Note that a piggyback procurement requires approval by the OGS Procurement Services Group – this can be difficult and time-consuming to accomplish, as the OGS staff are not very familiar with public authority procurement policies and practices. For example, if the agency you wish to piggyback on is a State agency, it will have different contractual terms than those used by ESD. This may lead to delay, if OGS decides to seek approval of the proposed ESD contract terms from the Attorney General. Piggybacking is better accomplished when you wish to use a contract established by another public authority (rather than a State Agency).

3. Contract Reporter Exemptions

3.1. Reasons for Exemptions

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

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

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

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

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at

least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract awarded in the amount of \$50,000 or more should be published in the Contract Reporter (Economic Development Law, §143(4)). This publication requirement does not apply to contract amendments.

3.2. Authorization for Exemptions

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

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

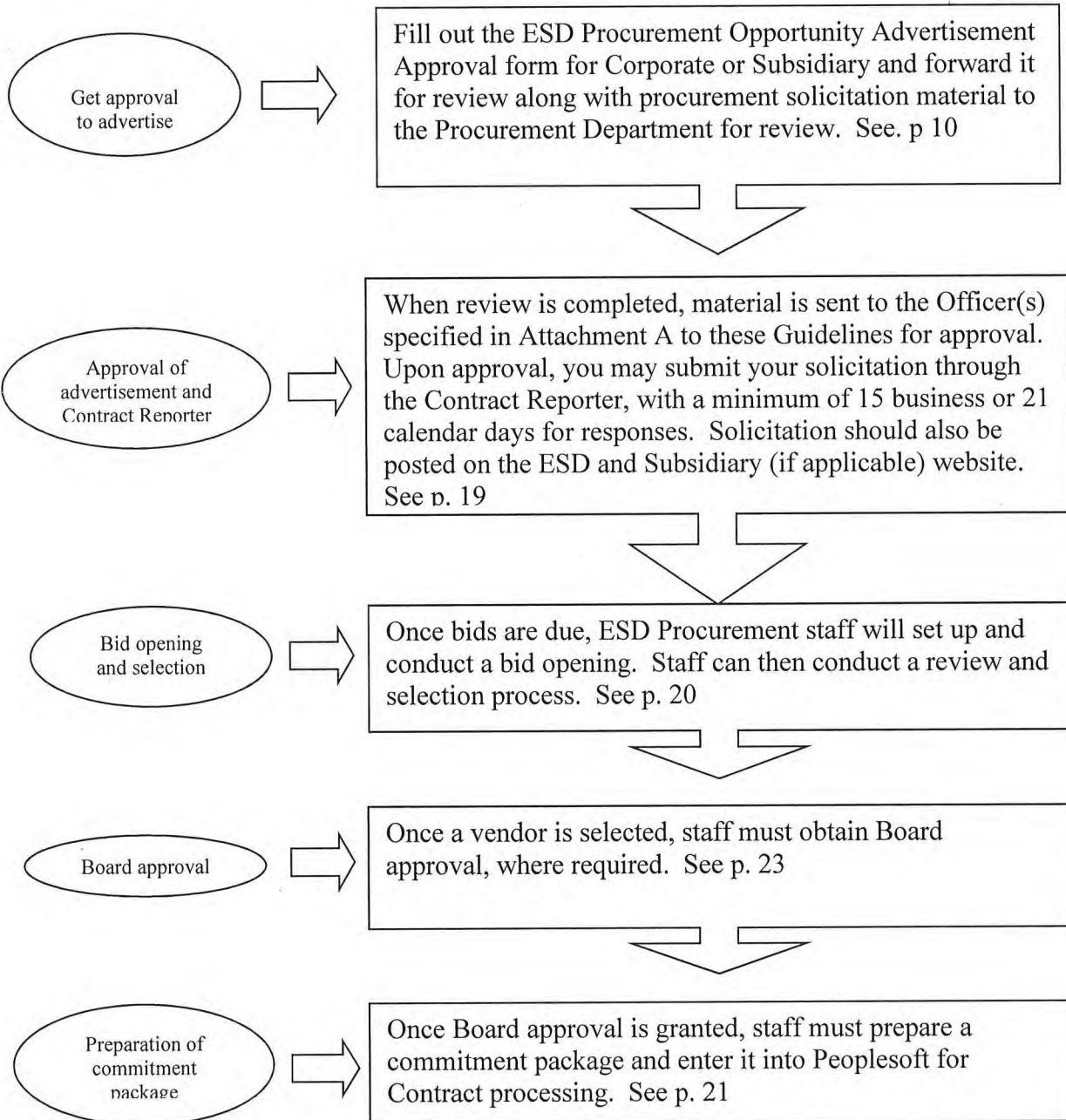
If the proposed contract amount is over \$250,000 or is a personal services contract that will last more than one year, the exemption authorization should be obtained before ESD Board or President approval. If the proposed amount is \$250,000 or less, and the term of the contract is less than one year, the exemption authorization should be obtained from the Officer(s) specified in Attachment A to these Guidelines, prior to contract execution and the commencement of any services or delivery of any goods.

Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139-k (Lobbying Laws) and State Tax Law § 5-a must still be satisfied (see Section 8.1, p.12).

Where appropriate, a statement from the staff initiator that the price obtained for the goods or service is compatible with market pricing must be presented with the exemption request.

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

4. How to Conduct a Competitive Solicitation



5. Approval to Advertise

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

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

6. Contents of ANY Procurement Solicitation

For all Procurement Contracts (see section 1.1), whether the procurement is formal (such as an RFP, RFQ or RFI) or informal (such as procurement for less than \$50,000, or a Discretionary Purchase from an MWBE for up to \$200,000, or procurement from a pre-qualified list) the same basic information should be included in the solicitation:

- (i) What goods are being sought or what scope of services is desired;
- (ii) What the projected length (“term”) of the resultant contract will be;
- (iii) What criteria will be used in evaluating bids, and how those criteria are weighted. For example, price, bidders’ expertise, the qualifications of the proposed staff; past history of government contracts, references/testimonials, understanding of ESD’s mission, and either diversity practices (commitment to sound diversity practices within the firm) or a firm’s status as a certified MWBE and/or SDVOB¹;
- (iv) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings/interviews held, etc);
- (v) Contact information for a designated contact at ESD who is the only person at ESD to whom communications about the solicitation may be directed. Failure to abide by this requirement may result in disqualification of the bidder.

¹ Program regulations provide that ESD can either score a firm’s diversity practices or the firm’s status as a certified MWBE, but not both in the same procurement. So, if certified firms are likely to respond, then the solicitation should request proof of certified status. But if it is more likely that no MWBE will respond to a solicitation, the solicitation should request diversity practice information instead. In either event, this factor must not exceed 10% of the overall technical score.

