



**REQUEST FOR QUALIFICATIONS**

**TO PROVIDE**

**PROGRESSIVE DESIGN-BUILD SERVICES**

**FOR THE**

**NORTH/WEST BATTERY PARK CITY RESILIENCY**

**PROJECT**

**September 10, 2021**

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## **1 INTRODUCTION**

### **1.1 Project and Process Overview**

The Battery Park City Authority (BPCA) seeks an entity that is prequalified pursuant to this request for qualifications (RFQ) to provide all necessary design-build services for the design and construction of flood resiliency improvements, including flood barriers, interior drainage infrastructure and site enhancements, in the northern and western areas of Battery Park City, as more particularly described herein (Project). The Project will be delivered pursuant to a progressive design-build contract (PDB Contract) in accordance with the New York Infrastructure Investment Act, as established in Part F of Chapter 60 of the 2015 Laws of New York (DB Act).

This RFQ invites statements of qualifications (SOQs) according to the requirements set forth herein, including in Section 5 (SOQ Submittal Requirements) and Schedule A (Submittal Requirements). The SOQs will be reviewed and evaluated to generate a shortlist of the entities determined to be the most highly qualified to perform the required design-build services, as described in Section 6 (SOQ Evaluation and Selection). BPCA will shortlist no more than four (4) entities pursuant to this RFQ. At completion of the SOQ evaluation process, BPCA intends to issue a request for proposals (RFP) only to such shortlisted entities for determining the highest scored Proposal for negotiations and award of the PDB Contract. In accordance with the DB Act, this RFQ is the first step in a two-step best value selection process, with the goal of awarding the PDB Contract to the Proposer with the highest scored Proposal based on the evaluation criteria to be specified in the RFP.

Only those entities that respond to this RFQ and are shortlisted in accordance with the requirements of this RFQ will be issued an RFP to submit a Proposal in response to the RFP. This RFQ is not a tender of an offer or an RFP, and there is no intention by BPCA to make an offer by issuing this RFQ.

### **1.2 BPCA**

Created in 1968, BPCA is a 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 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/>.

### **1.3 BPCA Goals**

BPCA's goals for the Project are as follows:

- (a) Resiliency and Environmental Stewardship – Design and construct a Project that meets FEMA certification requirements associated with the target level of design, provides long-term risk reduction to Battery Park City from coastal flooding events, adheres to a standard of design excellence consistent with that of existing Battery Park City development, incorporates specific sustainability goals (including those set forth in BPCA's Sustainability Plan at <https://bpca.ny.gov/wp-content/uploads/2020/09/BPC-Sustainability-Plan.pdf>) and minimizes environmental impacts through effective and efficient design and construction methods.
- (b) Engagement and Collaboration – Through effective engagement, communication and collaboration with a diverse group of impacted community residents, property owners and public stakeholders (including, without limitation, City, State and

federal agencies and entities), develop an environment of trust and collaboration in order to facilitate an outcome that meets the overall Project objectives in the most community-sensitive and cost-effective manner possible and that can engender wide community support and maintain public trust through completion of the Project.

- (c) Design & Quality Excellence – Responding to community engagement and BPCA’s project aspirations, develop an urban, landscape and architectural design response that is innovative, efficient and centered on enhanced urban human experience as well as environmental sustainability.
- (d) Budget and Schedule Compliance – Design and construct the Project on time and within the established budget, employing innovation and best practices in progressive design-build contracting to optimize timely and cost-effective Project delivery with transparent and competitive pricing that is thoroughly defensible in the light of public scrutiny and audit.
- (e) Effective Project Management and Accountability – Develop and implement effective project management to meet the PDB Contract scope, schedule, and budget requirements, proactively identify and manage Project risks, and provide for a single point of accountability through the Design-Builder for all aspects of PDB Contract performance.
- (f) Safety – Complete the Project in a safe manner through the implementation of an effective safety program and measures to ensure both public and worker safety by incorporating industry best practices, maintaining zero OSHA recordable injuries and minimizing near misses.
- (g) Long-term Maintenance – Select material types, finishes, thickness, connections and other attributes to maximize product durability and longevity and minimize short and long-term maintenance while also implementing constructible solutions that facilitate maintenance activities when required.

#### **1.4 Abbreviations and Definitions**

The following abbreviations and definitions shall apply generally to the RFQ process and have the meanings set forth below.

##### **1.4.1 Abbreviations**

BPCA	Battery Park City Authority
BPC	Battery Park City
BPCPC	Battery Park City Parks Conservancy Corporation
BOD	Basis of Design
CEQR	City Environmental Quality Act
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FOIL	Freedom of Information Law
GMP	Guaranteed Maximum Price
MBE/WBE	Minority Business Enterprise/Women Business Enterprise
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration
PLA	Project Labor Agreement
RFP	Request for Proposals

RFQ	Request for Qualifications
SDVOB	Service Disabled Veteran-Owned Businesses
SEQRA	State Environmental Quality Review Act
SOQ	Statement of Qualifications

#### 1.4.2 Defined Terms

**Addendum/Addenda** – A written supplemental addition, deletion or modification to this RFQ issued by BPCA after the date of initial publication of this RFQ.

**Advisory Team** – The team of advisors identified in Section 4.1 (BPCA Advisory Team) and any additional advisors appointed by BPCA for the Project.

**Ballfields Project** – The Battery Park City Ballfield & Community Center Resiliency Project.

**Battery Park City Authority (BPCA)** – The Battery Park City Authority, d/b/a Hugh L. Carey Battery Park City Authority, a body corporate and politic, constituting a public benefit corporation of the State.

**BPCA Goals** – The BPCA goals for the Project, as set forth in Section 1.3 (BPCA Goals).

**BPC Resiliency Projects** – All urban flood resiliency projects currently anticipated to be undertaken by BPCA, including the Project, the South BPC Project and the Ballfields Project.

**City** – New York City.

**Confidentiality and Non-Disclosure Agreement** – A confidentiality and non-disclosure agreement in the form set forth in Schedule H (Form of Confidentiality and Non-Disclosure Agreement).

**Consulting Engineer** – AECOM USA, Inc., as counterparty to BPCA under that certain Consulting Engineer Services Agreement dated June 10, 2021, including its sub-consultants, subcontractors and all associated personnel in connection therewith.

**Contract Services** – The Phase 1 Services and the Phase 2 Work, along with all other obligations and responsibilities of the Design-Builder under the PDB Contract.

**DB Act** – The New York Infrastructure Investment Act, as established in Part F of Chapter 60 of the 2015 Laws of New York, as amended.

**Designated Contact** – Any individual identified pursuant to Section 3.3.1 (Communications to BPCA) of this RFQ as a Designated Contact and, with respect to the matters specified in Section 4.5 (MBE/WBE/SDVOB Participation; Equal Employment Opportunity), the MBE/WBE/SDVOB Designated Contact.

**Design-Builder** – The legal entity, shortlisted pursuant to this RFQ and selected pursuant to the RFP process described herein, that enters into the PDB Contract with BPCA.

**Early Work Package** – A defined scope of Phase 2 Work that is identified for performance by the Design-Builder pursuant to an Early Work Package Amendment prior to the execution of a GMP Amendment.

**Early Work Package Amendment** – A PDB Contract amendment entered into by the Design-Builder and BPCA during the Phase 1 Services Period and following BPCA approval of an Early Work Package proposal by the Design-Builder to accommodate work or procurement required prior to the execution of a GMP Amendment.

**Engineer of Record** – The Design-Builder or the Design-Builder's identified lead engineering/design subcontractor.

**Freedom of Information Law** – Article 6 of the State Public Officers Law.

**GMP Amendment** – The amendment(s) to the PDB Contract to be entered into by the Design-Builder and BPCA following completion of Phase 1 Services and negotiation of a GMP Proposal, authorizing the performance of Phase 2 Work in whole or in part.

**GMP Proposal** – The proposal(s) of the Design-Builder, to be developed and submitted to BPCA as part of the Phase 1 Services, for the performance of Phase 2 Work, including a proposed GMP, the design information upon which the proposed GMP is based, and all other elements required by the PDB Contract.

**Guaranteed Maximum Price (GMP)** – The limit of the total of all amounts payable to the Design-Builder by BPCA for allowable costs incurred in the performance of Phase 2 Work, as established by the applicable GMP Amendment and as may be adjusted from time to time in accordance with the PDB Contract.

**Key Entities** – With respect to each Respondent:

- (a) The Respondent;
- (b) Each joint venture member of the Respondent;
- (c) The proposed lead construction subcontractor; and
- (d) The proposed lead engineering/design subcontractor.

**Key Personnel** – The personnel identified in each Respondent’s SOQ, as required by Package 4 of Schedule A (Submittal Requirements).

**Key Respondent Team Members** – With respect to each Respondent, its Key Personnel and each Key Entity.

**MBE/WBE/SDVOB Designated Contact** – The individual identified in Section 4.5 (MBE/WBE/SDVOB Participation; Equal Employment Opportunity).

**PDB Contract** – The agreement to be entered into between the Design-Builder and BPCA, including all associated appendices and transaction forms, to perform the Contract Services.

**Phase 1 Services** – The design, planning, permitting and other pre-construction services to be performed by the Design-Builder pursuant to the PDB Contract prior to the execution and delivery of the final GMP Amendment.

**Phase 1 Services Period** – The period of time in which the Design-Builder will complete the Phase 1 Services, beginning with the execution and delivery of the PDB Contract and concluding on the date of execution and delivery of the final GMP Amendment.

**Phase 2 Work** – All work, besides the Phase 1 Services, necessary to complete the Project, including final design, construction, commissioning, testing and related services for the completion of the Project, as well as warranty work to be performed following substantial completion of the Project.

**Phase 2 Work Period** – The period of time in which the Design-Builder will complete the Phase 2 Work, beginning with the execution and delivery of a GMP Amendment (or, with respect to any Early Work Package, an Early Work Package Amendment) and concluding with the satisfaction by the Design-Builder of all of its obligations and responsibilities under the PDB Contract.

**Prohibited Entities List** – The list of “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

**Project** – The North/West Battery Park City Resiliency Project.

**Projects of Similar Scope and Complexity** – Projects having one or more of the characteristics specified in Package 3 of Schedule A (Submittal Requirements).

**Project Technical Criteria** – The set of technical objectives, requirements and related information to be established in the RFP and in the final PDB Contract to define the scope of the Project and guide the performance of the Contract Services.

**Proposal** – A proposal submitted by a Proposer in response to the RFP for the Project, including all clarifications and supplements thereto.

**Proposer** – The legal entity submitting a Proposal in response to the RFP for the Project.

**Protest Official** – An individual designated in accordance with Section 7.1 (Protests Generally).

**Request for Proposals (RFP)** – The document package issued by BPCA requesting the submittal of Proposals for the Project and establishing requirements for the preparation and submittal of Proposals.

**Request for Qualifications (RFQ)** – This request for qualifications entitled “Request for Qualifications to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project” and any Addenda.

**Respondent** – A legal entity submitting an SOQ in response to this RFQ.

**Selection Committee** – The committee of BPCA employees designated by BPCA to review and evaluate SOQs in accordance with this RFQ.

**SOQ Due Date** – The date by which SOQs must be submitted to BPCA, as set forth in Section 3.5 (Procurement Schedule).

**South BPC Project** – The South Battery Park City Resiliency Project.

**State** – The State of New York.

**Statement of Qualifications (SOQ)** – A Respondent’s submittal, made in accordance with and in response to the terms of this RFQ, including all clarifications and supplements thereto.



## **2 PROJECT-SPECIFIC INFORMATION**

### **2.1 Background**

In the wake of the localized destruction caused by Superstorm Sandy in 2012, BPCA began undertaking targeted efforts responsive to the threats of damage and injury to specific assets and areas within Battery Park City that could be caused by future severe storm activity. In 2014, BPCA began a series of structured waterfront assessments and studies to investigate opportunities to provide a full community-wide system of protection to address the risks of Battery Park City flooding resulting from storm events, coastal surge, and sea level rise associated with global climate change. The BPC Resiliency Projects are intended to provide risk reduction for Battery Park City and its residents, with each BPC Resiliency Project providing a set of flood barriers and interior drainage improvements with standalone, independent utility at different locations in Battery Park City.

Recent amendments (effective in April 2020) to the DB Act provide BPCA with the legal authority necessary to implement the BPC Resiliency Projects utilizing the design-build project delivery method. The DB Act provides for a best value selection process and authorizes design-build contracts on either a lump sum or GMP basis. A GMP design-build contract allows for a staged, progressive approach to design-build contracting, with the selected Design-Builder working with BPCA to develop the design on a compensated basis to enable the establishment of a GMP at an advanced state of design (typically, 60% design). This progressive design-build process differs from lump sum design-build contracting, which typically involves competing design-build firms proposing a lump sum or fixed price based on a design proposal developed in response to a request for proposals.

BPCA has determined to proceed with this procurement for the Project on a progressive design-build basis in accordance with the DB Act, while the Ballfields Project and the South BPC Project proceed separately under the design-bid-build project delivery method.

### **2.2 Project Overview**

The Project scope information set forth in this RFQ is provided to Respondents to assist in developing a team with the qualifications, experience and expertise that is required for the Project. The Design-Builder will be responsible for all aspects of the design and construction of the Project, which will be in accordance with the Project Technical Criteria and all other requirements of the PDB Contract. BPCA is currently working with the Consulting Engineer to develop the Project Technical Criteria and intends to maximize flexibility for possible design and construction solutions while establishing minimum standards to be met by the Design-Builder and a clear basis for the required environmental review process. Preliminary information concerning the Project Technical Criteria is set forth in Schedule E (Preliminary Project Technical Criteria Information). BPCA reserves the right to modify the scope of work described in this RFQ, including the information provided in Schedule E, in finalizing the Project Technical Criteria.

The Project will provide for the flood resiliency improvements necessary for the northern and western areas of Battery Park City, as indicated in Figure 2-2 (BPC Resiliency Projects). Certification by FEMA will be a required element of the completed Project, and the Design-Builder will be responsible for satisfying all requirements under Chapter 44 of the Code of Federal Regulations, Part 65.10, for certification of floodwall and deployable sections, interior drainage systems, and operations and maintenance plans for the Project. The Project must be capable of connecting with the South BPC Project and must be coordinated with the Lower Manhattan Coastal Resiliency Projects (see Figure 2-1 (Lower Manhattan Resiliency Projects)), which are currently under design and expected to be implemented separately by the City. Such coordination will involve matters of construction scheduling and ensuring that the Project is consistent with (although not identical to) the Lower Manhattan Coastal Resiliency Projects and

the South BPC Project on matters of performance standards and operations and maintenance criteria.

The Project will include site enhancements that will require landscape and urban design services performed in a manner consistent with the design excellence standards established by Battery Park City’s long history of high quality public open spaces, including seminal works by internationally recognized landscape and urban designers. The Design-Builder will be required to balance the rich design legacy of such public open spaces with climate adaptation needs and cost considerations. Additionally, all aspects of the design and construction of the Project will need to be consistent with the goals outlined in the BPCA’s Sustainability Plan and Green Guidelines available at <https://bpca.ny.gov/nature-and-sustainability/sustainability/>.

Figure 2-1 Lower Manhattan Resiliency Projects

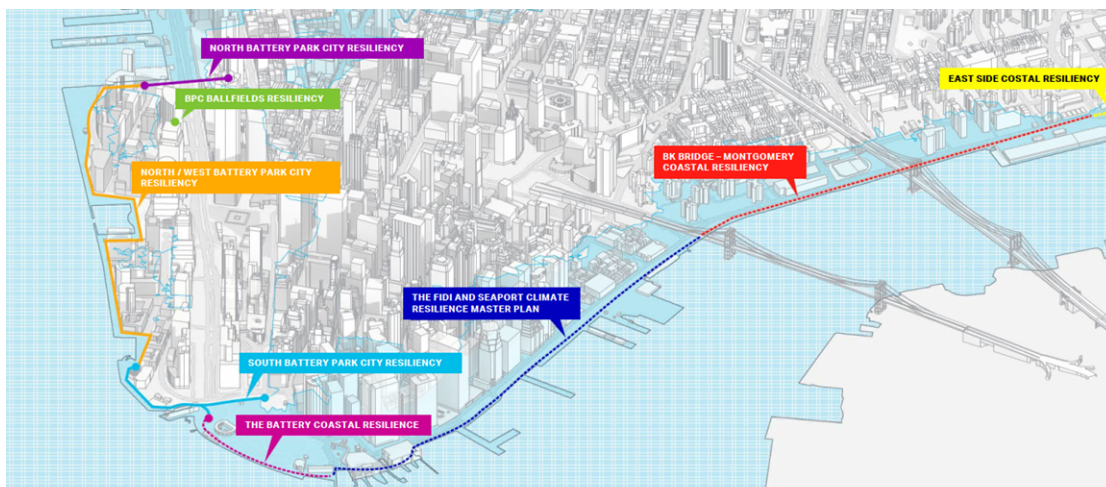
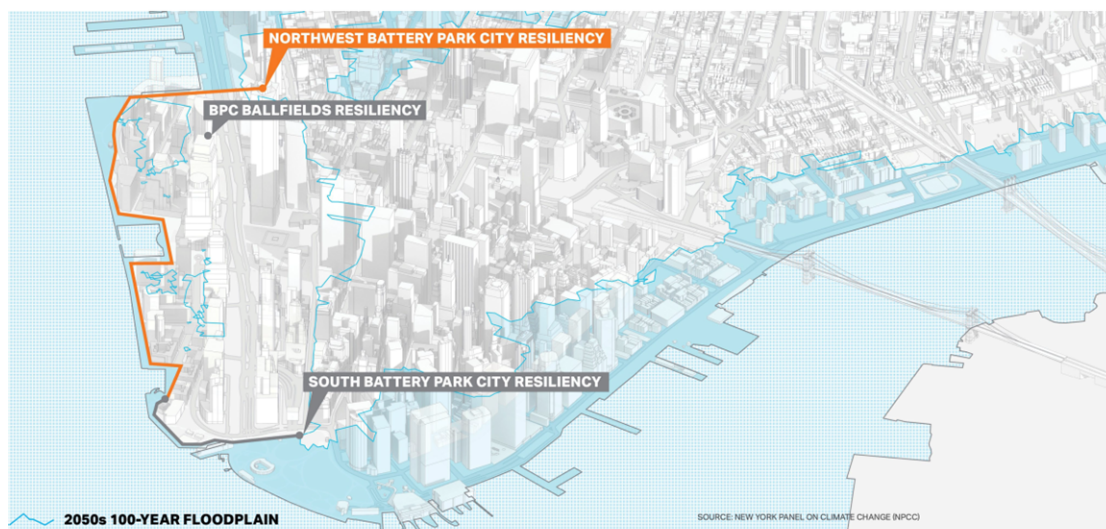


Figure 2-2 BPC Resiliency Projects



### 2.3 Key Project Milestones

The currently anticipated schedule for certain key Project milestones following PDB Contract execution is shown in the table below. This schedule is subject to revision by any Addenda and

in the RFP. The procurement schedule, concluding with the execution of the PDB Contract, is set forth in Section 3.5 (Procurement Schedule).

**Table 2-3 Project Milestone Schedule**

<b>Action</b>	<b>Dates/Times</b>
<b>Phase 1 Services</b>	
Phase 1 Services NTP	July 2022
Draft EIS	October 2022
Final EIS	May 2023
Receive Environmental Permit Approvals	July 2023
Early Work Package(s) NTP (if applicable)	March – July 2023
Execution of GMP Amendment	August 2023
<b>Phase 2 Work</b>	
Construction Duration	March 2023 – February 2026
Construction Substantial Completion	February 2026
Certificate of Final Completion	April 2026

## **2.4 Phases under the PDB Contract**

The Design-Builder will cooperate with BPCA and provide the design-build services in two distinct phases under the PDB Contract in a timely manner. The Design-Builder will be the single point of responsibility for delivery of the Contract Services. The RFP process is expected to conclude with the award of a PDB Contract to perform the Phase 1 Services. The Phase 2 Work will be dependent upon the successful negotiation of the anticipated amendment(s) to the PDB Contract, as described below. No construction will commence for any component of the Project until the completion of all required pre-construction activities for the applicable component, the conclusion of the required environmental review process and all permits and approvals from regulatory agencies that are required for the commencement of construction have been obtained. The Design-Builder will be responsible for all Project management required to perform the Contract Services, including coordinating the Phase 1 Services and the Phase 2 Work and supervising its subconsultants, subcontractors, and personnel.

### **2.4.1 Phase 1 Services (Design & Pre-Construction)**

Upon execution of the PDB Contract and issuance of a notice to proceed (NTP) by BPCA, the Design-Builder will perform the Phase 1 Services, which generally consist of preliminary engineering, site investigations (buried utility locating, confirmation of materials, etc.), geotechnical investigations, structural investigations, process evaluation, and design development, as well as preparation, in close collaboration with BPCA, of a proposed GMP and Project schedule. The Project's design will include plans, specifications, and all necessary supporting documentation.

The Phase 1 Services include, but are not limited to, the following:

- (a) Validation of the Project Technical Criteria and the performance of site investigations and engineering and resource studies necessary to support design development, such as further geotechnical investigations; underground and aboveground utilities investigations; potholing to confirm location, size, and material of buried utilities; coastal modeling; and interior drainage modeling;
- (b) Development and maintenance of the Project schedule, with, at a minimum, monthly updates throughout the Phase 1 Services Period;
- (c) Development of all Project plans, including a project management plan, a design management plan, a construction management plan, a quality management plan, a permit collaboration plan, a risk management plan, a

- subcontracting/procurement plan, an MBE/WBE/SDVOB utilization plan and a Project-specific health and safety plan;
- (d) Construction planning, including development of procurement strategies for equipment and materials, a construction staging and site logistics plan that minimizes impacts to the adjacent community and existing built infrastructure and assets, and recommendations of Early Work Packages for BPCA approval;
  - (e) Attending meetings and coordinating with BPCA, its staff and the Advisory Team, including conducting workshops at key points throughout the Phase 1 Services Period to ensure coordination and common understanding;
  - (f) Attending meetings and preparing presentations, reports and graphics as needed to communicate with relevant agencies, government entities, regulatory bodies, impacted property owners, the community and public at large, and other relevant stakeholders concerning the design of the Project, and ensuring that the Contract Services are performed in a manner consistent with feedback from impacted stakeholders;
  - (g) Supporting BPCA and the Consulting Engineer with the environmental review (SEQRA/CEQR) and permitting process, as further described in Section 2.7 (SEQRA/CEQR Review);
  - (h) Obtaining governmental approvals, permits and licenses necessary to commence the performance of Phase 2 Work, as further described in Schedule C (PDB Contract Terms);
  - (i) Production of a basis of design (BOD) report and subsequent updates to the BOD consistent with each design document submission;
  - (j) Preparation of design and construction documents necessary to support GMP development and submission of design deliverables at designated milestones (e.g., schematic, 30% and 60%) for review, comment and subsequent approval by BPCA;
  - (k) Preparation of cost estimates of the overall Project at each designated design deliverable milestone and reconciliation of any cost variance with BPCA and its Advisory Team;
  - (l) Development and submission of monthly progress reports describing Project progress, including design development, schedule, permitting interface, procurement overview, quality program and construction implementation, as appropriate;
  - (m) Development of a subcontractor package strategy responsive to the BPCA Goals, the Project design and governmental approvals, including qualitative criteria and supporting materials to facilitate the identification, solicitation and recommendation of qualified subcontractors for the Contract Services;
  - (n) Identification of construction work packages wherein the Design-Builder may self-perform portions of the construction work, subject to the terms and conditions (including pricing terms and conditions) of the PDB Contract;
  - (o) Conducting solicitations of competitive and transparent bids for the subcontracted construction work in support of the proposed GMP; and
  - (p) Development of each GMP Proposal for the Phase 2 Work.

Each GMP will be negotiated on an “open book” basis, with the Design-Builder bound by pricing included in the PDB Contract (e.g., the Design-Builder’s fee). While it is expected that the parties will negotiate and agree on the GMP Amendments anticipated for the performance of all Phase 2 Work, BPCA will not be obligated to enter into any GMP Amendment or to authorize the performance of any Phase 2 Work.

If BPCA and the Design-Builder are unable to reach agreement as to a GMP Amendment, BPCA will have the right to terminate the PDB Contract, in whole or in part, and proceed with design and construction on a bid-build or other project delivery basis.

Refer to Schedule C (PDB Contract Terms) for a description of the expected terms of the PDB Contract, including the rights and responsibilities of the parties in the event of an early termination of the PDB Contract.

#### **2.4.2 Early Work Packages**

The Design-Builder will be expected, during the Phase 1 Services Period, to propose Early Work Packages for construction components requiring a long lead-time or that may be ready for commencement prior to the establishment of a GMP Amendment. BPCA will have the sole discretion to authorize the commencement of any Early Work Package through an Early Work Package Amendment, subject to compliance with environmental laws and regulations and with the understanding that all Phase 1 Services associated with the Early Work Package, including the Design-Builder having obtained all permits and approvals necessary for the commencement of the Early Work Package, must be complete before any associated Phase 2 Work may commence. Any Early Work Package must be appropriately bonded and insured on the date of the execution of the Early Work Package Amendment.

#### **2.4.3 Multiple GMP Amendments**

BPCA anticipates that, in addition to any Early Work Package Amendment, it may be appropriate to authorize Phase 2 Work for specific components of the Project prior to the completion of all Phase 1 Services in order to accelerate the overall construction schedule and minimize construction disturbances to surrounding residents and businesses. For example, if all Phase 1 Services are completed with respect to the northern area of the Project (refer to Figure 2-2 (BPC Resiliency Projects)) and the environmental review process has been completed, BPCA may authorize a GMP Amendment for the northern component of the Project while the Design-Builder continues to perform Phase 1 Services associated with the western component of the Project. If multiple GMP Amendments are established, each GMP Amendment will be a part of the same PDB Contract to preserve the unified nature of the Project and the Design-Builder’s overall responsibilities. BPCA expects that Project components appropriate for separate GMP Amendments will be identified prior to PDB Contract execution or early in the performance the Phase 1 Services and will factor into the development of the Project schedule, with separate milestones established for each identified Project component. The Phase 1 Services Period will conclude with the execution and delivery of the final GMP Amendment. Accordingly, it is anticipated that the Phase 1 Services Period and the Phase 2 Work Period will overlap, and that during the period of overlap the obligations of the Design-Builder to be performed during both such periods will apply.

