



**Battery Park
City Authority**

**REQUEST FOR PROPOSALS
FOR
LEGAL SERVICES**

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I. INTRODUCTION

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

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

II. OVERVIEW

BPCA hereby requests proposals (a “Proposal” or the “Proposals”) from law firms and practitioners, large and small, (individually a “Proposer” and collectively the “Proposers”) to provide legal representation to BPCA in various areas of the law. BPCA seeks proposals from Proposers with demonstrable expertise in one or more of the following areas of law (including, in each instance, litigation capabilities):

- (1) general corporate law and corporate governance;
 - (2) real estate and land use;
 - (3) residential and commercial landlord/tenant
 - (4) environmental;
 - (5) construction;
 - (6) labor & employment;
 - (7) general litigation (other than personal injury litigation);
 - (8) public finance
- (all such services collectively, “Legal Services”)

Additional information regarding the scope of the Legal Services is set forth in the Scope of Work, attached hereto as Exhibit A. BPCA reserves the right to assign firms with demonstrated expertise in one area of law to a legal matter that may cross over to subject matter areas typically covered by firms with expertise in other practice areas. Proposers may submit Proposals to provide Legal Services in one or multiple practice areas, but may only submit one (1) Proposal, which should clearly identify the practice areas for which the Proposer seeks to be considered.

The purpose of this solicitation is to identify a panel of pre-qualified counsel and law firms that would be eligible to represent BPCA in legal matters from time to time. Inclusion on the pre-qualified legal counsel list does not mean or imply that any firm will in fact be selected or engaged to provide legal services to BPCA. Such selection and engagement will take place only when a need for outside legal counsel arises. The purpose of the pre-qualified list is to procure legal counsel available for engagement on short notice.

This solicitation **does not** modify or affect existing retainer agreements. However, any firm, including those currently providing services to BPCA, **must submit a Proposal** if they wish to be pre-qualified to provide paid legal services to the BPCA under a future contract issued pursuant to this RFP.

In the event that the principal partners and attorneys identified as being responsible for BPCA's matters or other key members of a pre-qualified firm's team in a particular area of expertise, leave the prequalified law firm, the pre-qualification will "follow" these key law firm member(s). Similarly, if a pre-qualified firm combines with another firm and such principal partners and other attorneys remain with the newly combined firm, the newly combined firm will be considered to be pre-qualified in that area of expertise

III. GENERAL PROVISIONS

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

- withdraw and/or cancel this RFP at any time before final award of the contract;
- request clarification and/or additional information from any or all Proposers;
- amend any term or requirement of this RFP at any time before award of a contract (Proposers may amend their Proposals, as directed by BPCA, if BPCA materially alters or amends the RFP after submission of Proposals);
- alter any key dates or deadlines related to this RFP;
- award the Work, in whole or in part, to one or more Proposers with or without negotiations or interviews;
- reject any Proposal that does not strictly conform to the requirements of this RFP;
- conduct an interview with any or all of the Proposers to aid the evaluation process; and
- negotiate potential contract terms with any Proposer.

BPCA is not liable or responsible in any way for any expenses incurred in the preparation of a Proposal in response to this RFP. All information submitted in response to this RFP is subject to the Freedom of Information Law, Article 6 of the New York State Public Officers Law ("FOIL"), which requires public access to certain documents possessed by BPCA, unless a specific exemption applies. Proposers are responsible for identifying any information in their respective Proposals considered by them to be confidential and exempt from disclosure under FOIL. BPCA, however, is obligated to disclose information consistent with the requirements of FOIL, NYS Public Officers Law Section 87.

IV. TIMETABLE & DESIGNATED CONTACT

A. *Key Dates*

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

- RFP issued: January 22, 2019
- Deadline to submit questions to BPCA: February 1, 2019 by 4:00 p.m. (by email only)

All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Lauren Murtha, Paralegal, Battery Park City Authority, at lauren.murtha@bpcanyc.gov.

- BPCA's response to substantive questions: February 8, 2019 (by email)
- PROPOSAL DUE DATE: February 22, 2019 by 3:00 p.m. (the "Due Date")
- Panel start date: Spring 2019 (approximately)

B. Anticipated Contract Term

The term of the Contracts awarded pursuant to this solicitation will vary based upon the specifics and scope of the Legal Services required. However, BPCA anticipates that the pre-qualified panel of firms and practitioners established pursuant to this solicitation will have a three (3) year duration, with a BPCA option to extend the panel for one (1) additional year (subject to the approval of BPCA's Board).

V. GENERAL REQUIREMENTS

A. Minimum Qualification Requirements

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

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

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

Contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs/SDVOBs and equal employment opportunity requirements relating to minority group members and women are attached as Exhibit B. Note that, as this solicitation has been issued to develop a list of pre-qualified vendors and will result in the award of a number of prime Contracts, no MWBE or SDVOB goals have been established at this time. However, BPCA will assess each Contract issued pursuant to this solicitation for MWBE and SDVOB goals prior to award. Please also note that a prospective Contractor's use of MWBE/SDVOB firms is among the factors BPCA will consider when assigning Legal Services work (see Section IX.D of this RFP).

For questions relating to MBE/WBE/SDVOB participation, joint ventures and sub-contracting goals *only*, please contact the "MBE/WBE/SDVOB Designated Contact" Mr. Anthony Peterson at Anthony.peterson@bpca.ny.gov or 212-417-2337.

C. Restricted Period

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

D. Submission of Proposals

Proposals must be received by BPCA no later than 3:00 p.m. on February 22, 2019.

