



**Battery Park  
City Authority**

**REQUEST FOR PROPOSALS  
FOR  
LEGAL SERVICES**

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## **I. SUMMARY**

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA” or the “Authority”) is a forward-facing public entity that is confronted with many of the same legal issues as private corporations, in addition to the myriad of legal issues facing public entities. BPCA requests proposals (individually a “Proposal” and collectively the “Proposals”) from law firms, large and small (individually a “Proposer” and collectively the “Proposers”) that have demonstrable expertise in one or more of the following areas of law: (1) municipal/governmental entity representation, particularly in the areas of law described in items (2) through (7); (2) real estate; (3) land use, zoning and environmental; (4) procurement; (5) construction; (6) labor, employment and benefits; and (7) civil litigation (the “Legal Services”). Additional information with respect to the scope of the Legal Services is set forth on Exhibit A attached hereto. The purpose of this solicitation is to identify counsel that may be eligible to represent BPCA from time to time. Firms may apply to one practice area or multiple practice areas but may only submit one Proposal. Firms **may not** submit separate Proposals for each practice area for which the firm applies. In addition, Proposer’s must agree to render legal services at rates not to exceed those set forth in Section VIII of this RFP. This RFP shall not affect those law firms that are providing legal services to BPCA pursuant to an existing retainer agreement. However, all such law firms are encouraged to submit Proposals in different practice areas, if so desired.

Created in 1968, BPCA is a New York State public benefit corporation responsible for financing, developing, constructing, maintaining, and operating Battery Park City as a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas, and a waterfront esplanade. A summary of BPCA’s structure, mission, and history, as well as the Battery Park City project area, may be viewed at: <http://bpca.ny.gov/>. Public information regarding BPCA’s finances, budget, internal controls, guidelines, and policies may be viewed at: <http://bpca.ny.gov/public-information/>. Information relating to the Battery Park City Parks Conservancy Corporation (“BPCPC”), BPCA’s affiliate, may be viewed at: <http://bpcparks.org/>.

Minority-Owned Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”) and Service-Disabled Veteran-Owned Business Enterprises (“SDVOB”) are encouraged to submit Proposals.

## **II. GENERAL PROVISIONS**

This request for Proposals, including attachments, exhibits, and any amendments or addenda (collectively, the “RFP”) is subject to the rights reserved by BPCA, including, but not limited to BPCA’s right to:

- withdraw and/or cancel this RFP at any time before final award of the contract;
- request clarification and/or additional information from any or all Proposers;
- amend any term or requirement of this RFP at any time before award of a contract (Proposers may amend their Proposals, as directed by BPCA, if BPCA materially alters or amends the RFP after submission of Proposals);
- alter any key dates or deadlines related to this RFP;
- award the Legal Services, in whole or in part, to one or more Proposers;
- reject any Proposal that does not strictly conform to the requirements of this RFP;
- conduct an interview with any or all of the Proposers to aid the evaluation process; and
- negotiate potential contract terms with any Proposer.

BPCA is not liable or responsible in any way for any expenses incurred in the preparation of a Proposal in response to this RFP. All information submitted in response to this RFP is subject to the Freedom of Information Law, Article 6 of the New York State Public Officers Law (“FOIL”), which requires public access to certain documents possessed by BPCA, unless a specific exemption applies. Proposers are responsible for identifying any information in their respective Proposals considered to be confidential and exempt from FOIL.

### III. TIMETABLE & DESIGNATED CONTACT

#### A. *Key Dates*

Subject to change at BPCA's discretion, the following are key dates for this RFP:

- RFP issued: **October 14, 2016**
- Deadline to submit questions to BPCA: **October 26, 2016 by 4:00 p.m.** (by email only)
- All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Lauren Bruggess, Paralegal, Battery Park City Authority, at [Lauren.Bruggess@bpca.ny.gov](mailto:Lauren.Bruggess@bpca.ny.gov).
- BPCA's response to substantive questions: **November 2, 2016** (by email)
- **PROPOSAL DUE DATE: November 8, 2016 by 3:00 p.m. (the "Due Date")**

#### B. *Anticipated Contract Term*

The anticipated term of the contract awarded pursuant to this RFP (the "Contract") will be one year. BPCA reserves the right to terminate the Contract at any time, with or without cause, in accordance with the terms of the Contract.