#### **2.4.4 Phase 2 Work (Final Design, Construction & Acceptance)**

The Design-Builder will begin the Phase 2 Work upon the receipt of an NTP from BPCA following the execution of a GMP Amendment or, with respect to an Early Work Package, the execution of an Early Work Package Amendment. Upon such authorization, the Design-Builder will be solely responsible for completing the design and constructing the Project (or Early Work Package, as applicable) pursuant to the applicable amendment in accordance with the established design and construction requirements and all other requirements of the PDB Contract.

Phase 2 Work generally encompasses construction of the Project's design, performance of commissioning and startup services, successful completion of acceptance testing that demonstrates Project performance, and the provision of other support services in accordance with the PDB Contract. Each GMP Amendment will establish, among other matters, the Guaranteed Maximum Price and the Design-Builder's guaranteed completion schedule for the Phase 2 Work authorized pursuant to such GMP Amendment, with the final GMP Amendment covering the entirety of the Project. Successful completion of the Project will require both completion of construction and satisfactory demonstration of Project performance through acceptance testing on or before a scheduled completion date.

As part of the Phase 2 Work, the Design-Builder will:

- (a) Finalize the design for construction and provide final design documents to BPCA for review and comment in accordance with the PDB Contract;
- (b) Finalize the competitive and transparent bid processes, execute subcontracts, and procure all necessary materials and equipment based on the applicable GMP Amendment or Early Work Package Amendment;
- (c) Obtain any additional permits, approvals and licenses (i.e., other than permits, approvals and licenses required as part of the associated Phase 1 Services) necessary for the continued performance of construction;
- (d) Construct the Project and meet specified construction milestones, including substantial and final completion;
- (e) Coordinate with utility providers and BPCA for supply of temporary construction utilities, long-term utility improvements and required utility relocations;
- (f) Coordinate with adjacent projects under design and/or construction by separate firms/contractors;
- (g) Lead construction meetings, including distribution of agendas, meeting minutes and action items;
- (h) Maintain site security;
- (i) Supervise subcontractors and Design-Builder personnel;
- (j) Conduct startup, commissioning, and all required inspection and testing during construction, including acceptance testing necessary to demonstrate Project performance;
- (k) Conduct training in compliance with Project specifications and requirements;
- (l) Implement all Project plans developed as part of the Phase 1 Services, including the employment of quality control procedures and health and safety practices;
- (m) Provide Project management services and coordinate with BPCA, its staff and the Consulting Engineer;
- (n) Maintain and update the Project schedule, with, at a minimum, monthly updates throughout the Phase 2 Work Period;
- (o) Attend meetings and prepare presentations, reports and graphics as needed to communicate with relevant agencies, government entities, regulatory bodies, impacted property owners, the community and the general public, and other relevant stakeholders concerning the performance of the Phase 2 Work;
- (p) Achieve FEMA certification of the completed Project;

- (q) Develop and provide record documents of the completed Project, including record drawings to document as-built conditions;
- (r) Develop and provide operations and maintenance manuals and related plans for the completed Project;
- (s) Provide warranty coverage and perform any necessary warranty work during a warranty period to be specified in the PDB Contract; and
- (t) Perform Project close-out, including filing for permits, completion or rectification of punch-list items, and provision of final payment to all subcontractors and vendors in compliance with applicable law and the PDB Contract.

## **2.5 PDB Contract Terms**

The expected terms and conditions of the PDB Contract are summarized in Schedule C (PDB Contract Terms). Respondents are encouraged to provide comments concerning such terms and conditions with their SOQs. As indicated in Package 7 of Schedule A (Submittal Requirements), such comments are voluntary and will not be part of any SOQ evaluation. However, BPCA will review such comments and may incorporate reasonable suggestions in developing the draft PDB Contract, which will be included with the RFP. Proposers will also have the right to provide comments concerning the draft PDB Contract, as described in Section 8.1 (RFP Proposal Development Process).

## **2.6 Project Funding and Budget**

Funding for the Project will be provided through the issuance of bonds by BPCA. No federal funding is anticipated. The budget associated with the PDB Contract is in the estimated range of \$500 million to \$575 million.

The anticipated payment terms and conditions of the PDB Contract are summarized in Schedule C (PDB Contract Terms).

## **2.7 SEQRA/CEQR Review**

SEQRA/CEQR review and compliance will not be completed prior to PDB Contract execution, but will be completed prior to authorization of any Phase 2 Work that is dependent upon SEQRA/CEQR finalization. BPCA is currently working with the Consulting Engineer to manage the environmental review process for the Project, and BPCA will ultimately be responsible for completing SEQRA/CEQR documentation and making final determinations as the lead agency. The Project Technical Criteria will include requirements necessary to enable BPCA and the Consulting Engineer to proceed with the environmental review process pending the selection of the Design-Builder. Following execution of the PDB Contract, the Design-Builder will support BPCA and the Consulting Engineer with the continuing environmental review process during the Phase 1 Services Period and will be required to comply with all final SEQRA/CEQR documentation in performing the Contract Services.

Consistent with the on-going environmental assessment and permit application process, the Design-Builder will assist the SEQRA/CEQR review process during the Phase 1 Services Period by providing timely submittals in accordance with the scope of the Phase 1 Services and the requirements of the PDB Contract, attending public meetings and meetings with regulatory agencies, and providing timely responses to permit-related questions. As part of the Proposal preparation process and the subsequent Phase 1 Services, the Design-Builder will provide reasonable alternatives analysis, recommend a preferred alignment and develop the necessary information concerning Project design, site-plan layout, construction sequencing and timing, resource calculations, site conditions and storm water management, among other matters.



## **2.8 Governmental Approvals and Permits**

Governmental approvals and permits required for the Project may include, but are not limited to, those from the following public entities and agencies: New York State Department of Environmental Conservation, U.S. Army Corps of Engineers, U.S. Coast Guard, FEMA, New York State Historic Preservation Office, New York City Department of Environmental Protection, Port Authority of New York and New Jersey, New York City Department of Transportation, New York City Department of City Planning, New York State Department of Transportation, Hudson River Park Trust, New York State Office of Governmental Services and New York City Public Design Commission.

Respondents should refer to Schedule C (PDB Contract Terms) for the expected terms and conditions associated with governmental approvals and permits required for the Project, including certain permitting responsibilities of BPCA.

## **2.9 Community and Stakeholder Engagement**

Effective community engagement is essential for the successful delivery of the Project. The Design-Builder is expected to be familiar with Battery Park City, including its landscapes and conditions, and, with support from the Consulting Engineer, provide management, coordination and technical materials to facilitate the engagement process throughout the performance of the Contract Services. All stakeholder engagement and public outreach efforts will be closely coordinated with BPCA and the Consulting Engineer, with the Design-Builder taking on a lead role following the initial NTP and ensuring that the Contract Services are performed in a manner responsive to community and stakeholder concerns.

## **2.10 BPCA Oversight**

The Design-Builder is responsible for delivering the Project in compliance with the PDB Contract, as amended by each GMP Amendment. The Design-Builder will coordinate with BPCA, the Consulting Engineer and all subcontractors, material suppliers and vendors to verify that all services comply with applicable laws and regulations. BPCA intends to provide quality oversight and audit of the Design-Builder's design and construction activities, including quality checks and third party material sampling, testing and inspection. BPCA's quality oversight will in no way eliminate or diminish the Design-Builder's responsibility to provide quality management of the performance of the Contract Services.

## **2.11 General Project Information and Background Documents**

General information concerning the BPC Resiliency Projects can be found on BPCA's website at <https://bpca.ny.gov/nature-and-sustainability/resiliency/>. Respondents may also wish to review the Lower Manhattan Climate Resiliency Study, providing a framework for the Lower Manhattan Coastal Resiliency Project, at [https://edc.nyc/sites/default/files/filemanager/Projects/LMCR/Final\\_Image/Lower\\_Manhattan\\_Climate\\_Resilience\\_March\\_2019.pdf](https://edc.nyc/sites/default/files/filemanager/Projects/LMCR/Final_Image/Lower_Manhattan_Climate_Resilience_March_2019.pdf) and available on BPCA's website.

BPCA will also make available to Respondents the documents listed in Schedule G (Project Background Documents) via a secure website, subject to the receipt and execution of a Confidentiality and Non-Disclosure Agreement in the form set forth in Schedule H (Form of Confidentiality and Non-Disclosure Agreement). Any Respondent that would like to access such documents must have their authorized representative sign and submit such Confidentiality and Non-Disclosure Agreement to the Designated Contact in accordance with Section 3.3.1 (Communications to BPCA) on or before the deadline set forth in Section 3.5 (Procurement Schedule). Promptly following receipt of such executed agreement in accordance with this Section and Section 3.3.1, the Designated Contact will return a countersigned agreement to the Respondent, along with instructions to access such documents over a secure website. A



Respondent's use of such documentation will be subject to the terms and conditions of the Confidentiality and Non-Disclosure Agreement.

Information made available on BPCA's website or on the secure website pursuant to the Confidentiality and Non-Disclosure Agreement is for reference and background information only. Such information may not be current and may reflect status or expectations as of an earlier date. BPCA makes no representation as to the accuracy, completeness, or pertinence of such information for any purpose and will not be responsible for any interpretations thereof or conclusions drawn therefrom.

### **3 PROCUREMENT PROCESS**

#### **3.1 Procurement Process Overview**

The issuance of this RFQ is the first step in the two-step procurement process to select the Design-Builder in accordance with the DB Act. BPCA intends to evaluate and score each submitted SOQ to determine which Respondents are the most highly qualified to deliver the Project and will be among the up to four (4) shortlisted entities invited to participate in the RFP process. BPCA reserves the right to proceed with the RFP process with fewer than four (4) shortlisted entities.

In the second step, BPCA will issue the RFP to the shortlisted entities. Only Respondents that are shortlisted pursuant to this RFQ will be eligible to receive the RFP and to submit a Proposal for the Project. The requirements for the submittal of Proposals and the terms and conditions for the evaluation and scoring of Proposals will be set forth in the RFP.

The SOQ shall be prepared and submitted according to the requirements set forth in this RFQ, including those relating to format and content. By submitting an SOQ, Respondents agree to be bound by all requirements of this RFQ. Failure of a Respondent to meet the requirements of this RFQ may result in disqualification of the Respondent or rejection of its SOQ.

BPCA may cancel or re-advertise this procurement at any time in its discretion.

#### **3.2 Informational Meeting**

BPCA will hold an informational meeting for potential Respondents regarding this RFQ and the Project on the date and time indicated in Section 3.5 (Procurement Schedule). Attendance at this meeting is not a prerequisite to be considered as a Respondent. The meeting will be held using a virtual platform. Potential Respondents are requested to RSVP for the meeting via email to the Designated Contact by the date and time indicated in Section 3.5 (Procurement Schedule). Access information and instructions for the virtual platform will be provided to each potential Respondent submitting an RSVP for the informational meeting.

#### **3.3 Communications Protocols**

##### **3.3.1 Communications to BPCA**

Questions and requests for clarification regarding this RFQ and the subsequent RFP, including any request for access to the secure website pursuant to Section 2.11 (General Project Information and Background Documents), must be submitted via email to the Designated Contacts listed below.

For purposes of this RFQ, the following individuals are hereby identified as Designated Contacts and may respond to any email inquiry submitted in accordance with this Section 3.3.1:

Michael LaMancusa  
Assistant Contracting Officer  
michael.lamancusa@bpca.ny.gov

Achille Niro  
CE Services Director  
achille.niro@aecom.com

BPCA reserves the right to designate other individuals as a Designated Contact at any time during the course of this procurement process.

To be considered, all questions and requests must be received in writing via email at the addresses designated above and by the date and time indicated in Section 3.5 (Procurement Schedule). Written communications must include the requestor's name, e-mail address, and the Respondent represented. E-mails should include "BPCA RFQ for Design-Build Services" in the subject line.

### **3.3.2 Communications from BPCA**

Each Respondent and potential Respondent has the sole responsibility for keeping informed of all Project information posted by BPCA to its website at <http://www.bPCA.ny.gov/apply/rfp-opp/>.

Prior to RFP issuance, the BPCA website will be the primary means for BPCA to communicate Project and procurement-related matters to entities interested in participating in this procurement. Responses to all timely and appropriate questions, as well as any Addenda, will be posted to the BPCA website, and BPCA will use all reasonable efforts to post responses to Respondent questions before the deadline specified in Section 3.5 (Procurement Schedule). BPCA is not obligated to notify potential Respondents of the posting of any information to the BPCA website, including any Addenda. All Respondents are solely responsible for checking the BPCA website for relevant information and for complying with any Addenda. BPCA reserves the right to respond to questions submitted in accordance with Section 3.3.1 (Communications to BPCA) via email from a Designated Contact.

In connection with the issuance of the RFP, BPCA may designate a Project-specific website with restricted access for the shortlisted Respondents for purposes of communications concerning the RFP.

No oral communications from a Designated Contact or any other individual will be binding on BPCA. BPCA disclaims the accuracy of any information derived from any source other than in writing and posted to the BPCA website or sent via email from a Designated Contact in accordance with this Section 3.3.2, and the use of any such information is at the sole risk of the Respondent.

### **3.3.3 Restricted Period**

State Finance Law Sections 139-j and 139-k apply to this RFQ and procurement process, restricting Respondent contact with BPCA and its representatives, including the Advisory Team. Respondents are restricted from making 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) with anyone other than a Designated Contact during the period from the date of publication of the notice of this RFQ in the New York State Contract Reporter through approval of the PDB Contract or the cancellation of this procurement by BPCA. Employees of BPCA are required to record certain contacts during such restricted period, including, but not limited to, any oral, written or electronic communications that could reasonably be seen as intended to influence BPCA's conduct or award under this RFQ and procurement. Upon notice of an improper contact, BPCA will make a determination regarding the Respondent's eligibility to continue participating in this procurement process. Failure of a Respondent to comply with these requirements may result in disqualification of the Respondent from the procurement process.

Each BPCA representative, including any member of the Advisory Team, who participates in any interview or meeting scheduled by BPCA as part of this procurement process will be considered a Designated Contact solely for purposes of conducting the interview or meeting, and communications during such interviews or meetings will be considered permissible contact.

After the announcement of the shortlist, no shortlisted Respondent or any of its members may communicate with another shortlisted Respondent or members of another shortlisted Respondent team with regard to this procurement or the Project, except that a shortlisted Respondent may communicate with a subcontractor that is on both its team and another shortlisted Respondent's team, provided that such subcontractor is not a Key Respondent Team Member and so long as those shortlisted Respondents establish a protocol to ensure that the subcontractor will not act as a conduit of information between the shortlisted Respondents. Respondents are advised that the Proposal submittal requirements will include certification of compliance with these requirements. The RFP will include further requirements and guidelines governing communications during the Proposal development period.

### 3.4 Addenda

BPCA reserves the right to revise or otherwise modify this RFQ. Any such revision or modification will be made via an Addendum and posted to the BPCA website in accordance with Section 3.3.2 (Communications from BPCA). In issuing any Addendum, BPCA will take into consideration the SOQ Due Date and the time reasonably required for potential Respondents to account for the information included in the Addendum in preparing their SOQs.

### 3.5 Procurement Schedule

The procurement schedule is shown in the table below. This schedule is subject to revision by any Addenda and in the RFP.

**Table 3-1 Procurement Schedule**

<b>Action</b>	<b>Dates/Times (Eastern Time)</b>
<b>Step 1 – RFQ Phase</b>	
RFQ Issue Date	Sept. 10, 2021
RSVP for Informational Meeting	Sept. 21, 2021 (2:00 p.m.)
Informational Meeting	Sept. 22, 2021 (2:00 p.m.)
Deadline for Submittal of Confidentiality and Non-Disclosure Agreement	Sept. 24, 2021 (2:00 p.m.)
Deadline for Submitting RFQ Questions	Oct. 21, 2021 (2:00 p.m.)
Deadline for BPCA Response to RFQ Questions	Oct. 28, 2021
SOQ Due Date	Nov. 10, 2021 (2:00 p.m.)
Interviews or Clarifications, if required	Dec. 06, 2021 – Dec. 17, 2021
Notify Shortlisted Respondents	Dec. 2021
<b>Step 2 – RFP Phase</b>	
Issue RFP	Jan. 2022
Individual Meetings with Proposers	Jan. – March 2022
Proposal Due Date	April 2022
Proposal Review & Clarifications	May 2022
Proposer Interviews	May 2022
Announcement of Selected Proposer	June 2022
Expected Date of PDB Contract Execution and Phase 1 Services NTP	July 2022

### 3.6 Interviews

BPCA may opt to invite any or all of the Respondents to participate in one or more interviews with the Selection Committee. Interviews may be conducted for any reason determined appropriate by BPCA, including to further assess the Respondent's capability to perform the Contract Services or to seek information related to any evaluation criterion. If BPCA elects to

conduct interviews, applicable Respondents will be notified in writing with instructions for participation and such interviews will be required. BPCA reserves the right to limit the number of Respondents to be interviewed and to require specific Key Personnel to participate in the interview.

### **3.7 Expenses of the Respondents**

BPCA accepts no liability for the costs or expenses incurred by the Respondents in responding to this RFQ, in providing responses to clarification requests, in making resubmittals, in participating in any interviews or in connection with any other activities included as part of this procurement process. Each Respondent that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from BPCA or from any of its employees, advisors or representatives for the costs and expenses associated with the process, including, but not limited to, costs of preparation of the SOQ, loss of anticipated profits, loss of opportunity or for any other loss, cost or expense.

Should BPCA determine that it is appropriate based upon the Proposal submittal requirements, it may offer a stipend at the conclusion of the RFP process to the short-listed Proposers who submit a responsive but unsuccessful Proposal. BPCA's decision as to whether to offer a stipend will be reflected in the RFP and will be made based on the expected level of effort required of the Proposers to comply with the Proposal submittal requirements. If offered, the amount of, and terms and conditions associated with, the stipend will be set forth in the RFP.

### **3.8 Intellectual Property Rights**

By submitting an SOQ, the Respondent acknowledges and agrees that BPCA shall have the right to use (or permit the use of) all SOQ materials submitted pursuant to this RFQ, including the data, information, concepts, and ideas contained therein, for all purposes associated with the continued development, implementation, operation or expansion of the Project. Notwithstanding the foregoing, BPCA agrees that any such use of SOQs by BPCA without the applicable Respondent's verification or adaptation for the specific purpose intended shall be at the sole risk of BPCA.

Intellectual property rights with respect to information submitted in Proposals will be addressed in the RFP. Intellectual property rights with respect to information submitted pursuant to the PDB Contract will be subject to the terms and conditions of the PDB Contract.

### **3.9 Freedom of Information Law**

All information submitted in response to this RFQ is subject to the Freedom of Information Law (FOIL), which requires public access to certain documents possessed by BPCA, unless a specific exemption applies. Respondents are responsible for identifying any information in their respective SOQs considered to be confidential and exempt from FOIL. However, BPCA is obligated to disclose information consistent with the requirements of FOIL, State Public Officer's Law Section 87.

In order to assist BPCA in complying with any disclosure request, Respondents seeking to protect any information contained in their SOQs from disclosure must do the following:

- (a) Clearly mark all confidential information as such in its SOQ at the time such SOQ is submitted and include a cover sheet stating "DOCUMENT CONTAINS CONFIDENTIAL INFORMATION" and identifying each section and page which has been so marked;
- (b) Include a statement with its SOQ justifying the Respondent's determination that the marked information is confidential and exempt from FOIL; and

- (c) Submit a copy of the full SOQ that has all confidential information redacted from the SOQ and label such copy of the SOQ: “SOQ Public Copy”.

No information shall be marked as confidential unless the Respondent has a reasonable basis for determining that such information is exempt under FOIL. In the event information marked as confidential or otherwise redacted from the submitted public copy of the SOQ is requested for release under applicable law, BPCA may release such information unless, prior to such release, the Respondent secures a protective or other appropriate order from a court of competent jurisdiction enjoining the release of the information. BPCA intends to use reasonable efforts to notify a Respondent prior to the release of any such information, but is under no obligation to do so. BPCA will not under any circumstance be responsible for securing a protective order or other relief enjoining the release of information marked confidential in any SOQ, nor will BPCA be in any way financially responsible for any costs associated with securing any such order or for any loss associated with the release of information marked confidential or otherwise. BPCA makes no representation or warranty as to the ability of any Respondent to secure a protective order or other relief enjoining the release of information marked confidential.

### **3.10 Non-Collusion**

By submitting an SOQ, Respondents warrant and represent that any ensuing shortlist decision or PDB Contract has not been and will not be solicited or secured directly or indirectly in a manner contrary to the laws of the State, and that said laws have not been violated and shall not be violated as they relate to this procurement or the PDB 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.

### **3.11 BPCA’s Reserved Rights**

Throughout the procurement process, BPCA reserves the right, at its sole discretion, to:

- (a) Appoint the members of the Selection Committee;
- (b) Investigate the qualifications of any Respondent or Proposer;
- (c) Seek or obtain data from any source related to the SOQs or Proposals;
- (d) Require confirmation of information furnished by a Respondent or Proposer;
- (e) Hold meetings and conduct discussions and correspondence with one or more Respondents or Proposers to seek an improved understanding and evaluation of the SOQs or Proposals;
- (f) Require additional information from a Respondent or Proposer concerning its SOQ or Proposal;
- (g) Visit and examine any of the projects referenced in the SOQs, and to observe and inspect the operations at these projects;
- (h) Seek and receive clarifications and conduct negotiations with respect to any SOQ or Proposal;
- (i) Require additional evidence of qualifications to perform the Contract Services;
- (j) Modify the procurement process;
- (k) Waive minor deficiencies or irregularities in an SOQ or Proposal;

- (l) Disqualify any Respondent that fails to comply with this RFQ, submits a nonconforming, nonresponsive, incomplete, inadequate, or conditional SOQ, or is otherwise deemed during any stage of the procurement process to be unqualified or unable (due to inadequate financial capacity, litigation, past performance or otherwise) to perform the Contract Services;
- (m) Supplement, amend or otherwise modify this RFQ via Addendum, including the modification of any dates set or projected in this RFQ;
- (n) Reject any or all of the SOQs or Proposals;
- (o) Not issue an RFP;
- (p) Issue a new RFQ or RFP;
- (q) Issue a request for best and final Proposals;
- (r) Cancel the PDB Contract signed by the selected Design-Builder but not yet executed by BPCA;
- (s) Not issue any NTP after execution of the PDB Contract; and/or
- (t) Take any action affecting this RFQ process, the RFP process, or the Project that would be in the best interests of BPCA.

The foregoing reserved rights are in addition to and shall not serve to limit any of the specific rights and conditions set forth in this RFQ.

## **4 RESPONDENT TEAMING REQUIREMENTS**

### **4.1 BPCA Advisory Team**

BPCA has engaged the Consulting Engineer, including its subconsultants, and other advisors to assist in the development of the Project and this procurement. The advisors listed below and any additional advisors appointed by BPCA for the Project, including all associated personnel, will be ineligible for participation in any capacity with any Respondent team in connection with this procurement or the Project. BPCA will notify Respondents of the appointment of any additional advisors for the Project via Addendum.

The current Advisory Team for the Project is as follows:

- AECOM USA, Inc. (Consulting Engineer)
- AKRF, Inc. (Consulting Engineer/Subconsultant)
- Arch Street Communications (Consulting Engineer/Subconsultant)
- The CSA Group (Consulting Engineer/Subconsultant)
- Ellana Cost Consultants (Consulting Engineer/Subconsultant)
- Gedeon GRC Consulting (Consulting Engineer/Subconsultant)
- Hawkins Delafield & Wood LLP (Procurement and Contract Counsel)
- Matrix New World (Consulting Engineer/Subconsultant)
- One Architecture (Consulting Engineer/Subconsultant)
- Sive Paget & Riesel, PC (Environmental Counsel)

### **4.2 BPCA Conflicts of Interest Policy**

Persons or entities may also be prohibited from joining or assisting a Respondent team based on conflicts of interest. Potential Respondents are directed to BPCA's conflict of interest policy available at [https://bpca.ny.gov/wp-content/uploads/2015/03/BPCA-83083-v1-Code\\_of\\_Ethics\\_-\\_June\\_2017-.pdf](https://bpca.ny.gov/wp-content/uploads/2015/03/BPCA-83083-v1-Code_of_Ethics_-_June_2017-.pdf). Individuals or entities included in, participating with or assisting a Respondent team in violation of this policy will be grounds for disqualification of the Respondent or rejection of its SOQ. Potential Respondents are further directed to BPCA's Procurement Guidelines available at <https://bpca.ny.gov/public> information.

By executing Qualification Form A (Transmittal Letter), each Respondent will certify, represent, and warrant that the Key Respondent Team Members have reviewed all of the engagements and pending engagements of the Key Respondent Team Members, and that no potential exists for any conflict of interest or unfair advantage. If a potential Respondent has any concern regarding a potential conflict of interest, including the appearance thereof, or its ability to execute Qualification Form A, such potential Respondent should contact the Designated Contact and disclose all relevant facts. BPCA will review the disclosed information and make a final determination as to such potential Respondent's eligibility to be considered as a Respondent.

### **4.3 Exclusivity of Respondent Teams**

The Key Respondent Team Members identified in a Respondent's SOQ, as well as any affiliate of any such entity, shall not be allowed to be a member of, participate with, or assist another Respondent team.

### **4.4 Team Continuity and Changes to Organizational Structure**

Following submittal of the SOQ, Key Respondent Team Members may not at any time be removed or replaced without the prior written approval of BPCA. BPCA may revoke the shortlisted status of a Respondent or Proposer if any Key Respondent Team Member identified in its SOQ is removed or replaced without the prior written approval of BPCA.



