

**BATTERY PARK CITY AUTHORITY**

**AND**

**BATTERY PARK CITY PARKS CONSERVANCY CORPORATION**

**REQUEST FOR PROPOSALS**

**FOR**

**PUBLIC ACCOUNTANT – AUDIT SERVICES**

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## **I. SUMMARY**

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) and the Battery Park City Parks Conservancy Corporation (“BPCPC”), collectively referred to here as the “Organization,” requests proposals (each individually, a “Proposal” or collectively, the “Proposals”) from public accounting firms (each individually, a “Proposer” or collectively, the “Proposers”) to provide audit services to the Organization. Currently, the Organization’s financial reporting includes financial statements relating to BPCA and BPCPC. BPCPC is a 501(c)(3) that is a blended component unit under the guidance included in Governmental Accounting Standards Board (“GASB”) Statement Nos. 14 and 39. BPCPC’s assets, liabilities, and results of operations are combined with those of BPCA for financial reporting purposes. Audit services shall include, but not be limited to, reviewing the Organization’s semi-annual financial statements and providing the Organization with audit and opinion letters in connection with its year-end financial statements.

Minority-Owned Business Enterprises (“MBE”) and Women-Owned Business Enterprises (“WBE”) are encouraged to submit Proposals.

This request for proposals, the attachments and any additional information submitted herewith, (collectively, the “RFP”) does not obligate BPCA to complete the selection and contract award process. BPCA reserves the right: 1) to accept or reject any and all Proposals; 2) to request additional information from any or all Proposers to assist BPCA in its evaluation process; 3) to amend or withdraw this RFP prior to the announcement of the selected firm; and 4) to award the proposed services, in whole or in part, to one or more firms. In case of an amendment to the RFP, all Proposers will be provided with a copy of any such amendment(s) and will be afforded the opportunity to revise their Proposals in response to the RFP amendment.

## **II. DESCRIPTION OF THE ORGANIZATION**

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 the Organization’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/>.

To obtain a copy of BPCA’s most recently completed audited financial statements, please visit BPCA’s website. . The audited financial statements and related reports found on BPCA’s website will provide you with an overview of the operations for which BPCA is responsible and the areas of expertise in which the selected Proposer must be proficient.

## **III. SERVICES REQUIRED**

The Organization requests that qualified firms submit proposals to BPCA to serve as Public Accountants for the review and audit of the Organization’s financial statements. If selected, Proposer will provide at a minimum the following:

- A.** The selected Proposer shall be responsible for performance of all services detailed in the Scope of Work, attached hereto as Exhibit A.
- B.** All work to be performed by the selected Proposer shall be performed under the supervision of a Partner of the firm in charge of this engagement, who must ensure that the work completed for the Organization is performed competently and in a timely manner.

#### **IV. KEY DATES, CONTRACT TERM AND MINIMUM QUALIFICATIONS**

##### **A. Key Dates**

The following is a list of key dates, up to and including the date Proposals are due to be submitted, which is subject to change at the Organization's discretion:

- Request for Proposals issued: **November 25, 2015**
- Deadline to submit questions to the Organization: **December 7, 2015** by 4:00 p.m. (by email only)  
All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": **Linda Soriero** of Battery Park City Authority, at [linda.soriero@bpca.ny.gov](mailto:linda.soriero@bpca.ny.gov).
- Deadline for the Organization's response to substantive questions: **December 11, 2015** (by email)
- **DUE DATE FOR RESPONSES TO RFP: January 6, 2016 by 3:00 p.m. (EST) (the "Due Date")**
- Selection and notification of successful Proposer: To be determined.
- Contract start date: To be determined.

##### **B. Anticipated Contract Term**

It is anticipated that the term of the contract awarded pursuant to this RFP (the "Contract") will be 4 years. The Organization reserves the right to terminate the Contract at any time, with or without cause, upon thirty (30) days written notice. The Organization reserves the right to terminate the Contract at any time, without prior notice, if the partner identified in the Proposal as the Lead Partner for this engagement ceases to be employed by the selected Proposer.