### IV. GENERAL REQUIREMENTS

#### A. *Minimum Qualification Requirements*

The following are minimum qualification requirements for this RFP. **Proposals that fail to meet these requirements will be rejected.**

- 1) Proposer must have an office in New York State (a New York City office is preferred);
- 2) Any person providing Legal Services relating to a matter that is or may reasonably be anticipated to result in litigation, including, but not limited to, appearing in court on behalf of BPCA, must be licensed in the State of New York. This requirement is not applicable to any person providing any Legal Services that do not concern litigation.

#### B. *MBE/WBE/SDVOB Participation, Joint Ventures and Sub-contracting Goals*

Contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs/SDVOBs and equal employment opportunities for minority group members and women are attached as Exhibit B. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals *only*, please contact the "MBE/WBE/SDVOB Designated Contact" Mr. Anthony Peterson at [Anthony.peterson@bpca.ny.gov](mailto:Anthony.peterson@bpca.ny.gov) or 212-417-2337.

#### C. *Restricted Period*

New York State's State Finance Law sections 139-j and 139-k apply to this RFP, restricting Proposers' contacts with BPCA. Proposers are restricted from making any contact (defined as oral, written or electronic communications with BPCA under circumstances where a reasonable person would infer that a communication was intended to influence BPCA's conduct or decision with respect to a procurement) relating to this RFP with anyone other than the Designated Contact, as specified in Section III.A., or MBE/WBE/SDVOB Designated Contact, as specified in Section IV.B., from the time of Proposer's receipt of notice of this RFP through execution of the Contract by BPCA (the "Restricted Period"). BPCA employees must record certain contacts during the Restricted Period, including, but not limited to, any oral or written communications that could reasonably be seen as intended to influence BPCA's conduct or award of this RFP. Upon notice of an improper contact, BPCA must make a determination regarding the Proposer's responsibility.

*D. Submission of Proposals*

**Proposals must be received by BPCA no later than 3:00 p.m. on November 8, 2016**

Each Proposer must submit ten (10) paper copies and a PDF version (via CD-ROM or flash drive) in a sealed package clearly marked “**Proposal Enclosed – Legal Services**” to the Designated Contact **by messenger, overnight courier or certified mail** to the following address:

Ms. Lauren Brugess  
Battery Park City Authority  
200 Liberty Street, 24<sup>th</sup> Floor  
New York, NY 10281

BPCA is not responsible for late Proposals, no matter the cause. Proposals *must* arrive at the time and place specified herein and be time stamped by BPCA by the Due Date. Please leave ample time for building security. Late Proposals will NOT be accepted. Proposals submitted by fax or electronic transmission will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting an amended Proposal, clearly labeled “**Amended Proposal - Legal Services,**” as long as the amended Proposal is submitted by the Due Date.

**V. PROPOSAL FORMAT AND CONTENTS**

*A. Proposal Format*

The Proposal must:

- Be printed on 8½” x 11” paper;
- Have numbered pages; and
- Be no longer than ten (10) single-sided pages per practice area, exclusive of the Cover Letter, Cost Proposal, and RFP Attachments.

*B. Proposal Content*

In addition to the separately sealed Cost Proposal described in Section VIII below, each Proposal must include the following in the order listed:

- 1) Cover Letter, signed by a person within the firm who is authorized to bind the Proposer, which includes representations that:
  - (a) Except as disclosed in the Proposal, no officer or employee of the Proposer is directly or indirectly a party to or in any other manner interested financially or otherwise in this RFP; and,
  - (b) Proposer satisfies all of the minimum qualification requirements in Section IV.A.

**Cover Letters must include each of these representations and be signed. Proposals with Cover Letters that are unsigned or that fail to include each of the above representations will be rejected.**

- 2) Executive Summary.
- 3) Responses to the Questions as well as all of the Information Required (Sections VI.A and B).
- 4) Required Attachments (Section VI.C).