Requests for removal or replacements shall be submitted in writing to the Designated Contact. To qualify for approval, the written request shall document how the proposed removal or replacement will be equal to or better qualified than the applicable Key Respondent Team Member identified in the SOQ. Specifically, the written request shall provide all information required by this RFQ for the original Key Personnel or Key Entity, as applicable. For Key Entities, this side-by-side comparison shall relate relevant experience to each of the evaluation criteria identified in Package 3 of Schedule A (Submittal Requirements). For Key Personnel, this side-by-side comparison shall relate relevant experience to the evaluation criteria in Package 4 of Schedule A. The determination of whether the proposed change is equal to or better than the applicable Key Respondent Team Member identified in the original SOQ submittal will be made by BPCA in its sole discretion. BPCA will use the criteria specified in this RFQ to evaluate all requests. BPCA reserves the right to re-score the SOQ based on any removal or substitution of any Key Respondent Team Member, and the re-score may result in the removal of a Respondent from the shortlist. Any change in Key Respondent Team Members following selection of the Design-Builder will be subject to the PDB Contract, which will require BPCA approval of such changes and include protections against impermissible changes.

#### **4.5 MBE/WBE/SDVOB Participation; Equal Employment Opportunity**

Contractor requirements and procedures for business participation opportunities for State certified MBEs/WBEs/SDVOBs and EEO requirements relating to minority group members and women are attached as Schedule D (Diversity Requirements). Consistent with the PDB Contract, identification, solicitation, and selection of MBE/WBE/SDVOB subcontractors is anticipated to occur during both the Phase 1 Services Period and the Phase 2 Work Period. For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals only, please contact the “**MBE/WBE/SDVOB Designated Contact**”: Justin McLaughlin Williams at [Justin.McLaughlin-Williams@bpca.ny.gov](mailto:Justin.McLaughlin-Williams@bpca.ny.gov) or 212-417-2337.

#### **4.6 Project Labor Agreement (PLA)**

BPCA is currently evaluating whether the Project will be subject to a PLA in accordance with Section 222 of the State Labor Law. If BPCA determines that a PLA will be required for the Project, a draft of the PLA will be provided with the RFP.

#### **4.7 Iran Divestment Act**

By submitting an SOQ, Respondents certify that they, including each Key Entity, are not on the Prohibited Entities List and further certify that, if selected as the Design-Builder, they will not utilize any subcontractor or sub-consultant that is identified on the Prohibited Entities List in connection with the PDB Contract. Any violation of these certifications will be grounds for disqualification of the Respondent, rejection of its SOQ and, if applicable, removal from the shortlist. The PDB Contract will further specify remedial action BPCA may take in the event of a violation of these certifications by the Design-Builder.

#### **4.8 Encouraging Use of State Businesses in Contract Performance**

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 the State, Respondents are strongly encouraged and expected to consider State businesses in the fulfillment of the requirements of the PDB Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Respondents are strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore,

Respondents are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing 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 State business partners. State businesses will promote the Design-Builder's optimal performance under the PDB 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 State businesses by its contractors. New York State therefore expects bidders/proposers to provide maximum assistance to State businesses in their contracts. The potential participation by all kinds of State businesses will deliver great value to the State and its taxpayers.

## **5 SOQ SUBMITTAL REQUIREMENTS**

### **5.1 General Instructions**

Respondents must follow the requirements stated in this RFQ. Adherence to these requirements will ensure a fair and objective analysis of each SOQ. SOQs that do not meet the submittal requirements may be deemed to be non-responsive and may be rejected.

Respondents are advised to provide information essential to the understanding and evaluation of the SOQ. Respondents should not assume that any SOQ reviewer has any previous knowledge of the Key Respondent Team Members. The SOQ should provide a clear, concise description of the Respondent's qualifications to satisfy the requirements of this RFQ.

### **5.2 SOQ Format and Content**

The SOQ must be formatted in the manner and include the information required by Schedule A (Submittal Requirements). Such information shall be presented and organized in the same manner as set forth in Schedule A.

### **5.3 SOQ Submittal**

Each Respondent shall submit its SOQ in both of the following mediums:

- Two USB flash drives, each containing an electronic copy of the SOQ in the form of a single Adobe Portable Document Format (PDF) file with the package number and sections bookmarked; and
- One unbound, original, hard copy of the SOQ.

Respondents seeking to protect any information contained in their SOQs from disclosure pursuant to Section 3.9 (Freedom of Information Law) shall also submit an additional USB flash drive of the redacted SOQ in a PDF file, labeled in accordance with Section 3.9 (Freedom of Information Law).

The unbound, original, hard copy and USB flash drives shall be packed together in one sealed package for delivery to BPCA at the following address on or before the SOQ Due Date:

200 Liberty Street  
24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Michael LaMancusa, Assistant Contracting Officer

The outside of the sealed package shall be clearly identified, labeled, and addressed with the following:

- A return address including the Respondent's name, contact person's name, and mailing address.
- The address of the BPCA Designated Contact, as indicated above.
- "SOQ – Design-Build Services for North/West Battery Park City Resiliency Project."
- The date of the SOQ.

SOQs received after the time indicated in Section 3.5 (Procurement Schedule) on the SOQ Due Date will not be considered.

### **5.4 Amendment or Withdrawal of SOQs**

A Respondent that submits an SOQ prior to the SOQ Due Date may amend its SOQ by submitting an amended SOQ, clearly labeled "Amended SOQ – Design-Build Services for North/West Battery

Park City Resiliency Project,” as long as the amended SOQ is submitted on or before the time indicated in Section 3.5 (Procurement Schedule) on the SOQ Due Date. Any such amended SOQ shall be submitted in accordance with Section 5.3 (SOQ Submittal). A Respondent may withdraw its SOQ at any time before the time indicated in Section 3.5 (Procurement Schedule) on the SOQ Due Date by delivering a written request for withdrawal to the Designated Contact. Individuals submitting any amendment to an SOQ or seeking to withdraw an SOQ will, if requested by a Designated Contact, provide the Designated Contact with evidence that the individual is an authorized representative of the Respondent.

## **6 SOQ EVALUATION AND SELECTION**

### **6.1 Selection Committee**

BPCA will appoint the Selection Committee on or before the SOQ Due Date. While only Selection Committee members will score SOQs, the Selection Committee may consult with other BPCA employees or officials and with the Advisory Team in the evaluation of SOQs.

### **6.2 General Evaluation Procedure**

The Selection Committee will review and evaluate the SOQs according to the requirements and criteria outlined in this Section. During the SOQ evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding its SOQ or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Respondent from further consideration. In addition, as specified in Section 3.6 (Interviews), BPCA may require that all or a limited number of Respondents participate in interviews if needed to complete evaluations.

In general, the selection process will be conducted as follows:

- (a) BPCA will open the SOQs;
- (b) The Selection Committee will review the SOQs (with assistance pursuant to Section 6.1 (Selection Committee)) to determine if they are responsive;
- (c) The Selection Committee or its advisors will attempt to contact references and verify information relating to representative projects and other matters;
- (d) For those SOQs that are determined to be responsive, the SOQ criteria will be scored (100 total points possible) by the Selection Committee using the SOQ criteria established in this RFQ;
- (e) Based upon the SOQ scores, the SOQs and corresponding Respondents will be ranked and a recommended shortlist of Respondents will be prepared;
- (f) BPCA will confirm the approved shortlisted Respondents who will be issued the RFP and will be invited to prepare Proposals in response to the RFP; and
- (g) The shortlist will be posted electronically on the BPCA website (see Section 3.3.2 (Communications from BPCA)) for viewing by all Respondents.

SOQs received from Respondents will not be returned to the Respondents. Information gained during any optional interview pursuant to Section 3.6 (Interviews) and any reference checks will be considered by the Selection Committee in arriving at final scores.

### **6.3 Responsiveness Review**

Each SOQ will be reviewed to determine whether it is responsive to this RFQ. Failure to comply with the requirements of this RFQ may result in an SOQ being rejected as nonresponsive. At its sole discretion, however, the Selection Committee may waive any failure to meet a minor requirement of this RFQ and may request clarification or additional information to remedy any failure to fully respond to this RFQ in the SOQ.

The responsiveness review will include:

- (a) Compliance with RFQ: Respondent must comply with all terms and conditions of this RFQ.

- (b) **Financial Strength/Material Adverse Condition:** The shortlisted Respondents/Design-Builder must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide a contract bond or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate and absorb associated risks. As part of this evaluation the selection committee will consider the financial information provided by each Respondent in accordance with Package 1 of Schedule A (Submittal Requirements).
- (c) **Compliance with Applicable Law:** The shortlisted Respondents/Design-Builder must have the capability to comply with all applicable legal requirements, including Articles 145, 147 and 148 of the State Education Law, and an acceptable record of past compliance with applicable law, including the State Labor Law.
- (d) **Business Integrity:** The shortlisted Respondents/Design-Builder must have a satisfactory record of business integrity, considering all factors covered by the vendor responsibility questionnaire included in Qualification Form B-1.
- (e) **Licensing and Registration:** Each Key Respondent Team Member must be licensed in the State or be reasonably capable of being licensed in the State prior to award of the PDB Contract, for the type of work to be performed.

Package 1 of Schedule A (Submittal Requirements) will be reviewed as part of the responsiveness review process only, and not as part of the comparative evaluation described in Section 6.4 (Comparative Evaluation Criteria). An SOQ may be rejected without scoring if the Selection Committee determines, based on its responsiveness review, that the Respondent is unqualified or unable (due to inadequate financial capacity, litigation, past performance or otherwise) to perform the Contract Services.

#### 6.4 Comparative Evaluation Criteria

BPCA will evaluate and rank the responsive SOQs based on the information required to be provided in Schedule A (Submittal Requirements), with respect to the five (5) evaluation criteria set forth below. The total number of points that will be used in evaluating all of the factors for this SOQ is 100, allocated as shown in the following table:

**Table 6-1 Evaluation Criteria Scoring**

<b>Evaluation Criterion</b>	<b>Maximum Possible Points</b>
Organizational Structure (Package 2 of Schedule A)	10
Past Experience (Package 3 of Schedule A)	35
Key Personnel (Package 4 of Schedule A)	25
Diversity (Package 5 of Schedule A)	10
Project Approach (Package 6 of Schedule A)	20
<b>TOTAL</b>	<b>100</b>

Package 1 of Schedule A (Submittal Requirements) will be evaluated only for responsiveness. Package 7 of Schedule A (Submittal Requirements) is voluntary and will not be evaluated.

The factors the Selection Committee will consider for each evaluation criterion are summarized in the following subsections, with further details specified in Schedule A (Submittal Requirements):

#### **6.4.1 Organizational Structure**

The Selection Committee will evaluate the Respondents based on each Respondent's team structure, including its legal structure and organization, team roles and responsibilities, clarity in team members' functional relationships, and their capability to perform assigned work responsibilities as an integrated cohesive team to serve as the Design-Builder.

#### **6.4.2 Past Experience**

The Selection Committee will evaluate the Respondents based on the demonstrated experience of the members of each Respondent's team, including their individual and collective performance history, experience on previous or current Projects of Similar Scope and Complexity and demonstrated capability to achieve the BPCA Goals. The Selection Committee reserves the right to award more points to Respondents with experience on projects that have more of the characteristics set forth in the definition of Projects of Similar Scope and Complexity.

#### **6.4.3 Key Personnel**

The Selection Committee will evaluate the Respondents based on the qualifications, demonstrated experience, and past performance of the Key Personnel, with the evaluation considering among other things, his/her experience working on similar roles to those proposed for the Project based on Projects of Similar Scope and Complexity, the BPCA Goals, and their overall suitability to fulfill their described role individually and as an integrated team. The entirety of this package will receive a combined score, and the Respondent's Key Personnel will not be scored individually. The Selection Committee reserves the right to award more points to Respondents with experience on projects that have more of the characteristics set forth in the definition of Projects of Similar Scope and Complexity.

#### **6.4.4 Diversity**

The Selection Committee will evaluate Respondents based upon the demonstrated experience of the Key Entities to successfully utilize MBE/WBE/SDVOB firms and to meet established MBE/WBE/SDVOB goals and EEO requirements.

#### **6.4.5 Project Approach**

The Selection Committee will evaluate the Project approach based on the Respondent's ability to demonstrate understanding of the objectives, elements, and challenges associated with the Project, including the BPCA Goals, and the potential/likely approaches to successfully plan and execute the Project.

### **6.5 Notification to Respondents**

BPCA will notify all Respondents of those selected to move to the next phase of the selection process in accordance with Section 6.2 (General Evaluation Procedure). Final SOQ scores will not be shared with any Respondents, except as otherwise required pursuant to the Freedom of Information Law. The process will not proceed to the next phase until at least two (2) business days after all Respondents are notified of BPCA's selection decision.

## **6.6 Debriefing**

Any unsuccessful Respondent shall have fifteen (15) calendar days from the date of notification from BPCA that they were not selected for the shortlist to request a debriefing from BPCA. Such requests must be submitted in writing in accordance with Section 3.3.1 (Communications to BPCA) by an authorized representative of Respondent. Within thirty (30) calendar days after receipt of a debriefing request, BPCA will be available for an oral debriefing session to the non-shortlisted Respondent; provided that, BPCA will not be required to conduct a debriefing during the pendency of any protest in accordance with Section 7 (Protest Procedures). At any time prior to a debriefing, BPCA will provide the requesting Respondent with a scoring summary of the evaluation factors related specifically to its SOQ.



## **7 PROTEST PROCEDURES**

### **7.1 Protests Generally**

This Section 7 sets forth the exclusive protest remedies available with respect to this RFQ. By submitting its SOQ, each Respondent acknowledges the limitation on its rights to protest as set forth in this RFQ; waives all other rights and remedies; and agrees that the decision on any protest, as provided in this RFQ, shall be final and conclusive. These provisions are included in this RFQ expressly in consideration for such waiver and agreement by the Respondents. Such waiver and agreement by each Respondent are also consideration to each other Respondent for making the same waiver and agreement.

All protests and related materials shall be filed in writing, by hand delivery or courier, to the BPCA Procurement Department at the following address in accordance with this Section 7:

200 Liberty Street  
24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Procurement Department

Upon receipt of a protest, the BPCA Procurement Department will designate an individual responsible for handling the protest (a “**Protest Official**”) in accordance with this Section 7.

### **7.2 Protests Regarding the RFQ**

A Respondent may protest the terms of this RFQ prior to the time for submission of the SOQ solely on the grounds that (a) a material provision in this RFQ is ambiguous, (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement, or (c) this RFQ in whole or in part exceeds the authority of BPCA. Protests regarding this RFQ shall be filed only after the Respondent has notified the Designated Contact of the particular issue in an effort to remove the grounds for protest, by Addendum or otherwise.

Protests regarding this RFQ shall completely and succinctly state the basis for the protest in writing. Protests regarding this RFQ shall be filed as soon as the basis for protest is known to the Respondent, but in any event the protest must be actually received by the Protest Official no later than ten (10) calendar days before the SOQ Due Date; provided that protests regarding an Addendum shall be filed and actually received by the Protest Official no later than five (5) calendar days after such Addendum is issued, but in no event later than the SOQ Due Date.

BPCA may distribute copies of the protest to other potential Respondents and may request other potential Respondents to submit statements or arguments regarding the protest. At its discretion, BPCA may authorize appropriate BPCA representatives to discuss the protest with the protesting Respondent.

The Protest Official is not required to hold a hearing on the protest, and may decide the protest on the basis of the written submissions. The Protest Official or its designee shall undertake reasonable efforts to issue a written decision regarding the protest within fifteen (15) calendar days after the date the Protest Official receives the detailed statement of protest. The decision shall be final and conclusive. The Protest Official or its designee shall deliver the written decision to the protesting Respondent and may deliver copies to other potential Respondents. If necessary, to address the issues raised in the protest, BPCA may make appropriate revisions to this RFQ by issuing Addenda. At its discretion and if necessary, BPCA may extend the SOQ Due Date to address any protest issues. Each party shall bear its own attorney’s fees and legal costs that may result from any protest.

The failure of a Respondent to raise the grounds for a protest regarding this RFQ within the applicable time period shall constitute an unconditional waiver of the right to protest the terms

of this RFQ and shall preclude consideration of that ground in any protest regarding responsiveness or shortlisting.

### **7.3 Protests Regarding Responsiveness and Shortlisting**

A Respondent may protest the results of the evaluation and qualification process described herein solely in accordance with this Section 7.3.

Notice of protest of any decision to accept or disqualify an SOQ or Respondent on responsiveness grounds must be filed within five (5) calendar days after the earliest to occur of (a) notification of non-responsiveness or (b) the publication of the shortlisted Respondent notice on the BPCA website. Notice of protest of the decision on shortlisted Respondents must be filed and received by the Protest Official within five (5) calendar days after the publication of the shortlisted Respondent notice on the BPCA website.

Within ten (10) calendar days after the deadline for notice of protest pursuant to this Section 7.3, the protesting Respondent must file with the Protest Official a detailed, written statement of the basis for its protest. BPCA may distribute a copy of the detailed statement to all other Respondents and may request other Respondents to submit statements or arguments regarding the protest. At its discretion, BPCA may authorize appropriate BPCA representatives to discuss the protest with the protesting Respondent.

Failure to file a notice of protest or a detailed statement within the applicable time period specified in this Section 7.3 shall constitute an unconditional waiver of the right to protest the evaluation or shortlisting process and decisions.

The Protest Official is not required to hold a hearing on the protest, and may decide the protest on the basis of the written submissions. The Protest Official or its designee shall undertake reasonable efforts to issue a written decision regarding the protest within fifteen (15) calendar days after the date the Protest Official receives the detailed statement of protest. The decision shall be final and conclusive. The Protest Official or its designee shall deliver the written decision to the protesting Respondent and may deliver copies to the other Respondents.

If any notice of protest regarding responsiveness is filed prior to any scheduled interviews or the shortlist decision, BPCA may proceed with the interview process and may shortlist Respondents before the protest is withdrawn or decided, unless the Protest Official or its designee determines, at their discretion, that it is in the public interest to postpone the interviews or the shortlist announcement prior to a decision on the protest. Such a determination shall be in writing and shall state the facts on which it is based.

If the Protest Official or its designee concludes that the Respondent filing the protest has established a basis for protest, the Protest Official or its designee will determine what remedial steps, if any, are necessary or appropriate to address the issue raised in the protest. The steps may include, but are not limited to, submitting the issue to the Selection Committee to determine whether the list of Respondents selected to submit Proposals should be revised; withdrawing or revising the decisions; issuing a new RFQ; or taking other appropriate actions.

If the protest is denied, the protesting Respondent may, as its sole and exclusive remedy, seek judicial review of BPCA's decision in State court located in within the County of New York within five (5) calendar days of receiving BPCA's decision denying the protest. Each party shall bear its own attorney fees, expert witness fees, and all other legal costs.

### **7.4 Costs and Damages**

BPCA shall not be liable for damages to the Respondent filing the protest or to any participant in the protest, on any basis, express or implied.

## **8 ANTICIPATED RFP PROCESS**

### **8.1 RFP Proposal Development Process**

BPCA currently anticipates that the RFP, when issued, will allow for each shortlisted Proposer to submit a single Proposal meeting the submittal requirements of the RFP. The RFP will include the Project Technical Criteria and a draft PDB Contract. Proposers will be given the opportunity during the Proposal preparation period for BPCA-supervised site visits and tours, with details to be specified in the RFP. BPCA also expects to hold individual meetings with each Proposer during the Proposal development period to enable Proposers the opportunity to ask questions and request clarifications concerning the RFP, the Project Technical Criteria and the draft PDB Contract. The Proposers may submit proposed changes to the Project Technical Criteria and draft PDB Contract during the Proposal development period. BPCA, at its sole discretion, may revise the RFP, including the Project Technical Criteria and draft PDB Contract, by issuing an addendum to the RFP to all Proposers.

### **8.2 RFP Proposal Evaluation**

Following the receipt of Proposals, BPCA expects to perform a preliminary responsiveness review to ensure that each Proposal complies with the submittal requirements established in the RFP. BPCA also anticipates conducting at least one interview with each Proposer during the Proposal evaluation period with the Selection Committee and members of its Advisory Team. Once the responsiveness review is complete, BPCA will evaluate and score the Proposals to determine the Proposal that offers the best value to BPCA. BPCA anticipates that it will, subject to its reserved rights under the RFP, enter into negotiations with the Proposer with the highest scored Proposal. BPCA may, at its discretion, request clarifications as necessary throughout the Proposal evaluation process. BPCA intends to carry forward 10% of the Proposer's final SOQ score into the Proposal evaluation process.

Interviews following the submittal of Proposals will inform BPCA in scoring the Proposals, but will not be separately scored. The individual meetings with Proposers prior to submittal of Proposals will not be scored or be part of the scoring process.

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**SCHEDULE A**  
**SUBMITTAL REQUIREMENTS**

## **SCHEDULE A – SUBMITTAL REQUIREMENTS**

### **Formatting**

The SOQ shall be formatted as follows:

- (a) Language – All information shall be in English.
- (b) Type Font and Size – All narrative text shall be single-spaced in a regular style font at a minimum of 12 points. The type, style, and size of headings and figures are not prescribed. The minimum font size for charts, exhibits, and other illustrative and graphical information shall be 9-point font.
- (c) Page Size – With the exception of a team organizational chart, all information shall be, when printed, on 8.5-inch by 11-inch paper. The team organizational chart may be, when printed, on 11-inch by 17-inch paper.
- (d) Page Margins – No text, tables, figures, photos, or other substantive content shall be printed within 0.75 inches of any page edge.
- (e) Page Limit – There is no page limit, except as otherwise indicated in this Schedule A (Submittal Requirements). To the extent that this Schedule A indicates a page limit, unless expressly noted otherwise, a “page” is defined as, when printed, a single side of an 8.5-inch by 11-inch sheet of paper. The SOQ shall include only information required by this RFQ.
- (f) Table of Contents – Provide a table of contents that includes major headings for the SOQ and associated page numbers as well as a list of appropriate tables, graphics, figures, photos, appendices, etc.
- (g) Dividers – Section dividers shall contain, at a minimum, one of the following:
  - 1. Section number
  - 2. Section title
- (h) No other text is permitted on the dividers. The dividers will not be counted toward any allowable page total.
- (i) Front Page – The front page of each SOQ shall be labeled with the name of the Respondent, along with the following:

“Statement of Qualifications – Design-Build Services for North/West Battery Park City Resiliency Project”

### **Content**

Qualification information must be provided in a response format in accordance with this Schedule A, in tabbed sections using the section numbers and titles provided in the table below. Submittals should be simple and provide a concise description of the qualifications of the Key Respondent Team Members. To the extent any section of the Respondent’s SOQ would repeat the same information provided in another section of the SOQ, the Respondent may choose to include such information only once and refer the reader to the specific location of the SOQ where the duplicative information may be found.

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### Package 1 – Responsiveness Forms

Each of the following forms shall be included in Package 1, where they will be evaluated only as part of the responsiveness review described in Section 6.3 (Responsiveness Review).

Section No.	Title	Contents
1-1	Transmittal Letter (Qualification Form A)	<p>Submit a fully executed Qualification Form A (Transmittal Letter) of Schedule B (Qualification Forms).</p> <p>The transmittal letter and all attachments thereto shall be signed by a representative of the Respondent who is empowered to sign it and to commit the Respondent to the obligations contained in the SOQ. Respondents shall also submit the Certificate of Authorization, included as an attachment to the transmittal letter, with the SOQ. If the Respondent is a partnership, the SOQ shall be signed by one or more of the general partners. If the Respondent is a corporation, an authorized officer shall sign his or her name and indicate his or her title beneath the full corporate name. If Respondent is a joint venture, the SOQ shall be signed by the joint venture. Anyone signing the SOQ as an agent shall file with the transmittal letter legal evidence of his or her authority to execute such SOQ.</p>
1-2	Vendor Responsibility Questionnaire/Certificate of No Change (Qualification Form B-1)	<p>Complete and provide all information required by Qualification Form B-1 (Vendor Responsibility Questionnaire/Certificate of No Change) of Schedule B (Qualification Forms) for each Key Entity. The instructions included in Qualification Form B-1 indicate the circumstances under which a Certificate of No Change may be provided in lieu of the entire Vendor Responsibility Questionnaire.</p>
1-3	State Finance Law Certifications (Qualification Form B-2)	<p>Complete and provide all certifications required under Qualification Form B-2 (State Finance Law Certifications) of Schedule B (Qualification Forms) for each Key Entity.</p>
1-4	Disclosure of Prior Non-Responsibility Determinations (Qualification Form B-3)	<p>Complete and provide all information required by Qualification Form B-3 (Disclosure of Prior Non-Responsibility Determinations) of Schedule B (Qualification Forms) for each Key Entity.</p>
1-5	Financial Information (Qualification Form B-4)	<p><u>Financial Statements.</u> For each Key Entity, provide financial statements for the three (3) most recent fiscal years (FY) and interim financial statements since the last fiscal year for which audited statements are provided.</p>

Section No.	Title	Contents
		<p>To the extent that any Key Entity intends to rely on a guarantor to meet its obligations under the PDB Contract, only the financial statements of the guarantor are required to be submitted.</p> <p>The following are the required financial statements:</p> <ul style="list-style-type: none"> <li>• Opinion letter (auditor’s report);</li> <li>• Balance sheet;</li> <li>• Income statement;</li> <li>• Statement of changes in cash flow; and</li> <li>• Footnotes.</li> </ul> <p>In addition, the financial statements must meet the following requirements:</p> <ul style="list-style-type: none"> <li>• For US entities, prepared in accordance with US Generally Accepted Accounting Principles (GAAP) and audited by a Certified Public Accountant (CPA). For non-US entities, prepared in accordance with International Financial Reporting Standards (IFRS) and audited by a CPA equivalent.</li> <li>• If any entity provides financial statements prepared in accordance with principles other than US GAAP or IFRS, a letter must be provided from a certified public accountant, or equivalent, discussing the areas of the financial statements that would be affected by a conversion to US GAAP or IFRS.</li> <li>• If audited financials are not available for a Key Entity for which financial information is required to be submitted, the SOQ must include unaudited financials for such member, certified as true, correct, and accurate by the Chief Financial Officer (CFO) or treasurer of the entity. If any entity required to submit financial statements is a newly formed entity and does not have independent financial statements, such entity shall expressly state that it is a newly formed entity and does not have independent financial statements meeting the requirements above and shall provide financial statements otherwise consistent with those required hereby for each of its shareholders/equity members.</li> <li>• If a Key Entity or any other entity for which financial information is submitted as required hereby files reports with the Securities and Exchange Commission (SEC), then such entity must provide electronic links to the most recently filed Forms 10-K, 10-Q and 8-K for all such reporting entities in lieu of hard copies.</li> </ul>

Section No.	Title	Contents
		<ul style="list-style-type: none"> <li>Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must accompany the original financial statement information.</li> <li>If financial statements are not available in US dollars, the Key Entity must include summaries of the income statement, balance sheet and cash flow statement for the applicable time periods converted to US dollars. If financial statements are converted from a foreign currency into US dollars, the conversion method(s) must be explained in an attachment and must be reasonable. Translation at the average period rate for income statements and cash flow statements, and period end rate for balance sheet statements, shall be appropriate.</li> </ul> <p><u>Financial Information Summary.</u> The Respondent shall complete Qualification Form B-4 (Financial Information Summary) of Schedule B (Qualification Forms) for each Key Entity. If design work and construction work will be carried out by an integrated design-build firm, include the Qualification Form B-4 for the design-build firm. If a Key Entity has provided a guarantor, include Qualification Form B-4 only for the Guarantor.</p> <p>As a general matter, in order to be included on the shortlist pursuant to this RFQ, Respondents must demonstrate that each proposed Key Entity, including the proposed Design-Builder, has sufficient financial strength to assure BPCA that it is capable of performing the Contract Services; i.e., a financial capability at least commensurate with the Project. To this end, Respondents may propose to supplement the financial strength of a Key Entity by proposing a parent or affiliate company to serve as the guarantor of the Key Entity and guarantee, through a guaranty agreement, all of the Key Entity's obligations under or in connection with the PDB Contract. If a Respondent chooses to submit financial information of a parent company or affiliate of a Key Entity for pre-qualification purposes, the parent company or affiliate will be required to serve as a guarantor pursuant to a guaranty agreement. The Respondent shall indicate clearly in response to this Section 1-5 whether it is proposing such a guarantor and, if so, provide a letter of acknowledgement from such proposed guarantor.</p>
1-6	Insurance Requirements	Provide evidence of ability to obtain the insurance coverage anticipated to be required of the Design-Builder, as set forth in Schedule F (Insurance Requirements).
1-7	Bonding Capacity	The Respondent shall provide a letter from a surety or insurance company stating whether or not the Respondent is capable of obtaining performance and payment bonds in amounts consistent with the Project budget established in Section 2.6 (Project Funding and Budget) and the bonding terms described in Schedule C (PDB Contract Terms).