##### **C. Minimum Qualification Requirements**

The following are the Minimum Qualification Requirements for this RFP. **Proposals that fail to comply with these requirements will be rejected.**

- 1) The firm must have an office in New York State (a New York City office is preferred); and
- 2) The Firm and Lead Partner must both be licensed in the State of New York as a Certified Public Accountant.

#### **V. GENERAL REQUIREMENTS**

##### **A. Questions regarding MBE/WBE participation, joint ventures and sub-contracting goals**

Please see **Exhibit B** (attached) for contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs and equal employment opportunities for minority group members and women.

For questions relating to MBE/WBE participation, joint ventures and sub-contracting goals ONLY, please contact "MBE/WBE Designated Contact" Mr. Anthony Peterson at 212.417.2337.

##### **B. Restricted Period**

Applicants are restricted from making contact with anyone other than the Designated Contact or MBE/WBE Designated Contact specified above during the period from the date of publication of the notice of this RFP in the New York State Contract Reporter through approval of the Contract by BPCA (the "Restricted Period"). Employees of BPCA are required to record certain contacts during the Restricted Period, including, but not limited to, any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence BPCA's conduct or decision

regarding the governmental procurement, and to make a determination of responsibility based, in part, upon any such contact. Failure to abide by this process may result in a finding that the firm is a non-responsive Proposer.

### **C. Submission of Proposals**

#### **Proposals are due no later than 3:00 p.m. on January 6, 2016.**

Proposers must submit ten (10) paper copies of their Proposals and one (1) electronic PDF copy in a sealed package clearly marked “**Proposal Enclosed – Public Accountant – Audit Services**” to the Designated Contact **by messenger, overnight courier or certified mail** to the following address:

Hugh L. Carey Battery Park City Authority  
Public Accountant - Audit Services RFP  
200 Liberty Street, 24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Ms. Linda Soriero  
Financial Administrative Assistant

The Organization is not responsible for any internal or external delivery delays which may cause any Proposal to arrive beyond the stated Due Date. To be considered, Proposals must arrive at the time and place specified herein and be time stamped by BPCA’s time stamp prior to the Due Date. Please leave ample time for building security, as 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 a second, amended Proposal, clearly labeled “**Amended Proposal Enclosed –Public Accountant – Audit Services**,” as long as the amended Proposal is submitted by the Due Date.

Public access to Proposals shall be governed by the relevant provisions of the Freedom of Information Law, Article 6 of the New York State Public Officers Law, and regulations adopted pursuant thereto.

### **D. Mandatory Forms**

Proposers must complete and include with their Proposal all “Mandatory Forms,” which can be found at the following URL address: [http://www.batteryparkcity.org/pdf\\_n/Mandatory\\_Forms\\_Packet.pdf](http://www.batteryparkcity.org/pdf_n/Mandatory_Forms_Packet.pdf), by the Due Date.

These Mandatory Forms include the following:

1) NYS Standard Vendor Responsibility Questionnaire – **Submit with the Cost Proposal (as described below), one (1) original unbound set of a completed NYS Standard Vendor Responsibility Questionnaire with original ink signatures. Do not include the Standard Vendor Responsibility Questionnaire in the copies of the Cost Proposal.** The NYS Standard Vendor Responsibility Questionnaire must be notarized and signed by the individual(s) authorized to bind the firm contractually. Indicate the title or position that the signer holds within the firm.

2) State Finance Law § 139 Form 1 – **one original unbound completed SFL 139 Form 1: Professional’s Certifications Pursuant to SFL § 139-j and § 139-k with original signature.** State Finance Law § 139 Forms 1 must be signed by the individual(s) authorized to bind the firm contractually.

3) W-9 form.

4) Statement of Non-Collusion.

5) Diversity Forms.

## **VI. PROPOSAL FORMAT AND CONTENTS**

## **A. Proposal Format**

The Proposal must be printed on 8½” x 11” paper. Pages should be numbered. The Proposal will be evaluated on the basis of its content, not length and should be limited to no more than ten (10) pages front and back, exclusive of the Transmittal Letter and the Appendices (See Subsection D – RFP Additional Information Request) listed below. The Organization reserves the right to disqualify Proposals that fail to comply with any of these instructions.