## **VI. INFORMATION REQUIRED**

### ***A. Questions and Information Sought Relating to the Legal Services***

- 1) Indicate in which of the relevant practice areas your firm is interested in serving as counsel for BPCA. For each such practice area, provide the following:  

A description of your firm's relevant experience in such area. Please include a brief description of representative transactions and specify your firm's role with respect to each such transaction.
- 2) Briefly describe your firm's background, services, size, and history, as these factors are relevant to such practice area. If your offices are located in more than one location, indicate which office will provide the services.
- 3) Indicate whether your firm has previously provided any legal services to BPCA and if so, describe the nature and dates of these services.
- 4) Describe any relevant special services your firm provides, particularly those that may not be offered by other firms.
- 5) Please describe your proposed team's experience with similar work for public sector clients, with an emphasis on New York State public entities.
- 6) List all attorneys you intend to assign to this engagement and include for each listed individual: (a) area(s) of specialization; (b) title and/or position within your firm. Describe the anticipated role of each attorney who will be assigned to the engagement.
- 7) Identify the Lead Partner who will be the primary contact and lead attorney in providing services to BPCA, and who will be listed as a "key person" in any contract with BPCA.
- 8) Describe your firm's plan in the event the Lead Partner assigned to the engagement leaves the firm.
- 9) Clearly identify any information in your Proposal that you believe to be confidential and exempt from FOIL, and state the reasons. Please note that this question is for informational purposes only, and BPCA will determine FOIL applicability in its sole discretion.
- 10) Does your firm provide clients with CLEs, client alerts and practice area updates? If so, provide a description of these items.
- 11) Provide at least three (3) client references for whom your firm has performed similar work to that requested in this RFP. For each client, describe the project, the project's date, and services performed, and provide the name, address, and telephone number for a person at client's firm familiar with such work.

### ***B. Questions relating to Proposer's Firm & Eligibility***

- 12) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.
- 13) How does your firm identify and manage conflicts of interest?
- 14) Has your firm or have any of the firm's partners/employees been disciplined or censured by any regulatory body within the last five (5) years? If so, please describe the relevant facts.
- 15) Within the last five (5) years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of legal services? If so, please provide an explanation and the current status or disposition of the matter.
- 16) Are there any potential conflict of interest issues posed by your firm's performance of the Legal Services on behalf of BPCA?

- 17) List any professional or personal relationships your firm's attorneys may have with BPCA's Board and/or staff members. A current list of BPCA Board members and employees is attached to this RFP as Exhibit D.
- 18) If selected, will your firm assign any person to this engagement who was previously an employee of BPCA or BPCPC? If so, please: i) identify when (month and year) that person's employment at BPCA/BPCPC terminated, and ii) describe that person's involvement, if any, with matters related to this RFP during his/her employment at BPCA/BPCPC.
- 19) In the past five (5) years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and provide a contract person address and telephone number.

**C. Required Attachments**

1) Mandatory Forms:

Each Proposal must include a completed copy of all "Mandatory Forms" found at: <http://bpcanyc.org/wp-content/uploads/2015/03/Vendor-ResponsibilityQuestionnaire.pdf>. The Mandatory Forms include the following:

- a) NYS Standard Vendor Responsibility Questionnaire, notarized and signed by the individual(s) authorized to contractually bind the Proposer, indicating the signer's title/position within the firm.\*
- b) State Finance Law § 139 Form 1, signed by the individual(s) authorized to contractually bind the Proposer.\*
- c) W-9 form.
- d) Statement of Non-Collusion.
- e) MBE/WBE/SDVOB Utilization Plans. Please note that all such plans must be submitted even if Proposer is a MBE/WBE/SDVOB.

\*In addition to the copy required to be included in each bound Proposal, Proposers must additionally provide one (1) unbound, completed original, with ink signatures, of the NYS Standard Vendor Responsibility Questionnaire and SFL 139 Form 1.

- 2) Response to the question regarding the use of New York State businesses set forth in Section IX.
- 3) Completed MBE/WBE and EEO Policy Statement and Diversity Practices Questionnaire (attached as part of Exhibit B).
- 4) Financial Statements:

Provide a copy of your firm's most recent Audited Financial Statements (within the last year). In the event you do not have audited financials you must provide a statement to that effect with your proposal.