(vi) ESD's insurance requirements (obtained from Contract Administration for all solicitations);

(vii) ESD's contractor and supplier diversity requirements: MWBE and SDVOB goals, if applicable (goals should be identified before seeking approval to advertise);

(viii) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;

(ix) A copy of the ESD standard terms and conditions to which the successful bidder will be expected to agree. This will generally be ESD's Schedule A - Standard Terms and Conditions (For Materials and Services or for Law Firms). IMPORTANT: ESD's standard terms and conditions must be sent to potential vendors as early in the process as possible, to avoid later disputes about terms.

(x) VENDREP Form where needed (See Section 8.13);

(xi) Proof that the vendor is authorized to do business in New York State, if services are to be performed in New York State. Generally, this will require NYS Department of State Registration, which can be checked here;

(xii) Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.6).

A template for informal solicitation language can be viewed here.

7. Types of Solicitations

7.1. General

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

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

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible vendors. "Best value" is the basis for awarding service and technology contracts to the vendor that optimizes

quality, cost and efficiency, among responsive and responsible vendors. The basis for a “best value” contract award must be, wherever possible, quantifiable. However, all procurement solicitations issued by ESD are to be guided by the same basic principles:

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

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

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

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

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

7.2. Requests for Proposals (“RFP”)

RFP solicitations may range from relatively uncomplicated procurements to highly complex, long term efforts involving the significant commitment of both ESD and vendor resources.

RFPs follow a common format, focusing on a description of tasks including, but not limited to:

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

Click here to view ESD’s standard RFP template.

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

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

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

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

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. See also the OGS website on procurement lobbying, found at <https://ogs.ny.gov/acpl>.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the

designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an ESD employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported, and asked to communicate directly with the designated contact person in the future.

8.2. Compliance with State Tax Law § 5-a (Sales Tax Registration)

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

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

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

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

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

EO 177, issued on February 3, 2018, directs all State agencies, including public authorities, to amend their procurement procedures to prevent contracting with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military

status, sex, marital status, disability or other protected basis. As of June 1, 2018, all ESD contracts must contain a representation that the vendor's policies or practices do not fail to address harassment and discrimination.

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

Background

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

All Procurement Contracts must also comply with the requirements of Executive Law Article 17-B, which acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Staff should familiarize themselves with the SDVOB Operations Guidance published by OGS to ensure compliance with SDVOB-related laws and requirements.

ESD staff are expected to encourage the use of MWBEs and SDVOBs in all procurements, including any amendments to existing contracts. Staff must reach out to the Office of Contractor and Supplier Diversity ("OCSD") as early as possible in the procurement process in order to facilitate goal-setting for each contract. Additionally, upon advertising a solicitation for a new opportunity, staff should consider publicly posting a list of State-certified MWBEs or SDVOBs who have expressed interest in subcontracting opportunities in connection with the solicitation. Click here for an example of how to advertise potential opportunities for MWBEs: <http://www.panynj.gov/business-opportunities/pdf/OBDCR-LGA-MWBE-Flyer-16-F4%20.pdf>.

Executive Order 162

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

Goal-setting

All State contracts exceeding \$25,000 for commodities or services and \$100,000 for construction must be assessed for MWBE & SDVOB goals. For ESD's purposes, a State contract includes commodities procurements, professional services contracts, loans, grants, and leases of real property involving construction, demolition, replacement, and major repairs or renovation.

OCSD is responsible for ensuring ESD's compliance with the MWBE and SDVOB Programs. OCSD works with ESD program staff (project managers, program directors, originators and procurement officers) to determine if a contract is eligible for MWBE and SDVOB goal setting, exempted² from goal setting, or excluded³ from goal setting.

It is important to note that whole projects cannot be assessed for goals; rather individual contracts must be assessed for goals.

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

Waiver Requests

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

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

² "Exemptions" are defined contracts which are excluded from MWBE and SDVOB goal setting. Some examples of exemptions are wages, benefits, and other employee-expenditures; debt service; travel reimbursement; utilities; OGS centralized services; sole source contracts (subject to there being no MWBE or SDVOB available to participate as sub-contractor when subcontracting is appropriate); postage; telephones; operating transfers; certain rentals and repairs; and special departmental charges (i.e. unemployment insurance and tuition reimbursement).

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

⁴ "Good Faith Efforts" are the actions that all contractors must demonstrate to certify they have performed their due diligence to solicit MWBE and SDVOB participation in support of their State contract goals. Good Faith Efforts requirements are outlined in 5 NYCRR §142.7 (MWBEs) and 9 NYCRR § 252.2(n) (SDVOBs).

A waiver of MWBE or SDVOB goals will not be granted unless the contractor has provided documentation of good faith efforts. In addition to completing a waiver request form, the contractor shall also provide OCSD with supporting information including, but not limited to:

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

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

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

8.5. Compliance with Iran Divestment Act of 2012

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

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not

on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State finance law."

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

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

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

8.7. Project Sunlight

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

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

8.8. Publication on ESD Website

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

8.9 Contract Reporter Advertising Process

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

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

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

8.10. Selection Criteria

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

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

8.11. Bid Opening Procedures

All proposals should be received by the Procurement Department (unless the Procurements Director directs otherwise), and immediately should be stamped with the date and time of receipt. **Do not open any bid packages for any reason before the formal bid opening.** ESD staff members representing Contracts Administration, Procurements, Legal and the initiating Department/Subsidiary should be present at bid openings in person or by teleconference. Bids shall be opened by the Procurement Director or his/her designee, and the time and date of receipt shall be entered into the Bid Log, which must be signed by all staff members present. Teleconference participants must confirm their presence by email to the Procurements Director. The Bid Log shall also record the presence of SFL 139j-k and ST-220 forms in the bid.

A **Public Bid Opening is required** for Public Works contract solicitations, pursuant to UDC Act § 11 (which incorporates by reference State Finance Law § 135). This section generally covers

bids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. ESD or a subsidiary must be a party to the contract, which must involve the use of laborers, mechanics or workers (not, for example, architects and engineers). Construction contracts must be awarded to the lowest qualified and responsible bidder. See UDC Act § 11. The definition of a “Public Work” is more a matter of art than law: if in doubt as to whether the contract is for Public Work, contact the Legal Department for guidance.

8.12. Bid Evaluation and Vendor Selection

The initiating Department Head should establish, as early as practicable prior to bid opening, a team of at least three ESD staff members with relevant knowledge and experience of the goods and/or services being procured. One member should come from Contracts Administration or Finance. In some cases, one or more non-ESD team members may join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. This involvement of non-ESD persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as ESD to “take into consideration the views and policies of any elected official or body, or other person” in the exercise of its powers and duties, provided that ESD must “apply independent judgment in the best interest of the authority, its mission and the public.” If non-ESD staff is included in the review team, the team must be expanded in number such that a majority will always be ESD staff members.

