



**Battery Park
City Authority**

**REQUEST FOR EXPRESSIONS OF INTEREST
FROM INTERESTED PARTIES REGARDING A
POSSIBLE DESIGN-BUILD PROJECT
FOR
FLOOD RESILIENCY IMPROVEMENTS**

DATED: SEPTEMBER 2, 2020

RFEI RESPONSES DUE: SEPTEMBER 25, 2020

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1. INTRODUCTION

Created in 1968, the Battery Park City Authority (d/b/a Hugh L. Carey Battery Park City Authority, the “**BPCA**”) is a New York State public benefit corporation responsible for financing, developing, constructing, maintaining, and operating Battery Park City as a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas, and a waterfront esplanade.

Since 2014, the BPCA has been assessing and undertaking efforts to address the threats of damage and injury to Battery Park City and its residents as a result of future severe storm activity, storm surge and sea level rise associated with global climate change. As a significant part of this effort, the BPCA is currently working on four major resiliency projects (the South, Ball Fields, North, and West Projects, as further described below) that are intended to protect and flood-proof Battery Park City from another major weather event such as Superstorm Sandy in Fall 2012. These resiliency projects are each intended to provide a set of flood barriers and interior drainage improvements with standalone, independent utility at different locations in Battery Park City.

The BPCA is currently seeking to determine whether to proceed with a progressive design-build (“**PDB**”) procurement that would combine the North Project and the West Project. If implemented, this procurement would provide for the design and construction of the combined project under a single PDB contract (the “**Combined North and West PDB Project**”) in accordance with the New York Infrastructure Investment Act, as established in Part F of Chapter 60 of the 2015 Laws of New York and amended from time to time (the “**Design-Build Authorizing Act**”). The BPCA has determined that the PDB delivery method, as further described below, is likely to best enable the BPCA to realize the expected benefits of design-build contracting (e.g., transfer of design liability, schedule efficiencies and cost savings), while maximizing the opportunity for community engagement and stakeholder feedback on the design.

The BPCA invites interested parties (“**Interested Parties**”), through this Request for Expressions of Interest (this “**RFEI**”), to register their interest in participating in a competitive selection process for the Combined North and West PDB Project. Although responding to this RFEI is not mandatory in order to participate in any future competitive selection process, it will assist the BPCA in determining whether there is sufficient market interest for the BPCA to proceed with the procurement for the Combined North and West PDB Project.

Information that any Interested Party wishes to submit in response to this RFEI will be submitted voluntarily and with the understanding that this RFEI is for information gathering purposes only. This RFEI is not an offer and does not commence, or obligate the BPCA to commence, any competitive procurement opportunity.

2. PURPOSE OF THIS RFEI

The purpose of this RFEI is to determine whether there is sufficient market interest for the BPCA to proceed with a procurement for the Combined North and West PDB Project, and to provide an opportunity for Interested Parties to provide feedback on the BPCA’s conceptual PDB approach. Specifically, this RFEI provides:

- A. general background information related to the resiliency projects and the possible Combined North and West PDB Project;
- B. an outline of the conceptual transaction process and timing;
- C. an opportunity for Interested Parties to express their interest in participating in a possible future procurement; and

D. an opportunity for Interested Parties to provide input on a variety of issues.

A response to this RFEI is not a prerequisite to participating in any subsequent competitive procurement process and does not mark the commencement of any formal procurement process or restricted period. This is not a notice of intent to solicit proposals or bids. Interested Parties should note that the BPCA has not yet determined whether it will proceed with the Combined North and West PDB Project and may proceed with the North Project and the West Project by other means.

3. DESCRIPTION OF THE RESILIENCY PROJECTS

The BPCA’s resiliency projects generally consist of four distinct project areas: the South Battery Park City Resiliency Project (the “**South Project**”); the BPC Ball Fields & Community Center Resiliency Project (the “**Ball Fields Project**”); the North Battery Park City Resiliency Project (the “**North Project**”); and the Battery Park City Western Perimeter Resiliency Project (the “**West Project**”).

The scope of each of these resiliency projects is generally described below. Further information on the BPCA’s resiliency projects can be found on the BPCA’s website at <https://bpcanyc.gov/nature-and-sustainability/resiliency/>. Interested Parties may also wish to review the Lower Manhattan Climate Resiliency Study located at https://edc.nyc.gov/sites/default/files/filemanager/Projects/LMCR/Final_Image/Lower_Manhattan_Climate_Resiliency_March_2019.pdf and also available on the BPCA’s website.