## **B. Proposal Content**

A Proposal in response to this RFP must include the following sections in the order listed:

- 1) Transmittal Letter, as follows:

The Proposal must include a signed Transmittal Letter from a person within the firm who is authorized to bind the firm, preferably the Lead Partner. **Transmittal Letters must be signed. Proposals with unsigned Transmittal Letters will be rejected.**

**The Transmittal Letter must include a representation by the Proposer that, 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.**

- 2) Executive Summary.
- 3) Firm’s discussion of its understanding of the Services required (see Section III).
- 4) Firm’s Responses to the RFP Questions and RFP Additional Information Request, set forth below.
- 5) Firm’s Cost Proposal, as described below.

## **C. RFP Questions**

- 1) Briefly describe your firm’s background, size, and history as it may be relevant to the Services required, with an emphasis on the audit of governmental and non-profit entities. If your offices are located in more than one city, indicate which office will provide the services.
- 2) Describe the relevant special services your firm provides, particularly those that may not be offered by other firms.
- 3) Describe your experience and methodology for performing audits and reviews.
- 4) 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.
- 5) Describe the on-line services, publications, training/seminars and other resources maintained by your firm that would be available to the Organization.
- 6) How does your firm identify and manage conflicts of interest?
- 7) Has your firm or any of the firm’s partners/employees been disciplined or censured by any regulatory body within the last 5 years? If so, please describe the relevant facts.
- 8) Within the last five 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 Public Accountant – Audit Services? If so, please provide an explanation and the current status or disposition of the matter.
- 9) Are there any potential conflict of interest issues in representing the Organization?
- 10) List any professional or personal relationships your firm’s employees may have with the Organization’s Board and/or staff members of the Organization.
- 11) List all the professional staff you intend to assign to this engagement and the area(s) of specialization. Describe the role of each employee who will be assigned to this engagement.
- 12) Identify the Lead Partner who will be the primary contact in providing services to the Organization, and who will be listed as a “key person” in any contract with the Organization.
- 13) Describe your proposed team’s experience with similar work for other public agencies and authorities, with a particular emphasis on New York State agencies and authorities.

14) Describe your firm's "backup plan" in the event one or more of the Partners assigned to this engagement leave the firm.

15) Discuss fully the status, implications, impacts and timing of implementation of the following as they affect the Organization:

- a) GASB Statement No.73– Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68
- b) GASB Statement No.74– Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans
- c) GASB Statement No.75– Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions
- d) GASB Statement No.76- The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments
- e) GASB Statement No.77- Tax Abatement Disclosures
- f) Any other Related Financial Reporting Requirements of the Authority

16) In the past five years, have any 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 each such client's in-house counsel's name, address and telephone number.

17) Please provide any additional information that would serve to distinguish your firm from other firms and that you believe may be relevant to this RFP and your capability to perform the services requested.

#### **D. RFP Additional Information Request**

##### 1) Insurance:

The selected Proposer will be required to provide the types and amounts of insurance as listed below, for the duration of its performance of the Work:

- **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

BPCA, BPCPC, and the State of New York must be protected as additional insured on ISO Form CG 2010 (11/85) or its equivalent and must be included as such on all subcontracts.

- **Automobile Liability Insurance** with a Combined Single Limit of not less than \$1,000,000. Coverage must apply to the Proposer's owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State of New York as additional insured.
- **Umbrella Liability Insurance** at a limit not less than \$5,000,000 per occurrence and in the aggregate. BPCA, BPCPC, and the State of New York must be protected as additional insured and must be included as such on all subcontracts.
- **Workers' Compensation / Employer's Liability / Disability Benefits Liability** at statutorily required limits.
- **Professional Liability ("Errors & Omissions") Insurance** must be maintained at a limit of not less than \$5,000,000 each claim.