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

In reviewing bids, all members of the team must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must not include anything other than numerical ratings (i.e., no comments/opinions/notes, etc). Original scoring sheets must be signed and retained by the Procurements Director as part of the Procurement Record.

8.13. Determination of Responsibility – “CLIP Review” and the VendRep form

Pursuant to State Finance Law § 139-j(7), ESD or the Subsidiary Board must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. In any event, whether or not a formal Determination of Responsibility is sought from the relevant Board, the initiator should ensure that all vendors are “responsible.”

There are two methods of ascertaining vendor responsibility:

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

Category	Factors to be considered include, but not are limited to:
Financial and Organizational <u>C</u> apacity	Assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, and proper auditing and accounting controls.
<u>L</u> egal Authority	Authority to do business in New York State, licenses, and registrations.
<u>I</u> ntegrity	Criminal indictments or convictions, civil fines and injunctions imposed by other agencies, anti-trust investigations, ethical violations, tax delinquencies, or debarment by federal, State or local governments.
Previous Contract <u>P</u> erformance	Reports of less than satisfactory performances, early contract termination for cause, contract abandonment, court determinations of breach of contract.

For all procurements, the initiator must submit a memo to the Procurements Director attesting that the initiator conducted a CLIP review and finds the vendor to be responsible and indicating what steps were taken to make that determination. View Determination of Responsibility form. In addition to consulting the resources listed on the Determination of Responsibility form, staff may find it useful to consult OSC’s list of suggested resources, at <http://www.osc.State.ny.us/vendrep/webresources.htm>, or review OGS’s bulletin of best practices for determining vendor responsibility.

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

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

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

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

8.13.1. Cancellation of a Solicitation

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

8.14. Procurement Record

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

9. Contract Approval

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

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

Note that **insurance policies, warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases and software support services)** are not considered personal service contracts and do not require approval by the Board unless the amount of the contract is over \$250,000 in aggregate through its term. All contracts with a

technology component must be approved by ESD's Information Security Officer or designee prior to execution or Board approval.

9.1. Board Materials

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

The Board materials must set out:

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

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

- a. If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted.
- b. **Contracts for personal services** to be rendered over a period of more than one year, regardless of the amount of the contract, which must have been approved by the Board, must in addition be reviewed annually by the ESD (or subsidiary) Directors, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and

product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.

- c. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, and before Board or President approval if required, the officer named in Attachment A to these Guidelines may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents (“**Notice to Proceed**”), provided that:
 - i. the contract is not subject to OSC approval (See Section 10.5); and
 - ii. the authorization contained in the Notice to Proceed is (a) \$250,000 or less and (b) does not exceed 20% of the total contract value; and
 - iii. the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of the Officer(s) specified in Attachment A to these Guidelines.

d. **Contract Amendments**

- i. **Amendments to existing contracts** generally follow the same process as new contracts, i.e., any amendment over \$50,000 needs to be advertised in the Contract Reporter, exempted, or awarded to a firm on a pre-qualified list after soliciting bids from three other firms including at least one MWBE firm and one SDVOB firm. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated. If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of SFL §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed \$1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds.

- ii. Amendments that increase the **contract amount** to more than \$250,000 must be approved by the ESD (or subsidiary) Directors. Amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the ESD officer named in Attachment A to these Guidelines without further Board approval, unless the amendment increases the contract to an amount above \$250,000 and Directors' approval has not been previously obtained.
- iii. If a proposed amendment to a contract for personal services will increase the **term** of the contract to more than one year, Board approval is necessary, and Contract Reporter advertising is necessary unless (i) as discussed in paragraph (a) above, the original contract contained a clause specifically permitting extension; or (ii) the amendment is awarded to a vendor on a pre-qualified list following wherever practicable the receipt of three quotes from other vendors on the list including at least one from a certified MWBE or SDVOB fir; or (iii) the amendment increases the term of the contract by not more than three months, and approval for the extension is given by the person named in Attachment A to these Guidelines. If the amendment will increase the amount of time or other terms of the contract but **will not increase the contract amount**, the initiator need not submit a new Commitment Request Package.
- iv. In the case of contracts for more than \$1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and/or the Chief Financial Officer of the corporation. Note that such an amendment may require OSC review and approval (see section 10.5). If in doubt, consult the Legal Department.

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

*Some subsidiaries have lower monetary thresholds for board approval.

Example B: Original contract for \$40,000 was awarded via purchase order. Due to unforeseen circumstances, the initiator wishes to amend the contract for an additional \$20,000. Because the amendment is less than \$50,000, it too can

be procured via purchase order. However, staff should carefully examine future needs to avoid repeated awards of small noncompetitive amendments.

Example C: Original contract for \$5 million was awarded competitively and approved by the Board and by OSC. The Board also approved the power to amend the contract to reflect an increase in the scope of services/goods, in an amount not to exceed 10% of the original approved amount, with the amendment to be approved by the CEO/CFO. The initiator wishes to amend the contract for an additional \$300,000. Because the amendment is less than 10%, and the contract has previously been approved by the Board, no further Board approval is necessary, but Contract Reporter advertising is still necessary, unless an exemption is granted (see s. 3.2 above).

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

10. Steps After Contract Approval Is Obtained

10.1. Commitment Request Process (for contracts of \$50,000 or more)

- a. The contract initiator should assemble and submit via Peoplesoft a Commitment Request Package containing the following documents:
 1. A Commitment Request Form (composed in Peoplesoft).
 2. A Contract Summary/Justification Memorandum (composed in PeopleSoft) explaining the need for the procurement and the method of procurement used.
 3. One (1) completed original of the Standard Form Contract - Short Form for Goods/Services or Standard Form Amendment or Modification of Contract with: (i) Schedule A (conditions applicable to procurements of goods/services or legal services); (ii) Schedule B (Participation By Minority and Women-Owned Business Enterprises: Requirements and Procedures); (iv) Schedule B-1 (Participation by Service-Disabled Veteran-Owned Businesses with Respect to State Contracts); (v) Appendix A (ST-220 Contractor Certification Form pursuant to Tax Law § 5-a); (vi) Appendix B (Compliance with SFL § 139-j and 139-k, the Offerer's Affirmation of Understanding and Agreement pursuant to

SFL §139-j; and (vii) Appendix C (Offerer Disclosure of Prior Non-Responsibility Determinations under SFL § 139-k).

Remember that the provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and ESD, and the method of payment to the contractor. The more clear and specific the contract, the easier it will be to monitor.