Section No.	Title	Contents
		<p>It is anticipated that the PDB Contract will require the Design-Builder to furnish a performance bond to guarantee performance of the Phase 2 Work and a payment bond to guarantee payments to laborers, mechanics, subcontractors, and materials suppliers in connection with the Phase 2 Work, each in the amount of the total GMP for the Phase 2 Work.</p> <p>Letters indicating “unlimited” bonding capability are not acceptable. The surety or insurance company providing the letter must be authorized to do business in the State with an A.M. Best Co. "Best's Rating" of A- or better.</p>
1-8	Material Changes in Financial Condition	<p>Information regarding any material changes in financial condition for the past five (5) years or anticipated in the future must be provided for each Key Entity.</p> <p>If no material change has occurred and none is pending, the Key Entity shall provide a letter from its CFO or treasurer so certifying. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance, and the projected full extent of changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity will be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes.</p> <p>Where a material change will have a negative financial impact, the affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in each of the three (3) completed fiscal years (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.</p> <p>Representative material changes include the following:</p> <ol style="list-style-type: none"> <li>(1) An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;</li> <li>(2) A change in tangible net worth of 10% of net assets;</li> </ol>

Section No.	Title	Contents
		<p>(3) A sale, merger or acquisition exceeding 10% of the value of net assets prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;</p> <p>(4) A change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity;</p> <p>(5) Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;</p> <p>(6) In the current and three (3) most recent completed fiscal years, the affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then net assets due to claims, changes in accounting, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity;</p> <p>(7) Any material litigation or other material adverse proceedings that are still outstanding and may affect the Key Entity's ability to perform its obligations in relation to the Project; and</p> <p>(8) Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition over the past three (3) years or may be pending for the next reporting period.</p>

## Package 2 – Organizational Structure

BPCA will evaluate the Respondents based on each Respondent's team structure, including its legal structure and organization, team roles and responsibilities, clarity in team members' functional relationships, and their capability to perform assigned work responsibilities as an integrated cohesive team to serve as the Design-Builder.

Section No.	Title	Contents
2-1	Legal Structure	The Respondent shall provide a description of the legal entity proposed as the Design-Builder. If the Respondent legal entity has already been formed, the Respondent shall provide complete copies of the organizational documents, along with evidence that the Respondent and its team members are authorized to conduct business in the State or will be authorized to conduct business in the State prior

Section No.	Title	Contents
		<p>to the award of the PDB Contract. If the Respondent's legal entity has not yet been formed, then the Respondent shall provide a description of the proposed legal structure, with sufficient information to enable BPCA to determine whether the future organization will be capable of entering into the PDB Contract and to meet all applicable legal requirements once it is formed. Once the entity is legally formed, the Respondent shall supplement its SOQ with copies of the final organizational documents.</p> <p>If the Respondent is a joint venture, the Respondent shall provide a copy of the executed joint venture agreement or a copy of the executed letter of intent to joint venture.</p>
2-2	Team Organization	<p>Provide an organization chart demonstrating the proposed make-up of the participants on the Respondent's team. It shall include the Respondent, all Key Entities, Key Personnel (indicating their firm affiliation), and other proposed subcontractors and staff necessary for the performance of the Contract Services. The organization chart shall identify the Engineer of Record and include the anticipated percentage of time that Key Personnel will be participating on the Project by phase or period.</p> <p>The organization chart shall also clearly show the team organization and reporting structure and lines of communication and responsibility. If the Respondent proposes a different organizational structure for Phase 1 Services relative to the Phase 2 Work, it shall submit two separate organization charts. The organization charts will assist the evaluators in understanding how the team envisions working together. Furthermore, if an Early Work Package is approved for implementation, the Respondent is to identify how the organization chart(s) will be adjusted to accommodate the delivery of the Early Work Package. The RFP phase is likely to include the development and submission of a detailed management plan.</p> <p>The organization charts will be scored based upon clarity in identifying the Respondent team, including each Key Respondent Team Member, and in describing the relationships between the team members and how the team will be integrated into one cohesive team to serve as the Design-Builder throughout all phases of the Project. Include a narrative description of the benefits the team structure and organization provides to the Project and how it will help in meeting the BPCA Goals. Describe the team's past performance working together on any Projects of Similar Scope and Complexity and/or describe the steps the team has taken to promote integration and a collaborative working environment. This section (not including the organization charts) is limited to two (2) pages.</p>

### Package 3 – Past Experience

BPCA will evaluate the Respondents based on the demonstrated experience of the members of each Respondent's team, including their individual and collective performance history, experience on previous or current Projects of Similar Scope and Complexity and

demonstrated capability to achieve the BPCA Goals. **“Projects of Similar Scope and Complexity”** shall mean projects completed or in construction within the last ten (10) years with one or more of the following characteristics:

- Large-scale urban flood resiliency capital improvements of similar size and budget that include design and construction of flood barriers, interior drainage infrastructure and site enhancements in environmentally and culturally sensitive areas with numerous stakeholders;
- Waterfront projects that require federal and/or state environmental permits;
- An integrated delivery method (i.e., design-build, construction manager at risk, etc.) that require strong coordination and integration of design and construction professionals and continuous involvement of the construction personnel from the beginning through conclusion of the design process; and
- Contractor selection prior to the establishment of the final price and schedule, with collaboration between contractor and owner to develop the final price and schedule based on open book fair market pricing principles.

BPCA reserves the right to award more points to Respondents with experience on projects that have more of the characteristics set forth in the definition of Projects of Similar Scope and Complexity.

Section No.	Title	Contents
3-1	Project Profiles	<p>Provide project profiles to demonstrate that the Respondent’s team has completed or has the capability to complete Projects of Similar Scope and Complexity and achieve the BPCA Goals. Project profile criteria are as follows:</p> <ul style="list-style-type: none"><li>(a) Project profiles shall include the project name, project location, client name, project manager name, project description (including identifying relevance to the Project), delivery method, services provided, baseline and actual completion date, baseline and actual contract amounts, and reasons for any variations from baseline.</li><li>(b) Project profiles must identify Key Personnel from the profiled project, who are proposed for this Project, and a description of the scope of services and length of involvement provided by each such Key Personnel.</li><li>(c) Photographs or other graphic materials may be included.</li><li>(d) The Respondent may submit up to eight (8) project profiles.</li><li>(e) Project profiles shall not exceed two (2) pages in length for each project.</li><li>(f) BPCA projects shall not be included among the project profiles.</li><li>(g) Project profiles should demonstrate experience with Projects of Similar Scope and Complexity.</li></ul>

Section No.	Title	Contents
		<p>(h) Additional evaluation points are possible for Respondents that demonstrate previous working experience among the Key Respondent Team Members on Projects of Similar Scope and Complexity.</p> <p>This section is limited to sixteen (16) pages.</p>
3-2	Project References (Qualification Form C)	<p>Respondent shall provide a project reference for each project profile submitted above using Qualification Form C (Reference Information for Key Entities) included in Schedule B (Qualification Forms). The reference should be for the project's owner or the project owner's representative.</p> <p>BPCA intends to contact those individuals and firms that are listed as references by the Respondent and points will be assigned based upon the reference's verification that the Respondent's characterization of its involvement in the project is accurate, as well as their overall assessment of the quality of those services provided, including project management, partnership and collaboration, cost and schedule control, quality, and commissioning and function of installed work. It is the Respondent's responsibility to verify that all references listed can be reached by telephone and email. If a reference cannot be located based upon the information provided by the Respondent, BPCA may disregard the listed project.</p> <p>BPCA reserves the right to maintain the confidentiality of the past performance information provided by the references listed by the Respondent, as well as references obtained by other means, and is under no obligation to share such information with the Respondent. By submitting an SOQ for consideration under this RFQ the Respondent agrees that it shall not seek to discover from any source the contents of such communication.</p>
3-3	Safety Questionnaire (Qualification Form D)	Complete and provide all information required by Qualification Form D (Safety Questionnaire) of Schedule B (Qualification Forms) for each Key Entity.
3-4	Current Work vs. Capacity	<p>For each Key Entity, provide graphics that highlight the entity's ability to effectively staff and complete the Phase 1 Services and the Phase 2 Work. No specific format is required however, at a minimum, the following information is to be provided:</p> <ul style="list-style-type: none"> <li>Average number of projects (with construction value equal to or greater than \$100 million) in progress for each of the last five (5) years and the cumulative aggregate value of the in-progress projects.</li> </ul>

Section No.	Title	Contents
		<ul style="list-style-type: none"> <li>For each project with construction value in excess of \$100 million, identify project value, start and forecast completion dates and number of staff currently assigned to the project.</li> <li>Based in part on the above data, for the period from 2019 to 2026, present the aggregate staffing level currently assigned to existing projects plus the total staffing level available for assignment to prospective or upcoming projects.</li> </ul>

#### Package 4 – Key Personnel

BPCA will evaluate the Respondents based on the qualifications, demonstrated experience, and past performance of the Key Personnel, with the evaluation considering among other things, his/her experience working on similar roles to those proposed for the Project based on Projects of Similar Scope and Complexity, the BPCA Goals, and their overall suitability to fulfill their described role individually and as an integrated team. The entirety of this package will receive a combined score, and the Respondent's Key Personnel will not be scored individually. The Respondent shall present the Key Personnel and explain how their qualifications, experiences, and past performance on Projects of Similar Scope and Complexity make them uniquely qualified to lead in their role on this multi-year, multi-phased Project. BPCA reserves the right to award more points to Respondents with experience on projects that have more of the characteristics set forth in the definition of Projects of Similar Scope and Complexity.

Section No.	Title	Contents
4-1	List of Key Personnel	<p>Provide a succinct list of all Key Personnel, supplying only the following information:</p> <ul style="list-style-type: none"> <li>Individual name</li> <li>Company/firm and title of individual</li> <li>Key Personnel role</li> <li>Intended commitment of key staff during Project phases in percentage of full-time employment</li> </ul> <p>The following Key Personnel shall be identified at a minimum:</p> <p><b>4-1.1 Project Executive</b></p> <p>The "Project Executive" is the Design-Builder's executive with authority to make the highest-level decisions. Their duties include, without limitation, settling the most difficult disputes and fostering a culture of partnering, integrity, and good faith among the leadership of all entities teamed with the Design-Builder. The Project Executive will be the person BPCA's executive team turns to effect positive change on the Project,</p>

Section No.	Title	Contents
		<p>when needed. The Project Executive should possess, at a minimum, ten (10) years of experience in the role of Project Executive involving multiple phases of larger scale building/infrastructure programs. In addition, the Project Executive must have a proficient level of knowledge relative to all aspects of design and construction management.</p> <p><b>4-1.2 Project Manager</b></p> <p>The “Project Manager” is the primary liaison for the Design-Builder and will act as the first point of contact between the Design-Builder and BPCA. This individual will have authority to make staffing decisions and shall be responsible for the overall design, construction, schedule, budget, quality management, and PDB Contract administration for the Project. It is the Project Manager’s responsibility to ensure the Project is managed and delivered in accordance with the PDB Contract requirements and to ensure that the Design-Builder meets or exceeds the BPCA Goals. BPCA expects the Project Manager to have experience managing and delivering a minimum of at least three (3) Projects of Similar Scope and Complexity. Additional consideration may be given if the Project Manager is also a certified project management professional. This person shall be assigned to the Project full-time, from the NTP for Phase 1 Services through substantial completion of the entire Phase 2 Work, as well as be available to assist, as needed, for any subsequent warranty work.</p> <p><b>4-1.3 Design Lead</b></p> <p>The “Design Lead” shall be responsible for ensuring that the overall Project design is completed, the Project Technical Criteria are met, and the design is managed and delivered to meet or exceed the BPCA Goals. Proven design excellence in innovative and creative design must be demonstrated. BPCA expects the Design Lead to be licensed to provide engineering services in the State, have a minimum of at least twenty (20) years of design related experience and have experience managing the design of a minimum of at least two (2) Projects of Similar Scope and Complexity. If the Design Lead is not a licensed engineer then the Respondent must also identify the proposed engineer employed by the Engineer of Record and their appropriate qualifications within Section 4-1.15 below. The Design Lead shall be assigned to the Project full-time, from commencement of the Phase 1 Services through completion of the design effort and shall be available as needed during construction activities. The Design Lead shall be employed by the Engineer of Record and work closely with the Construction Manager to assure that the Project design is constructible.</p> <p><b>4-1.4 Design Integrator</b></p> <p>The “Design Integrator” is the individual responsible for the development and implementation of a multi-discipline design team that also establishes and implements an integrated design work plan that ensures alignment of design deliverables with Early Work Packages and other construction packages. Accordingly, the Design Integrator must have a close working relationship with the Procurement Manager and</p>

Section No.	Title	Contents
		<p>Construction Manager. The Design Integrator should be a licensed engineer, architect or landscape architect in the State, have a minimum of at least twelve (12) years of design experience and have specific design experience with at least two (2) Projects of Similar Scope and Complexity. The Design Integrator shall be assigned to the Project from commencement of the Phase 1 Services through completion of the design effort and shall be available as needed during construction activities.</p> <p><b>4-1.5 Landscape Architecture Lead</b></p> <p>The “Landscape Architecture Lead” shall be responsible for developing a design approach to ensure the flood barrier system will be seamlessly integrated into the existing urban landscapes. The Landscape Architecture Lead will work closely with the Project Manager, Design Lead, Design Integrator, and Construction Manager to ensure finish conditions are constructed to a high quality and meet the functional requirements of the Battery Park City park system. As such, the Landscape Architecture Lead is responsible for developing final design and construction documentation for all landscape architectural items in a manner compliant with relevant Project Technical Criteria and its influence on public space. The Landscape Architecture Lead will also be primarily responsible for developing content for community and stakeholder engagement and must demonstrate proven experience in leading engagement efforts with similar scope and scale. The Landscape Architecture Lead should have a minimum of twenty (20) years of design experience, with at least two (2) resiliency projects of comparable scope, scale, and complexity; must demonstrate ability to successfully integrate the work of allied disciplines within the last five (5) years, and five (5) projects with similar regulatory and agency approval requirements in the last ten (10) years.</p> <p><b>4-1.6 Construction Manager</b></p> <p>The “Construction Manager” shall be responsible for all Project construction. It is the Construction Manager’s primary responsibility during pre-construction to ensure that the proposed design solutions are constructible and to identify potential value engineering (VE) alternatives that the Design-Builder is to consider and to recommend VE solutions to maximize cost efficiency. The Construction Manager shall attend various technical design meetings and provide input related to Project components, phasing and staging plans, Early Work Packages, risk management, alternatives analysis, cost minimization, environmental impact avoidance and minimization and ultimately to assist with recommendations that facilitate development of the Project’s preferred alternative.</p> <p>Following execution of any Early Work Package Amendment(s) and issuance of NTP for Phase 2 Work, the Construction Manager’s primary responsibility is to ensure that construction activities are managed and delivered in accordance with the PDB Contract. The Construction Manager shall manage the resolution of construction-oriented field problems, and actively engage in risk identification and mitigation. BPCA expects the Construction Manager to be licensed to provide construction management services in the State and have experience managing a minimum of three (3) Projects of Similar Scope and Complexity. The Construction</p>



Section No.	Title	Contents
		<p>Manager shall have experience with (i) managing a diverse group of subcontractors, (ii) constructing works in an urban, waterfront environment, (iii) sequencing works in a manner that minimizes impacts to adjacent infrastructure and other assets, (iv) adhering to environmental permit conditions and (v) coordinating with public project owners and third party stakeholders. Additional consideration may be given if the Construction Manager is a certified project management professional and/or certified construction manager.</p> <p>The Construction Manager shall be assigned to the Project from commencement of the Phase 1 Services through design completion, lead various constructability reviews and shall be available to attend Project meetings during the Phase 1 Services Period. The Construction Manager shall be assigned to the Project full-time during construction activities through substantial completion of the Project and be available to assist, as needed, for any subsequent warranty work.</p> <p><b>4-1.7 Project Superintendent</b></p> <p>Commencing with any Early Work Packages and continuing through completion of the Phase 2 Work, the “Project Superintendent” shall work closely with the Construction Manager. The Project Superintendent should possess, at a minimum, fifteen (15) years of construction experience involving multiple phases of large-scale projects, including Projects of Similar Scope and Complexity. This individual must be able to develop/communicate a project work plan, monitor manpower and performance against the work plan and be able to perform a detailed comparison of the design drawings against each other to ensure coordination between each of the various project trades. This position requires experience to supervise a project’s field activities including quality assurance (e.g. project completed in compliance with drawings and specifications), safety program implementation and monitoring, schedule compliance, site logistics, coordination of special/controlled inspections and resource tracking.</p> <p><b>4-1.8 Procurement Manager</b></p> <p>The Design-Builder will be required to procure numerous subcontracts under the PDB Contract. The “Procurement Manager” will be required to ensure these procurements are conducted in a professional, transparent and competitive manner that is consistent with the PDB Contract requirements. The Procurement Manager shall also be responsible for assisting in the development of the GMP and recommendation of award of Early Work Packages. The Procurement Manager shall participate in the Phase 1 Services and continue through BPCA’s approval of the GMP Amendment. The Procurement Manager should possess at minimum of fifteen (15) years of design and construction experience and have performed similar services for at least one (1) Project of Similar Scope and Complexity.</p> <p><b>4-1.9 Project Controls Manager</b></p> <p>The “Project Controls Manager” shall be responsible for establishing and implementing procedures to maintain an efficient system to control schedule, cost, earned value, risk and any construction delay claims</p>

Section No.	Title	Contents
		<p>related to the Project and for recommending corrective actions. This individual shall have experience in a variety of construction management services that include critical path method scheduling, cost estimating, change control, risk register development/analysis/mitigation, and document control. The Project Controls Manager shall develop and maintain all Project documentation, such as Project correspondence, meeting minutes, action item trackers, claims review and analysis, constructability reviews, RFIs, submittals, transmittals, monthly reports and daily reports. The Project Controls Manager shall be assigned to the Project from commencement of Phase 1 Services throughout Phase 2 Work and should possess, at a minimum, ten (10) years of experience in project controls.</p> <p><b>4-1.10 Project Scheduler</b></p> <p>The “Project Scheduler” shall be a professional with experience in the production of large-scale complex schedules and project tracking documents, including overall schedules, detailed construction schedules, delay analysis, and four-week look ahead schedules. The Project Scheduler shall have experience using Primavera P6 and shall be assigned to the Project from commencement of Phase 1 Services through completion of the Phase 2 Work. This position shall determine a protocol and schedule for schedule submissions, which incorporates revisions and updates such that schedules remain current and represent the most accurate information available for the status of the Project. The Project Scheduler should possess, at a minimum, ten (10) years of experience in providing scheduling services for similar large-scale, complex projects.</p> <p><b>4-1.11 Project Estimator</b></p> <p>The “Project Estimator” shall be a professional with experience in the preparation of cost estimates based on the tracking of historical costs, along with knowledge and analytical capabilities associated with construction market conditions and dynamics. The Project Estimator shall assist the Procurement Manager in developing the GMP based on the approved design, proposed construction sequence and schedule. The Project Estimator should possess a minimum of five (5) years of comparable experience on similar large-scale complex projects. The Project Estimator shall participate in the cost estimate reconciliation meetings with BPCA and its Advisory Team and prepare accurate minutes, draft correspondence for review, create simple calculations based spreadsheets and print out reports as required.</p> <p><b>4-1.12 Quality Manager</b></p> <p>The “Quality Manager” shall prepare and implement the quality control plan and quality assurance protocol/applications and make recommendations pertaining to constructability, sequencing, impact analysis, and other related tasks. This individual shall assure compliance with goals outlined in the Sustainability Plan and Green Guidelines adopted by BPCA. The Quality Manger should have experience on</p>

Section No.	Title	Contents
		<p>providing cost-effective quality control consistent with the complexity, criticality and safety aspects of the Project and possess a minimum of ten (10) years of comparable experience.</p> <p><b>4-1.13 Safety Manager</b></p> <p>The “Safety Manager” shall develop and implement the safety program and assure the Design-Builder's compliance with the Occupational Safety and Health Act (OSHA) and amendments thereto, and other City, State and federal ordinances, rules, regulations, statutes or laws that may be applicable. This individual shall work closely with the Project Manager and Construction Manager and coordinate with BPCA and the Advisory Team regarding any and all necessary health and safety plans, spill response requirements and related environmental regulations and procedures as required by any agency having such jurisdiction over the Project. This individual shall assure that toolbox safety meetings are conducted on a frequent, recurring basis and shall lead the investigation and preparation of reports of any accident for BPCA review and follow-on action that minimizes the potential for re-occurrence.</p> <p><b>4-1.14 Construction Community Engagement Manager</b></p> <p>The “Construction Community Engagement Manager” shall be an experienced community engagement professional with infrastructure design and construction knowledge that can provide support and recommendations to BPCA while leading the community outreach and communication activities throughout the balance of design and construction activities. The Construction Community Engagement Manager should have a minimum of seven (7) years of experience on comparable projects.</p> <p><b>4-1.15 Additional Personnel</b></p> <p>The Project will require substantially more personnel than those identified as Key Personnel in this Section. Respondents may include qualifications, technical competence, and experience of additional personnel and their proposed involvement that Respondent wishes to identify as Key Personnel.</p>
4-2	Resumes	<p>Provide resumes for each Key Personnel identified in Section 4-1. Such resumes shall demonstrate how each Key Personnel is uniquely qualified to lead in their role on the Project. Each resume must include the name, qualifications and relevant experience in Projects of Similar Scope and Complexity. The relevant experience must also include contracting method, dates spent on the project, and duties performed.</p> <p>Each Key Personnel resume submittal shall be no more than two (2) pages in length and the entirety of this Section shall be limited to thirty (30) pages.</p>
4-3	References	<p>Respondent shall provide three (3) references for each Key Personnel from different projects that are included in each resume described in Section 4-2 of this Package. The reference should be for the project's owner or the project owner's representative. BPCA personnel shall not be identified as a reference.</p>

<b>Section No.</b>	<b>Title</b>	<b>Contents</b>
		<p>BPCA reserves the right to contact those individuals that are listed as references and points may be assigned based upon the reference's verification that the Respondent's characterization of the individual's involvement in the project is accurate, as well as their overall assessment of those services provided in their identified role.</p> <p>Each reference should include the referral's name, title, email address, and phone number. Two of the three references for each Key Person should be from projects that are at least 75% complete. BPCA reserves the right to contact references other than those identified by the Respondent to evaluate past performance. BPCA reserves the right to maintain the confidentiality of the past performance information provided by the references listed by the Respondent, as well as references obtained by other means, and is under no obligation to share such information with the Respondent. By submitting an SOQ for consideration under this RFQ, the Respondent agrees that it shall not seek to discover from any source the contents of any such communication.</p>

#### **Package 5 – Diversity**

BPCA will evaluate Respondents based upon the demonstrated experience of the Key Entities to successfully utilize MBE/WBE/SDVOB firms and to meet established MBE/WBE/SDVOB goals and EEO requirements.

<b>Section No.</b>	<b>Title</b>	<b>Contents</b>
5-1	Prior Diversity Experience	Respondent shall provide a description of the experience of the Key Entities in successfully using MBE/WBE/SDVOB firms and meeting established goals with meaningful, substantive participation in similar work elements as required in the Project. Include the goals for specific projects completed and the actual results for achieving such goals. Diversity goals for the Project are discussed in Schedule D (Diversity Requirements).
5-2	M/WBE & EEO Policy Statement (Qualification Form E-1)	Complete and provide all information required by Qualification Form E-1 (Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement) of Schedule B (Qualification Forms).
5-3	Diversity Practices Questionnaire	Complete and provide all information required by Qualification Form E-2 (Diversity Practices Questionnaire) of Schedule B (Qualification Forms).