- **Data Breach and Privacy / Cyber Liability Insurance** including coverage for failure to protect confidential information and failure of the security of the Proposer’s computer systems or BPCA’s / BPCPC’s systems due to the actions of the Proposer which results in unauthorized access to BPCA’ and or BPCPC’s data. The limit applicable to this policy shall be no less than \$1,000,000 per occurrence, and must apply to incidents related to the Cyber Theft of BPCA’s and BPCPC’s property, including but not limited to money and securities. BPCA, BPCPC, and the State of New York must be protected as additional insured and must be included as such on all subcontracts.

The policy shall include coverage for third party fidelity including cyber theft and protect BPCA, BPCPC, and the State of New York as “Additional Insured”.

The total cost of the insurance, as listed above, 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 above 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.

2) Appendices: (Included in Proposal Format)

Include professional biographies for all Partners and senior level staff listed in your proposal.

3) References:

Please provide at least three client (3) references for whom your firm has performed similar work to that requested in this RFP. For each client, please provide the name, address and telephone number for the client’s Chief Financial Officer.

**E. Cost Proposal**

The Cost Proposal, regardless of whether it is bound, must be submitted in its own separate envelope within the sealed package containing all other Proposal documents. For the avoidance of doubt, the Cost Proposal must be submitted separately and unbound from the remainder of the Proposal documents.

Each “Cost Proposal” must state a maximum annual fee for the services contemplated herein for the next four years. In addition to the maximum annual fee required in the Cost Proposal, please provide the hourly billing rate per position and the number of hours you anticipate allocating for each member of your professional staff you intend to assign to this engagement.

**VII. THE EVALUATION PROCESS**

**A. Objectives**

The primary objectives of the evaluation process is to select a firm that:

- Demonstrates a thorough understanding of the scope of the engagement and the specific responsibilities that it entails;
- Possesses adequate resources to handle both assigned responsibilities and unforeseen circumstances that may arise;

- Assigns highly skilled, experienced, diligent, responsible and professional personnel to perform the required services;
- Maintains high ethical standards and has an unblemished reputation;
- Has no conflict of interest between its representation of the Organization and that of other clients.

The selection process will begin with the review and evaluation of each of the written Proposals. The purpose of this evaluation process is twofold: (1) to examine the responses for compliance with this RFP and (2) to identify the complying firms that have the highest probability of satisfactorily performing the Services required. The evaluation process will be conducted in a comprehensive and impartial manner by a committee of the Organization's employees selected by BPCA (the "Committee"). **The Committee will evaluate the Proposals based upon the evaluation criteria set forth below.**

The Organization reserves the right to reject and return unopened to the Proposer any Proposal received after the RFP Due Date of 3pm on January 6, 2016. All timely submitted Proposals will be reviewed to determine if they contain all required submittals specified herein. Incomplete Proposals may be rejected.

## **B. Interviews**

The Organization reserves the right to determine whether interviews will be necessary for any or all of the Proposers. The purpose of an interview is to further document a Proposer's ability to provide the Services required, and to impart to the Committee an understanding of how specific services will be furnished. The proposed Lead Partner, as well all other key personnel proposed to provide the services must be present and participate in the interview. The firm will be evaluated on the basis of whether the interview substantiates the characteristics and attributes claimed by the Proposer in its written response to this RFP and any other information requested by the Committee prior to the interview.

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

Selection will be based upon the following criteria:

- 1) Cost: 20%
- 2) Relevant public sector experience and expertise in similar size and scope organizations: 30%
- 3) Response to RFP, firm resources, organizational capability, quality/experience of assigned staff and support staff: 30%
- 4) Proposed MBE/WBE utilization plan (the "Utilization Plan") and/or Firm MBE/WBE status: 10%
- 5) Response to Diversity Practices Questionnaire: 10%

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

The Contract will be awarded to the highest rated Proposer.

## **VIII. NON-COLLUSION**

By submitting a Proposal, Proposers hereby warrant and represent 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 the Organization.

## **IX. IRAN DIVESTMENT ACT**

By submitting a Proposal or by assuming the responsibility of any Contract awarded hereunder, Proposers hereby certify that they are 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/regs/docs/ListofEntities.pdf> and further certify that they will not utilize any subconsultant 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.