Each Proposer must submit six (6) paper copies and a PDF version (via CD-ROM or flash drive) in a sealed package clearly marked “Proposal Enclosed – Legal Services” to the Designated Contact by messenger, overnight courier or certified mail to the following address:

Lauren Murtha
Battery Park City Authority
200 Liberty Street, 24th Floor
New York, NY 10281

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

VI. PROPOSAL FORMAT AND CONTENTS

A. Proposal Format

The Proposal must:

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

B. Proposal Content

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

- 1) Cover Letter, signed by a person within the firm who is authorized to bind the Proposer, which includes representations that:
 - (a) Except as disclosed in the Proposal, no officer or employee of the Proposer is directly or indirectly a party to or in any other manner interested financially or otherwise in this RFP; and
 - (b) Proposer satisfies all of the minimum qualification requirements in Section IV.A; and
- 2) Executive Summary.
- 3) Responses to the Questions as well as all of the Information Required (Sections VI.A and B).
- 4) Required Attachments (Section VI. C).

BPCA reserves the right to reject any Proposals that fail to include any required item described in this Section V. B., including Cover Letters that are unsigned or that fail to include each of the above representations.

VII. INFORMATION REQUIRED

A. Questions and Information Sought Relating to the Work

- 1) Indicate which of the relevant practice areas your firm is interested in serving as counsel for BPCA. For each practice area, provide a description of your firm's relevant experience in (a) litigation that area; (b) transactional work in that area; and (c) counseling work in that area. Please include a brief description of representative matters, along with your firm's role in those matters.
- 2) Briefly describe your firm's background, services, size, and history, as these factors are relevant to each desired practice area.
- 3) List all attorneys you intend to assign to this engagement. For each attorney listed, include the following: (a) area(s) of specialization; (b) title and/or position within your firm or practice; and (c) anticipated role of the attorney.
- 4) Indicate whether services have been provided previously to BPCA, or any other New York State, local or federal entities. If so, list and describe any and all work performed including (a) the date(s) such work was performed, (b) the entity for which such work was performed, and (c) the area of expertise for the work performed.
- 5) Please describe your firm's experience with similar work for public sector clients, other than New York State public entities.
- 6) Identify the "Lead Partner" or "Principal" who will be the primary contact and lead attorney in providing services to BPCA, and who will be listed as a "key person" in any contract with BPCA.
- 7) Identify principal partners and other attorneys who would likely be responsible for BPCA's matters, and provide a description of the relevant qualifications and experience of each attorney.
- 8) Describe your firm's plan in the event the Lead Partner or Principal assigned to the engagement leaves the firm.
- 9) BPCA's public officials' liability policy (including employment practices liability) is currently placed with AIG. BPCA's general liability policy is currently placed with Chubb. (A) For firms that are seeking to provide labor and employment litigation services, please indicate whether you have previously been approved by AIG, either as a panel or non-panel firm. (B) For firms that are seeking to provide general litigation services, please indicate whether you have previously been approved by *either* AIG or Chubb, either as a panel or non-panel firm.
- 10) If the law firm is a State-certified MWBE or SDVOB firm, provide documentation evidencing certification. Law firms that are not certified, but have applied for certification, should provide evidence of filing, including the filing date
- 11) Does your firm provide clients with CLEs, client alerts and/or practice area updates? If so, provide a description of these items.
- 12) Clearly identify any information in your Proposal that you believe to be confidential and exempt from FOIL, and state the reasons. Please note that this question is for informational purposes only, and BPCA will determine FOIL applicability in its sole discretion.
- 13) Identify any and all exceptions taken to BPCA's standard retainer agreement, attached as Exhibit C, explaining the reasons for such exceptions. Such exceptions must be detailed in an appendix to your

Proposal labeled, "Appendix: Objections to BPCA Form of Retainer Agreement." No exceptions to the retainer agreement will be considered by BPCA after submission of the Proposals. BPCA maintains the right to reject Proposals based on non-conformance with the standard form of retainer agreement.

- 14) Provide at least three (3) client references for whom your firm has performed similar work to that requested in this RFP. For each client, describe the project, the project's date, and services performed, and provide the name, address, and telephone number for a person at client's firm familiar with such work.

B. Questions and Information Sought Relating to Proposer's Firm & Eligibility

- 1) Within the past three (3) years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.
- 2) How does your firm identify and manage conflicts of interest?
- 3) Are there any potential conflict of interest issues posed by your firm's performance of the Work on behalf of BPCA?
- 4) Has your firm or have any of the firm's partners/employees been disciplined or censured by any regulatory body within the last five (5) years? If so, please describe the relevant facts and disposition.
- 5) Within the last five (5) years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of professional services? If so, please provide an explanation and the current status or disposition of the matter.
- 6) List any professional or personal relationships your firm's employees may have with BPCA's Board Members and/or employees. This does not include contacts Proposer has had with BPCA Board Members or employees relating to Proposer's past or present representation of BPCA or BPCPC in a legal matter. A list of BPCA Board Members and employees is attached as Exhibit E.
- 7) If selected, will your firm assign any person to this engagement who was previously an employee of BPCA or BPCPC? If so, please: i) identify when (month and year) that person's employment at BPCA/BPCPC terminated, and ii) describe that person's involvement, if any, with matters related to this RFP during his/her employment at BPCA/BPCPC.
- 8) In the past five (5) years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and provide a contact person, address and telephone number.