Section No.	Title	Contents
	(Qualification Form E-2)	

### Package 6 – Project Approach

BPCA will evaluate the Project approach based on the Respondent's ability to demonstrate understanding of the objectives, elements, and challenges associated with the Project, including the BPCA Goals, and the potential/likely approaches to successfully plan and execute the Project. The Project approach shall describe the use of Respondent's proven systems, processes and tools, referencing real-world examples of project success. The Project approach is to also include description of design processes to achieve innovative solutions for the public sector in alignment with the BPCA Goals.

Section No.	Title	Contents
6-1	Project Approach: Management	<p>Provide the Respondent's approach to addressing this Project, including the philosophy and approach to the design and construction of flood barriers, interior drainage infrastructure and site enhancements within a system of built infrastructure and 24-7 operations such as Battery Park City. Items to be addressed include management of the design process consistent with the deliverable milestones, procurement/selection of subcontractors, early work construction, balance of construction services and post-construction close-out activities. Within the Respondent's approach, include the proposed location for the performance of the pre-construction, construction and post-construction services.</p> <p>As part of the Respondent's approach to project management, discuss the major components, issues and challenges the Respondent has identified on this complex, urban resiliency project and how it intends to address them. Provide a log that identifies the top ten (10) potential risks to the Project with suggested mitigation strategies.</p> <p>Discuss the elements of the Project that the Respondent may elect to self-perform or anticipate completing using named team-members/subcontractors. Identify work that is likely to be subcontracted, and how Respondent intends to implement a competitive and transparent solicitation process that complies with the established Schedule D (Diversity Requirements).</p> <p>This section shall not exceed five (5) pages.</p>

Section No.	Title	Contents
6-2	Project Approach: Technical	<p>BPCA expects each submission to address substantive technical issues outlined below. Respondents are encouraged to use the below to describe their design approach for the Project and anticipated technical and climate change adaptation challenges particular to the Project area. To the extent possible, use other large-scale resiliency projects as examples including your teams' experience.</p> <ol style="list-style-type: none"> <li>1) With varying site conditions and uses within Battery Park City, describe the Respondent's approach to evaluating an optimal ratio between passive and active/deployable elements in the flood protection system. Discuss the viability/desirability of flood protection system elements that combine both passive and deployable components.</li> <li>2) Describe the Respondent's planning and design strategy/approach to over-topping storm events in excess of currently anticipated design storm at 1% in 2050 and to the potential for adaptability of the flood protection system for potentially more stringent flood level targets in the future.</li> <li>3) In addition to coastal surge protection, describe the overall approach to addressing pluvial (rainstorm event) risk reduction.</li> <li>4) Describe the approach to anticipated technical challenges posed by the Project area including existing structures, open spaces and subterranean conditions. Discuss potential prioritization principals for selection of the flood protection system alignment.</li> <li>5) Battery Park City's urban spaces are the pride of its community. Describe how an integrated design approach will ensure protection and enhancement of the overall character, programmatic functionality, and user experience of the Project area, including the continuing ability to accommodate a broad variety of public space activities and ground level building uses.</li> <li>6) Describe the approach to integrating sustainable design in the Project to align with BPCA's Sustainability Plan and Green Guidelines, including, among numerous other considerations, the anticipated ability to address urban heat island effect, response to heat-waves, healthy spaces, materiality and embodied carbon and construction waste diversion.</li> </ol> <p>This section shall not exceed eight (8) pages.</p>

**Package 7 – Comments on PDB Contract Terms**

Submissions as part of Package 7 are voluntary and will not be part of the SOQ evaluation.

<b>Section No.</b>	<b>Title</b>	<b>Contents</b>
7-1	Comments on PDB Contract Terms	Provide comments, if any, on the expected terms and conditions of the PDB Contract, as summarized in Schedule C (PDB Contract Terms).

**SCHEDULE B**  
**QUALIFICATION FORMS**



**QUALIFICATION FORM A – TRANSMITTAL LETTER**  
  
**REQUEST FOR QUALIFICATIONS  
TO PROVIDE DESIGN-BUILD SERVICES  
FOR THE  
NORTH/WEST BATTERY PARK CITY RESILIENCY PROJECT**

***Transmittal Letter***

(To be typed on Respondent's Letterhead)

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

Battery Park City Authority

Re: Request for Qualifications to Provide Design-Build Services for the North/West Battery Park City Resiliency Project.

\_\_\_\_\_ (the "**Respondent**") hereby submits its Statement of Qualifications ("**SOQ**") in response to the Request for Qualifications to Provide Design-Build Services for the North/West Battery Park City Resiliency Project ("**RFQ**"), issued on September 10, 2021, as amended. Capitalized terms used but not defined herein have the meanings set forth in the RFQ.

As a duly authorized representative of the Respondent, I hereby certify, represent, and warrant, on behalf of the Respondent, as follows in connection with the SOQ:

1. The Respondent acknowledges receipt of the RFQ and the following Addenda:

<u>No.</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____

2. The submittal of the SOQ has been duly authorized by, and in all respects is binding upon, the Respondent. The Certificate of Authorization, accompanying this Transmittal Letter, evidences my authority to submit the SOQ and bind the Respondent.

3. The Respondent has completely reviewed and understands and agrees to be bound by the requirements of the RFQ, including all Addenda thereto.

4. All information and statements contained in the SOQ are current, correct and complete, and are made with full knowledge that BPCA will rely on such information and statements in determining whether to pre-qualify the Respondent in accordance with the RFQ.

5. The SOQ has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the services contemplated by the RFQ. No attempt has been made or will be made by Respondent or any Key Respondent Team Member to induce any other person, partnership, firm or corporation to submit or not to submit an SOQ for the purpose of restricting competition.

6. No Key Respondent Team Member in the SOQ is currently suspended or debarred from doing business with any governmental entity.

7. The Key Respondent Team Members have reviewed all of the engagements and pending engagements of the Key Respondent Team Members, and no potential exists for any conflict of interest or unfair advantage.

8. No person or selling agency has been employed or retained to solicit the award of the PDB Contract under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the Respondent.

9. If the Respondent is shortlisted, the Respondent intends to participate in the RFP and Proposal process.

10. The principal contact person who will serve as the interface between BPCA and the Respondent for all communications is:

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
COMPANY: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
  
PHONE: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

11. The key technical and legal representatives available to provide timely response to written inquiries submitted, and to attend meetings requested by BPCA are:

Technical Representative:

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
COMPANY: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
  
PHONE: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

Legal Representative:

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
COMPANY: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
  
PHONE: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

[Signature page follows]

\_\_\_\_\_  
Name of Respondent

\_\_\_\_\_  
Name of Designated Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Notary Public)

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me appeared \_\_\_\_\_, personally known to me to be the person described in and who executed this Transmittal Letter and acknowledged that (she/he) signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed by official seal the day and year last written above.

\_\_\_\_\_  
Notary Public in and for the state of

(SEAL)

\_\_\_\_\_  
(Name printed)

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**CERTIFICATE OF AUTHORIZATION\***

I, \_\_\_\_\_, a resident of \_\_\_\_\_ in the State of \_\_\_\_\_, DO HEREBY CERTIFY that I am the Clerk/Secretary of \_\_\_\_\_, a [corporation] duly organized and existing under and by virtue of the laws of \_\_\_\_\_; that I have custody of the records of the [corporation]; and that as of the date of this certification, \_\_\_\_\_ holds the title of \_\_\_\_\_ of the [corporation], and is authorized to execute and deliver in the name and on behalf of the [corporation] the Statement of Qualifications (“SOQ”) submitted by the [corporation] in response to the Request for Qualifications to Provide Design-Build Services for the North/West Battery Park City Resiliency Project issued on September 10, 2021, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the [corporation] in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the [corporation] this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

(Affix Seal Here)

\_\_\_\_\_  
Clerk/Secretary

\* **Note:** *Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the SOQ. Respondents shall make appropriate conforming modifications to this Certificate in the event that the signatory’s address is outside of the United States.*

### **LICENSES AND CERTIFICATES**

Provide copies of the licenses and certificates of registration for Key Respondent Team Members leading the design and construction efforts. Include business licenses, contractor licenses and any certificates of authorization to perform the required services.

## **QUALIFICATION FORM B-1**

### **STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE / NO CHANGE FORMS**

#### **Instructions**

In your packet you have 2 forms:

- The Standard Vendor Responsibility Questionnaire (Consisting of 4 pages and a Certification page); and
- The Certificate of No Change (1 page)

The Standard Vendor Responsibility Form should be filled out by someone in your firm who knows about tax filings, prior findings of non-responsibility by a governmental authority, etc., and can certify the accuracy of all information requested in the form (such as legal status, tax status, and debarment status).

You must answer every question on the questionnaire.

NOTE: You may fill out the “Certificate of No Change” form instead ONLY if your firm has submitted the Vendor Responsibility form to Battery Park City Authority already during this calendar year. If this is the first time your firm is proposing to do work for Battery Park City Authority this year, then you must fill out the entire Vendor Responsibility Questionnaire.

1. LEGAL BUSINESS NAME:

2. FEDERAL EMPLOYER ID NO. (FEIN):

3. D/B/A — Doing Business As (if applicable):  
COUNTY FILED:

4. WEBSITE ADDRESS (if applicable):

5. PRINCIPAL PLACE OF BUSINESS ADDRESS:

6. TELEPHONE: ext. 7. FAX:

8. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE:  
Name:  
Title:  
Telephone Number:  
Fax Number:  
E-mail:

9. TYPE OF BUSINESS: (please check appropriate box and provide additional information):

a) <input type="checkbox"/> Corporation	State of Incorporation:
b) <input type="checkbox"/> Sole Proprietor	State/County filed in:
c) <input type="checkbox"/> General Partnership	State/County filed in:
d) <input type="checkbox"/> Not-for-Profit Corporation	Charities Registration Number:
e) <input type="checkbox"/> Limited Liability Company (LLC)	Jurisdiction filed:
f) <input type="checkbox"/> Limited Partnership	State/County filed in:
g) <input type="checkbox"/> Other — Specify:	Jurisdiction filed (if applicable):

10. IF NOT INCORPORATED OR FORMED IN NEW YORK STATE, PLEASE PROVIDE A CURRENT CERTIFICATE OF GOOD STANDING FROM YOUR STATE OR APPLICABLE LOCAL JURISDICTION.

11. LIST NAME AND TITLE OF EACH PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), DIRECTOR AND MEMBER, as applicable:

a)	
b)	
c)	
d)	
e)	
f)	
g)	
h)	

12. AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:  
Name:  
Title:  
Telephone Number: Fax Number:  
E-mail:

**STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE (CONTINUED)**

VENDOR FEIN:

13. DOES THE VENDOR USE, OR HAS IT USED IN THE PAST FIVE (5) YEARS, ANY OTHER BUSINESS NAME, FEIN, OR D/B/A OTHER THAN WHAT IS LISTED IN QUESTIONS 1-3 ABOVE? ☐Yes ☐No

If yes, provide the name(s), FEIN(s) and d/b/a(s) and the address for each such company and d/b/a on a separate piece of paper and attach to this response.

14. WITHIN THE PAST FIVE (5) YEARS, HAS THE VENDOR, ANY PRINCIPAL, OWNER, OFFICER, MAJOR STOCKHOLDER (10% OR MORE OF THE VOTING SHARES FOR PUBLICLY TRADED COMPANIES, 25% OR MORE OF THE SHARES FOR ALL OTHER COMPANIES), AFFILIATE<sup>1</sup> OR ANY PERSON INVOLVED IN THE BIDDING, CONTRACTING OR LEASING PROCESS BEEN THE SUBJECT OF ANY OF THE FOLLOWING:

- a) a judgment or conviction for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct? ☐Yes ☐No
- b) a criminal investigation or indictment for any business related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct? ☐Yes ☐No
- c) an unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency? ☐Yes ☐No
- d) an investigation for a civil or criminal violation for any business related conduct by any federal, state or local agency? ☐Yes ☐No
- e) a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct? ☐Yes ☐No
- f) a federal, state or local government suspension or debarment from the contracting process? ☐Yes ☐No
- g) a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract? ☐Yes ☐No

<sup>1</sup>"Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct



such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

**STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE (CONTINUED)**

VENDOR FEIN:

- h) a federal, state or local government denial of a lease or contract award for non-responsibility? ☐Yes ☐No
- i) an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease? ☐Yes ☐No
- j) a federal, state or local determination of a willful violation of any public works or labor law or regulation? ☐Yes ☐No
- k) a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license? ☐Yes ☐No
- l) a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws? ☐Yes ☐No
- m) an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful? ☐Yes ☐No
- n) a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles? ☐Yes ☐No
- o) a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of:
- health laws, rules or regulations ☐Yes ☐No
  - unemployment insurance or workers' compensation coverage or claim requirements ☐Yes ☐No
  - ERISA (Employee Retirement Income Security Act) ☐Yes ☐No
  - human rights laws ☐Yes ☐No
  - federal U.S. Citizenship and Immigration Services laws ☐Yes ☐No
  - Sherman Act or other federal anti-trust laws ☐Yes ☐No
- p) entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity? ☐Yes ☐No
- q) a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status? ☐Yes ☐No
- r) a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract? ☐Yes ☐No
- s) a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j? ☐Yes ☐No

FOR EACH YES ANSWER TO QUESTIONS 14 a-s, PROVIDE DETAILS ON ADDITIONAL SHEETS REGARDING THE FINDING, INCLUDING BUT NOT LIMITED TO CAUSE, CURRENT STATUS, RESOLUTION, ETC.

**STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE (CONTINUED)**

VENDOR FEIN:

15. DURING THE PAST THREE YEARS, HAS THE VENDOR FAILED TO:

- a) FILE RETURNS OR PAY ANY APPLICABLE FEDERAL, STATE OR LOCAL GOVERNMENT TAXES? ☐Yes ☐No

If yes, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability:

- b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE? ☐Yes ☐No

If yes, indicate the years the company failed to file/pay the insurance and the current status of the liability:

16. HAVE ANY BANKRUPTCY PROCEEDINGS BEEN INITIATED BY OR AGAINST THE VENDOR OR ITS' AFFILIATES WITHIN THE PAST SEVEN YEARS (WHETHER OR NOT CLOSED) OR IS ANY BANKRUPTCY PROCEEDING PENDING BY OR AGAINST THE VENDOR OR ITS AFFILIATES, REGARDLESS OF THE DATE OF FILING? ☐Yes ☐No

If yes, indicate if this is applicable to the submitting vendor or one of its affiliates:

If it is an affiliate, include the affiliate's name and FEIN:

Provide the court name, address and docket number:

Indicate if the proceedings have been initiated, remain pending or have been closed:

If closed, provide the date closed:

17. DOES VENDOR HAVE THE FINANCIAL RESOURCES NECESSARY TO FULFILL THE REQUIREMENTS OF THE PROPOSED CONTRACT? ☐Yes ☐No

**STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE (CONTINUED)**

VENDOR FEIN:

State of                                )  
  ) ss:  
County of                            )

CERTIFICATION:

The undersigned, personally and on behalf of the vendor identified in questions 1-3 above, does hereby state and certify to Battery Park City Authority – State of New York that the information given above is true, accurate and complete. It is further acknowledged that Battery Park City Authority – State of New York will rely upon the information contained herein and in any attached pages for purposes of evaluating our company for vendor's responsibility for contract award and Battery Park City Authority – State of New York may, in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein. It is further acknowledged that intentional submission of false or misleading information may constitute a felony under Penal Law Section 175.35 or may constitute a misdemeanor under Penal Law Sections 175.30, 210.35 or 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in a denial of contract award or contract termination.

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Typed Copy of Signature

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Title

Sworn to before me this \_\_\_\_  
day of \_\_\_\_\_ 20\_\_ .

\_\_\_\_\_  
Notary Public:  
Registration No:  
State:

**CERTIFICATE OF NO CHANGE**

STATE OF ( )

COUNTY OF ) ss.:

The undersigned, being duly sworn, deposes and says:

1. I am \_\_\_\_\_, the \_\_\_\_\_ (title) of the \_\_\_\_\_ (hereinafter the "Contractor"), which is currently submitting an amendment to a State Contract.

2. Contractor previously submitted the completed Battery Park City Authority Standard Vendor Responsibility Questionnaire, dated \_\_\_\_\_ in connection with another State Contract.

3. Attached is an accurate and true copy of such previously submitted Standard Vendor Responsibility Questionnaire.

4. I hereby certify that with the exception of the information specified in Question 12, and as changed herein, there has been no material change in the information pertaining to the Contractor specified on such attached Questionnaire.

**AUTHORIZED CONTACT FOR THE PROPOSED CONTRACT:**

Name & Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE

Sworn before me this

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

**QUALIFICATION FORM B-2**

**STATE FINANCE LAW CERTIFICATIONS**

**Offerer's Affirmation of Understanding of and Agreement pursuant to  
State Finance Law §139-j(3) and §139-j(6)(b)**

Offerer affirms that it understands and agrees to comply with the procedures of Battery Park City relative to permissible Contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: \_\_\_\_\_  
(Signature)

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

Name: \_\_\_\_\_  
(Printed)

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

Contractor Name: \_\_\_\_\_  
(Company)

Contractor Address: \_\_\_\_\_

**Offerer's Certification Of Compliance With State Finance Law §139-k(5)**

*I certify that all information provided to Battery Park City Authority, its subsidiaries and affiliates with respect to State Finance Law § 139-k is complete, true and accurate.*

By: \_\_\_\_\_  
(Signature)

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

Name: \_\_\_\_\_  
(Printed)

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

Contractor Name: \_\_\_\_\_  
(Company)

Contractor Address: \_\_\_\_\_

**QUALIFICATION FORM B-3**

**DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address:

\_\_\_\_\_

Name and Title of Person Submitting this Form:

\_\_\_\_\_

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

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

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please check box):

☐ No

☐ Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please check box):

☐ No

☐ Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please check box):

☐ No

☐ Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)



**DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS (CONTINUED)**

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

(Please circle):

☐ No

☐ Yes

6. If yes, please provide details below:

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_  
(Signature)

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

Name: \_\_\_\_\_  
(Print)

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

**QUALIFICATION FORM B-4**  
**FINANCIAL INFORMATION SUMMARY**

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

Project Role: \_\_\_\_\_

		<b>2020<sup>1</sup></b> <b>(Year End)</b>	<b>2019<sup>1</sup></b> <b>(Year End)</b>	<b>2018<sup>1</sup></b> <b>(Year End)</b>
<b>Income Statement</b>				
A	Gross Revenues			
B	Cost of Sales			
C	Gross Profit (A-B)			
D	Operating Expenses			
E	Earnings Before Interest and Taxes			
F	Interest			
G	Taxes			
H	Earnings Before Interest, Taxes, Depreciation and Amortization			
<b>Balance Sheet</b>				
A	Current Assets			
B	Inventories			
C	Goodwill/Intangibles			
D	Total Assets			
E	Current Liabilities			
F	Short-Term Debt			
G	Long-Term Debt			
H	Total Liabilities			
I	Net Worth (D-H)			

		<b>2020<sup>1</sup></b> <b>(Year End)</b>	<b>2019<sup>1</sup></b> <b>(Year End)</b>	<b>2018<sup>1</sup></b> <b>(Year End)</b>
<b>Cash Flow Statement</b>				
A	Cash Flow From Operations			
B	Net Cash Flow from Investing Activities			
C	Net Cash Flow from Financing Activities			
D	End of Year Cash and Cash Equivalents			
<b>Other</b>				
A	Financial Statement Currency			
B	USD: Local Currency Exchange Rate			
C	Ratings (e.g. Fitch Ratings, Moody's Investors Service, and S&P Global Ratings)			

<sup>1</sup> Express in millions (000,000) of US dollars. Where applicable, companies should indicate the conversion to US dollars, using the average periods' exchange rate for income statements and cash flow statements, and for period end exchange rate for balance sheet times. The local currency and exchange rate used should be identified, if applicable.

### QUALIFICATION FORM C – REFERENCE INFORMATION FOR KEY ENTITIES

<b>Name of Respondent/Key Entity:</b>
---------------------------------------

<b>Title of Referenced Project:</b>	
<b>Description of the Work/Services Provided:</b>	
<b>Percentage of Overall Project Work Performed by Entity: %</b>	
<b>Reference</b> Owner Name: Contact Name: Email: Phone:	
<b>Contract Amount:</b>	<b>Other Completion Milestones</b>  Description: Proposed: Actual/Projected:  Description: Proposed: Actual/Projected:  Description: Proposed: Actual/Projected:
<b>Contracting Method:</b>	
<b>% Complete: %</b>	
<b>Substantial Completion</b> Proposed: Actual/Projected:	
<b>Final Completion</b> Proposed: Actual/Projected:	

### QUALIFICATION FORM D – SAFETY QUESTIONNAIRE

#### (a) Safety Performance

Contractor Description	2016	2017	2018	2019	2020
Average number of employees.					
Number of fatalities. (OSHA 300 Log column G total)					
No. days away from work cases, or cases with job transfer or restrictions, or both. (OSHA 300 Log column H & I totals)					
Other recordable cases - medical only; without lost or restricted workdays. (OSH 300 Log column J)					
Total recordable cases (OSHA 300 Log totals of columns G, H, I, & J)					
Total hours worked					
OSHA Total Recordable Incident Rate (TRIR) (Total recordable cases per 200,000 hours worked)					
OSHA Lost Workday Case Incident Rate (TCIR) (Days away cases per 200,000 hours worked)					

#### (b) Safety Violations

List all OSHA (or other health and safety agency) violations issued against any company or organization on the Respondent's team since January 1, 2016.

i.	Team Member:		
	Date of Offence:		
	Description:		
	Info attached?	<input type="checkbox"/>	(Yes/No) - attach further description to SOQ if necessary.
ii.	Team Member:		
	Date of Offence:		
	Description:		

	Info attached?	<input type="checkbox"/>	(Yes/No) - attach further description to SOQ if necessary.
iii.	Team Member:	<input type="text"/>	
	Date of Offence:	<input type="text"/>	
	Description:	<input type="text"/>	
	Info attached?	<input type="checkbox"/>	(Yes/No) - attach further description to SOQ if necessary.
iv.	Additional Offences?	<input type="checkbox"/>	(Yes/No) - attach further description to SOQ if necessary.

**(c) Safety Performance - EMR**

Provide Worker's Compensation Experience Ratings on the table below.

- If General Contractor is structures contractor and/or excavation contractor then please state 'N/A' or 'O' in cells that are not applicable.
- Final two blank columns are for Respondent to identify (insert name & construction discipline) any other team member company/organization that will be performing over 20% of the project's construction work.
- Include endorsement page from your latest insurance policy, or have your insurance carrier/broker provide this information on their letterhead. In the 'Endorsement' column indicate 'Attached' to say that it is included in your SOQ.

Respondent's Team Member	Endorsement*	2016	2017	2018	2019	2020
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="checkbox"/>	If EMR exceeds 1.00 in any of the cells above, attached an explanation with SOQ (Attached/N/A)
--------------------------	--

**(d) OSHA Violations**

Provide information and details below for any serious violations of the Occupational Safety and Health Act, as provided in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, settled against any member of the Respondent's team:

Respondent team member:	<input type="text"/>
Details	<input type="text"/>

Respondent team member:  
Details

--


Respondent team member:  
Details


Additional cases submitted as an attachment to the SOQ (Yes/None)

--

**QUALIFICATION FORM E-1 – MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES  
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**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”).

**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 \_\_\_\_\_, 20\_\_

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** (subject to subsequent RFP requirements)

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

**15%** Minority Business Enterprise Participation

**15%** Women's Business Enterprise Participation

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

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

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

## QUALIFICATION FORM E-2 – DIVERSITY PRACTICES QUESTIONNAIRE

### 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.

---

<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.

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

An MBE/WBE utilization plan will be required in connection with the Proposal submitted in response to the RFP.

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 \_\_\_\_\_, 20\_\_\_\_, 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

**SCHEDULE C**  
**PDB CONTRACT TERMS**

## **SCHEDULE C – PDB CONTRACT TERMS**

### **NORTH/WEST BATTERY PARK CITY RESILIENCY PROJECT PDB CONTRACT TERMS**

This term sheet is intended to provide Respondents with a general description of the expected terms and conditions of the PDB Contract, as currently anticipated by BPCA. Respondents are advised that the draft PDB Contract will be issued with the RFP and that the terms set forth herein are subject to change and further development prior to RFP issuance. Respondents may submit comments concerning these terms in accordance with Section 2.5 (PDB Contract Terms) of this RFQ. The draft PDB Contract included with the RFP will supersede this term sheet and will be subject to review and comment by the Proposers in accordance with the RFP. The final PDB Contract will supersede the RFP, including the draft PDB Contract.

Capitalized terms used and not otherwise defined herein have the meaning set forth in Section 1.4 (Abbreviations and Definitions) of this RFQ.