RESILIENCY MEASURES | BATTERY PARK CITY



3.1 South Project

The South Project provides for the creation of a continuous flood barrier system from the Museum of Jewish Heritage, through Wagner Park, across Pier A Plaza, and along the northern border of the Historic Battery, to a higher elevation point at State Street. The South Project’s design is currently 75% complete, and the South Project is being procured on a design-bid-build basis. It is currently expected to be the second of the resiliency projects, and the first of the waterfront resiliency projects, to be completed.

3.2 Ball Fields Project

The Ball Fields Project has been designed to be an interim flood resiliency solution and generally consists of an independent flood barrier system along the eastern, northern, and southern boundaries of the Battery Park City Ball Fields. It is intended to provide flood protection pending completion of the North Project and the South Project.

3.3 Combined North and West PDB Project

The subject of this RFEI is the potential Combined North and West PDB Project, which would join the project areas currently associated with the North Project and the West Project into a single combined project area and would deliver the design and construction for the resulting project by means of a PDB contract in accordance with the Design-Build Authorizing Act. The cost of the Combined North and West PDB Project is currently estimated to range from approximately \$250 million to approximately \$300 million.

Interested Parties should be aware that, if the procurement for the Combined North and West PDB Project proceeds, the BPCA will utilize a consulting engineer or owner's representative to serve as a general technical advisor to the BPCA for the Combined North and West PDB Project. The scope of services for the consulting engineer would include, among other things, assisting the BPCA in developing the minimum design and construction requirements that would be included in a request for proposals ("**RFP**") for the Combined North and West PDB Project. Any such consulting engineer will be ineligible to serve as a design-builder or to participate as a member of a design-builder team.

3.3.1 North Project

In July 2019, the BPCA entered into a contract with AECOM USA, Inc. for design services for the North Project. As of the date of this RFEI, AECOM has developed an approximately 30% design for the North Project. Based on this 30% design and the planning efforts to date, the North Project is currently anticipated to cover Battery Park City's North Esplanade, entail a deployable barrier crossing West Street/Route 9A, and extend eastward of West Street/Route 9A to an appropriate high point. The North Project's flood barrier system is currently expected to be constructed beginning at the intersection of Chambers Street and River Terrace, extending east along the Battery Park City North Esplanade, moving northward along the Hudson River Bikeway, crossing West Street/Route 9A, and continuing east along North Moore to a termination point on Greenwich Street. A variety of different barrier technologies may be utilized as appropriate for specific segments of the alignment.

If the BPCA determines to proceed with the Combined North and West PDB Project, the design for the North Project will not progress further prior to selection of the design-builder, but the 30% design will be evaluated for purposes of establishing minimum design and construction requirements for the RFP for the Combined North and West PDB Project. These minimum design and construction requirements would guide further design development by the selected design-builder, who would assume full responsibility and liability for the design of the Combined North and West PDB Project, and serve as the basis for the advancement of permitting efforts pending the selection of the design-builder.

3.3.2 West Project

The West Project contemplates the creation of a new line of flood protection along or adjacent to the water's edge to provide a continuous flood barrier capable of ultimate connection to the western terminus of the South Project and the western terminus of the North Project. The BPCA has received proposals to perform design services for the West Project pursuant to an RFP issued in March 2020, but has not selected a design engineer or advanced the design of the West Project.

If the BPCA determines to proceed with the Combined North and West PDB Project, it is anticipated that the consulting engineer noted above will assist the BPCA in developing the minimum design and construction requirements (as described above) for all segments of the Combined North and West PDB Project and that the current RFP for design services for the West Project will be cancelled.

4. PDB PROCUREMENT AND CONTRACTING OVERVIEW

4.1 PDB Determination

Recent amendments (effective in April 2020) to the Design-Build Authorizing Act provided the BPCA with the legal authority necessary to implement its resiliency projects utilizing the design-build project delivery method. The Design-Build Authorizing Act provides for a best value selection process and authorizes design-build contracts on either a lump sum or guaranteed maximum price (“**GMP**”) basis, with a GMP contract establishing a process for determining the GMP. A GMP design-build contract allows for a staged, progressive approach to design-build contracting, with the selected design-builder working with the owner 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 PDB process is in contrast with lump sum design-build contracting, which typically involves competing design-build firms proposing a lump sum or fixed price based on a design proposal at the RFP stage.