C. Required Attachments

- 1) Mandatory Forms:

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

- a) NYS Standard Vendor Responsibility Questionnaire, notarized and signed by the individual(s) authorized to contractually bind the Proposer, indicating the signer's title/position within the firm.*
- b) State Finance Law § 139 Form 1, signed by the individual(s) authorized to contractually bind the Proposer.*
- c) W-9 form.
- d) Statement of Non-Collusion.

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

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

Provide a copy of your firm's most recent Audited or Certified Financial Statements (within the last year). In the event you do not have audited financials you must provide a statement to that effect with your proposal, and in lieu thereof provide summary financial information for the calendar year most recently ended.

- 5) Acknowledgement of Addenda:

Attach a completed and signed Acknowledgement of Addenda Form, attached as Exhibit D, acknowledging receipt of all addenda to this RFP, if any, issued by BPCA before the Due Date. Addenda are posted by BPCA as necessary and can be found on the BPCA website at www.bpca.ny.gov. It is the responsibility of each Proposer to check the BPCA website for addenda and to review addenda prior to submitting any proposal in response to this RFP.

- 6) Appendices:

- a) Attach resumes/CVs for all attorneys identified in your Proposal.

VIII. INSURANCE

A. General Requirements

The total cost of the required insurance listed in paragraphs 2) and 3) below, must be incorporated into the Cost Proposal. The additional insured protection afforded BPCA, BPCPC, and the State of New York must be on a primary and non-contributory basis. All policies must include a waiver of subrogation in favor of BPCA, BPCPC, and the State of New York, 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 of New York.

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 of

New York at least 30 days before such cancellation or non-renewal is effective, except for cancellations due to non-payment of premium, in which case 10 days written notice is acceptable.

B. Insurance Requirements for the Selected Proposer

The selected Proposer will be required to obtain and provide proof of the types and amounts of insurance listed below: (i) as a condition precedent to the award of a contract; and (ii) continuing throughout the entire Contract term. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's sample form of contract attached.

- **Commercial General Liability Insurance**, written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, shall be provided on an occurrence basis and limits shall not be less than:
 - \$1,000,000 per occurrence
 - \$2,000,000 general aggregate, which must apply on a per location/per project basis

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by the selected Proposer and any of its sub consultants.

- **Workers' Compensation, Employer's Liability, and Disability Benefits** shall not be less than statutory limits.
- **Professional Liability ("Errors & Omissions") Insurance** must be maintained at a limit of not less than \$3,000,000 each claim.

C. Insurance Requirements for Subconsultants

Any subcontractor(s) utilized by the selected Proposer will be required to obtain the types and amounts of insurance listed below: (i) as a condition of commencing any Work; and (ii) continuing throughout the duration of the subcontractor's Work. The insurance policies listed below must also conform to the applicable terms of the Contract, as shown in BPCA's sample form of contract attached:

- **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

BPCA, BPCPC, and the State of New York must be protected as additional insureds on ISO Form CG 2010 (11/85) or its equivalent on policies held by all sub consultants.

- **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.
- **Sub consultants will also be required to obtain all other insurances listed in Section (2) unless otherwise approved in writing by BPCA prior to commencement of any Subcontractor's work.**

IX. COST PROPOSAL; FORMAT AND REQUIRED INCLUSIONS

Each Cost Proposal must contain the following:

1. The regular billing rates for those partners, junior associates, senior associates and paralegals proposed to be assigned to each practice area for which Proposer is applying for.
2. The discounted rates (if any) to be charged to BPCA for those partners, junior & senior associates and paralegals proposed to be assigned to each practice area for which Proposer is applying for.
3. The disbursements or other services for which Proposer would expect reimbursement.
4. Whether the rates proposed exceed the rates currently being charged by your Firm to other public entities in New York or elsewhere in the United States.
5. Any alternative fee arrangement you believe would be beneficial to BPCA, along with an explanation as to why Proposer believes such an alternate arrangement would be favorable.

Nothing herein shall prevent BPCA from entering into a fixed-fee arrangement for Legal Services based on the hourly rates provided by Proposer, should such arrangement be in the best interests of BPCA.

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

X. SELECTION PROCESS

A. *Evaluation*

Each timely submitted Proposal will be reviewed for compliance with the form and content requirements of this RFP. A committee of BPCA employees selected by BPCA (the "Committee") will then review and evaluate the Proposals in accordance with the evaluation criteria set forth below. While only Committee members will score the evaluation criteria, the Committee may consult an outside expert for advisement on the evaluation of matters requiring technical expertise. Before final selection, BPCA must determine that the proposed selected Proposer is responsible, in accordance with applicable law and BPCA's Procurement Guidelines, which may be viewed at: <http://bpca.ny.gov/public-information/>.

B. *Interviews*

BPCA reserves the right to decide whether to interview any or all of the Proposers. The Committee may conduct interviews for various purposes, including to further assess a Proposer's ability to perform the Work or provide specific services, or to seek information related to any other evaluation criteria. The proposed Lead PM, as well as other key members of Proposer's team, must be available to participate in the interview.

C. *Evaluation Criteria for Selection*

Selection will be based upon the following criteria:

1. Technical Evaluation:

- A) Qualifications and experience of the Proposer and proposed counsel in each practice area

for which pre-qualification is sought, as evidenced by the responses to the questions set forth in Section VI of the RFP:	50%
B) Demonstrated relevant experience representing municipalities or other, similar governmental entities:.....	25%
C) Overall quality of Proposal, including cohesiveness, brevity, clarity of response, and responsiveness to the requirements of this RFP:	15%
D) Response to Diversity Practices Questionnaire:	10%

2. Cost Proposal evaluation.

D. Basis for Panel Selection and Contract Award

BPCA will assess the Proposals utilizing the criteria set forth above. BPCA will select multiple Proposers for its “pre-qualified” Legal Services panel and will then enter into Contracts with one or more of those pre-qualified Proposers on an as-needed basis. Selection as a pre-qualified Proposer is subject to BPCA’s determination that the Proposal is responsive to the requirements stated in this RFP, that the Cost Proposal is fair and reasonable and that the Proposer receives a satisfactory score as a result of the technical evaluation.