<b>1. OVERVIEW AND GENERAL TERMS</b>	
<b>A. Parties</b>	BPCA and the Design-Builder.
<b>B. Scope of Contract Services</b>	The Contract Services will include the Phase 1 Services and the Phase 2 Work, together with all reporting, administrative and related obligations of the Design-Builder under the PDB Contract.
<b>C. Contract Term</b>	<p>The PDB Contract will take effect upon execution, and will continue until completion of all Contract Services, subject to early termination in accordance with its terms.</p> <p>As discussed further below, the PDB Contract will include scheduled milestone completion dates for the performance of the Contract Services during both the Phase 1 Services Period and the Phase 2 Work Period, with the overall objective of completing the Project in accordance with the anticipated milestone schedule set forth in Section 2.3 (Key Project Milestones) of this RFQ.</p>
<b>D. Contract Phases</b>	<p>Upon execution of the PDB Contract and issuance of a notice-to-proceed from BPCA, the Design-Builder will be required to perform and complete all Phase 1 Services. The Design-Builder may not proceed with any Phase 2 Work prior to the negotiation and execution of an amendment to the PDB Contract authorizing the performance of such Phase 2 Work.</p> <p>Amendments authorizing Phase 2 Work may include Early Work Package Amendments and multiple GMP Amendments, each focused on a specific component of the Project. The final GMP Amendment will cover the entirety of the Project, incorporating all prior amendments, and will require the Design-Builder to perform all Phase 2 Work necessary to complete the Project as a whole.</p> <p>BPCA will not be obligated to enter into any Early Work Package Amendment or GMP Amendment and may terminate the PDB</p>

	Contract for its convenience at any time, subject to the terms set forth below.
<b>E. BPCA Representatives</b>	The Design-Builder and its subcontractors, including all associated personnel and team members (collectively the “ <b>DB Team Members</b> ”), will fully cooperate with all representatives and consultants designated by BPCA, including the Consulting Engineer and other Advisory Team members.
<b>F. Compliance with Law and Governmental Approvals</b>	<p>The PDB Contract will be governed by and construed in accordance with the applicable laws of the State.</p> <p>The Design-Builder will perform the Contract Services in accordance with all applicable law and will coordinate with, and comply with the requirements of, each federal, state, local, municipal or foreign governmental body, including any court and any regulatory or administrative agency, commission, body, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power, in each case, having jurisdiction in any way over the Project or the Contract Services (each, a “<b>Governmental Body</b>”). Governmental Bodies include, without limitation, each of the public entities and agencies identified in Section 2.8 (Governmental Approvals and Permits) of this RFQ.</p> <p>Except with respect to certain BPCA-designated Governmental Approvals, the Design-Builder will be responsible for obtaining, maintaining and complying with all conditions, permits, licenses, authorizations, consents, certifications, and other approvals required by any Governmental Body in order to perform the Contract Services (each, a “<b>Governmental Approval</b>”).</p> <p>BPCA, working with the Consulting Engineer, will be responsible for obtaining certain Governmental Approvals prior to the performance of Phase 2 Work by the Design-Builder. Such Governmental Approvals (the “<b>BPCA-designated Governmental Approvals</b>”) and associated BPCA/Consulting Engineer responsibilities will include:</p> <ol style="list-style-type: none"> <li>1) Completing SEQRA/CEQR documentation and making final determinations under SEQRA/CEQR to perform and complete the environmental review process for the Project, with BPCA as the lead agency;</li> <li>2) Consulting with the New York State Historic Preservation Office (SHPO) and the New York City Landmarks Preservation Commission (LPC), completing necessary analyses and investigations as requested by the agencies and working with SHPO and LPC to determine, based on those investigations, whether any mitigation or monitoring measures will be required for the Project;</li> <li>3) Initial FEMA coordination with respect to the Project Technical Criteria, including securing a conditional letter of</li> </ol>

	<p>map revision (Design-Builder responsible for final FEMA certification and letter of map revision); and</p> <p>4) Such other BPCA-designated Governmental Approvals as may be specified in the RFP.</p> <p>The Design-Builder will cooperate and provide reasonable assistance to BPCA and the Consulting Engineer in connection with the BPCA-designated Governmental Approvals and will perform the Contract Services in compliance with all Governmental Approvals, including the BPCA-designated Governmental Approvals. With respect to FEMA certification and certain other BPCA-designated Governmental Approvals (to the extent specified in the RFP), the Design-Builder will be required to complete the permitting and approval process as part of the Contract Services. BPCA will not authorize Phase 2 Work until all necessary Governmental Approvals have been obtained, including completion by BPCA of the environmental review process under SEQRA/CEQR for all Phase 2 Work that is dependent upon such environmental review process.</p>
<b>G. Stakeholders. Agency and Community Engagement</b>	<p>The Project Technical Criteria will be based on, among other things, feedback from the Battery Park City community, the Lower Manhattan community, Manhattan Community Board 1, impacted property owners, the public and other relevant stakeholders, including Governmental Bodies. In addition to complying with the Project Technical Criteria, the Design-Builder will coordinate and engage with such stakeholders throughout the performance of the Contract Services in accordance with an approved stakeholder and community engagement plan. The Design-Builder will be responsive to the concerns of all stakeholders and will, to the extent practicable, minimize interference with the community in performing the Contract Services.</p>
<b>H. Project Sites</b>	<p>To the extent not already established based on the RFP and successful Proposal, the parcels of real property on which the Project will be constructed (the “<b>Project Sites</b>”) will be established early in the performance of the Phase 1 Services in accordance with the Project Technical Criteria. The Project Technical Criteria will specify the available areas for the Project Sites, and the background documents included with the RFP will indicate BPCA’s ownership interests associated with such available areas, including any access right or property interest obtained in anticipation of the Project. To the extent BPCA does not own or control any area designated as available that is ultimately included among the Project Sites, BPCA will secure access rights and property interests necessary for the Project and will provide the Design-Builder with any applicable terms and conditions of access established by its agreements with property owners. In the case of any such access right or property interest that is not obtained prior to PDB Contract execution, the Design-Builder will provide reasonable assistance to BPCA in securing the same prior to the performance of the Phase 2 Work and will review and comment on any proposed access terms and conditions.</p>

	<p>The Design-Builder will notify BPCA if any design alternative developed during the Phase 1 Services would necessitate a change in the Project Sites or the available areas designated in the Project Technical Criteria and require additional access rights or property interests. BPCA may agree to secure such rights or interests prior to the performance of the Phase 2 Work. However, any change to the Project Sites will be subject to BPCA approval in its discretion, and BPCA will have no obligation to secure access rights or property interests with respect to any area that is not designated as an available area in the Project Technical Criteria.</p> <p>The Design-Builder will perform the Contract Services in accordance with all terms and conditions of access to the Project Sites, including those established by BPCA's agreements with property owners. If any areas in addition to the Project Sites, such as staging and storage areas, are necessary for the performance of the Phase 2 Work, the Design-Builder will be solely responsible for securing all necessary access rights for such areas.</p>
<b>I. Information Provided by BPCA</b>	<p>BPCA will be responsible for the performance specifications for the Project, as established by the Project Technical Criteria, and will provide certain background documents and technical information to the Design-Builder, such as subsurface condition reports, coastal and interior drainage modeling and topographic, bathymetric and utility surveys. The Project Technical Criteria will specify the information upon which the Design-Builder may rely in the performance of the Contract Services, such that the Design-Builder may be entitled to Uncontrollable Circumstance relief (discussed below) in the event of error or omission relating to the identified information, subject to the terms and conditions of the PDB Contract.</p> <p>For all other information provided by or on behalf of BPCA (i.e., information not specified in the Project Technical Criteria as reliance information), the Design-Builder will independently verify and confirm the information in the performance of the Contract Services. Except with respect to Uncontrollable Circumstance relief associated with reliance information specified in the Project Technical Criteria, as stated above, BPCA will have no responsibility for any error, omission or insufficiency relating to information provided to the Design-Builder by or on behalf of BPCA in connection with the PDB Contract.</p>
<b>J. Design-Builder Work Product</b>	<p>All drawings, specifications, plans and other work product developed by or on behalf of the Design-Builder in the performance of the Contract Services will be owned by BPCA, and the Design-Builder will grant such rights in the PDB Contract as may be necessary to enable BPCA to use such work product without restriction. Any use of such work product by BPCA for any purpose other than in connection with the Project will be at BPCA's own risk, and the Design-Builder will have no liability therefor.</p>



<b>2. PERSONNEL, LABOR AND SUBCONTRACTORS</b>	
<b>A. Responsibility for DB Team Members</b>	<p>The Design-Builder will be fully responsible, in accordance with the terms and conditions of the PDB Contract, for all Contract Services performed by its personnel, including all subcontractors and each other DB Team Member. The Design-Builder will, as between itself and BPCA, be responsible and liable to BPCA for, and not relieved of its obligations under the PDB Contract by, the acts, omissions, breaches, defaults, non-compliance, negligence, wilful misconduct or other legal fault of any other DB Team Member.</p> <p>If the Design-Builder is organized as a joint venture, each joint venture member will be jointly and severally liable for the obligations of the Design-Builder under the PDB Contract.</p>
<b>B. Key Personnel and Key Entities</b>	<p>The Design-Builder will maintain the Key Respondent Team Members throughout the performance of the PDB Contract and will utilize the Key Personnel and Key Entities to perform the services specified in its Proposal and set forth in the PDB Contract. With respect to any Key Entity identified for the performance of construction work, such obligation will be subject BPCA's rights to require the competitive procurement of construction work, as discussed below. The Design-Builder may not substitute or replace any individual identified as Key Personnel without the written consent of BPCA. In the event of the permissible unavailability of any individual identified as Key Personnel, the Design-Builder will appoint a replacement individual acceptable to BPCA and having at least the equivalent skill, experience and reputation as the individual being replaced.</p>
<b>C. Staffing Generally</b>	<p>The Design-Builder will provide for staffing of the performance of the Contract Services in accordance with the PDB Contract with qualified personnel who meet all applicable licensing and certification requirements imposed by applicable law. All persons engaged by any DB Team Member in the performance of the Contract Services must have the requisite skills for the tasks assigned.</p>
<b>D. Professional Services</b>	<p>All DB Team Members performing professional services as part of the Contract Services, including business entities and individuals, must be licensed and/or authorized to perform such services in the State in accordance with the requirements of applicable law, including the State Education Law.</p> <p>Any professional services regulated by Articles 145, 147 and 148 of the State Education Law will be performed and stamped and sealed, where appropriate, by a professional licensed in accordance with such Articles.</p>
<b>E. Labor Requirements and Project</b>	<p>The Design-Builder will be responsible for complying with all applicable provisions of the State Labor Law in performing the Phase 2 Work, including prevailing wage requirements. As between the Design-Builder and BPCA, the Design-Builder will have exclusive responsibility for labor disputes among its employees and</p>

<b>Labor Agreement</b>	the employees of its subcontractors and other DB Team Members. As indicated in Section 4.6 (Project Labor Agreement (PLA)) of this RFQ, the Project may be subject to a PLA in accordance with Section 222 of the State Labor Law.
<b>F. Diversity Requirements</b>	As provided in the DB Act, the PDB Contract must comply with the objectives and goals of MBEs and WBEs pursuant to Article 15-A of the State Executive Law and of SDVOBs pursuant to Article 17-B of the State Executive Law. The Design-Builder will fully comply and cooperate with BPCA in implementing these requirements, will use good faith efforts to meet the MBE/WBE/SDVOB participation goals established for the Project and will comply with all equal employment opportunity requirements. The MBE/WBE/SDVOB participation goals and the EEO requirements are detailed in Schedule D (Diversity Requirements) of this RFQ.
<b>G. Subcontracting and Self-Performance</b>	<p>All subcontracts and subcontracting processes employed by the Design-Builder for the performance of Contract Services will be subject to the approval of BPCA. BPCA may pre-approve subcontractors proposed by the Design-Builder and identify such pre-approved subcontractors in the PDB Contract.</p> <p>All subcontracts will be in compliance with the PDB Contract and will be assignable to BPCA, solely at BPCA's election and without cost or penalty, upon any early termination of the PDB Contract, including convenience termination.</p> <p>BPCA intends to negotiate with the Design-Builder the nature, extent, and price of any Phase 2 Work proposed to be performed by the Design-Builder or any pre-approved subcontractors based on the Design-Builder's Proposal in response to the RFP and as a part of the negotiation of any Early Work Package Amendment or GMP Amendment during the Phase 1 Services Period. Any such negotiation will be on an "open book" basis, and the Design-Builder will be required to demonstrate through transparent supporting data that all proposed pricing is fair, reasonable and consistent with industry standards. BPCA will nonetheless reserve the right at any time prior to the execution of an Early Work Package Amendment or GMP Amendment to require the Design-Builder to instead employ or participate in a separate competitive procurement process for the performance of any construction work, including any construction proposed for self-performance by the Design-Builder or any pre-approved subcontractor.</p>
<b>3. PHASE 1 SERVICES</b>	
<b>A. Generally</b>	The Phase 1 Services are primarily professional services, with the objective of developing the design of the Project, reaching agreement on final pricing for all Phase 2 Work and performing all preconstruction services necessary to commence performing Phase 2 Work upon execution of a GMP Amendment or an Early Work Package Amendment. The Design-Builder will perform the Phase 1 Services in accordance with all requirements and standards

	established by the PDB Contract, including professional engineering and management practices.
<b>B. Project Technical Criteria</b>	The Design-Builder will perform the Phase 1 Services and develop the Design and Construction Requirements (defined below) in accordance with the Project Technical Criteria. BPCA will be responsible for the Project performance specifications established by the Project Technical Criteria. However, as part of the Phase 1 Services, the Design-Builder will validate all other aspects of the Project Technical Criteria for its efficacy in achieving such performance specifications and may propose changes to the Project Technical Criteria for BPCA consideration. Any change to the Project Technical Criteria will be subject to BPCA approval.
<b>C. Design Responsibility</b>	<p>As part of the Phase 1 Services, the Design-Builder will be responsible for developing the BOD and the baseline drawings, specification, plans and other technical information necessary to guide the Phase 2 Work (the “<b>Design and Construction Requirements</b>”), which will be included in any GMP Amendment or Early Work Package Amendment. The Design-Builder will develop the Design and Construction Requirements to include specific consideration of constructability, operability, safety, maintenance, and life cycle cost issues at all stages of design development, including consideration of safe, efficient, and cost-effective operation and maintenance of the Project. The Design and Construction Requirements must be in compliance with all applicable law, including the terms and conditions of all Governmental Approvals, and will include utility improvements necessary for the Project.</p> <p>Upon execution of a GMP Amendment or Early Work Package Amendment, the Design-Builder will have the sole and exclusive responsibility and liability for the performance of the associated Phase 2 Work in accordance with and subject to the terms and conditions of the PDB Contract. The Design-Builder will perform the Phase 1 Services in anticipation of the assumption of this responsibility and liability and will not propose or agree to any element of the Design and Construction Requirements that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.</p> <p>The Design-Builder will be responsible for the professional quality, technical accuracy, timely completion, and coordination of the Design and Construction Requirements and all other design professional services. Neither BPCA nor the Consulting Engineer will have any responsibility for the design professional services performed by or on behalf of the Design-Builder or any responsibility for discovering deficiencies in the Design and Construction Requirements, notwithstanding any BPCA approval of the same.</p>

<p><b>D. Design Development and Review</b></p>	<p>The Design-Builder will develop various plans for the performance of the Contract Services, including a design submittal protocol to provide for a staged and orderly design development process that is coordinated with the Design-Builder’s stakeholder engagement responsibilities, provides for weekly progress meetings and regularly scheduled workshops and establishes adequate review periods for BPCA and the Consulting Engineer. BPCA and the Consulting Engineer will have a review period consistent with the comprehensive nature of each submittal and supported by the associated meetings and workshops, with a targeted average duration of 14 days to review and provide comments to each design submittal. BPCA will provide for timely review and comment in accordance with the approved design submittal protocol.</p> <p>The Design-Builder will provide ongoing Project cost modelling on at least a monthly basis throughout the performance of the Phase 1 Services and will keep BPCA informed of the cost implications of decisions regarding the development of the Design and Construction Requirements.</p>
<p><b>E. GMP Proposals</b></p>	<p>The Design-Builder may identify Project components appropriate for separate GMP Amendments, subject to BPCA approval. The Phase 1 Services include the obligation to submit a GMP Proposal for the Project, including (if applicable) a separate GMP Proposal for each such approved Project component, and to develop the Design and Construction Requirements to a level sufficient to support each GMP Proposal.</p> <p>The Design-Builder may also propose Early Work Packages for approval by BPCA and, for each approved Early Work Package, will submit a GMP Proposal for the Early Work Package, including the associated Design and Construction Requirements.</p> <p>Each GMP Proposal will be based on the terms and conditions, including risk allocation, of the PDB Contract and will include all information necessary to enable negotiation on an “open book” basis, allowing BPCA to review and evaluate all cost data and underlying assumptions and supported by transparent and competitive subcontractor procurement processes, with any proposed self-performance of construction subject to the requirements discussed above. Each GMP will be based on the reasonably estimated actual cost of completing the associated Phase 2 Work (including general conditions costs), a reasonable contingency amount and the Design-Builder’s fee for the performance of Phase 2 Work (the “<b>Phase 2 Fee</b>”). The Phase 2 Fee is the amount (expressed as a percentage of the actual allowable cost of the work) attributable to profit, risk, mark-up, and general or indirect overhead with respect to the Phase 2 Work. The Phase 2 Fee will be established as of the execution date of the PDB Contract based on the RFP process and will not be renegotiated as part of any GMP Proposal negotiation.</p>
<p><b>F. Off-Ramp</b></p>	<p>BPCA will have the right at any time in its discretion to proceed to develop and implement the Project with other contractors and</p>

	<p>service providers. BPCA may exercise such right during the performance of the Phase 1 Services, upon termination of the PDB Contract or upon any failure of the parties to execute any GMP Amendment. In connection with such right, BPCA will have the right to use the work product of the Design-Builder and to take assignment of any subcontract. Additionally, the PDB Contract will include terms and procedures to enable BPCA to elect to cause the Design-Builder, or any joint venture member or subcontractor responsible for the professional design services, to advance the design of the Project, either partially or to the fully complete level, so that the Project may be procured and implemented on a design-bid-build or other alternative basis.</p>
<b>G. Phase 1 Services Schedule</b>	<p>Time is of the essence in the performance of the Phase 1 Services. The Design-Builder will complete the Phase 1 Services in a diligent, efficient and timely manner in accordance with the scheduled milestone completion dates established in the PDB Contract for the Phase 1 Services, including dates for design deliverables, permit applications and the submittal of GMP Proposals. The Design-Builder will have the continuing obligation to perform and complete all Phase 1 Services throughout the Phase 1 Services Period, notwithstanding the execution of any Early Work Package Amendment or component GMP Amendment and the resulting concurrent obligation to perform Phase 2 Work.</p> <p>The Design-Builder will prepare, provide, update and maintain a schedule for the Project (the “<b>Project Schedule</b>”) in compliance with all requirements of the PDB Contract, covering both the Phase 1 Services Period and the Phase 2 Work Period. No update to the Project Schedule may change any PDB Contract milestone completion date absent the approval of BPCA.</p>
<b>H. Compensation for Phase 1 Services</b>	<p>BPCA will pay the Design-Builder for properly performed and completed Phase 1 Services on a time and materials basis, subject to a not-to-exceed amount. The not-to-exceed amount, along with the Design-Builder’s rates and reimbursable expenses for the Phase 1 Services, will be proposed in accordance with the RFP, negotiated by the parties and finalized prior to execution of the PDB Contract. The Design-Builder will submit monthly invoices for the Phase 1 Services performed during the prior month, and BPCA will make payment within 30 days of receipt of each properly submitted invoice in accordance with BPCA’s prompt payment policy.</p>
<b>4. PHASE 2 WORK</b>	
<b>A. Design Completion and Construction Commencement</b>	<p>As part of the Phase 2 Work, the Design-Builder will complete the design of the Project based on the applicable Design and Construction Requirements established in each Early Work Package Amendment and GMP Amendment. Design reviews associated with the Phase 2 Work will focus on compliance with the established Design and Construction Requirements. Any change to the Design and Construction Requirements subsequent to an Early Work Package Amendment or GMP Amendment, as applicable, will be subject to the change management and change order provisions</p>

	<p>of the PDB Contract, including BPCA approval rights. The Design-Builder will not be entitled to relief due to error, omission or insufficiency relating to the Design and Construction Requirements, but will be required to correct any such error, omission or insufficiency at its sole cost and expense. However, the Design-Builder will not be responsible for achieving performance standards associated with the completed Project beyond those established by the acceptance standards set forth in the PDB Contract, as amended through the final GMP Amendment.</p> <p>The Design-Builder may complete Phase 2 Work in stages, whereby the Design-Builder will complete the design and construct particular segments of such Phase 2 Work prior to the completion of the design of the authorized Phase 2 Work as a whole. However, the Design-Builder will comply with all requirements of applicable law in performing the Phase 2 Work and will not commence construction prior to satisfaction of all preconditions specified in the PDB Contract, including compliance with all design submittal and approval requirements associated with the Phase 2 Work.</p>
<b>B. Construction</b>	<p>The Design-Builder will perform, supervise, direct, and inspect the Phase 2 Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Phase 2 Work in accordance with the PDB Contract. The Design-Builder will be solely responsible for and will have control over the means, methods, techniques, sequences, and procedures of construction, including safety precautions and programs, and the coordination of the various elements of the Phase 2 Work. The Design-Builder will have full responsibility for quality management for the Phase 2 Work, including the development of and compliance with an approved quality management plan.</p> <p>The PDB Contract will require compliance with the “Buy-American” provisions of State Public Authorities Law Section 2603-A with respect to steel products.</p> <p>The Design-Builder will keep the Project Sites neat and orderly at all times during the Phase 2 Work Period and will perform the Phase 2 Work efficiently, safely and without interfering with the use of adjacent areas or causing complaints from other contractors, adjacent property owners, public officials or members of the public.</p> <p>BPCA and its representatives and consultants, including the Consulting Engineer, will have the right at all times to monitor, inspect, observe and conduct tests and investigations of the Phase 2 Work to verify compliance with the PDB Contract. Such monitoring activities are expected to include quality oversight and audit of the Design-Builder’s design and construction activities, including quality checks and third party material sampling, testing and inspection. However, such monitoring activities will not transfer any responsibility for the Phase 2 Work to BPCA, the Consulting Engineer or any other BPCA representative or consultant.</p>

<b>C. Title and Risk of Loss</b>	Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Project will pass to BPCA upon incorporation in the Project or payment therefor by BPCA, whichever first occurs, free and clear of all liens, claims, security interest or encumbrances. Except with respect to certain uninsurable Uncontrollable Circumstances to be specified in the PDB Contract, the Design-Builder will nonetheless bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until the applicable completion date for the Phase 2 Work, regardless of the extent to which the loss was insured or the availability of insurance proceeds.
<b>D. Substantial and Final Completion</b>	<p>Substantial completion of the Project will require both substantial completion of construction and satisfactory demonstration of Project performance through acceptance testing. The Project Technical Criteria will include the Project acceptance test procedures and standards, which will be further developed through the performance of the Phase 1 Services and finally established in the applicable GMP Amendment. Following achievement of substantial completion, the Design-Builder will complete all punch list work and achieve final completion of the Project. Early Work Packages and any component GMP Amendment (i.e., prior to the final GMP Amendment) may have alternative procedures and standards for achievement of substantial and final completion of the applicable Phase 2 Work. However, the Design-Builder will be responsible for demonstrating that the Project as a whole complies with the established acceptance standards.</p> <p>Time is of the essence in the performance of all Phase 2 Work. The Design-Builder will continue to update and maintain the Project Schedule throughout the Phase 2 Work Period in accordance with the PDB Contract.</p>
<b>E. Liquidated Damages for Delay</b>	The final GMP Amendment will establish a scheduled substantial completion date and a scheduled final completion date for the performance of all Phase 2 Work. The Design-Builder's unexcused failure to achieve substantial completion or final completion of the Phase 2 Work on or before such scheduled completion dates will result in the assessment of daily delay liquidated damages in an amount to be specified in the PDB Contract.
<b>F. Performance Incentives</b>	The PDB Contract may include provisions to enable the Design-Builder to share in savings actually realized against the established GMP as of final completion of the Phase 2 Work.
<b>G. Project Warranties</b>	Throughout the Phase 2 Work Period, the Design-Builder will be responsible for correcting any Phase 2 Work that does not comply with the requirements of the PDB Contract. The PDB Contract will specify certain warranties of the Phase 2 Work by the Design-Builder, which will remain effective for a period of two years following substantial completion of the Phase 2 Work regardless of the completion date of any Early Work Package.