Following an internal business case study, the BPCA determined that, with respect to the North and West Projects, pursuing a PDB approach would likely be more beneficial than a lump sum design-build approach or a traditional design-bid-build approach. This determination was largely based on the BPCA’s desire to maximize the opportunity for stakeholder and community engagement in design development while still achieving the expected benefits of design-build contracting (e.g., transfer of design liability, schedule efficiencies and cost savings).

4.2 Combined North and West PDB Project Procurement Selection Process and Schedule

If the BPCA determines to proceed with the procurement of the Combined North and West PDB Project, the selection process for the design-builder will be in accordance with the Design-Build Authorizing Act and will consist of a request for qualifications (“**RFQ**”) stage followed by an RFP stage.

At the RFQ stage, respondent teams will submit qualifications to demonstrate their capabilities to perform the design and construction services as a unified team for the Combined North and West PDB Project. Responses to the RFQ will be evaluated to shortlist respondent teams to proceed to the RFP stage. It is expected that up to three respondent teams will be shortlisted.

The RFP will be issued only to respondent teams shortlisted from the RFQ stage and will include a draft PDB contract. Shortlisted respondent teams will be asked to submit technical and price proposals in accordance with requirements to be specified in the RFP. It is anticipated that technical proposals will describe a proposed technical approach for the Combined North and West PDB Project, but will not include a detailed design solution. For price proposals, the BPCA will seek to maximize pricing information that can be submitted on a competitive basis at the RFP stage. This is expected to include, at a minimum, pricing for the phase 1 preconstruction services described below and the fee payable (on a percent of the cost of the work basis) to the selected design-builder for the performance of all design-build services (inclusive of the design-builder’s profit, administration, overhead and risk premium). In accordance with the PDB procurement process, it is not expected that proposers at the RFP stage will propose a lump sum price for completing the Combined North and West PDB Project.

Preliminarily, the BPCA anticipates the following procurement schedule if it determines to proceed with the procurement of the Combined North and West PDB Project:

Milestone	Estimated Date
Issue RFQ	January 2021
Short-list respondent teams and issue RFP	April/May 2021
Deadline for submittals in response to the RFP	June to August 2021
Select design-builder and execute PDB contract	Sept. to Nov. 2021

4.3 Description of the Anticipated PDB Contracting Approach

The Combined North and West PDB Project is expected to be designed and constructed in two phases by a design-builder under a single PDB contract as follows:

- A. Preconstruction phase (Phase 1): 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 a definitive amendment establishing the GMP and related matters. It is expected that the key commercial terms governing the performance of the design-build services, including construction, will be included in the PDB contract as of the initial execution date, with the definitive amendment establishing only the GMP, the design upon which it is based and matters such as detailed acceptance test procedures and standards. The PDB contract will address the process for establishing the definitive amendment and will allow for flexibility in establishing the GMP earlier or later than the 60% design, as warranted. The PDB contract will also allow for early work packages so that construction components requiring a long lead-time or ready for early commencement may begin on an expedited basis. Construction for any component, however, will not be able to commence until all required pre-construction activities, including environmental reviews and the obtainment of New York City consents for construction, have been concluded. The GMP will be negotiated on an “open book” basis, with the design-builder bound by pricing included in the contract (e.g., the design-builder’s fee) and required to competitively bid subcontracted work. If the parties are unable to reach agreement as to a definitive amendment, the BPCA will have the right to terminate the PDB contract and proceed with the design and construction on a bid-build or other basis.

- B. Construction phase (Phase 2): All work, other than the phase 1 services described above, necessary to complete the Combined North and West PDB Project, including design completion, construction, commissioning and acceptance testing of the Combined North and West PDB Project.

The PDB contract is expected to be a performance-based contract, with the design-builder responsible for all aspects of design and construction, including performance by its subcontractors, and entitled to relief only in the event of the occurrence of uncontrollable circumstances specified in the contract. Successful completion will require both completion of construction and satisfactory demonstration of project performance through acceptance testing on or before a scheduled completion date. The PDB contract will also (1) include security for performance requirements, such as 100% payment and performance bonds; (2) require the

design-builder to perform the design-build services in accordance with all requirements of applicable law; and (3) include requirements and procedures for business opportunities for New York State certified MBEs/WBEs/SDVOBs.