The terms of the contract should include, but not be limited to:

- the scope and purpose of the contract;
 - the description of the services to be performed;
 - the location where the work is to be performed;
 - the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
 - the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
 - the projected starting date and the contract period;
 - the finished product or the services to be delivered;
 - record-keeping and reporting requirements, including a statement that ESD and any relevant State agency has the right to audit the contractor's records;
4. Written explanation of the responsibility determination/CLIP review. View Determination of Responsibility form. For contracts valued at \$100,000 or more, staff must also submit a VendRep Form completed by the vendor (not applicable to vendors outside NY)..
 5. ESD/Subsidiary Board of Directors or CEO/designee approval, if applicable. View sample Board materials and CEO/Designee Approval Cover Memo.
 6. Depending on the procurement method used: (i) the Contract Reporter advertisement and posting of bid results and internal approval to advertise and the scoring sheet/bid opening log; or (ii) an approved exemption letter; or (iii) the OGS Centralized Contract; or (iv) a copy of the relevant Board-approved prequalified list.
 7. All appropriate insurance certificates, as approved by the ESD Insurance Administrator, a copy of the appropriate officer's approval and a copy of the RFP, if applicable. Note that all contractors must have evidence of Workers' Compensation and Disability Insurance coverage.

8. A completed Commitment Package Checklist.
 - a. 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.
 - b. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various ESD departments.
 - c. Upon obtaining in-house approvals, Contract Administration sends all three (3) sets of the contract or amendment package to the vendor for signature(s).
 - d. 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.
 - e. One original copy of the fully-executed contract or amendment is sent by Contract Administration to the vendor.

10.2. Contract Reporter Award Notification

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

10.3. [INTENTIONALLY OMITTED]

10.4. Department of Budget (“DoB”) Approval

Under DOB Bulletin B-1184, approval for certain procurements over \$500 is required. In general, if a State or legislative appropriation is the source of funds, approval is needed. A web-based application known as the “Agency Spending Controls Application” process is used to obtain prior approval. DOB approval is not required when the funding source for the procurement comes from a non-State source (e.g., a developer of an ESD project), where at least 75% of the procurement cost will be reimbursed by federal funds, or when the procurement is needed to address an immediate threat to public health and/or safety. DOB mandated forms are used in cases where approval is required. ESD has implemented the cost control measures described in Bulletin B-1184. All spending not involving Federal reimbursement of at least 75 percent, presenting an immediate threat to public health and/or safety or whose funding source is from a Third Party is subject to the preapproval process specified in the Budget Bulletin utilizing forms established by

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

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

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

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

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

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

- ESD must annually report to OSC all Eligible Contracts/Amendments that it anticipates in the next fiscal year, and revise such report within 30 days of learning of any significant changes to the annual report.
- ESD must give OSC 10 days’ notice before (i) publishing a solicitation that ESD expects will result in an Eligible Contract/Amendment that was not previously reported to OSC or (ii) executing a noncompetitive Eligible Contract/Amendment that was not previously reported to OSC.
- ESD must file all Eligible Contracts/Amendments that are not subject to OSC approval (see following paragraph) with OSC within 60 days of execution.

Certain Eligible Contracts/Amendments that are the subject of a written notice must also be approved by OSC within 90 days after the contract is signed. A list of active written notices can be viewed [here](#). If approval by OSC has not been obtained, the signed contract “shall not be a valid enforceable contract.”

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

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

12. Monitoring of Procurement Contracts

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

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

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

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

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

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

All MWBE and SDVOB performance should be reported to OCSD.

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

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

13. Ethical Considerations

13.1 Procurement Contracts Involving Former Employees of ESD

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

13.2 Conflicts of Interest

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

13.3 Unfair Advantage Prohibited

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

14. Implementation of These Guidelines

ESD's Legal Department, in conjunction with the Contracts Administration Department, shall be responsible for preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines, as well as preparing proposed amendments to the Guidelines for approval by the CEO and the ESD Directors when and as required.

15. Reporting

15.1. Annual Reports

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

MWBE Participation. ESD's VP/Contract Administration shall also prepare, on an annual basis, a report for submission to:

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

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

16. Effect on Awarded Contracts

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

Item 3



FOR CONSIDERATION

May 13, 2019

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: Proposed Acquisition of the Longshed Parcel (the "Property")

REQUEST FOR: Authorization to Enter into Agreements Regarding the Acquisition of Real Property;
and Authorization to Takes Related Actions

I. Background

The City of Buffalo ("the City") is the owner of property located at 1 Marine Drive in the City of Buffalo consisting of approximately 9.5 acres. The City of Buffalo and the Erie Canal Harbor Development Corporation ("ECHDC"), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), have agreed that ECHDC should take ownership of approximately 10,200 SF (0.23 acres) of this parcel (the "Property") in order to facilitate the construction, operation, and maintenance of ECHDC's Longshed Project (the "Project"). The Project consists of a new building within the Central Wharf at the corner of Prime and Lloyd Streets, which will be created to evoke the 1870s building that existed on this corner (Lloyd Street at Central Wharf). The Property is located on Prime Street at the corner of the Buffalo River and the Commercial Slip, along the Central Wharf. A Subdivision Plan of the Property is included in Attachment A. An Aerial Photograph of the Property is included in Attachment B.

It is expected that the transfer will facilitate development on the parcel to ensure public access and provide economic development opportunities for the citizens of the State and Western New York by transferring the Property to the agency that was formed to specifically develop Buffalo's waterfront.

II. Proposed Transaction

The ECHDC will acquire the Property, including any necessary easements, from the City for One Hundred Fifty Thousand Dollars (\$150,000). Pursuant to two appraisals received in April 2018, the value of the Property to be developed could be worth as much as \$290,000. The valuation assumes a \$33 per square foot appraisal. Under the City's recently adopted Unified Development Ordinance (i.e., the "Green Code"), the Property was re-zoned Mixed-Use Center (N-2C) and would likely have a valuation similar to the development parcels noted above.

The Longshed Project also includes public restrooms which both parties consider an amenity for the entire Canalside development. It is estimated that the ECHDC will incur approximately \$140,000 in construction costs to provide the public restrooms.

Therefore, the City and ECHDC agreed on an acquisition cost of \$150,000 for the Property (the "Purchase

Price”) and any necessary easements.

III. Agreement Funding

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

IV. Environmental Review

The Directors made a Determination of No Significant Effect on the Environment for the Property, in conjunction with the adoption of the general project plan for the Canalside Interpretive Structures Civic Project at their meeting of December 11, 2017. This determination addressed all aspects of the proposed Longshed Project; therefore, no further environmental review is required in connection with this action.