<b>5. COMPENSATION FOR THE PHASE 2 WORK</b>	
<b>A. Phase 2 Price</b>	<p>Subject to the GMP, BPCA will pay the Phase 2 Price to the Design-Builder for properly performed and completed Phase 2 Work and the assumption of all associated risk allocated to the Design-Builder under the PDB Contract.</p> <p>The “<b>Phase 2 Price</b>” will include the following components:</p> <ol style="list-style-type: none"> <li>1) The actual allowable costs of the Phase 2 Work, excluding general conditions costs (the “<b>Phase 2 Costs</b>”);</li> <li>2) A fixed amount for general conditions costs; and</li> <li>3) The Phase 2 Fee, which will be a percentage of the Phase 2 Costs.</li> </ol> <p>The Phase 2 Price will not exceed the GMP. Phase 2 Costs will exclude certain unallowable costs (such as costs resulting from the negligence or willful misconduct of any DB Team Member) that will be identified in the PDB Contract. The Phase 2 Fee will be established as of the execution date of the PDB Contract based on the RFP process and will not be subject to renegotiation. The fixed general conditions cost payment will be established as of the date of the applicable Early Work Package Amendment or GMP Amendment based on line item detail acceptable to BPCA and will be paid on a monthly basis over the duration of the Phase 2 Work Period for general conditions costs incurred during the prior month.</p>
<b>B. Design-Builder Contingency</b>	<p>A separate Design-Builder contingency amount will be negotiated and identified as part of any Early Work Package Amendment or GMP Amendment. The Design-Builder contingency will be itemized in the GMP and available for use by the Design-Builder to pay Phase 2 Costs that exceed estimated costs included in the approved schedule of values due to risks assumed by the Design-Builder, such as the risks associated with design completion and the performance of subcontractors. However, the Design-Builder contingency may not be used for any cost that does not otherwise qualify as a Phase 2 Cost. Each contingency amount will be an amount reasonably attributable to indeterminable costs that, considered individually and valued in the aggregate based on agreed-upon probability-of-occurrence models adapted specifically to the Project, may be incurred by the Design-Builder should certain risks assumed by the Design-Builder in performing the Phase 2 Work occur.</p>
<b>C. Guaranteed Maximum Price</b>	<p>A base GMP amount will be negotiated and established for each Early Work Package Amendment and GMP Amendment, subject to BPCA approval. Each GMP will be the sum of (1) the negotiated base GMP amount and (2) any adjustments to such amount in accordance with the PDB Contract due to the occurrence of Uncontrollable Circumstances, including changes to the Phase 2</p>



	<p>Work that are initiated and directed by BPCA in the absence of Design-Builder fault.</p> <p>Each GMP represents the limit of the total of all amounts payable to the Design-Builder by BPCA for the performance of the Phase 2 Work. Liability for and payment of amounts expended over and above the approved GMP will be the sole responsibility of the Design-Builder.</p>
<b>D. Payment Procedures</b>	<p>BPCA will pay the Phase 2 Price to the Design-Builder subject to the GMP and based on an approved schedule of values and the progress of the Phase 2 Work. The Design-Builder will submit monthly requisitions for partial payment of the Phase 2 Price based on Phase 2 Work completed during the prior month, and BPCA will pay the amount approved for payment within 30 days of receipt of each properly submitted and completed requisition in accordance with its prompt payment policy. BPCA will have the right to verify all Phase 2 Costs incurred, including the right to inspect and audit all records and other data concerning the Phase 2 Work, which the Design-Builder will be required to maintain in accordance with the PDB Contract.</p>
<b>E. Retainage and Withholdings</b>	<p>Each progress payment of the Phase 2 Price will be subject to a five percent (5%) retainage holdback. Fifty percent (50%) of the amount of the accumulated retainage will be released in connection with the payment due following the achievement of substantial completion, and the remaining amount will be released with the final payment following the achievement of final completion.</p> <p>In addition to retainage, progress payments of the Phase 2 Price will be subject to certain withholding and set-off rights of BPCA, including the right to deduct amounts due and owing from the Design-Builder to BPCA under the PDB Contract.</p>
<b>6. UNCONTROLLABLE CIRCUMSTANCES</b>	
<b>A. Relief Generally</b>	<p>The PDB Contract will be a performance-based contract, with the Design-Builder responsible for all aspects of the Contract Services and entitled to relief only in the event of the occurrence of certain specifically defined Uncontrollable Circumstances. The occurrence of an Uncontrollable Circumstance will entitle the Design-Builder to appropriate price and/or schedule relief, subject to the applicable terms and conditions of the PDB Contract.</p>
<b>B. Uncontrollable Circumstances Defined</b>	<p>The PDB Contract will include a specific listing of Uncontrollable Circumstances, and the Design-Builder will not be entitled to relief for acts, events or circumstances not identified as an Uncontrollable Circumstance in the PDB Contract. The “<b>Uncontrollable Circumstances</b>” are expected to include:</p> <ol style="list-style-type: none"> <li>1) BPCA fault, including breach by BPCA of its obligations under the PDB Contract;</li> </ol>

	<ol style="list-style-type: none"> <li>2) A suspension order by BPCA in circumstances other than the fault of any DB Team Member;</li> <li>3) Changes to the Design and Construction Requirements that are directed by BPCA during the performance of the Phase 2 Work to the extent not resulting from the fault of any DB Team Member;</li> <li>4) Project Sites conditions, such as regulated site conditions (e.g., hazardous materials), that differ from those indicated in the background technical information and that were not reasonably discoverable by the Design-Builder through the performance of the Phase 1 Services;</li> <li>5) Error or omission relating to information designated as reliance information in the Project Technical Criteria;</li> <li>6) Certain changes in law;</li> <li>7) Delay by a Governmental Body in the issuance of a Governmental Approval beyond an assumed issuance date agreed upon by the parties and set forth in an Early Work Package Amendment or GMP Amendment, subject to compliance by the Design-Builder with all associated terms and conditions of the PDB Contract;</li> <li>8) The issuance of a preliminary or permanent injunction or temporary restraining order concerning the Phase 2 Work to the extent not resulting from the fault of any DB Team Member;</li> <li>9) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Project Sites;</li> <li>10) Material interference with or physical damage to the Phase 2 Work directly attributable to BPCA's, a Governmental Body's or their separate contractors' work at the Project Sites;</li> <li>11) Certain failures of performance by utility owners;</li> <li>12) Strikes and similar labor disruptions affecting a specific trade on a national or regional level;</li> <li>13) Acts of a declared public enemy, war, blockade or insurrection, riot or civil disturbance, including terrorism; and</li> <li>14) Certain naturally occurring events (subject to limitations) such as unusually severe and abnormal climactic conditions, earthquakes, fires, tornadoes, hurricanes,</li> </ol>
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	<p>floods, lightning, epidemics, pandemics and other acts of God.</p> <p>Uncontrollable Circumstances will not include any act, event or circumstance resulting from the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of the PDB Contract by the Design-Builder or any other DB Team Member.</p>
<b>C. Notice and Mitigation</b>	<p>The Design-Builder will be required to provide notice of the occurrence of any Uncontrollable Circumstance, demonstrate the material impact of the Uncontrollable Circumstance on the performance of the Phase 2 Work and take all measures reasonably necessary to mitigate the impact of the Uncontrollable Circumstance. Any schedule adjustment will require the Design-Builder to demonstrate the impact of the Uncontrollable Circumstance on the critical path of the Project Schedule. The Design-Builder's entitlement to relief will be conditioned upon compliance with the notice, demonstration and mitigation requirements of the PDB Contract.</p>
<b>D. Extent of Uncontrollable Circumstance Relief</b>	<p>The Design-Builder will be entitled to relief only to the extent an Uncontrollable Circumstance materially and directly interferes with, delays or increases the cost of performing the Phase 2 Work in accordance with the PDB Contract. Uncontrollable Circumstance relief will be limited to that relief which properly reflects the time lost or the amount of the increased cost, in each case only to the extent directly attributable to the Uncontrollable Circumstance. The Design-Builder will not be entitled to any payment or price relief on account of an Uncontrollable Circumstance to the extent the Design-Builder is or should be entitled to recover the costs associated with the Uncontrollable Circumstance under its required insurance.</p>
<b>7. INSURANCE AND SECURITY FOR PERFORMANCE</b>	
<b>A. Insurance</b>	<p>The Design-Builder will obtain and maintain all insurance coverage required by the PDB Contract and comply with all associated insurance requirements. Preliminary information concerning the insurance expected to be required under the PDB Contract is set forth in Schedule F (Insurance Requirements) of this RFQ. The Design-Builder will ensure that all subcontractors and other DB Team Members secure and maintain all insurance coverage required by the PDB Contract and by applicable law. Proof of required insurance will be furnished to BPCA in accordance with the PDB Contract, and the PDB Contract will specify BPCA's rights to review the underlying insurance policies.</p> <p>All required insurance will be available for the benefit of BPCA, the other Indemnified Parties (defined below) and the Design-Builder with respect to covered claims, but the required insurance coverage will not be interpreted to relieve the Design-Builder of any liability or obligation under the PDB Contract.</p>

<b>B. Performance and Payment Bonds</b>	Upon execution of the PDB Contract, the Design-Builder will be required to provide a security bond in the amount of \$5,000,000 to secure the obligation of the Design-Builder to perform the Phase 1 Services and provide the performance and payment bonds required for the Phase 2 Work. In connection with each Early Work Package Amendment and GMP Amendment, the Design-Builder, as financial security for the faithful performance and payment of its obligations under the PDB Contract will provide a performance bond and a payment bond in an amount at least equal to the GMP. The performance and payment bonds provided with the final GMP Amendment will cover the entirety of the Phase 2 Work for the Project.
<b>C. Warranty Bond</b>	The performance and payment bonds will be released upon the achievement of final completion of the Phase 2 Work. As a condition precedent to the achievement of such final completion, the Design-Builder will provide a warranty bond to secure the faithful performance of its warranty obligations under the PDB Contract. The warranty bond will be in an amount to be specified in the PDB Contract and will be released upon expiration of the warranty period, subject to the completion of all required warranty work.
<b>D. Parent Company Guarantee</b>	If any Respondent selected as the Design-Builder proposes in its SOQ a parent or affiliate company to serve as a guarantor of the Design-Builder, or submits financial information in its SOQ of a parent company or affiliate company to demonstrate the financial qualifications of such Respondent, such parent or affiliate company must guarantee, through a separate guaranty agreement, all of the Design-Builder's obligations under the PDB Contract.
<b>8. SUSPENSION AND TERMINATION RIGHTS</b>	
<b>A. BPCA Suspension</b>	BPCA will have the right to order the Design-Builder to suspend all or any part of the performance of the Contract Services at any time and for any reason. The Design-Builder will be entitled to Uncontrollable Circumstance relief if BPCA issues such an order except to the extent issued due to a breach of the PDB Contract by the Design-Builder or the fault of any DB Team Member.
<b>B. BPCA Convenience Termination</b>	<p>BPCA will have the right to terminate the PDB Contract in whole or in part by written notice to the Design-Builder for its convenience and for any reason at any time.</p> <p>If BPCA exercises such right with respect to the Phase 1 Services, the Design-Builder will be entitled to payment for all Phase 1 Services performed through the termination date, plus reasonable demobilization costs, but will not be entitled to any separate convenience termination settlement payment.</p> <p>If BPCA exercises such right with respect to any Phase 2 Work, the Design-Builder will be entitled to a convenience termination settlement payment equal to the sum of:</p>

	<ol style="list-style-type: none"> <li>1) The difference between (a) the value of all Phase 2 Work performed up to the termination date and (b) all payments already made to the Design-Builder pursuant to the PDB Contract; and</li> <li>2) The reasonable costs incurred by the Design-Builder in connection with the termination, including actual and reasonable demobilization costs and amounts due in settlement of terminated subcontracts.</li> </ol> <p>No DB Team Member will be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of termination for convenience by BPCA.</p>
<b>C. Design-Builder Event of Default</b>	<p>BPCA will have the right to terminate the PDB Contract for specified events of default by the Design-Builder, including, among others, an unexcused failure of the Design-Builder to achieve substantial completion within a specified period following the scheduled substantial completion date. In the event of a termination for a Design-Builder event of default, BPCA will have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under the PDB Contract, under the security for performance instruments and under applicable law.</p> <p>If it is finally determined that BPCA incorrectly terminated the PDB Contract for a Design-Builder event of default, the termination will be treated as a termination for convenience by BPCA.</p>
<b>D. Partial Termination</b>	<p>If BPCA exercises any termination right after the execution of any Early Work Package Amendment or component GMP Amendment, BPCA will have the right in its discretion to require continued performance of the applicable Phase 2 Work and terminate only the remaining Phase 1 Services and any other Phase 2 Work. In such event, the PDB Contract will remain in full force and effect only with respect to the Phase 2 Work that is not terminated by BPCA, and the GMP established in the applicable Early Work Package Amendment or component GMP Amendment will continue to apply to such Phase 2 Work.</p>
<b>E. Design-Builder Suspension</b>	<p>The Design-Builder will have the right to suspend performance of the Contract Services only in the event that:</p> <ol style="list-style-type: none"> <li>1) BPCA fails to make any undisputed payment by its due date in accordance with the PDB Contract;</li> <li>2) The Design-Builder provides written notice of such non-payment and BPCA fails to make such payment within 30 days following receipt of the Design-Builder's notice;</li> <li>3) The Design-Builder provides subsequent written notice that it will suspend performance of the Contract Services unless</li> </ol>

	<p>such payment is made within 30 days following such subsequent notice; and</p> <p>4) BPCA fails to make such payment within 30 days following receipt of such subsequent notice from the Design-Builder.</p> <p>Such right will not be available to the Design-Builder if there is a good faith dispute concerning the Design-Builder's entitlement to the payment under the PDB Contract.</p>
<b>F. BPCA Event of Default</b>	<p>The failure, refusal or other default by BPCA in its duty to pay any undisputed amount required to be paid to the Design-Builder under the PDB Contract within 180 days following the due date for such payment will be an event of default by BPCA upon which the Design-Builder, by written notice to BPCA, may terminate the PDB Contract. Such termination right will be subject to notice and cure rights of BPCA and will not be available if there is a good faith dispute concerning the Design-Builder's entitlement to the payment under the PDB Contract. In the event of any such termination for a BPCA event of default, the Design-Builder will be entitled to payment in the same amount as if the PDB Contract were terminated for the convenience of BPCA, and BPCA will have no further liability to the Design-Builder.</p> <p>No other breach or default by BPCA under the PDB Contract will be considered an event of default upon which the Design-Builder may terminate the PDB Contract. The Design-Builder's sole remedy for any other breach or default by BPCA under the PDB Contract will be its entitlement to Uncontrollable Circumstance relief in accordance with the terms and conditions of the PDB Contract.</p>
<b>9. INDEMNIFICATION AND LIABILITY</b>	
<b>A. Design-Builder Indemnification Obligations</b>	<p>To the fullest extent permitted by applicable law, the Design-Builder will indemnify, defend and hold harmless BPCA, the Battery Park City Parks Conservancy Corporation, the State and each such entity's respective officers, board members, employees, agents and representatives, including the Consulting Engineer (each, including BPCA, an "<b>Indemnified Party</b>"), from and against (and pay the full amount of) any and all loss-and-expense incurred by any Indemnified Party in connection with any injury to or death of persons or damage to or loss of property or any third party claims arising out of, relating to or resulting from, or alleged to result from or in connection with any or the following:</p> <ol style="list-style-type: none"> <li>1) Any breach of any terms and conditions of the PDB Contract by the Design-Builder or any other DB Team Member, including any failure to comply with applicable law;</li> <li>2) The willful misconduct or negligent act or omission of any DB Team Member; and</li> <li>3) Certain other acts, events and circumstances to be specified in the PDB Contract, including with respect to</li> </ol>

	<p>subcontractor claims, labor disputes among employees of DB Team Members and intellectual property claims relating to the Design and Construction Requirements or any other work product developed by or on behalf of the Design-Builder.</p> <p>The Design-Builder's indemnification obligations will not be limited by the required insurance or by any coverage exclusions or other provisions in any policy of insurance maintained by the Design-Builder which is intended to respond to such events.</p>
<b>B. Waiver of Consequential Damages</b>	<p>Neither party will be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under the PDB Contract, or the material inaccuracy of any representation made in the PDB Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. However, the waiver of the foregoing damages will apply only to disputes and claims as between BPCA and the Design-Builder and will not limit either party's liability for losses or damages arising out of fraud, corruption or criminal activity on the part of the relevant party. Additionally, such waiver will not limit the Design-Builder's liability for:</p> <ol style="list-style-type: none"> <li>1) Amounts payable by the Design-Builder under its indemnification obligations under the PDB Contract in respect of third-party claims;</li> <li>2) Any liquidated damages specified in the PDB Contract; or</li> <li>3) Claims, losses or damages, to the extent the same is required to have been covered by the required insurance or is covered by the proceeds of insurance actually carried by or insuring the Design-Builder with respect to the Project.</li> </ol>
<b>C. Limitation on Liability for Non-Performance</b>	<p>The Design-Builder's aggregate liability under the PDB Contract with respect to damages of any kind payable to BPCA arising out of the performance or unexcused non-performance of the Contract Services as a consequence of a claim or suit initiated by BPCA, including for delay liquidated damages, will not exceed an amount equal to the aggregate value of the not-to-exceed amount for the Phase 1 Services and each GMP.</p> <p>BPCA will have the automatic right to terminate the PDB Contract and exercise its remedies in respect of a Design-Builder event of default if the Design-Builder's liability to BPCA reaches or exceeds such limitation on liability.</p> <p>Such limitation on liability applies only to damages payable by the Design-Builder to BPCA for non-performance under the PDB Contract and will not apply if the Design-Builder abandons the Project or to any other liability, loss, damage, cost or expense that</p>

	<p>may be incurred by the Design-Builder in connection with the PDB Contract, including any of the following:</p> <ol style="list-style-type: none"> <li>1) Any loss, cost or expense incurred by any DB Team Member in the performance of the Contract Services or in seeking to cure or prevent any breach of the PDB Contract by the Design-Builder;</li> <li>2) Any fines or penalties levied or imposed by any Governmental Body;</li> <li>3) Any claims, losses or penalties incurred by any DB Team Member to third parties in any legal proceedings;</li> <li>4) Any indemnity payment (resulting from third party claims) made by the Design-Builder to any Indemnified Party;</li> <li>5) Payment of any defense costs, including attorney's fees, to, for, or on behalf of any Indemnified Party with respect to any third-party claim;</li> <li>6) Any payments made in connection with any insurance required under the PDB Contract, including the proceeds of such insurance and the payment of any deductible or self-insured retention; or</li> <li>7) Any claims, losses, penalties or settlement payments paid to BPCA in connection with any tort claim by BPCA against any DB Team Member based on gross negligence, willful misconduct or fraud.</li> </ol>
<b>10. DISPUTE RESOLUTION</b>	
<b>A. Purpose and Informal Negotiations</b>	<p>Each party will be required to follow the dispute resolution procedures set forth in the PDB Contract to attempt to resolve and settle disputes between themselves concerning the rights, obligations and liabilities of the parties. The dispute resolution procedures will be intended to encourage a negotiated resolution of disputes in a prompt and efficient manner without resort to litigation, which should be a last resort.</p> <p>In the event of a dispute, representatives of BPCA and the Design-Builder with day-to-day involvement in the administration of the PDB Contract will initially and promptly enter into negotiations to attempt to address and resolve the dispute, furnishing such information as may be reasonably necessary to assist in resolving the dispute and involving subcontractor representatives and senior representatives as appropriate. Upon the expenditure of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a party may declare that the informal negotiations have been exhausted and such party may request non-binding mediation or request a final decision of the BPCA contract representative.</p>



<p><b>B. BPCA Contract Representative's Final Decision</b></p>	<p>If a dispute has not been resolved through informal negotiations, then, upon the written request of the Design-Builder, an appropriate BPCA contract representative (other than any personnel assigned to the administration of the PDB Contract) will review the dispute and issue his or her determination of the dispute. Such final decision will be issued in writing within 45 days following the date of the request for review. If the Design-Builder disagrees with the decision, or if a decision is not issued within such 45-day period, then the Design-Builder will have the right to initiate legal proceedings concerning the dispute in accordance with the PDB Contract. If the Design-Builder fails to initiate such legal proceedings concerning the dispute within 60 days following the earlier to occur of (a) the issuance of the final decision or (b) the expiration of the 45-day period without issuance of a decision, then the Design-Builder will be deemed to have accepted the decision and waived any further right to relief or to initiate such legal proceedings. In the case of the expiration of the 45-day period without issuance of a decision, the decision will be considered a rejection of any requested relief by the Design-Builder.</p>
<p><b>C. Non-Binding Mediation</b></p>	<p>Subject to the requirements regarding informal negotiations, either party may request non-binding mediation of any dispute arising under the PDB Contract, whether technical in nature or otherwise. Non-binding mediation is voluntary and will not be a condition precedent to initiating legal proceedings by either party. The costs of the mediator will be divided equally between the parties. No mediator will be empowered to render a binding decision.</p>
<p><b>D. Legal Proceedings</b></p>	<p>The issuance of a final decision by the BPCA contract representative (or failure to issue such decision within the specified timeframe) will be a condition precedent to the Design-Builder's right to initiate legal proceedings against BPCA. Additionally, no legal proceedings may be initiated by the Design-Builder against BPCA unless such legal proceedings are commenced within six months after the date of issuance of a certificate of substantial completion for the Project, except that:</p> <ol style="list-style-type: none"> <li>1) In the case of legal proceedings for monies due in respect of substantial completion or pertaining exclusively to work performed after substantial completion, such deadline will be six months after the date of issuance of a certificate of final completion for the Project; and</li> <li>2) In the event of an early termination of the PDB Contract, such deadline will be six months after the termination date.</li> </ol> <p>All legal proceedings related to the PDB Contract or to any rights or any relationship between the parties arising therefrom will be solely and exclusively initiated and maintained in a court of competent jurisdiction located in the County of New York and any review of a BPCA contract representative final decision will be subject to Article 78 of the New York Civil Practice Law and Rules.</p>

<b>E. Continuance of Performance</b>	Unless otherwise directed in writing by BPCA, at all times during the course of any dispute or legal proceeding, the Design-Builder will continue with the performance of the Contract Services in a diligent manner and in accordance with the applicable provisions of the PDB Contract. BPCA will continue to satisfy its uncontested payment obligations to the Design-Builder during the pendency of any such dispute, subject to the terms and conditions of the PDB Contract.
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**SCHEDULE D**  
**DIVERSITY REQUIREMENTS**

## **SCHEDULE D – DIVERSITY REQUIREMENTS**

### **MBE/WBE/SDVOB REQUIREMENTS, MBE/WBE & EEO POLICY STATEMENT AND DIVERSITY PRACTICES QUESTIONNAIRE**

#### **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 the following MWBE participation goals, based on the current availability of MWBEs:

**Overall goal for total MWBE participation: 30%**

**NYS-Certified Minority-Owned Business (“MBE”) Participation: 15%**

**NYS-Certified Women-Owned Business (“WBE”) Participation: 15%**

BPCA is considering potential scope exclusions from the applicability of these participation goals. For example, the unique and highly specialized nature of (i) pile fabrication and installation and (ii) deployable gate fabrication and installation work may result in their exclusion from these requirements. Any exclusions will be detailed in the RFP.

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 RFQ, the Proposer agrees that BPCA may withhold payment pursuant to any Contract awarded as a result of this RFQ 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. 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 RFQ, 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 participation goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a 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 Justin McLaughlin Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@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 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 selected Proposer of BPCA acceptance or issue a notice of deficiency within 30 days of award or receipt of any revision.
- 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 Justin McLaughlin-Williams at BPCA, by email at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov), 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 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 participation 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 Proposer must document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract and Proposer 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).

BPCA is considering potential scope exclusions from the applicability of this participation goal. For example, the unique and highly specialized nature of (i) pile fabrication and installation and (ii) deployable gate fabrication and installation work may result in their exclusion from these requirements. Any exclusions will be detailed in the RFP.

In accordance with 9 NYCRR §252.2(s), the Proposer 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 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 selected Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of award or receipt of any revision.
- 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 Justin McLaughlin-Williams at BPCA, by email at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov), 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 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.

The successful Proposer 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.

The successful Proposer is required to submit a Contractor's SDVOB 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 Proposal in response to the RFP, 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 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.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

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 Justin McLaughlin-Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov) or 212-417-2337. 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 Justin McLaughlin-Williams at [justin.mclaughlin-williams@bpca.ny.gov](mailto:justin.mclaughlin-williams@bpca.ny.gov) or 212-417-2337.

**SCHEDULE E**

**PRELIMINARY PROJECT TECHNICAL CRITERIA INFORMATION**

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## **SCHEDULE E – PRELIMINARY PROJECT TECHNICAL CRITERIA INFORMATION**

### Design Objectives:

- Design approach must achieve a sustainable, resilient, fully functional, and aesthetically appealing project outcome that balances public realm design excellence with climate adaptation needs.
- Develop and locate, within the existing urban context an integrated FEMA Certifiable/Accreditable flood barrier system (FBS) to provide multi-stage Flood Risk Reduction measures that:
  - o Provide targeted risk reduction for a 2050s 100-yr storm event (including sea level rise);
  - o Where feasible, address nuisance flooding *and* daily tidal inundation;
  - o Prevent circumvention/undermining of FBS through validated alignment length, tie-back location, and inclusion of seepage cutoff barrier and relevant structural elements;
  - o Decrease the risk of future saltwater intrusion into Battery Park City (BPC).
- Provide adaptive capacity within the FBS through various means including structural platform and/or foundation design.
- Develop and implement climate-adaptive strategies to mitigate pluvial flood and interior drainage risk.
- Optimize risk reduction for built assets, parks and open spaces within Battery Park City

### General Criteria:

- Integrated flood barrier system (FBS) comprised of static (fixed) barrier elements and deployable barrier systems.
- Interior drainage improvements to consider alternative design approaches that include both permanent infrastructure modifications and deployable pumping systems.
- FBS will tieback to point(s) of high ground within or outside of Battery Park City boundaries (as necessary to achieve targeted risk reduction for BPC property/assets), and/or existing FBS systems that have been developed separately.
- All major deployable system components must have redundant deployment methods in addition to manual deployment to the greatest extent feasible.
- Project shall integrate Sustainable Building techniques (ex. bio-adaptive concrete in aquatic settings) and seek to achieve construction waste diversion and incorporation of regionally sourced and/or low embodied carbon materials. The project shall also address urban-heat island effect to mitigate heat-wave events as part of overarching sustainability strategy.

### Technical Criteria:

#### ***Resiliency, Sustainability, and Risk Reduction Targets***

- Advance BPC Sustainability Plan through implementation of relevant/applicable BPC Green Guidelines into final design solution(s).
- FBS Design Flood Elevations (DFEs) will be derived from four components, 1) Design Storm, 2) Projected Wave Action, 3) Projected Sea Level Rise, and 4) Freeboard. These components are further described as follows:
  - o Design Flood Elevations (DFEs) are derived for a 2050s 100-yr storm event; incorporating the 90<sup>th</sup> percentile Sea Level Rise (SLR) estimate as published

in New York City Panel on Climate Change (2019) (NPCC3) with applicable FEMA Freeboard requirements (*Reference: NPCC (2019) Report Chapter 3: Sea Level Rise*);

- Stormwater/interior drainage management design will be derived through use of NOAA 2050 5-yr Rainfall Event.
- Targeted FBS and interior drainage levels must also include consideration of system adaptability for potentially greater levels of new structural platforms and/or foundation design modifications to accommodate future loading conditions required.
- Platform modifications and esplanade elevations to be determined by final engineering analysis and coastal modeling results.
- Seepage Barrier required; to be sized based on final geotechnical recommendations.

### **Design**

- Beyond flood risk reduction, project design shall incorporate green infrastructure and other design techniques to build sustainability in areas of urban heat island effect and stormwater management.
- Circulation requirements shall meet or exceed Universal Design Guidelines.
- Project design shall seek to maximize opportunities to enhance existing and/or increase total area of green space, lawn, and other accessible planted areas within Battery Park City.
- Attain, at minimum, SITES Silver and/or WEDG Certification(s) or equivalent; SITES emphasis on Materials Selection and Construction sections.
- Placement and location of parks and open-space related programming must be responsive to and accommodate current and future access, use and maintenance requirements within the context of daily tidal inundation, sea level rise and other climate change characteristics.
- Stone, concrete, and other hardscape material criteria must be appropriate for use on and around FBS, considering volume of pedestrian use, maintenance requirements, and saltwater exposure.
- Criteria for planting must include/consider native/regionally appropriate plant materials, biodiversity, salt tolerance, hardiness, and ecological benefit.
- Alterations affecting the State's right-of-way shall be designed in accordance with the applicable sections of the NYSDOT Highway Design Manual (HDM).
- Proposed work affecting street elements within the City rights-of-way shall meet the standards and requirements of NYCDOT.
- Street tree work shall meet the requirements of the NYCDPR.
- Utility work shall meet the requirements of the respective owning utility companies.
- Existing on-street parking spaces shall be maintained to the greatest degree feasible. Access to existing driveways and other curb cuts shall be maintained.