BPCA will consider the following factors when assigning Legal Services work:

- The specialized expertise of the Contractor;
- The Contractor’s rates, including a Contractor’s willingness to provide BPCA discounted hourly rates;
- The availability and expertise of Contractor’s assigned employees;
- The amount of other Authority work assigned to the Contractor; and
- The Vendor’s use of MWBE and SDVOB subcontractors/consultants.

XI. NON-COLLUSION

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

XII. IRAN DIVESTMENT ACT

By submitting a Proposal or by assuming the responsibility of any Contract awarded hereunder, each Proposer certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize any subcontractor/consultant that is identified on the Prohibited Entities List on this Contract. The selected Proposer agrees that should it seek to renew or extend any Contract awarded hereunder, it must provide the same certification at the time the Contract is renewed or extended.

The selected Proposer also agrees that any proposed assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before BPCA may approve a request for assignment of the Contract.

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

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

XIII. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

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

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

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

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

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

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

EXHIBIT A

Scope of Work

The scope of the Legal Services is described below. The case volume for each practice area varies from year to year. BPCA reserves the right to assign firms with demonstrated expertise in one area of law to a legal matter that may cross over to subject matter areas typically covered by firms with expertise in other practice areas.

Real Estate and Land Use –includes, but is not limited to, any matter involving the Authority’s real property assets, including, but not limited to, the acquisition, sale and leasing of real property by the Authority, all negotiations related thereto, compliance, enforcement of lease provisions, property maintenance, title disputes, national, regional and local land use matters, including zoning due diligence and analysis, condominium conversions, and advising on various New York City tax exemption programs including New York City’s 421-a program. While the Authority’s real estate and land use matters are predominately transactional or regulatory, experience handling real estate and land use disputes (pre-litigation and litigation) is also desirable.

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

Labor & Employment– includes both non-litigation and litigation matters. Non-litigation matters may include, but not be limited to, advice on internal employee matters, including severance-related matters, aid in drafting policies and best practices, and internal investigations. Litigation matters may include representation of BPCA in labor/employment-related claims (e.g. Title VII, ADA, ADEA) in state and federal court, as well as administrative hearings, arbitration and mediation. At this time, the Authority does not anticipate any employment contract drafting or negotiation work.

Municipal/Government Entity Representation- includes, but is not limited to, advising BPCA and/or representing BPCA in litigation related to the wide range of issues affecting a public entity, such as day-to-day operational issues such as corporate governance, compliance with open meetings laws and the Freedom of Information Law, general commercial litigation, Article 78 proceedings, actions commenced by or against BPCA, its members, officers and employees arising out of the performance of their duties and responsibilities, civil rights litigation, and allegations of constitutional law violations. **BPCA is not seeking representation for personal injury or tort claims.**

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

Environmental – includes, but is not limited to, advising in environmental regulatory matters, strategic advice, zoning opinions and letters, advising on the public trust doctrine, environmental approvals for development projects, litigating environmental disputes, and matters relating to flood and storm resiliency.

Public Finance – includes, but is not limited to, advising on public bond finance and bond issuance matters, strategic advice relating to public financing, as well as all related tax and regulatory matters.

EXHIBIT B

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

Note Regarding this Pre-Qualified Vendor Solicitation: As this solicitation has been issued to develop a list of pre-qualified vendors and will result in the award of a number of prime contracts, no MWBE or SDVOB goals have been established at this time. However, BPCA will assess each contract issued pursuant to this solicitation for MWBE and SDVOB goals prior to award. Proposers need not submit MWBE utilization plans at this time.

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

A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the Proposer agrees that BPCA may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how BPCA will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.— The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. 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 the monetary value for fees, or the markup percentage, charged by the MWBE.

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

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

By submitting a bid or proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Proposer may arrange to provide

such evidence via a non-electronic method by contacting Mr. Anthony Peterson at Anthony.peterson@bpcanyc.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 at the time of Contract award:

- A. An MWBE Utilization Plan. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to BPCA for review and approval.
- B. BPCA will review the submitted MWBE Utilization Plan and advise the Proposer of BPCA acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Mr. Anthony Peterson at BPCA, by email at Anthony.peterson@bpcanyc.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 bid or proposal.

Contractors 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.

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

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. For guidance on how BPCA will determine a Contractor's "good faith efforts," refer to 9 NYCRR §252.2(f)(2).

In accordance with 9 NYCRR §252.2(s), 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. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.

- B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to Mr. Anthony Peterson at BPCA, by email at Anthony.peterson@bpcanyc.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 bid or Proposal.

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

Contractors will be 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, if any.

Equal Employment Opportunity Requirements

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

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

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

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 Mr. Anthony Peterson at Anthony.peterson@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 Mr. Anthony Peterson at Anthony.peterson@bpca.ny.gov or 212-417-2337.

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.

Battery Park City Authority Request For Proposals

Agreed to this _____ day of _____, 2019

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.

(Authorized Representative)

Title: _____

Date: _____

Diversity Practices Questionnaire

I, _____, as _____ (title) of _____ company (the “Company”), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

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

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

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

3. What percentage of your Company’s overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your Company’s clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified MBEs/WBEs as suppliers/contractors?¹

4. Does your Company provide technical training² to MBEs/WBEs? Yes or No

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

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

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

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

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

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

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

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

If Yes, complete the attached Utilization Plan

¹ Do not include onsite project overhead.