5) Acknowledgement of Addenda:

Attach a completed and signed Acknowledgement of Addenda Form, attached as Exhibit C, acknowledging receipt of all addenda to this RFP, if any, issued by BPCA before the Due Date. Addenda are posted by BPCA as necessary and can be found on the BPCA website at [www.bpcanyc.org](http://www.bpcanyc.org). It is the responsibility of each Proposer to check the BPCA website for addenda and to review addenda prior to submitting any proposal in response to this RFP.

6) Appendices:

Attach professional biographies (by practice area) for all attorneys identified in your Proposal.

## VII. INSURANCE REQUIREMENTS

### A. *General Requirements*

The selected Proposer will be required to provide proof of the types and amounts of insurance listed below (i) as a condition precedent to the award of the Contract for the work; and (ii) continuing throughout the entire term of the Contract. The insurance policies listed below must also conform to the applicable terms of the Contract.

The total cost of the required insurance listed in paragraphs B) and C) below must be incorporated into the Cost Proposal. The additional insured protection afforded BPCA, BPCPC, and the State of New York must be on a primary and non-contributory basis. All policies must include a waiver of subrogation in favor of BPCA, BPCPC, and the State of New York, and no policies may contain any limitations/exclusions for New York Labor Law claims.

All of the carriers that provide the below required insurance must provide direct written notice of cancellation or non-renewal to BPCA, BPCPC, and the State of New York at least 30 days before such cancellation or non-renewal is effective, except for cancellations due to non-payment of premium, in which case 10 days written notice is acceptable.

### B. *Insurance Requirements for the Selected Proposer*

- **Commercial General Liability Insurance**, written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:

- \$1,000,000 per occurrence
- \$2,000,000 general aggregate, which must apply on a per location/per project basis
- \$2,000,000 products/completed operations aggregate

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its subcontractors. When providing evidence of insurance, the Proposer must include a completed standard Acord 855 NY form.

- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits.

- **Professional Liability ("Errors & Omissions") Insurance** must be maintained at a limit of not less than \$3,000,000 each claim.

### C. *Insurance Requirements for Subconsultants*

- **Commercial General Liability Insurance**, written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:

- \$1,000,000 per occurrence
- \$2,000,000 general aggregate, which must apply on a per location/per project basis
- \$2,000,000 products/completed operations aggregate



BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its subcontractors. When providing evidence of insurance, the Proposer must include a completed standard Acord 855 NY form.

- **Workers’ Compensation, Employer’s Liability, and Disability Benefits** shall not be less than statutory limits.
- **Subconsultant will also be required to obtain all other insurances listed in Section VII(B) unless otherwise approved in writing by BPCA prior to commencement of any Subconsultant’s work.**

**VIII. COST PROPOSAL; FORMAT AND REQUIRED INCLUSIONS**

Each Cost Proposal must state an hourly fee structure for the Legal Services contemplated herein. Each Cost Proposal must detail the hourly rates to be billed for work performed by partners, senior associates, mid-level associates, junior associates, law clerks, paralegals and others (e.g., investigators).

In no event will BPCA pay a rate for any attorney, including a partner-level attorney, exceeding \$600/hour. The maximum rates to be paid by BPCA are the lesser of the following hourly rates or the firm’s billing rates normally charged to its governmental clients:

Partner/Of Counsel	\$600.00 per hour
Senior Associate <sup>1</sup>	\$550.00 per hour
Mid-level Associate <sup>2</sup>	\$500.00 per hour
Junior Associate <sup>3</sup>	\$425.00 per hour
Law Clerk <sup>4</sup>	\$325.00 per hour
Legal Assistant/Paralegal	\$150.00 per hour

The maximum rate structure is subject to change from time to time. In certain cases where third parties have agreed to reimburse BPCA’s legal fees, retained law firms may be compensated at higher rates than set forth above. Further, for certain complex matters, BPCA in its sole discretion and only prior to the commencement of work for any such matter, may compensate law firms at higher rates than set forth above.