### **Interior Drainage**

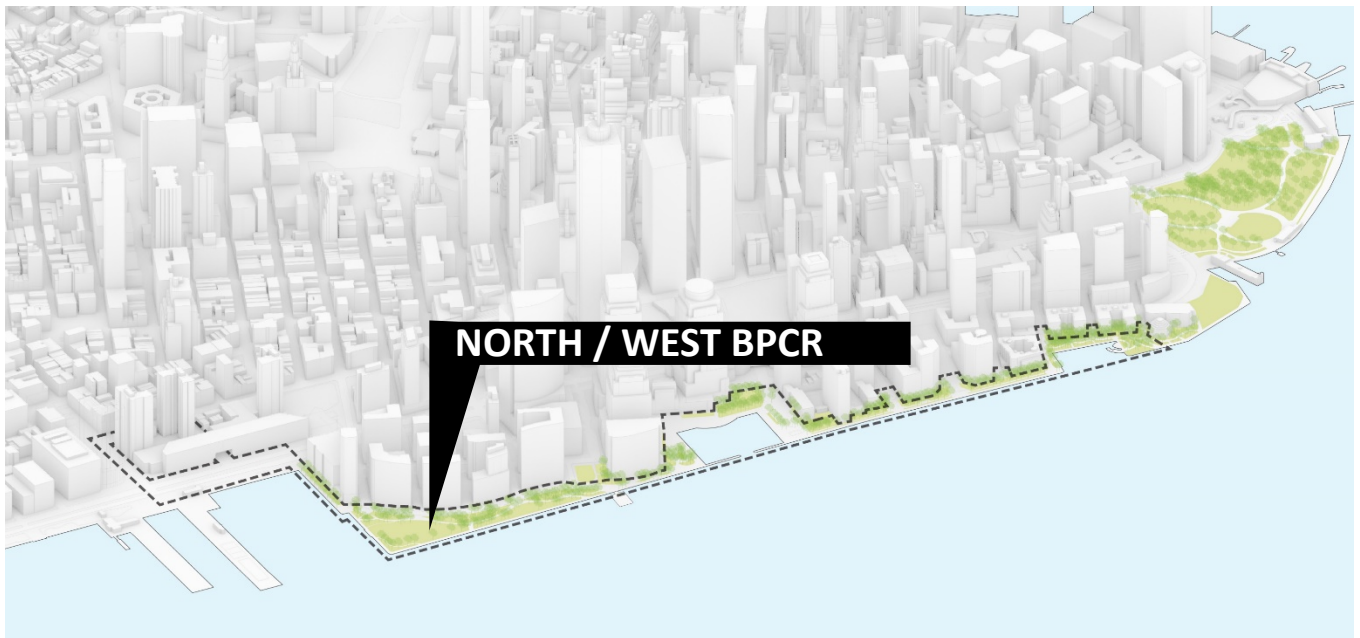
- New and/or replacement Tide Gates will be required for up to 9 CSO and SW outfalls; final placement to be determined by NYCDEP and based upon approved alignment location, individual site constraints, and interior drainage model results.
- Potential interior drainage design approaches to be analyzed shall include, but not be limited to: 1) combined sewer interceptor isolation gate, with control house and instrumentation; 2) near-surface isolation measures within sanitary sewer and drainage structures; and 3) deployable pumping solutions.
- Incorporation of stormwater BMPs will be required, with goals of capturing 90<sup>th</sup> percentile of 24-hour rain events and treating 100% of captured volume.

### **Electrical**

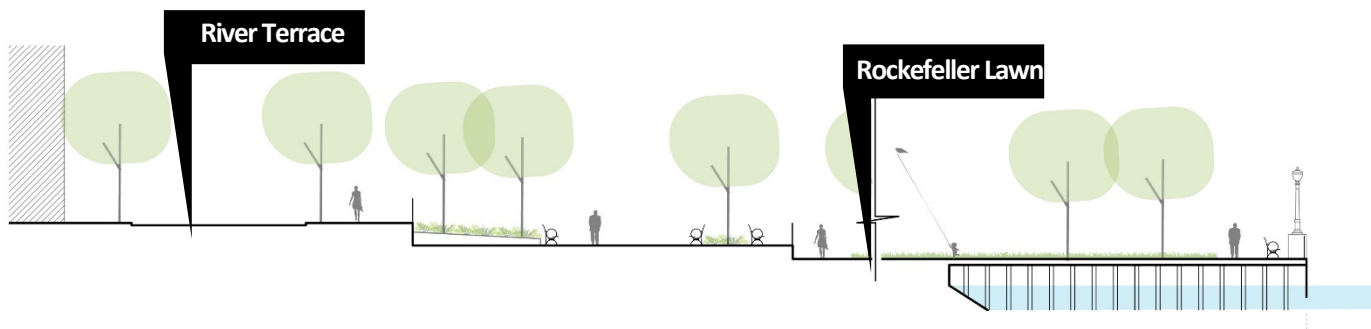
- Hydraulic Power Units (HPUs) and/or powered winch systems will be required for major deployable closures throughout the project alignment
- Backup Power generation and on-site storage are required for emergency lighting and deployables operation; to be determined by final FBS design and coordination with adjacent building owners.
- Utilization of solar powered street, site, and pedestrian lighting must be maximized.
- Project design must thoroughly explore and optimize opportunities for incorporation of renewable energy generation.

### **FEMA**

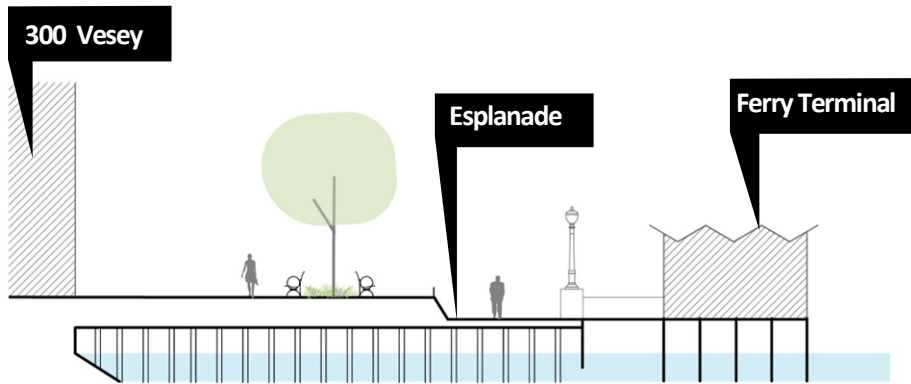
- Final 44 CFR 65.10 Certification and LOMR are required.
- Final Operations and Maintenance (O&M) and Emergency Response Plan (ERP) are required.



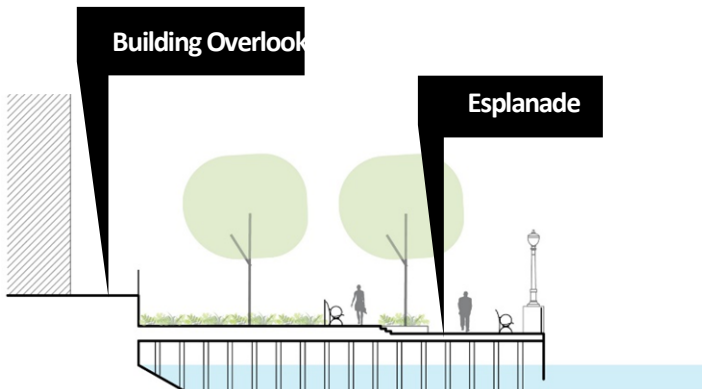
**Figure 1.** Project Footprint



**Figure 2.** Typical Existing Conditions Section – Rockefeller Park



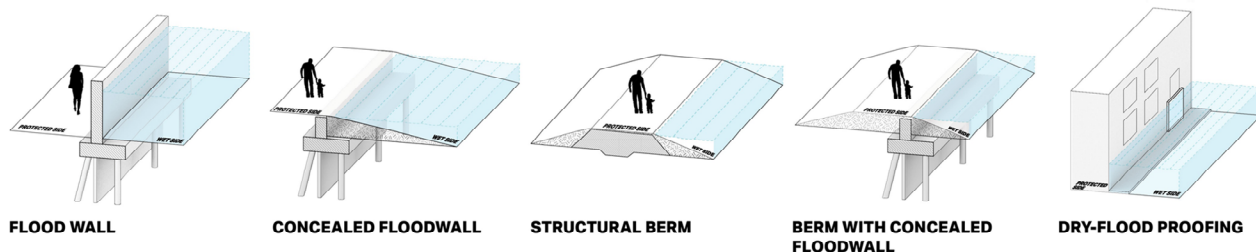
**Figure 3.** Typical Existing Conditions Section – Belvedere Plaza/Ferry Terminal



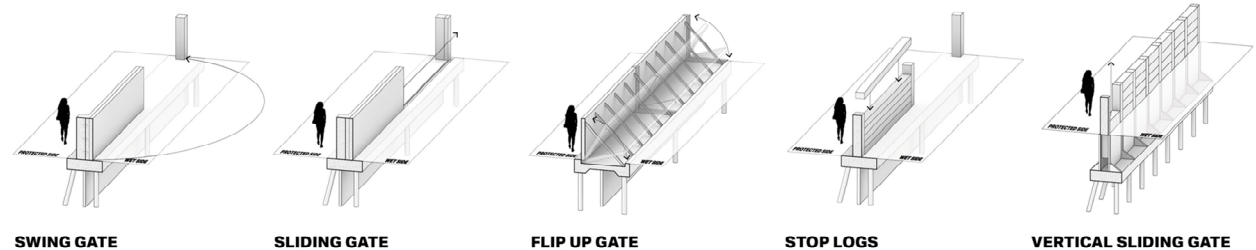
**Figure 4.** Typical Existing Conditions Section – South Esplanade

## POTENTIAL ALIGNMENT FLOOD RISK MEASURES

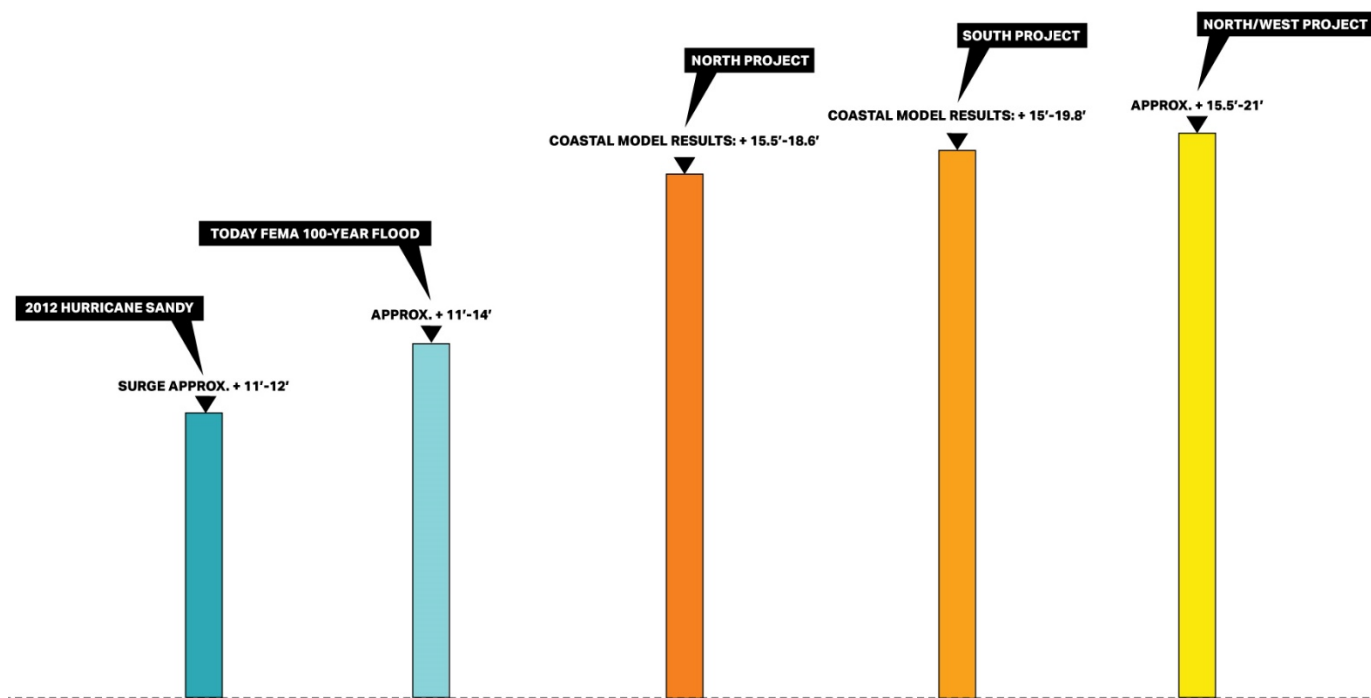
### STATIC



### DEPLOYABLES



**Figure 5.** Potential Flood Risk Reduction Measures



**Figure 6.** Potential Design Flood Elevations

**SCHEDULE F**  
**INSURANCE REQUIREMENTS**



## **SCHEDULE F – INSURANCE REQUIREMENTS**

### **PHASE 1 SERVICES INSURANCE REQUIREMENTS**

The insurance described below will be required to be obtained by the Design-Builder in connection with the execution of the PDB Contract and prior to the commencement of the Phase 1 Services.

#### **1) General Requirements**

The additional insured protection afforded BPCA, BPCPC, and the State 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, no policies may contain any limitations / exclusions for New York Labor Law claims, and cross liability coverage must be provided for BPCA, BPCPC, and the State.

All of the carriers that provide the below required insurance must be rated “A-:VII” or better by A.M. Best and must provide direct written notice of cancellation or non-renewal to BPCA, BPCPC, and the State 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) Insurance Requirements for the Design-Builder**

The Design-Builder will be required to obtain and provide proof of the types and amounts of insurance listed below, before and throughout performance of the Phase 1 Services.

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 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:
  - \$10,000,000 per occurrence
  - \$10,000,000 general aggregate
  - \$10,000,000 products/completed operations aggregate

**Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed.**

BPCA, BPCPC, and the State must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the Design-Builder and any of its subcontractors. The Design-Builder must maintain Products / Completed Operations coverage for no less than three years after the construction work is completed, and continue to include Additional Insured protection for BPCA, BPCPC and the State for the prescribed timeframe. When providing evidence of insurance the Design-Builder must include a completed Acord 855 NY form.

- **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the Design-Builder’s owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State as additional insured.
- **Workers’ Compensation, Employer’s Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage.

- **Professional Liability (“Errors & Omissions”) Insurance** must be maintained at a limit of not less than \$10,000,000 each claim.

As applicable to the Phase 1 Services, the Design-Builder will need to maintain or cause to be maintained the following:

- **Comprehensive Marine Liability Insurance** must be maintained at a limit of not less than \$10,000,000 per occurrence and include the following coverage:
  - Protection and Indemnity
  - General liability
  - Pollution liability
  - Jones Act

BPCA, BPCPC, and the State must be protected as additional insureds on policies held by the Design-Builder and any of its subcontractors.

### 3) Insurance Requirements for all Subcontractors

Any subcontractors utilized by the Design-Builder will be required to obtain the types and amounts of insurance listed below. (i) as a condition of commencing any Phase 1 Services; and (ii) continuing throughout the duration of the subcontractor’s performance of the Phase 1 Services.

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 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 must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by all subcontractors. Should the subcontractor’s work include construction activities of any kind then the subcontractor must maintain Products / Completed Operations coverage for no less than three years after the construction work is completed and continue to include Additional Insured protection for BPCA, BPCPC and the State for the prescribed timeframe. When providing evidence of insurance the subcontractor must include a completed Acord 855 NY form.

- **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the subcontractor’s owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State as additional insured.
- **Workers’ Compensation, Employer’s Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the subcontractor.
- **Subcontractors will also be required to obtain all other insurances listed in Section (2) to the extent determined appropriate by BPCA, after taking into account the nature and extent of the Phase 1 Services required under the applicable subcontract for such subcontractor and the Design-Builder’s ultimate**

**responsibility for all Phase 1 Services performed by all subcontractors pursuant to the terms of the PDB Contract.**

## PHASE 2 WORK INSURANCE REQUIREMENTS

The insurance described below will be required to be obtained by the Design-Builder in connection with the execution of a GMP Amendment and prior to the commencement of the Phase 2 Work. The insurance describe below may also be required in connection with an Early Work Package Amendment, to a degree commensurate with the scale and scope of work to be performed pursuant to such Early Work Package Amendment.

### 1) General Requirements

The additional insured protection afforded BPCA, BPCPC, and the State 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, no policies may contain any limitations / exclusions for New York Labor Law claims, and cross liability coverage must be provided for BPCA, BPCPC, and the State.

All of the carriers that provide the below required insurance must be rated “A-:VII” or better by A.M. Best and must provide direct written notice of cancellation or non-renewal to BPCA, BPCPC, and the State 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) Insurance Requirements for the Design-Builder

The Design-Builder will be required to obtain and provide proof of the types and amounts of insurance listed below, before and throughout performance of the Phase 2 Work.

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 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:
  - \$100,000,000 per occurrence
  - \$100,000,000 general aggregate
  - \$100,000,000 products/completed operations aggregate

**Securing the required limits via a combination of primary and umbrella/excess liability policies is allowed.**

BPCA, BPCPC, and the State must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the Design-Builder and any of its subcontractors. The Design-Builder must maintain Products / Completed Operations coverage for no less than three years after the Phase 2 Work is completed, and continue to include Additional Insured protection for BPCA, BPCPC and the State for the prescribed timeframe. When providing evidence of insurance the Design-Builder must include a completed Acord 855 NY form.

- **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the Design-Builder’s owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State as additional insured.
- **Workers’ Compensation, Employer’s Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage.

- **Professional Liability (“Errors & Omissions”) Insurance** must be maintained at a limit of not less than \$10,000,000 each claim.
- **Contractor’s Pollution Liability Insurance** must be maintained at a limit not less than \$25,000,000 each claim

As applicable to the Phase 2 Work, the Design-Builder will need to maintain or cause to be maintained the following:

- **Comprehensive Marine Liability Insurance** must be maintained at a limit of not less than \$10,000,000 per occurrence and include the following coverage:
  - Protection and Indemnity
  - General liability
  - Pollution liability
  - Jones Act

BPCA, BPCPC, and the State must be protected as additional insureds on policies held by the Design-Builder and any of its subcontractors.

### 3) Insurance Requirements for all Subcontractors

Any subcontractors utilized by the Design-Builder will be required to obtain the types and amounts of insurance listed below. (i) as a condition of commencing any Phase 2 Work; and (ii) continuing throughout the duration of the subcontractor’s Phase 2 Work.

- **Commercial General Liability Insurance**, written on ISO Form CG 00 01 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 must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by all subcontractors. Should the subcontractor’s work include construction activities of any kind then the subcontractor must maintain Products / Completed Operations coverage for no less than three years after the construction work is completed and continue to include Additional Insured protection for BPCA, BPCPC and the State for the prescribed timeframe. When providing evidence of insurance the subcontractor must include a completed Acord 855 NY form.

- **Automobile Liability Insurance** with a combined single limit of not less than \$1,000,000. Coverage must apply to the subcontractor’s owned, hired, and non-owned vehicles and protect BPCA, BPCPC, and the State as additional insured.
- **Workers’ Compensation, Employer’s Liability, and Disability Benefits** shall not be less than statutory limits, including United States Longshore and Harbor Workers Act coverage as applicable to the operations of the subcontractor.
- **Subcontractors will also be required to obtain all other insurances listed in Section (2) to the extent determined appropriate by BPCA, after taking into**

**account the nature and extent of the Phase 2 Work required under the applicable subcontract for such subcontractor and the Design-Builder's ultimate responsibility for all Phase 2 Work performed by all subcontractors pursuant to the terms of the PDB Contract.**

**SCHEDULE G**  
**PROJECT BACKGROUND DOCUMENTS**

**SCHEDULE G – PROJECT BACKGROUND DOCUMENTS**

[To be provided in an Addendum.]



**SCHEDULE H**  
**FORM OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

## **SCHEDULE H – FORM OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_, 2021, by and between THE BATTERY PARK CITY AUTHORITY (d/b/a Hugh L. Carey Battery Park City Authority, “BPCA”) and \_\_\_\_\_ (the “Respondent”), each a “Party” and together the “Parties.”

WHEREAS, BPCA issued a Request for Qualifications to Provide Progressive Design-Build Services for the North/West Battery Park City Resiliency Project (“RFQ”) on September 10, 2021;

WHEREAS, the Respondent is interested in submitting a statement of qualifications responsive to the RFQ (a “Statement of Qualifications” or “SOQ”); and

WHEREAS, in connection therewith BPCA is willing to disclose certain information to the Respondent, but only upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of and as a condition for furnishing the Confidential Information (as defined below), the Respondent and BPCA agree to the following, it being understood that they are also agreeing to direct their officers, employees, partners, representatives, advisors, subcontractors, vendors, agents, attorneys, and associates (“Representatives”) to comply with the provisions hereof:

**1. Confidential Information.** For purposes of this Agreement, the term “Confidential Information” means any information that is made available to the Respondent by BPCA, or one of its Representatives, that is disclosed on BPCA’s secure data website, Procore or any other folder or material marked as “Confidential”.

Notwithstanding anything in this Section 1 to the contrary, the term “Confidential Information” does not include any information that at the time of disclosure by BPCA, or any time thereafter (i) is generally available to and known by the public (other than as a result of a disclosure made directly or indirectly by the Respondent or its Representatives in violation of this Agreement), (ii) is available to the Respondent or its Representatives on a non-confidential basis from a source other than BPCA, or (iii) is already known to the Respondent or has been independently acquired or developed by the Respondent without violating any of the Respondent’s obligations under Section 2 of this Agreement.

**2. Confidentiality; Disclosure.** The Confidential Information will be kept confidential by the Respondent, and the Respondent agrees to protect the Confidential Information using the same degree of care, but no less than a reasonable degree of care, as the Respondent uses to protect its own confidential information of a like nature. Any analysis or work product that is based on the Confidential Information and developed by the Respondent is to be prepared for the exclusive use of BPCA, or any designee of BPCA. As a result, any such analysis or work product may not be reproduced or used by the Respondent or any Representative for any other purpose without the express written consent of BPCA

The Respondent may disclose the Confidential Information or portions thereof to those of the Respondent’s Representatives who need to know such information for the purpose of analysis or preparing an SOQ. The Respondent is not authorized to disclose Confidential Information to any Representative without (i) informing the Representative of the confidential nature of the Confidential Information, and (ii) securing the agreement of the Representative to a similar confidentiality obligation.

If the Respondent or one of its Representatives becomes legally compelled (by law, rule,

regulation, order, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the Respondent must, where practical, provide BPCA with prompt prior written notice of the disclosure requirement so that BPCA may seek a protective order or other appropriate remedy or waive compliance with the terms of this Section 2. If a protective order or other remedy is not obtained, or BPCA waives compliance with the provisions of this Section 2, the Respondent, when compelled to disclose, must (i) furnish only that portion of the Confidential Information that, in accordance with the advice of its own legal counsel, is legally required to be furnished, and (ii) exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information so furnished.

**3. Return.** Upon request from BPCA, the Respondent promptly will return or destroy (at the Respondent's option) all copies of the Confidential Information in the Respondent's possession in any form. The Respondent will keep confidential any Confidential Information contained in all copies of any analyses, compilations, studies or other documents prepared by or for the Respondent that contain or reflect any Confidential Information. If BPCA requests the return of its Confidential Information, then the Respondent must destroy all copies of its analyses, compilations, studies or other documents prepared by or for it that contain the Confidential Information in a manner that would allow its extraction or that would allow the identification of BPCA as the source of the Confidential Information or inputs to the analysis, etc. Upon notice that BPCA requests the return of its Confidential Information, the Respondent is not permitted to use it for any purpose.

Without limiting the generality of the foregoing, the Respondent agrees to erase, delete or destroy (in a manner satisfactory to BPCA in its sole discretion) any notes, documents, magnetic media and other computer storage, including but not limited to system backups, which contain any Confidential Information or information derived in whole or in part from any Confidential Information. The Respondent shall certify in writing such return or destruction, as the case may be, within fifteen days of BPCA's request.

**4. Intellectual Property Rights.** Nothing contained in this Agreement will be construed to grant or imply any right to the Respondent or any of its Representatives with respect to any intellectual property of BPCA (whether or not copyrighted or patented), including any uses related thereto, and all Confidential Information is the sole property of BPCA.

**5. Entire Agreement; Amendment; Waiver.** This Agreement constitutes the entire agreement of the Parties regarding access to and treatment of Confidential Information, and this Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the Parties relating to the Agreement's subject matter. No provision in this Agreement may be waived or amended except by written consent of each Party. It is further understood and agreed that no failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof.

**6. Remedies.** If the Respondent commits a breach, or threatens to commit a breach of, of any material terms or conditions of this Agreement, BPCA will have the right to seek and obtain all judicial relief (including but not limited to specific monetary damages and interest, except that each Party waives any claim for consequential damages resulting from a breach of this Agreement) as may be ordered or awarded by a court of competent jurisdiction. The Respondent hereby acknowledges that legal remedies may be inadequate to fully compensate BPCA for a breach of this Agreement.

**7. Beneficiary; Assignment; Governing Law.** This Agreement is for the benefit of each Party and will be governed by and construed in accordance with the laws of the State of New

York. No Party may assign or otherwise transfer its rights or delegate its duties under this Agreement without the prior written consent of the other Parties, and any attempt to do so without consent is void.

**8. Term.** This Agreement and all obligations under this Agreement continue into perpetuity.

**9. No Warranty.** For any information, including but not limited to Confidential Information, that BPCA furnishes or otherwise discloses to the Respondent, it is understood and agreed that BPCA does not make any representations or warranties as to the information's accuracy, completeness, or fitness for a particular purpose.

**10. Authority.** The undersigned individuals executing this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of the Party on whose behalf they are executing this Agreement.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement as of the date first written above.

**RESPONDENT:**

\_\_\_\_\_

By: \_\_\_\_\_

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

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

**BPCA:**

**BATTERY PARK CITY AUTHORITY**

By: \_\_\_\_\_

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

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