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

Battery Park City Authority Request For Proposals

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

EXHIBIT C

FORM OF RETAINER AGREEMENT

Battery Park City Authority

200 Liberty Street, 24th Floor
New York, NY 10281
(212) 417- XXXX
www.bpca.ny.gov

[DATE]

[FIRM/ATTORNEY NAME AND ADDRESS]

Re: **Legal Counsel (Contract No. XXXXX)**

Dear **[LEAD ATTORNEY NAME]**:

In accordance with the provisions of this letter agreement (the “Agreement”), Battery Park City Authority, d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) hereby retains **[FIRM NAME]** (the “Firm”) to provide legal counsel and render legal services to BPCA and to the Battery Park City Parks Conservancy Corporation (the “Conservancy”, and together with BPCA, the “Authority”), specifically relating to matters including, but not limited to **[DESCRIPTION OF LEGAL SERVICES]** (collectively, the “Services”).

1. Professional services of the Firm rendered to the Authority in connection with this Agreement shall be compensated at the hourly rates set forth in “Exhibit A” (“Fee Schedule”) attached hereto. In addition, the Authority will reimburse the Firm for reasonable actual out-of-pocket disbursements, such as photocopying, delivery charges and specialized computer applications, incurred by the Firm relating to its performance of Services as provided herein (the “Disbursements”).

2. **[LEAD ATTORNEY]** will bear the primary responsibility for the supervision, and completion, of the Services in a manner that is satisfactory to the Authority. **[LEAD ATTORNEY]** will be the “Key Partner” for purposes of this engagement. **[LEAD ATTORNEY]** may be reached at **[PHONE NUMBER AND EMAIL ADDRESS]**.

3. This Agreement shall be effective as of **[DATE]** and continue until **[DATE]** (the “Term”), unless the Authority terminates it earlier, for any reason, upon fifteen (15) days written notice from the Authority to the Firm. The Authority reserves the right to terminate the Agreement at any time, without prior notice, if the Key Partner ceases to be employed by the Firm.

4. The Firm will not represent any party with an interest that may be adverse to that of the Authority. Notwithstanding the preceding sentence, the Authority: (1) acknowledges that the Firm represents clients other than the Authority (“Firm Clients”) and from time to time, may be asked to represent either: (a) the Authority in a transaction in which one or more of the Firm’s Clients is involved, but where such Firm Client is represented by counsel other than the Firm; or (b) a Firm Client in a transaction in which the Authority is involved but where the Authority is represented by other counsel; and (2) hereby consents to such representation subject to the following conditions: (a) the Firm has received the Authority’s prior written consent for such representation; (b) the Firm has determined that such representation is consistent with the requirements of DR5-105 of the New York Code of Professional Responsibility; (c) the Firm notifies the Authority in writing of each instance in which it is

relying on this provision and whether it has also obtained the consent of the Firm Client; and (d) the Firm agrees that it will not represent a Firm Client against the Authority or the Authority against a Firm Client in connection with any litigation.

5. Upon the conclusion of the Services, please return all hardcopy and electronic documents, materials and files pertaining to the Authority and the Services in the Firm's possession to the Authority. The Firm may retain its own files relating to the Services, and these files will be kept confidential in accordance with applicable rules of professional conduct.

6. The Firm will submit monthly bills to the Authority which shall set forth, in detail, a description of the Services rendered, the name of the individuals performing the Services, the basis for the calculation of the charges submitted with respect to each such specified matter and an itemization of Disbursements for which reimbursement is requested. Services shall be limited to those requested or authorized by the Authority. The maximum obligation of the Authority hereunder shall not exceed [**CONTRACT \$ AMOUNT**] in the aggregate, inclusive of fees and Disbursements.

7. The Authority shall make payments to the Firm for Services and Disbursements in accordance with the "Prompt Payment Policy," which is attached hereto as "Exhibit B".

8. The laws of the State of New York shall govern the interpretation of this Agreement, including all rules or codes of ethics that apply to the provision of services. In addition, the Firm acknowledges that it has read Chapter 1 of the Laws of 2005, as amended, regarding procurement lobbying, and that certifications provided to the Authority in connection with the Services are complete, true, and accurate and will be updated to reflect any change in information. The Authority hereby reserves the right to terminate this Agreement in the event it is found that the certification provided by the Firm to the Authority pursuant to New York Finance Law Section 139-k was intentionally false or intentionally incomplete.

9. This Agreement supersedes any and all prior agreements between the Authority and the Firm regarding the performance of Services by the Firm. The provisions of this Agreement will continue in effect, as appropriate, even after the termination of the Services.

10. The Firm acknowledges that at the direction of the Authority, the Firm may be required to work with other law firms empanelled by the Authority, including minority and women-owned business enterprise firms, on specific assignments. The specific tasks and duties to be performed by each firm, together with the fees to be charged for their respective services, shall be determined by the Authority and the firms in advance of the commencement of work.

11. The Firm shall comply with the requirements relating to equal employment opportunities for minority group members and women set forth on "Exhibit C" attached hereto and the requirements relating to insurance set forth on "Exhibit D" attached hereto.