**The Cost Proposal must be submitted in its own separate, sealed envelope within the sealed package containing all other Proposal documents. Please provide two (2) copies of the Cost Proposal.**

**IX. SELECTION PROCESS**

**A. *Evaluation***

Each timely submitted Proposal will be reviewed for compliance with the form and content requirements of this RFP. A committee of BPCA employees selected by BPCA (the “Committee”) will then review and evaluate the Proposals in accordance with the evaluation criteria set forth below. While only Committee

<sup>1</sup> Senior associates have at least four years of experience.

<sup>2</sup> Mid-level associates have three to four years of experience.

<sup>3</sup> Junior associates have passed the bar exam but have less than three years of experience.

<sup>4</sup> Law clerks are law student interns or first year associates who have yet to pass the bar exam.

members will score the evaluation criteria, the Committee may consult an outside expert for advisement on the evaluation of matters requiring technical expertise. Before final selection, BPCA must determine that the proposed selected Proposer is responsible, in accordance with applicable law and BPCA’s Procurement Guidelines, which may be viewed at: <http://bpca.ny.gov/public-information/>.

***B. Interviews***

BPCA reserves the right to decide whether to interview any or all of the Proposers. The Committee may conduct interviews for many reasons, including to further assess a Proposer’s ability to perform the Legal Services, or provide specific services, or to seek information related to any other evaluation criteria. The proposed Lead Partner, as well all other key personnel proposed to perform the Legal Services, must be available to participate in the interview.

***C. Evaluation Criteria for Selection***

Selection will be based upon the following criteria:

1. Technical Evaluation:

- A) Demonstrated experience in the selected legal practice area(s):..... 25%
- B) Experience and expertise of proposed team members, availability of partners and interview feedback (if applicable):..... 25%
- C) Overall firm depth and resources:..... 15%
- D) Demonstrated relevant experience with municipalities or other similar governmental entities: ..... 15%
- E) Proposed MBE/WBE utilization plan (the “Utilization Plan”) and/or Proposer MBE/WBE status:..... 8%
- F) Proposed SDVOB utilization plan or firm SDVOB status: ..... 2%
- G) Response to Diversity Practices Questionnaire: ..... 8%
- H) Anticipated New York State business usage in contract performance..... 2%

2. Cost Proposal evaluation.

***D. Basis for Contract Award***

The Contract(s) will be awarded to the highest technically rated Proposer(s) whose Proposal(s) are determined to be responsive and in the best interests of BPCA, subject to a determination that the Cost Proposal is fair, reasonable, and provides the best value to BPCA given the requirements of the project.

**X. NON-COLLUSION**

By submitting a Proposal, each Proposer warrants and represents that any ensuing Contract has not been solicited or secured directly or indirectly in a manner contrary to the laws of the State of New York, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Contract by any conduct, including the paying or giving of any fee, commission, compensation, gift, or gratuity or consideration of any kind, directly or indirectly, to any member of the board of directors, employee, officer or official of BPCA.

**XI. IRAN DIVESTMENT ACT**

By submitting a Proposal or by assuming the responsibility of any Contract awarded hereunder, each Proposer certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regsg/docs/ListofEntities.pdf> and further certifies that it

will not utilize any subcontractor/consultant that is identified on the Prohibited Entities List on this Contract. The selected Proposer agrees that should it seek to renew or extend any Contract awarded hereunder, it must provide the same certification at the time the Contract is renewed or extended. The selected Proposer also agrees that any proposed assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before BPCA may approve a request for assignment of the Contract.

During the term of any Contract awarded hereunder, should BPCA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, BPCA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the New York State Iran Divestment Act of 2012 within 90 days after the determination of such violation, then BPCA shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the selected Proposer in default of the awarded Contract.

BPCA reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with the selected Proposer should it appear on the Prohibited Entities List hereafter.

**XII. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Proposers for this Contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Proposers need to be aware that all authorized users of this Contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their contracts. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below. Each Proposer must include a response to this question with their proposal. Please note that a “yes” response requires supporting information. If yes, identify New York State businesses that will be used and attach identifying information.