#### **X. 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:

Will New York State businesses be used in the performance of this contract?       Yes       No

If yes, identify New York State businesses that will be used and attach identifying information.

## EXHIBIT A

### SCOPE OF WORK

The selected Proposer shall annually provide to the Organization the following services:

- A.** An audit (the “Year-End Audit”) of the Organization’s statement of net position as of October 31, and the related statements of revenue, expenses, and changes in net position and cash flow statements for the year then ended in accordance with Governmental Auditing Standards (“GAS”). Such Year-End Audit shall include, but not be limited to:
  - A report to BPCA’s Audit Committee (under AICPA AU-C 260);
  - A report on the Organization’s internal controls;
  - A report on the Organization’s compliance with investment guidelines;
  - A report on information technology observations and recommendations;
- B.** A review (the “Semi-Annual Review”) of the Organization’s statement of net position as of April 30, and the related statements of revenue, expenses, and changes in net position and cash flow statements for the six months then ended.
- C.** A management letter to be attached to the Organization’s year-end and six-month (semi-annual) financial statements, if requested by BPCA.
- D.** Ad-hoc, informal consultation and guidance on related financial accounting and internal control matters, such as, but not limited to, GASB issues impacting the Organization’s recording or reporting of business transactions.
- E.** Presentation of audited financial statements to BPCA’s Audit Committee and attendance at monthly Board and/or quarterly Audit Committee meetings, as requested by the Organization.

## EXHIBIT B

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

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified MBEs/WBEs and the employment of minority group members and women in the performance of BPCA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether MBEs/WBEs had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" (the "Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of MBEs/WBEs in state procurement contracting versus the number of MBEs/WBEs that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified MBEs/WBEs program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that BPCA establish goals for maximum feasible participation of New York State Certified MBEs/WBEs and the employment of minority groups members and women in the performance of New York State contracts.

#### **Business Participation Opportunities for MBE/WBEs**

For purposes of this solicitation, BPCA hereby establishes an overall goal of 30% for MBE/WBE participation, 15% for MBE participation and 15% for WBE participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the Contract must document good faith efforts to provide meaningful participation by MBEs/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required MBE/WBE documentation. The directory of New York State Certified MBE/WBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=7562>.

For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and BPCA may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MBEs/WBEs had Contractor achieved the contractual MBE/WBE goals; and (2) all sums actually paid to MBEs/WBEs 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 its goals for the utilization of MBEs/WBEs by submitting evidence thereof through the New York State Contract System (the "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 BPCA. 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."

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 MBE/WBE 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 MBE/WBE 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 MBE/WBE Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the MBE/WBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or Proposal in response to this RFP, the Proposer/Contractor agrees with all of the terms and conditions of the attached M/WBE – Equal Employment Opportunity Policy Statement. The Contractor is required to ensure that it shall and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon, except where such work is for the beneficial use of the Contractor, 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 further agrees to submit a MBE/WBE and Equal Employment Opportunity Policy Statement, Form # 4, to BPCA with their Proposal.

To ensure compliance with Article 15-A, Proposer further agrees, where applicable, to submit with the Proposal, a staffing plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to BPCA a workforce utilization report identifying the workforce actually utilized on the Contract, if known, through the NYSCS; provided, however, that a Proposer may arrange to provide such report via a non-electronic method by contacting BPCA.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other New York 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 are allowed by the Contract.**

For questions on MBE/WBE participation, joint ventures and sub-contracting goals ONLY, please contact Mr. Anthony Peterson at 212.417.2337.



**Division of Minority  
and Women's  
Business Development**

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

The New York State Contract System (“NYSCS”) is your one stop tool for 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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### **MBE/WBE**

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:

- (1) Actively and affirmatively soliciting bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MBE/WBE contractor associations.
- (2) Requesting a list of State-certified MBEs/WBEs from BPCA and soliciting bids from these MBEs/WBEs directly.
- (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.
- (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.
- (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.
- (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.

### **EEO**

(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.

(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.

(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.

(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.