12. The Authority, periodically or upon the completion of an assignment, may review the quality and cost-effectiveness of the Services provided by the Firm. This review shall include consideration of the Firm's adherence to the representations made regarding diversity practices, as well as, the actual percentage of work performed by women and minority professionals assigned to the Authority's engagement. The Firm therefore acknowledges that it may be removed from this engagement prior to the expiration of the Term. The Authority similarly acknowledges that the Firm, consistent with its obligations under the New York Code of Professional Responsibility, may resign from the engagement prior to the expiration of the Term.

13. From time to time during the Term, the Firm may provide to the Authority, and the Authority may, in its sole discretion, fully participate in and/or accept, certain educational opportunities and/or materials prepared by or obtained from the Firm for use by or distribution to its clients, such as, but not limited to, seminars, conferences, symposiums, lectures, classes, informal or formal meetings, publications, periodicals and the like (“Educational Opportunities”), provided that such Educational Opportunities generally relate to those areas of the Firm’s expertise and its performance of Services hereunder. The Firm hereby expressly acknowledges that the value of any Educational Opportunities is part of the valuable consideration exchanged herein.

14. If litigation is threatened in connection with the Services, as determined by the New York courts, and in order to comply with its legal obligation, the Authority and its officers, members and employees shall immediately preserve all existing physical evidence, documents and data relevant to the Services and suspend deletion, overwriting, or any other possible destruction of relevant documents and data. At that time, any routine document retention/destruction policy will be suspended and a litigation hold will be put in place to ensure the preservation of relevant documents. Additionally, the Authority will direct all suitable employees to preserve all relevant records and create a mechanism for collecting the preserved records so they may be obtained at a later time.

15. Any dispute concerning the Firm’s representation of the Authority for the provision of Services shall be governed by New York State law. If during the course, or at the conclusion, of the Firm’s provision of the Services, there is a dispute as to the legal fee charged which is in excess of \$1,000.00 but less than \$50,000.00, the Authority will have the option to resolve this dispute by arbitration pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of the State of New York.

16. A binding contract between the parties shall exist only if and at such time as both parties have executed this Agreement.

If the foregoing is acceptable to you, please so indicate by signing and returning three originals of this Agreement. Upon receipt by the Authority, the Authority will execute the Agreement, a fully executed copy will be returned to you and this letter will thereupon constitute the Agreement between us.

Very truly yours,

BATTERY PARK CITY AUTHORITY

By: _____

Name: Abigail Goldenberg

Title: General Counsel

AGREED AND ACCEPTED:
[FIRM NAME].

By: _____

Name: [LEAD ATTORNEY]

Title: [INSERT TITLE]

Retainer Exhibit A

FEE SCHEDULE –
[FORMAT MAY VARY FOR INDIVIDUAL ENGAGEMENTS]

<u>Title</u>	<u>Rate per Hour</u>
Partner	\$XXX
Counsel	\$XXX
Senior Associate	\$XXX
Associate	\$XXX
Legal Assistant/Paralegal	\$XXX

Retainer Exhibit B

HUGH L. CAREY BATTERY PARK CITY AUTHORITY
PROMPT PAYMENT POLICY

Section 9002.1

Statement of Policy and Purpose. This Prompt Payment Policy is adopted pursuant to Section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

Section 9002.2

Definitions. For the purpose of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

(a) "Authority" shall mean the Hugh L. Carey Battery Park City Authority.

(b) "Contract" shall mean an enforceable agreement entered into by the Authority and a Contractor, including purchase orders. Bond resolutions and any leases to which the Authority is a party, including any leases between the Authority and any of its tenants or subtenants, as well as any related agreements which are an integral part of such leases or subleases, are not Contracts within the meaning of this Section.

(c) "Contractor" shall mean any person, partnership, private corporation or association providing or performing any of the following pursuant to a Contract:

(i) selling materials, equipment or supplies or leasing property or equipment to the Authority;

(ii) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Authority; or

(iii) rendering or providing services to the Authority.

(d) "Designated Payment Office" shall mean that department within the Authority to which a proper invoice is to be submitted by a Contractor; unless otherwise, specified, the Designated Payment Office shall be:

Office of the Chief Financial Officer
Hugh L. Carey Battery Park City Authority
200 Liberty Street, 24th Floor
New York, New York 10281-1097

Attention: Accounts Payable

(e) "Prompt Payment" shall mean payment of a debt due and owing by the Authority pursuant to a Contract before interest accrues thereon pursuant to the provisions of this Part.

(f) "Proper Invoice" shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a Contractor, such request or invoice being both in accordance with the terms of the Contract and in such form, and supported by such other substantiating documentation, as the Authority may reasonably require.

(g) "Receipt of a Proper Invoice" shall mean either:

(i) The date on which a Proper Invoice is received by the Designated Payment Office or

(ii) The date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.

(h) "Set-off" shall mean the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

Section 9002.3

Applicability. This Part shall apply to all Contracts entered into on or after April 29, 1988.

Section 9002.4

(a) Payment Request Procedure. Contractors owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.

(b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:

(i) For invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

(ii) For Contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided as in (i) above.

(iii) This schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be there provided.

(c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the

affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.

(d) Funds Available to Pay Interest Penalties. The Authority will pay interest as provided herein with monies available to the Authority for operating and administrative expenses pursuant to its approved budget.

(e) Extension of Payment Time. Any of the following facts, conditions or situations are determined by the Authority to be exceptions to the prompt payment schedule set forth in Section 9002.4(b) and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Authority's Treasurer consistent with this Part, with notice provided to the Contractor):

(i) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;

(ii) The absence of a state appropriation which is necessary to authorize payment;

(iii) A requirement for federal government examination of a Proper Invoice prior to payment;

(iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;

(v) Failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;

(vi) Where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.