Will New York State businesses be used in the performance of this contract?      \_\_\_\_Yes      \_\_\_\_No

## **EXHIBIT A**

### **Scope of Work**

The scope of the Legal Services is described more fully below. The case volume for each practice area has tended to vary greatly over the past few years. BPCA reserves the right to assign firms with demonstrated expertise in one area of law to a legal matter that may cross over to subject matter areas typically covered by firms with expertise in other practice areas.

Municipal/Governmental Entity representation – includes, advising the Authority on the wide range of issues affecting a public entity, including day-to-day operational issues such as corporate governance, compliance with open meetings laws and the Freedom of Information Act, as well as complex transactional matters and litigation, including in the areas of law described below.

Real Estate –includes, but is not limited to, any matter involving the Authority’s real property assets, including, but not limited to, the acquisition, sale and leasing of real property by the Authority, all negotiations related thereto, compliance, enforcement of lease provisions, property maintenance, title disputes, and condominium conversions. The work is predominantly transactional. Real estate litigation experience is desirable but not necessary.

Residential and Commercial Landlord/Tenant – includes, but is not limited to, representing the Authority in matters relating to individual residential units, including, but not limited to foreclosures, enforcement of lease provisions and litigation in housing court.

Land use, Zoning and Environmental – includes, but is not limited to, advising in all areas of national, regional and local land use matters, including zoning due diligence and analysis, environmental regulatory matters, strategic advice, zoning opinions and letters, advising on the public trust doctrine, land use approvals for development projects, litigating land use and environmental disputes, and advising on various New York City tax exemption programs including New York City’s 421-a program.

Procurement – includes, but is not limited to, counseling government entities on procurement matters, which may include, but not be limited to, development and review of solicitation documents, review and negotiation of contract terms, counseling on bid protest and challenges, and counseling on disputes arising out of bidding, performance, or termination of government contracts.

Construction – includes, but is not limited to, review of contracts, purchase/job orders and change orders relating to construction and design projects, contract template review and analysis, advising on procurement laws and bid award process, and construction dispute resolution, including litigation and alternative dispute resolution procedures.

Labor, Employment and Benefits – includes, but is not limited to, advice on internal employee matters, including severance-related matters, aid in drafting policies and best practices, internal investigations, litigation support, administrative hearings, arbitration and mediation. At this time, the Authority does not anticipate any employment contract drafting and negotiation work.

Civil Litigation - includes, but is not limited to, counseling on and handling of trial and appellate matters in federal and state courts, adjudicative proceedings, arbitrations and/or mediations. We expect that litigation may arise in the following areas: general commercial litigation, Article 78 and regulatory proceedings, civil rights and employment litigation, construction litigation, and allegations of constitutional law violations. We are not seeking representation for personal injury or tort claims.

## EXHIBIT B

### **CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MBEs/WBEs/SDVOBs AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

#### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations BPCA is required to promote opportunities for the maximum feasible participation of New York State-certified MBEs/WBEs (collectively, “MWBE(s)”) and the employment of minority group members and women in the performance of BPCA contracts. Pursuant to New York State Executive Law Article 17-B and 9 NYCRR §252, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified SDVOBs.

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, BPCA hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Proposer agrees that BPCA may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how BPCA will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. If applicable, the portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the Proposer further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and BPCA may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Proposer may arrange to provide such evidence via a non-electronic method by contacting Mr. Anthony Peterson at [Anthony.peterson@bpca.ny.gov](mailto:Anthony.peterson@bpca.ny.gov) or 212-417-2337. Please note that the NYSCS is a one-stop solution for all of your MBE/WBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet the Proposer’s MBE/WBE requirements, please see the attached MBE/WBE guidance from the New York State Division of Minority and Women’s Business Development, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

Additionally, a Proposer will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to BPCA for review and approval.
- B. BPCA will review the submitted MWBE Utilization Plan and advise the Proposer of BPCA acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Mr. Anthony Peterson at BPCA, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
  - 1) If a Proposer fails to submit an MWBE Utilization Plan;
  - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
  - 3) If a Proposer fails to submit a request for waiver; or
  - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

The successful Proposer will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Proposer will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to BPCA, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Business Participation Opportunities for SDVOBs**

For purposes of this solicitation, BPCA hereby establishes an overall goal of 6% for SDVOB participation. A Contractor must document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required SDVOB documentation. The directory of New York State Certified SDVOBs can be viewed at: [http://www.ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).