In addition, because the Property is within an “archaeological district” that is eligible for the State and National Registers of Historic Places (“S/NRHP”) and is near both S/NRHP-listed objects (USS Little Rock and USS The Sullivans) and the S/NRHP-eligible Marine Drive Apartments, ECHDC consulted with the NYS Office of Parks, Recreation and Historic Preservation (“OPRHP”) on the implications of the Project pursuant to the requirements of Section 14.09 of the State Historic Preservation Act. ESD/ECHDC entered into Letters of Resolution related to the Erie Canal Harbor and Canalside Projects in December 2004 and January 2010 and has since complied with all stipulations contained therein, including an extensive Stage III data recovery effort in the vicinity of the Property. In a letter dated December 12, 2017, OPRHP indicated that the proposed Project would have no adverse impact to archaeological resources, objects, or structures listed on or eligible for inclusion on the S/NRHP.

V. Requested Action

The Directors are requested to (1) authorize the Corporation to enter into the necessary agreements and pay the Purchase Price for the Property to the City of Buffalo to effectuate the transfer of Property as stated in these materials; and (2) to take all related actions.

VI. Recommendation

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

VII. Attachments

Resolution

Figure 1 – Subdivision Plan

Figure 2 – Aerial Photograph

May 13, 2019

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Proposed Acquisition of the Longshed Parcel -
Authorization to Enter into Agreements Regarding the Acquisition of Real Property; and Authorization to
Take All Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Erie Canal Harbor Development Corporation (the “Corporation”), the Corporation is hereby authorized to enter the necessary agreements to effectuate the transfer of the property referred to as the Longshed parcel as more particularly described in the Materials (the “Property”) at a cost not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00); and be it further

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

* * *

SURVEY REFERENCES:

- MAP ENTITLED "PROPOSED RIGHT OF WAY" PREPARED BY FOT-ALBERT ASSOCIATES DATED 12/18/08 AND REVISED 9/20/10, FILED AT THE CITY OF BUFFALO SURVEY OFFICE.
- MAP ENTITLED "BOUNDARY SURVEY - ERIE CANAL HARBOR DEVELOPMENT CORPORATION" REVISION 04, DATED 12/19/08 AND REVISED 5/13/09. PROJECT RECORD 04, PROVIDED BY THE CLIENT.
- MAP ENTITLED "BOUNDARY SURVEY - ERIE CANAL HARBOR DEVELOPMENT CORPORATION" ASSOCIATED DATED 12/17/08 SHEET NOS. 85-101, 85-101 & 85-102. "OPENING" RECORD 04, PROVIDED BY THE CLIENT.
- MAP ENTITLED "PROPERTY ACQUISITION, TOPOGRAPHY & UTILITY SURVEY" DATED APRIL 2011 AS-BUILT REVISIONS PREPARED BY TOWNSEND DRAWING A-1, SHEET 7 OF 88, "ACCEPTANCE" RECORD 04.
- MYSDOT ACQUISITION MAPS, 6, 27, 28, 30, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 54 & 55.
- NET MAP AND TABLE OF PROPERTY ACQUISITIONS, FURMAN BLVD - ARTERIAL ROUTE, DATED MARCH 26, 1950.
- INDEX CARD ENTITLED "FURMAN BLVD - ARTERIAL ROUTE HIGH LEVEL BRIDGE" SHOWING CONFORMANCE MAP 34-C "ON FILE".
- CITY OF BUFFALO TAX MAP 111.17.
- MAP ENTITLED "BOUNDARY, TOPOGRAPHY & UTILITY SURVEY - CHALCIDE INTERPRETIVE STRUCTURES" PREPARED BY RAVI ENGINEERING & LAND SURVEYING, DATED 9/15/2017. PROJECT NO. 2017-1022.

SURVEY NOTES:

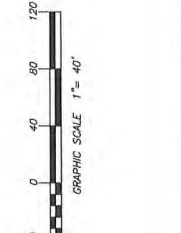
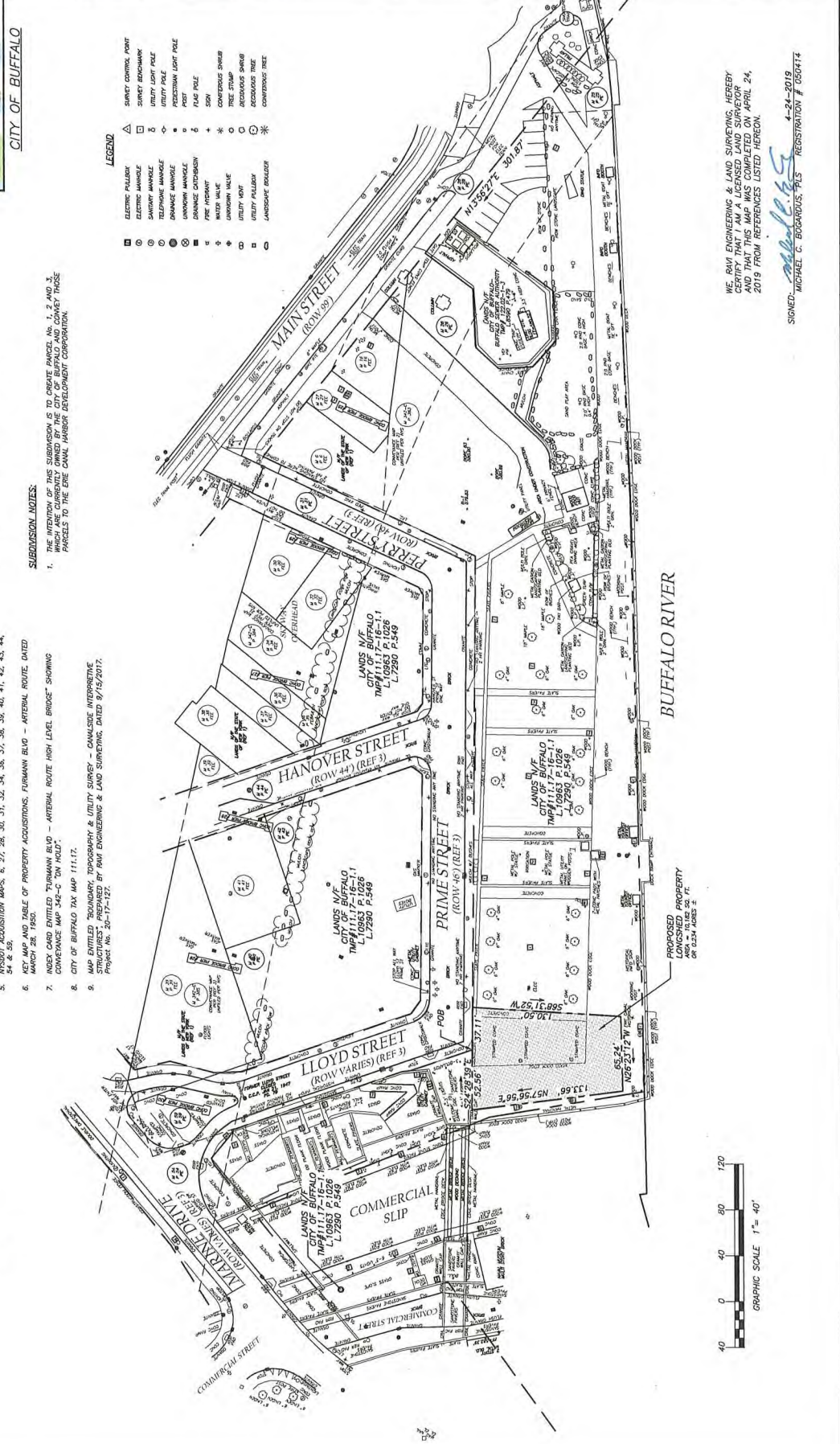
- HORIZONTAL COORDINATE SYSTEM NAD 83 (2011) N.T.S.P.L.S. WESTERN ZONE (US FOOT).
- FIELD WORK COMPLETED ON MAY 22, 2017 BY RAVI ENGINEERING AND LAND SURVEYING, 30 AND PARTIAL CLOSURE.
- SUPPLEMENTAL SURVEY COMPLETED ON 8/21/2017 & 9/4/2018 BY RAVI ENGINEERING AND LAND SURVEYING. THE RESULTS OF ALL IMPROVED INSTRUMENT OR TITLE REPORT AND IS SUBJECT TO ANY ENCUMBRANCES OR ENCUMBRANCES OF RECORD ONE WOULD DISCLOSE.
- UTILITIES SHOWN HEREON FROM FIELD LOCATED EVIDENCE.