(f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):

(i) A reasonable belief by the Authority in the existence of any defects(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;

(ii) A reasonable belief by the Authority in the existence of any defect(s) in the invoice; or

(iii) A reasonable belief by the Authority in suspected impropriety of any kind. In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor, setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice provided that, in the event that the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the

Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and the date of the Authority's transmitting such notifications. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

Section 9002.5

(a) Annual Report. The Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:

(i) A listing of the types or categories of contracts which the Authority entered into during the twelve-month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;

(ii) The number and amount of interest payments made for contracts, arranged according to each such type or category;

(iii) The number of interest chargeable days, and the total number of days taken to process each late contract payment; and

(iv) A summary of the principal reasons why such late payments occurred.

(b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

(c) Copies of its annual report shall be made available to the public upon reasonable request at the Authority's main office.

Section 9002.6

(a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

(b) Contract Incorporation. The policy statement in effect at the time that a Contract is entered into is hereby incorporated into and made a part of that Contract.

(c) Public Access. The Authority shall make copies of this policy statement available to the public upon reasonable request at the Authority's main office. The Authority shall also provide a copy of this policy statement to each Contractor at or prior to the time a Contract is entered into.

(d) Inapplicability. This policy is not applicable to payments due and owing by the Authority to any other governmental entity, agency, public benefit corporation or the employees thereof when acting in or incidental to their public employment capacity, to interest on judgments rendered by a

court against the Authority pursuant to any other provision of law, or to situations where the Authority exercises a legally authorized Set-off against all or part of a payment due a Contractor.

(e) Legal Processes. The Authority is under no liability to pay interest pursuant to this policy for any period after a Contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable.

(f) Interpretation. This Part shall be interpreted consistent with and to fulfill the purposes of Section 2880 of the Public Authority Law.

Retainer Exhibit C

EEO REQUIREMENTS

Equal Employment Opportunity (“EEO”)

1. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to this Agreement.
2. In performing the Agreement, the Firm shall:
 - a. Ensure that each consultant and subconsultant performing work on the Agreement shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - b. Submit an EEO policy statement to the Authority within seventy-two (72) hours after the date of the notice by the Authority to award the Agreement to the Firm.
 - c. If the Firm, or any of its consultants or subconsultants, does not have an existing EEO policy statement, the Authority may require the Firm or any of its consultants or subconsultants to adopt a model statement that shall include the following language:
 - i. The Firm 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 EEO programs to ensure that minority group members and women 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.
 - ii. The Firm shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - iii. The Firm shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or 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 the Firm’s obligations herein.
 - iv. The Firm will include the provisions of (2)(c)(i) through (iii), which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to the Services.

3. Workforce Utilization Report

- a. The Firm shall submit a Workforce Utilization Report (https://its.ny.gov/sites/default/files/documents/eo_workforce_utilization_report.xlsx) and shall require each of its subconsultants to submit a Workforce Utilization Report, in such form as shall be required by the Authority on a quarterly basis during the term of this Agreement.
- b. Separate forms shall be completed by the Firm and any subconsultants.
- c. Pursuant to Executive Order #162, the Firm and any subconsultants are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
- d. The Firm shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Firm and its subconsultants 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.

Retainer Exhibit D

INSURANCE REQUIREMENTS

- A. The Firm shall procure and maintain all of the insurance required under this Exhibit D during the Term of this Agreement.
- B. The Firm shall not commence performance of the Services until the Firm has obtained, and required each subconsultant to obtain, all the insurance required under this Exhibit D and until it has furnished to the Authority the certificate or certificates of insurance required by Section C hereof.
- C. The Firm shall furnish to the Authority, before or upon execution of this Agreement, attention: Nimisha Haribaran, a certificate or certificates of the insurance required under this Exhibit D and, upon the Authority's request, certified copies of the original policies of insurance, within the time period required by the Authority and before commencing performance of the Services. Such certificate or certificates shall be in form satisfactory to the Authority, shall list the various coverages and shall contain, in addition to any other provisions required hereby, a provision that the policy shall not be changed, canceled or reduced and that it shall be automatically renewed upon expiration and continued in force until two years after the Services are completed unless the Authority is given 90 days' written notice to the contrary. Such certificates shall also include riders providing that violation of any of the terms of any policy shall not by itself invalidate such policy. Such policies and certificates must name as additional insureds the Authority, Battery Park City Parks Conservancy Corporation ("BPCPC") and the State of New York.
- D. All insurance required to be procured and maintained must be procured from insurance companies that have a financial rating by A.M. Best Company as published in the most current key rating guide of A-:VII or better and which are authorized to do business in the State of New York.
- E. If at any time any of the required insurance policies should be canceled, terminated or modified so that insurance is not in effect as required, then the Firm shall suspend performance of the Services. If the Services are suspended then the Authority may, at the Authority's option, obtain insurance affording coverage equal to that required herein and the cost of such insurance shall be payable by the Firm to the Authority.
- F. All additional insured protection afforded the Authority, BPCPC, and the State of New York must be on a primary and non-contributory basis and all policies must include a waiver of subrogation in favor of the Authority, BPCPC, and the State of New York.
- G. The Firm and any subconsultants shall secure in a form satisfactory to the Authority the following:
1. Worker's Compensation, Employer's Liability insurance and Disability Benefits during the Term for the benefit of such employees as are required to be insured by the applicable provisions of law and voluntary compensation for employees excluded from statutory benefits.
 2. Commercial General Liability insurance, as follows:
 - a. Coverage must be written on ISO Form CG 00 001 or its equivalent and with no modification to the contractual liability coverage provided therein, and shall be provided on an occurrence basis with limits not less than:
 - \$1,000,000 per occurrence
 - \$2,000,000 General Aggregate, which must apply on a per project basis