In accordance with 9 NYCRR §252.2(s), Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, such finding constitutes a breach of Contract and Contractor shall be liable for damages as specified in the Contract.

Such damages shall be calculated based on the actual cost incurred by BPCA related to BPCA's expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing certified SDVOB programmatic goals.

- A. Additionally, a Proposer agrees to submit a Utilization Plan with their bid or Proposal as evidence of compliance with the foregoing. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.

- B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by facsimile at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of SDVOB participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.
- D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:
  - 1) If a Proposer fails to submit a Utilization Plan;
  - 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
  - 3) If a Proposer fails to submit a request for waiver; or
  - 4) If BPCA determines that the Proposer has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any SDVOB identified within its Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to the Contract award may be made at any time during the term of the Contract to BPCA, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's SDBVOB Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the SDVOB goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Proposer agrees with all of the terms and conditions of the attached MWBE Equal Employment Opportunity Policy Statement. The Proposer is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Proposer, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Proposer will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form # 4, to BPCA with its bid or proposal.

If awarded a Contract, Proposer shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by BPCA on a monthly basis during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence

victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**





## **Your MBE/WBE Utilization and Reporting Responsibilities Under Article 15-A**

The New York State Contract System (“NYSCS”) is your one stop tool compliance with New York State’s MBE/WBE Program. It is also the platform New York State uses to monitor state contracts and MBE/WBE participation.

### **GETTING STARTED**

To access the system, please login or create a user name and password at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract’s project manager. For verification, in the email, include your business name and contact information.

### **VENDOR RESPONSIBILITIES**

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MBE/WBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MBE/WBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on all features of the NYSCS. You may also click on the **Help & Tools** icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the “Knowledge Base” through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>).

For more information, contact your project manager.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

**EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**MBE/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_ (the “Contractor”), agree to adopt the following policies with respect to the project being developed at, or services rendered to, the Battery Park City Authority (“BPCA”).

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<p><b>MBE/WBE</b> This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MBE/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:</p> <ol style="list-style-type: none"><li>(1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.</li><li>(2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.</li><li>(3) Ensuring that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MBEs/WBEs.</li><li>(4) Where feasible, dividing the work into smaller portions to enhance participations by MBEs/WBEs and encourage the formation of joint venture and other partnerships among MBE/WBE contractors to enhance their participation.</li><li>(5) Documenting and maintaining records of bid solicitation, including those to MBEs/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MBE/WBE contract participation goals.</li><li>(6) Ensuring that progress payments to MBEs/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives are developed to encourage MBE/WBE participation.</li></ol>	<p><b>EEO</b> (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing diversity programs to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.</p> <ol style="list-style-type: none"><li>(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.</li><li>(c) At the request of BPCA, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.</li><li>(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.</li><li>(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.</li></ol>
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Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2016

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ is designated as the Consultant's Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises - Equal Employment Opportunity (MBE/WBE - EEO) program.

**MBE/WBE Contract Goals**

**30% Minority and Women's Business Enterprise Participation**

\_\_\_% Minority Business Enterprise Participation

\_\_\_% Women's Business Enterprise Participation

**EEO Contract Goals** (if applicable)

\_\_\_% Minority Labor Force Participation

\_\_\_% Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### Diversity Practices Questionnaire

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as suppliers/contractors?<sup>5</sup>

4. Does your company provide technical training<sup>6</sup> to MBEs/WBEs? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of MBEs/WBEs participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved MBE/WBE mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of MBEs/WBEs in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal MBE/WBE supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified MBE/WBE if selected as the successful Proposer? Yes or No

If Yes, complete the attached Utilization Plan.

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<sup>5</sup> Do not include onsite project overhead.