(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.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2015

By \_\_\_\_\_

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

\_\_\_\_\_ is designated as the Contractor'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 \_\_\_\_\_ company (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-ventures, 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>1</sup>

4. Does your Company provide technical training<sup>2</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 M/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 M/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 MBEs/WBEs if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan

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<sup>1</sup> Do not include onsite project overhead.

<sup>2</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.

All information provided in connection with the Diversity Practices 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 \_\_\_\_\_

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**

**List of BPCA Board Members and Employees**

**List of Board Members**

Dennis Mehiel  
Hector Batista  
Frank Branchini  
Don Capoccia  
Martha Gallo  
Lester Petracca

**List of BPCA Employees**

1. Curtis Afzal
2. Elsa Alvarez
3. Dana Anders
4. Anthony Andriano
5. Stephen Arciold
6. Kathleen Bailey
7. Marie Baptiste
8. Freddy Belliard
9. Scott Birdseye
10. Nidia Blake-Reeder
11. Lauren Brugess
12. Nancy Buivid
13. Anthony Buquicchio
14. Monica Centeno
15. Betty Chin
16. Adam Choper
17. Carlton Chotalal
18. Deshay Crabb
19. Gwendolyn Dawson
20. Henri delaVega
21. Gilbert Depadua
22. Paul Diaz-Larui
23. Abigail Ehrlich
24. Maria Ellison
25. Richard Faraino
26. Anitra Fauntelroy
27. Eric T. Fleisher
28. Robin Forst
29. Joseph Ganci

30. Julissa Garcia
31. Luis Garcia
32. Abigail Goldenberg
33. Lenron Goode
34. Neresa Gordon
35. Ned Greenberg
36. Patrick Greene
37. Evelyn Gregg
38. Kelly Grogan
39. Robert Hansen
40. Nicole Heater
41. Sankar Heerah
42. Sonia Henry
43. Hector Herrera
44. Craig Hudon
45. Cherish Hurley
46. Shari Hyman
47. Amy Jogie
48. Benjamin Jones
49. Kadia Kane
50. Roland Kemp
51. Susie Kim
52. Karl Koenig
53. Betzayda Laboy
54. Leandro Lafuente
55. Michael LaMancusa
56. Della Lee
57. Triny Lima
58. Rene Lopycy
59. Luis Lopez
60. Robert Maggi
61. Evelin Maisonet
62. Evonne Marche
63. Philip Mason
64. Kevin McCabe
65. Ellen McCarthy
66. Brenda McIntyre
67. Princess McNeill
68. Shinay McNeill
69. Vanessa Mesine
70. Ronnie Mohammed

71. Bertha Narcisse
72. Robert Nesmith
73. Siu NG
74. Yoshihiro Nishida
75. Kevin O'Toole
76. Hector Oyola
77. Willem Paillant
78. Gladys Pearlman
79. Dahlia Pena
80. Churman Persaud
81. Anthony Peterson
82. Bruno Pomponio
83. Katherine Powell
84. Sandra Power
85. Alix Pustilnik
86. Robert Quon
87. Jason Rachnowitz
88. Madelin Ramirez
89. Manuel Rivera
90. Anthony Robinson
91. Andrea Rodriguez
92. Nelson Rogers
93. Jose Rosada
94. Holly Ross
95. Sebastian Rozalski
96. Carlos Santiago
97. Jean Schwartz
98. Lindsey Senn
99. Robert Serpico
100. Rekha Sewraj-Kumar
101. Sean Simon
102. Kemnarine Singh
103. Seema Singh
104. Timothy Skipper
105. Linda Soriero
106. Kareem Starks
107. Jerome Sturiano
108. John Tam
109. Alexis Torres
110. Ryan Torres
111. Douglas VanHorn

112. Noe Velasquez
113. Evangelio Villalobos
114. Sharon Wade
115. David Wallace
116. Peter Wheelwright
117. Eric White
118. Angela Whitehead
119. Dwight Williams
120. Kenneth Windman
121. Al Wright
122. Jouli Yohannes
123. Julian Zapata
124. Bingxin Zheng