SUBDIVISION NOTES:

- THE INTENTION OF THIS SUBDIVISION IS TO CREATE PARCELS NO. 1, 2 AND 3, PARCELS TO BE CONVEYED TO THE ERIE CANAL HARBOR DEVELOPMENT CORPORATION.

LEGEND:

□	ELECTRIC FULLBURY	△	SURVEY CONTROL POINT
□	ELECTRIC MIDDLE	□	SURVEY BENCHMARK
□	ELECTRIC MAINLINE	□	UTILITY LIGHT POLE
□	ELECTRIC SERVICE	□	UTILITY PALE
□	UNKNOWN MIDDLE	□	UNKNOWN LIGHT POLE
□	UNKNOWN MAINLINE	□	UNKNOWN PALE
□	UNKNOWN SERVICE	□	FLAG POLE
□	DRAINAGE CATCH-BASIN	□	SPOT
□	FIRE HYDRANT	□	CONCRETE SWAMP
□	WATER VALVE	□	TREE STUMP
□	UNKNOWN VALVE	□	UNKNOWN SWAMP
□	UTILITY BOX	□	UNKNOWN TREE
□	UTILITY FULLBURY	□	CONCRETE TREE
□	LANDSCAPE BARRIER	□	



WE, RAVI ENGINEERING & LAND SURVEYING, HEREBY
 CERTIFY THAT THIS MAP WAS PREPARED BY US
 AND THAT THIS MAP WAS COMPLETED ON APRIL 24,
 2019 FROM REFERENCES LISTED HEREON.

SIGNED: *Michael C. Bogardus*
 MICHAEL C. BOGARDUS, PLS REGISTRATION # 050414
 4-24-2019



Figure 2
Aerial Photograph

Item 4



FOR CONSIDERATION

May 13, 2019

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: Canalside – Construction of the Longshed Building (the “Project”)

REQUEST FOR: Authorization to Enter into a Contract for Construction of the Canalside – Longshed Building; and Authorization to Take Related Actions

CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Consultant: Savarino Companies, LLC
500 Seneca Street, Suite 508
Buffalo, New York 14204

Scope of Services: Construction of the Canalside Longshed Building

Contract Term: May 2019 through July 2020

Contract Amount: Not to exceed \$5,530,000 (\$5,025,000 Base Bid with \$505,000 contingency)

Funding Source(s): New York Power Authority Industrial Incentive

II. Background

The principal goal of Canalside is to transform the vacant and underutilized Project Area into a vibrant mixed-use, year round setting for family-oriented uses, including sports, entertainment, cultural, residential, commercial and recreational uses. Canalside will build upon the public development framework established through recent and committed public infrastructure investments such as the Commercial Slip, enhancements to Naval Park, and reestablishment of portions of the former street grid (e.g., Prime, Lloyd, Hanover Streets). Also, Canalside will enhance public access and use of the downtown waterfront, including multimodal connections to transit, bicycle, pedestrian and waterborne networks.

In addition to creating a densely developed area with a mix of amenities and open space on parcels that have been vacant and underutilized for decades, the Canalside development, and this Project specifically, aims to provide for the following public uses and purposes described in the Canalside Modified General Project Plan (MGPP):

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

One of the key points of the Canalside MGPP is “promoting and incorporating architectural elements that celebrate and interpret the historical significance of the Erie Canal and its terminus on the 12.5-acre Erie Canal Harbor Project site, as provided for in the 2004 Erie Canal Harbor Master Plan (ECHMP). The 2004 ECHMP stems from an earlier plan for the site, managed by ESD and financed by a combination of federal, state, and local transportation funds administered by FTA, NFTA, NYSTA, Erie County, City of Buffalo, and the Buffalo Sewer Authority. This earlier plan was intended to facilitate both on-site and surrounding development activities by making infrastructure investments to improve multi-modal access connections to and along the water’s edge. The 2004 ECHMP focused on achieving these goals in the context of better interpreting the site’s rich history and importance to the development of the region and the nation as a whole.

The Project will erect a wood frame structure at the northern end of the Central Wharf. The approximate 4,400 square foot structure reflects on the history of building at the wharf location by incorporating elements from the Joy and Webster Storehouse that was situated on the site in the early 1800s. The exterior of the building will be wood with vertical battens and a metal sloped roof. The building will be utilized by the Buffalo Maritime Center in the first three years, as staff and volunteers will construct a packet boat.

III. Consultant Selection Process

On February 1, 2019 ECHDC (the “Corporation”) advertised for the *Canalside – Longshed Building Project* in the New York State Contract Reporter. A total of three (3) bids were received on March 4, 2019 and read aloud publicly.