Shortlisted respondents in the RFP stage will have the opportunity to review and comment on the draft PDB contract.

5. RFEI SUBMITTAL REQUIREMENTS

This section outlines the information to be provided in response to this RFEI and provides information on how to submit responses. The BPCA requests that Interested Parties follow the format and guidelines established by this section.

Please note that responses should be no more than 15 pages in total length.

5.1 RFEI Response Section 1: General Profile

All RFEI responses should include the following general information:

- A. Organization name, mailing address and website address;
- B. Primary contact name, title, phone number and email address;
- C. A preliminary indication of the capacity in which the organization would likely serve on a design-builder team (e.g., the entity that signs the PDB contract, a member of a joint venture, or a subcontractor);
- D. A concise description of the organization's major lines of business (less than one page is preferred); and
- E. A description of any similar projects the organization has worked on (the BPCA is interested in both flood resiliency project experience and PDB experience).

5.2 RFEI Response Section 2: Questionnaire

Your responses to the following questions will assist the BPCA in final project development if it determines to proceed with the Combined North and West PDB Project. It is not mandatory for you to respond to all of these questions in your RFEI response.

Please provide your current views on each of the following questions:

- A. Please indicate your level of interest in participating in a possible procurement for the Combined North and West PDB Project.
- B. Please comment on any specific aspects of the Combined North and West PDB Project and PDB contracting structure, as described herein, that will influence your decision as to whether to participate in a competitive selection process.
- C. Please comment on any thoughts or concerns you may have about utilizing a single PDB structure for delivering the North Project and the West Project. If possible, please reference your own experiences as may be helpful.

- D. Looking at the proposed PDB competitive selection process, please describe any concerns you may have and what adjustments could be made to address these concerns.
- E. Looking at the proposed PDB competitive selection schedule, please describe any issues you anticipate and what adjustments could be made to address these issues.
- F. Please provide any additional information that you feel may be helpful to the BPCA as it considers whether to proceed with a procurement for the Combined North and West PDB Project.

5.3 RFEI Questions

Any questions with respect to this RFEI should be directed via email to:

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

5.4 RFEI Response Deadline

Responses to this RFEI must be submitted via email, to the contact listed in Section 5.3 (RFEI Questions) of this RFEI, by no later than 5:00 P.M. Eastern Time on **September 25, 2020**.

5.5 Expense of RFEI Response

By submitting an RFEI response, the Interested Party submitting such response acknowledges and agrees that the cost associated with preparing a response to this RFEI is at the sole cost and expense of the Interested Party, and that such Interested Party will make no claim against the BPCA, its staff or its consultants for the reimbursement of costs and expenses incurred as a result of this RFEI process.

6. BPCA'S COMBINED NORTH AND WEST PDB PROJECT ADVISORY TEAM

The BPCA has engaged advisors to assist in the possible development of the Combined North and West PDB Project. These advisors will be ineligible for participation with any respondent team in connection with any procurement for the Combined North and West PDB Project.

The advisory team currently consists of the following:

Hawkins Delafield & Wood LLP

Sive Paget & Riesel, PC

As further described in Section 3.3 (Combined North and West PDB Project) of this RFEI, the BPCA is also anticipating the procurement of a consulting engineer. Such consulting engineer, when selected, will be part of the advisory team and ineligible to participate in or assist any design-builder team in connection with the Combined North and West PDB Project.

7. BPCA RESERVED RIGHTS

This RFEI does not obligate the BPCA to enter into a contract with, nor does this RFEI constitute an offer or tender to enter into a contract with, any Interested Party. No competitive

procurement process has commenced with the issuance of this RFEI and this RFEI is not a notice of intent to enter a competitive procurement process. No legal relations are created by this RFEI, or the responses to this RFEI. The BPCA further reserves the right, but will not be obligated to:

- A. Interview any number of Interested Parties or request clarification, additional information, or supporting data.
- B. Solicit further input from any Interested Party.
- C. Disclose the names of organizations that respond to this RFEI and their RFEI responses.
- D. Commence any competitive selection process at any time, independent of and without regard to this RFEI and its responses.
- E. Respond to questions regarding this RFEI or circulate any questions and responses to all Interested Parties.