<sup>6</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

Battery Park City Authority Request For Proposals

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All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip

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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT C**

**Acknowledgement of Addenda**

**RFP TITLE:** \_\_\_\_\_

**Complete Part I or Part II, whichever is applicable, and sign your name in Part III.**

**Part I**

Listed below are the dates of issue for each Addendum received in connection with this RFP:

Addendum #1, Dated \_\_\_\_\_, \_\_\_\_\_

Addendum #2, Dated \_\_\_\_\_, \_\_\_\_\_

Addendum #3, Dated \_\_\_\_\_, \_\_\_\_\_

Addendum #4, Dated \_\_\_\_\_, \_\_\_\_\_

Addendum #5, Dated \_\_\_\_\_, \_\_\_\_\_

Addendum #6, Dated \_\_\_\_\_, \_\_\_\_\_

**Part II Acknowledgement of No Receipt**

\_\_\_\_\_ No Addendum was received in connection with this RFP

**Part III**

Proposer's Name: \_\_\_\_\_

Proposer's Authorized Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT D**

**BPCA & BPCP Board Members and Employees**

**LIST OF BOARD MEMBERS**

Dennis Mehiel

Donald Cappocia

Martha Gallo

Lester Petracca

Hector Batista

**Employees:**

Curtis Afzal	Sankar Heerah	Sandra Power
Elsa Alvarez	Sonia Henry	Alix Pustilnik
Dana Anders	Hector Herrera	Robert Quon
Anthony Andriano	Craig Hudon	Jason Rachnowitz
Stephen Arciold	Shari Hyman	Madelin Ramirez
Kathleen Bailey	Kendall Jinwright	Manuel Rivera
Marie Baptiste	Amy Jogie	Anthony Robinson
Freddy Belliard	Benjamin Jones	Andrea Rodriguez
Scott Birdseye	Kadia Kane	Nelson Rogers
Nidia Blake-Reeder	Roland Kemp	Jose Rosada
Granderson Brown	Susie Kim	Holly Ross
Lauren Brugess	AnaMariah Knox	Carlos Santiago
Nancy Buivid	Karl Koenig	Jean Schwartz
Anthony Buquicchio	Betzayda Laboy	Lindsey Senn
Monica Centeno	Leandro Lafuente	Robert Serpico
Betty Chin	Michael LaMancusa	Rekha Sewraj-Kumar
Adam Choper	Della Lee	Sean Simon
Carlton Chotalal	Triny Lima	Kemnarine Singh
Deshay Crabb	Rene Lopcy	Seema Singh
Gwendolyn Dawson	Luis Lopez	Timothy Skipper
Henri delaVega	Robert Maggi	Sarah Smedley
Gilbert Depadua	Evelin Maisonet	Linda Soriero
Paul Diaz-Larui	Evonne Marche	Nicole Stallworth-Roper
Tonasia Dopson	Philip Mason	Kareem Starks
Abigail Ehrlich	Kevin McCabe	Jerome Sturiano
Maria Ellison	Brenda McIntyre	John Tam
Richard Faraino	Princess McNeill	Alexis Torres
Anitra Fauntelroy	Shinay McNeill	Ryan Torres
Eric T. Fleisher	Vanessa Mesine	Douglas VanHorn
Robin Forst	Ronnie Mohammed	Noe Velasquez
Joseph Ganci	Bertha Narcisse	Evangelio Villalobos
Julissa Garcia	Robert Nesmith	Sharon Wade
Luis Garcia	Siu NG	David Wallace
Abigail Goldenberg	Yoshihiro Nishida	Peter Wheelwright
Lenron Goode	Kevin O'Toole	Eric White
Neresa Gordon	Hector Oyola	Angela Whitehead
Ned Greenberg	Willem Paillant	Dwight Williams
Patrick Greene	Gladys Pearlman	Kenneth Windman
Evelyn Gregg	Dahlia Pena	Al Wright
Kelly Grogan	Churman Persaud	Jouli Yohannes
Robert Hansen	Anthony Peterson	Julian Zapata
Nicole Heater	Bruno Pomponio	Bingxin Zheng
	Katherine Powell	