ECHDC, Hamilton Houston Lownie Architects (“HHL”) and LiRo Engineers (LiRo) interviewed bidders and de-scoped the apparent low bidder on March 11, 2019. HHL is the design consultant for the Project with intimate knowledge of the Documents and LiRo is the construction manager that will oversee the Project during construction. It was the recommendation of LiRo to award the Contract to Savarino Companies, Inc. who was found to be the lowest responsible bidder. The following are the bid results (arranged by highest to lowest bidder):

Contractor	Base Bid Amount	Alternates Accepted
Savarino Companies, Inc.	\$5,025,000	None
Scrufari Construction Co., LLC.	\$5,680,000	None
Huber Construction, Inc.	\$6,105,000	None
HHL (i.e., Architect’s Estimate)	\$4,801,540	N/A

For over 15 years, Savarino Companies has been in the business of providing Western New York and beyond with service in the construction industry. The company began in the 2001 providing construction services and creating multi-use developments. Savarino Companies is located on Seneca Street in the City of Buffalo, and is familiar with the ECHDC as they are currently working on the interior fit-out for the Children's Museum.

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

IV. Scope of Work

The construction consists of site, underground utilities, building foundations, wood framing, and interior finishes to create an enclosed Longshed building at the end of the Central Wharf.

V. Contract Term, Price and Funding

This contract is a lump sum contract as delineated in the projects plans and specifications dated January 31, 2019 along with three (3) addenda that were provided during the bidding period.

The project is slated to begin in May 2019 and expected to be completed by July 2020.

ECHDC intends to issue a Notice to Proceed to Savarino Companies in the amount of \$88,300 to install the temporary fencing, fence banner, and begin the process of product submittals and shop drawings, and remove select areas of wharf boards, to allow work to begin by the end of May 2019.

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

VI. Non-Discrimination & Contractor and Supplier Diversity

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

Subcontractors on the Savarino Companies, LLC. team at the time of bid, to comply with MWBE and SDVOB percentages are as follows:

- MBE I.C Construction Services, Inc.; Orchard Park, NY
- DYNO Group, Inc.; Buffalo, NY
- 34 Group, LLC; Buffalo, NY

WBE Ideal Concrete; Cheektowaga, NY
CVF Inc.; Depew, NY
Scott Lawn Yard; Niagara Falls, NY
Arrow Sheet Metal; Buffalo, NY
Weydman Electric & Communications; Tonawanda, NY
Door 2 Door; Tonawanda, NY

SDVOB Northern Dreams Construction, Inc.; Cheektowaga, NY
JJ Contracting Corp.; Palmyra, NY
Tiede-Zoeller Tile; Cheektowaga, NY

VII. Environmental Review

The Directors made a Determination of No Significant Effect on the Environment for the Project, in conjunction with the adoption of the general project plan for the Canalside Interpretive Structures Civic Project at their meeting of December 11, 2017. This determination addressed all aspects of the proposed Longshed Project; therefore, no further environmental review is required in connection with this action.

In addition, because Project area is within an "archaeological district" that is eligible for the State and National Registers of Historic Places ("S/NRHP") and is near both S/NRHP-listed objects (USS Little Rock and USS The Sullivans) and the S/NRHP-eligible Marine Drive Apartments, ECHDC consulted with the NYS Office of Parks, Recreation and Historic Preservation ("OPRHP") on the implications of the Project pursuant to the requirements of Section 14.09 of the State Historic Preservation Act. ESD/ECHDC entered into Letters of Resolution related to the Erie Canal Harbor and Canalside Projects in December 2004 and January 2010 and has since complied with all stipulations contained therein, including an extensive Stage III data recovery effort in the vicinity of the Project location. In a letter dated December 12, 2017, OPRHP indicated that the proposed Project would have no adverse impact to archaeological resources, objects, or structures listed on or eligible for inclusion on the S/NRHP.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a construction contract with Savarino Companies, LLC for an amount not to exceed \$5,025,000 plus a \$505,000 contingency for a total contract amount of \$5,530,000; and (3) to authorize the Corporation to take all related actions.

IX. Recommendation

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

X. Attachment

Resolution
Attachment A - Longshed Building Site Plan
Attachment B - Longshed Building Perspective Renderings

May 13, 2019

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Canalside – Construction of the Longshed Building
- Authorization to Enter into a Contract for Construction Services; and Authorization to Take
Related Actions

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

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Savarino Companies, LLC for a base contract amount of FIVE MILLION TWENTY-FIVE THOUSAND DOLLARS (\$5,025,000), plus a contingency in the amount of FIVE HUNDRED FIVE THOUSAND DOLLARS (\$505,000) for a total contract amount not to exceed FIVE MILLION FIVE HUNDRED THIRTY THOUSAND DOLLARS (\$5,530,000) 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.

* * *



WEST INTERIOR PERSPECTIVE



EAST INTERIOR PERSPECTIVE



NORTHWEST EXTERIOR PERSPECTIVE



SOUTHEAST EXTERIOR PERSPECTIVE

**CANALSIDE LONG SHED BUILDING
PERSPECTIVE RENDERINGS**

Item 5



FOR CONSIDERATION

May 13, 2019

TO: The Directors

FROM: Steven P. Ranalli

SUBJECT: Canalside Interpretive Structures – Longshed Building (the “Project”)

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

CONTRACT NEEDS AND JUSTIFICATION

I. Contract Summary

Consultant: Hamilton Houston Lownie Architects, LLC
172 Allen Street
Buffalo, New York 14201

Scope of Services: Architectural and Engineering Design Services

Original Contract Term: March 2017 through December 31, 2019

Original Contract Amount: Not to exceed \$1,300,000 (\$1,091,200 plus \$208,800 contingency)

Amendment Term: January 2020 through July 2020

Amendment Amount: \$170,000

Total Contract Amount: Not to exceed \$1,470,000

Funding Source(s): New York Power Authority Industrial Incentive

II. Background

The principal goal of Canalside is to transform the vacant and underutilized Project Area into a vibrant mixed-use, year round setting for family-oriented uses, including sports, entertainment, cultural, residential, commercial and recreational uses. Canalside will build upon the public development framework established through recent and committed public infrastructure investments such as the Commercial Slip, enhancements to Naval Park, and reestablishment of portions of the former street grid (e.g., Prime, Lloyd, Hanover Streets). Also, Canalside will enhance public access and use of the downtown waterfront, including multimodal connections to transit, bicycle, pedestrian and waterborne networks.

In addition to creating a densely developed area with a mix of amenities and open space on parcels that have been vacant and underutilized for decades, the Canalside development, and this Project specifically, aims to provide for the following public uses and purposes described in the Canalside MGPP:

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

One of the key points of the Canalside MGPP is "promoting and incorporating architectural elements that celebrate and interpret the historical significance of the Erie Canal and its terminus on the 12.5-acre Erie Canal Harbor Project site, as provided for in the 2004 Erie Canal Harbor Master Plan (ECHMP). The 2004 ECHMP stems from an earlier plan for the site, managed by ESD and financed by a combination of federal, state, and local transportation funds administered by FTA, NFTA, NYSTA, Erie County, City of Buffalo, and the Buffalo Sewer Authority. This earlier plan was intended to facilitate both on-site and surrounding development activities by making infrastructure investments to improve multi-modal access connections to and along the water's edge. The 2004 ECHMP focused on achieving these goals in the context of better interpreting the site's rich history and importance to the development of the region and the nation as a whole.