b. The Authority, BPCPC and the State of New York must be protected as additional insureds with coverage at least as broad as the combination of the most recent editions of ISO Forms CG 20 26 and CG 20 37 on policies held by the Firm and any of its subconsultants. Subconsultants may not use blanket additional insured endorsements to provide additional insured protection to the Authority, BPCPC, and the State of New York “by written contract” but must use ISO Form CG 20 38 or its equivalent. The policy must provide coverage for defense and indemnification of claims and/or lawsuits, including third party actions, claims and/or lawsuits for bodily injury to the employees of the Firm or any subconsultants arising from the injured worker’s employment with the Firm or any of its subconsultants.

3. Professional Liability (“Errors and Omissions”) insurance must be maintained at a limit of not less than \$3,000,000 per claim.

H. The insurance required under subsection G(2) shall provide that the insurance company or an attorney approved and retained by the insurance company shall defend any suit or proceeding against the Authority or any officers, agents or employees of the Authority whether or not such suit is groundless, false or fraudulent. Notwithstanding the foregoing, the Authority shall have the right to engage its own attorneys for the purpose of defending any suit or proceeding against it or its respective officers, agents or employees, and, in such event, the Firm shall, indemnify the Authority for all attorneys’ fees and disbursements and other costs incurred by it arising out of, or incurred in connection with, any such defense.

I. The Authority, at its cost and expense, may, at its sole option, procure and maintain such insurance as shall in the opinion of the Authority, protect the Authority from contingent liability of the Authority to others for damages arising from bodily injury, including death and property damages which may arise from operations under this Agreement. The procurement and maintenance of such insurance by the Authority shall not in any way be construed or be deemed to relieve the Firm from, or to be a limitation on the nature or extent of, such obligations and risk.

EXHIBIT D

(Acknowledgement of Addenda)

RFP TITLE: _____

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

Part I

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

Addendum # 1, Dated _____, ____

Addendum # 2, Dated _____, ____

Addendum # 3, Dated _____, ____

Addendum # 4, Dated _____, ____

Addendum # 5, Dated _____, ____

Addendum # 6, Dated _____, ____

Part II Acknowledgement of No Receipt

_____ No Addendum was received in connection with this RFP

Part III

Proposer's Name: _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

EXHIBIT E

List of BPCA & BPCPC Board Members and Employees

(attached)

LIST OF BOARD MEMBERS

George J. Tsunis

Donald Cappocia

Lester Petracca

Louis J. Bevilacqua

Catherine McVay Hughes

Martha J. Gallo

Anthony Kendall

Employees:

Debbie Addison
Curtis Afzal
Elsa Alvarez
Dana Anders
Anthony Andriano
Stephen Arciold
Sharmila Baichu
Marie Baptiste
Brett Beecham
Freddy Belliard
Emily Birdseye
Nidia Blake-Reeder
LaToya Brooks-Jones
Nancy Buivid
Anthony Buquicchio
Peter Campbell
Frances Caperchi
Monica Centeno
Carlton Chotalal
Julissa Cooke
Deshay Crabb
Gwen Dawson
Gilbert DePadua
Paul Diaz-Larui
Tonasia Dopson
Patricia Ehlers
Abigail Ehrlich
Maria Ellison
Richard Faraino
Anitra Fauntleroy
Pamela Frederick
James Gallagher
Joseph Ganci
Abigail Goldenberg
Anastasia Gonzalez
Lenron Goode
Neresa Gordon
Sakina Graves
Ned Greenberg
Evelyn Gregg
Jonathan Gross
Robert Hansen

Nimisha Haribaran
Nicole Heater
Sankar Heerah
Sonia Henry
Stephanie Huayta
Craig Hudon
Amy Jogie
William John
Jasmine Johnson
Benjamin Jones
Roland Kemp
Ann Ketring
Susie Kim
Karl Koenig
Betzyda Laboy
Leandro Lafuente
Michael Lamancusa
Della Lee
Rene Lopcy
Robert Maggi
Evelin Maisonet
Kevin McCabe
Jonathan McCain
Princess McNeill
Vanessa Mesine
Ronnie Mohammed
Dana Morgera
Lauren Murtha
Bertha Narcisse
Robert Nesmith
Siu May NG
Yoshihiro Nishida
Anne O'Neill
Bienvenido Osorio
Kevin O'Toole
Hector Oyola
Willem Paillant
Jonathan Parker
Gladys Pearlman
Dahlia Pena
Anthony Peterson
Bruno Pomponio
Katherine Powell

Sandra Power
Robert Quon
Jason Rachnowitz
Madelin Ramirez
Manual Rivera
Anthony Robinson
Andrea Rodriguez
Nelson Rogers
Jose Rosado
Holly Ross
Carlos Santiago
Nicholas Sbordone
Jean Schwartz
Jesse Schwartz
Lindsey Senn
Rekha Sewraj
Sean Simon
Kemnarine Singh
Timothy Skipper
Sarah Smedley
Bruce Spierer
Nicole Stallworth-Roper
Shinay Stewart
Jerome Sturiano
Lance Super
John Tam
Alexis Torres
Ryan Torres
Douglas Van Horn
Noe Velasquez
Evangelio Villalobos
Jeffrey Vixamar
Sharon Wade
David Wallace
Eric White
Angela Whitehead
Dwight Williams
Kenneth Windman
Al Wright
Jouli Yohannes