III. Project Description

The Project consists of a new building within the Central Wharf at the corner of Prime and Lloyd Streets, that was identified in the ECHMP. This site is City of Buffalo-owned but is expected to be operated and maintained by ECHDC under its Management Agreement with the City through 2024.

As described in the ECHMP, "a new structure will be created to evoke the 1870s building that existed on this corner (Lloyd Street at Central Wharf). The structure may be an open pavilion with interpretive elements, though a small, fully enclosed museum is envisioned over the long term."

Per the ECHMP, a new structure is proposed for construction at the southwest corner of Prime and Lloyd Streets. This structure will feature sheltered exhibits focusing upon the relationship and interplay between Commercial Slip and Central Wharf, focusing on the themes Commercial Slip: Portal to the World, Transshipment and Transportation, and Center of Trade and Commerce. Located at the vital corner connecting the slip to Central Wharf, it will be the focus of interpretation at Erie Canal Harbor. The Commercial Slip Pavilion will be located on the footprint of a building that existed in this location during the canal era, prior to the 1880s. It is visible in several historic photographs from that period. The design of the structure will evoke the character of the building, though it is not expected to replicate it exactly. It will be connected to the Union Steamboat façade and ghosted balcony of Central Wharf with a low shed that is also visible in the historic photographs.

The building, currently called the "Longshed", will be an enclosed wooden framed structure with a western front facing the Central Wharf. This design recalls the appearance of the Joy & Webster Storehouse that was sited at Lloyd and Prime Street in the early 1800s. The "Longshed" will provide an

enclosed space for the Buffalo Maritime Center to construct a replica 1825 packet boat. The public will be able to witness the construction process over the next three years.

IV. Consultant Selection Process

On December 6, 2016 ECHDC advertised for the *Canalside Interpretive Structures* Project in the New York State Contract Reporter. The Request for Proposals (RFP) sought to retain professional architecture, engineering, and/or land surveying consultant firms and/or teams to provide planning, design and construction services for the Project. On January 26, 2017, ECHDC received and opened ten (10) 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 short-listed candidates by the Selection Committee are as follows (*only prime consultant shown*):

1. Hamilton Houston Lownie Architects, LLC
2. Foit-Albert Associates
3. Sage and Coombe Architects

Hamilton Houston Lownie Architects, LLC (“HHL” or the proposed “Consultant”) is a Buffalo-based architectural firm. Their team includes Perkins Eastman (formerly Ehrenkrantz Eckstut & Kuhn), Theatre Consultants Collaborative, Environmental Design & Research, M/E Engineering, Ravi Engineering, RJR Engineering, Illumination Arts and Baer & Associates.

The Consultant team will be directed by partner Matthew Meier and Project Manager Richard Rice. The team clearly understands the complexity of the Project, the key stakeholders and issues.

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.

The original Consultant scope of work was to design multiple structures on scattered sites within the Canalside District. However, after several meetings with the stakeholders and the public, the original scope of work was modified based on public comments and to provide an enclosed space for the Buffalo Maritime Center.

Currently, the Consultant team has completed the design work through the bid phase of the Project and will shortly be engaged with on-site inspections, reviews and architectural directives, as well as quality assurance/oversight of the construction phase services of the Project. The Consultant has unique familiarity with the history of the Project as well as the complex coordination between the public, stakeholders, the City of Buffalo and ECHDC. As a result, extension of the Consultant’s services is needed and increasing the original contract amount is required. A Contract Reporter Exemption was approved by Empire State Development on February 13, 2019.

V. Scope of Work

The HHL team has completed 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. The additional scope of work includes construction administration and inspection. Tasks for this Contract Amendment include the following:

- Task G: Construction Administration
- Task H: Construction Inspection

The original estimated project schedule was as follows:

Advertisement	December 6, 2016
Proposals Due	January 26, 2017
Review/Short-list	January 27 – February 5, 2017
Interviews	February 14 & 15, 2017
ECHDC Board Approval:	March 13, 2017
Design Start:	May 2017
Design End:	July 2018

The modified project schedule for consultant services is as follows to accommodate a shift in scope of work from multiple buildings to a single structure:

Design Start:	May 2017
Design End:	January 2019
Construction Advertisement:	Q1 2019
Construction Begins:	Q2 2019
Construction Ends:	Q2 2020

VI. Contract Term, Price and Funding

The Contract Amendment will cover fees and expenses over an approximate 13-month period (June 2019 – July 2020).

The Contract Amendment amount to complete the above scope of work shall not exceed \$170,000, so the Total Contract Amount shall not exceed \$1,470,000.

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 man-hour estimates and salary schedules, and includes an allowance for incidental out of pocket Project expenses (i.e., travel, reproduction costs, postage and delivery charges, permits and miscellaneous fees). Labor and expenses will be reimbursed on a monthly basis upon submission of timesheets and acceptable receipted documentation.

The funding source shall be New York Power Authority (Industrial Incentive).

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.

HHL will continue to utilize the following MWBE and SDVOB sub-consultants for the Project:

WBE Environmental Design & Research Landscape Architects; *Rochester NY 14607*
HLB Lighting Design, *New York NY*

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

SDVOB Encorus Engineering, P.C. (SDVOB); *Buffalo NY*

VIII. Environmental Review

Empire State Development staff has determined that the action, which involves entering into a contract for the purposes of engaging a design consultant team to undertake detailed architectural design and engineering of the Canalside Interpretive Structures Project without committing the agency to undertake any future project, constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required at this time.

IX. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed consultant; (2) authorize the Corporation to enter into a Contract Amendment with Hamilton Houston Lownie Architects for an amount not to exceed \$170,000 for a total contract amount of \$1,470,000; and (4) authorize the Corporation to take all related actions.

X. Recommendation

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

XI. Attachment
Resolution

May 13, 2019

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Canalside Interpretive Structures – Longshed Building - Authorization to Enter into a Consultant Amendment for Architectural and Engineering Services; and Authorization to Take Related Actions

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

RESOLVED, that the Corporation is hereby authorized to enter into a Contract Amendment with Hamilton Houston Lownie Architects for ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$170,000) for a total contract amount not to exceed ONE MILLION FOUR HUNDRED SEVENTY THOUSAND DOLLARS (\$1,470,000) 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.

* * *