



**Battery Park
City Authority**

REQUEST FOR PROPOSALS

FOR

South Battery Park City Resiliency Project:

Wagner Park Pavilion

Construction Services

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1. INTRODUCTION

Project Summary and Background

Battery Park City Authority (“BPCA”) requests proposals (individually, a “Proposal” and collectively, the “Proposals”) from Proposers (individually, a “Proposer” and collectively, the “Proposers”) to provide general construction contractor services (the “Services”) to construct a new Robert F. Wagner Park (“Wagner Park”) pavilion building (the “New Pavilion”), a component of the South Battery Park City (“BPC”) Resiliency Project. The project subject to this Request for Proposals (“RFP”) is referred to herein as the “Pavilion Project” or “Project,” and the overall South BPC Resiliency Project is referred to herein as the “SBPCR Project”. An overview of the scope of work for which the selected Proposer will be responsible is attached hereto as Exhibit A. The drawings and specifications (the “Construction Documents”) associated with the Pavilion Project’s construction bid package (referred to herein as “Package 3”) are attached hereto as Exhibit B-1 (all work and obligations set forth in Exhibit A and Exhibit B-1, collectively, the “Services”).

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

The SBPCR Project is designed to establish a comprehensive coastal flood prevention system to check water inundation from the Hudson River Estuary associated with future storm activity and sea level rise. The SBPCR Project will be phased and implemented through multiple construction contracts. The Pavilion Project work will be closely integrated and coordinated with a separate construction contract that will address the Wagner Park site work required for the SBPCR Project, referred to herein as “Package 2”.

Created in 1968, Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) is a New York State public benefit corporation responsible for financing, developing, constructing, maintaining, and operating Battery Park City (“BPC”) 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 BPC project area, may be viewed at: www.bpca.ny.gov. Public information regarding BPCA’s finances, budget, internal controls, guidelines, and policies may be viewed at: www.bpca.ny.gov/public-information. Information relating to the Battery Park City Parks Conservancy Corporation (“BPCPC”), BPCA’s affiliate, may be viewed at: www.bpcparks.org.

2. PROJECT-SPECIFIC INFORMATION

2.1 Scope Summary

The New Pavilion will be located southeast of the Museum of Jewish Heritage, and immediately southwest of the intersection of Battery Place and Little West Street. The New Pavilion will be a two (2) story structure with a publicly accessible roof. The Pavilion Project will provide public amenities such as a community room, public restrooms, a restaurant, and a rooftop deck for viewing New York Harbor. The New Pavilion

will also provide storage space for BPCA Parks Department maintenance and programming. The community room, restaurant, and public restrooms will be located at the level of Wagner Park. The Parks Department maintenance and storage area and the restaurant's kitchen area will be located at the level below the park level and will be accessible from Battery Place. The New Pavilion is designed to achieve third-party International Living Future Institute ("ILFI") zero-carbon certification, which is a material requirement of the Pavilion Project.

The Services will include demolition of the existing Wagner Park pavilion structure (the "Existing Pavilion") and portions of the surrounding site, as well as the construction of the New Pavilion on an adjacent building site within Wagner Park (the site of the demolition work and the site of the New Pavilion construction will collectively be referred to as the "Project Site," and is shown in Figure 1 on the following page of this document). The Services will also include construction of utilities, retaining walls, and other Project Site components as described in more detail in the Construction Documents, attached hereto as Exhibit B-1. The New Pavilion will be a two (2) story structure with a publicly accessible roof and mezzanine. As part of the Pavilion Project, the grade of Wagner Park will be elevated significantly, and the selected Proposer will be responsible for constructing retaining walls and associated improvements along Battery Place. See the below illustration of the Project Site, and refer to Exhibit A for the full Pavilion Project Scope of Work for which the selected Proposer is responsible.

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.

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Figure 1: South Battery Park City Resiliency Pavilion Project Site



2.2 Anticipated Contract Term

The anticipated term of the contract award pursuant to this RFP (the “Contract”) will be thirty (30) months, inclusive of any required Pavilion Project pre-construction and closeout tasks. BPCA reserves the right to terminate the Contract at any time, with or without cause, in accordance with the terms of the Contract. BPCA’s sample form of contract (the “Standard Form of Contract”) will be provided as an Addendum to this RFP (as noted in [Exhibit H](#)).

2.3 Key Project Milestones

The currently anticipated schedule for certain key Pavilion Project milestones following Contract execution – inclusive of both the number of consecutive calendar days (“CCDs”) and the number of months from BPCA’s issuance to the selected Proposer of a Notice to Proceed (“NTP”) – is shown in the table below. This Pavilion Project schedule is subject to revision by any RFP addenda (“Addenda”) to be issued by BPCA following the issuance of the RFP. The procurement schedule, concluding with the execution of the Contract, is set forth in *Section 3.5 – Procurement Schedule*. While the schedule below represents a baseline

for the anticipated Project completion date, Proposers that develop credible and innovative sequencing, phasing and work completion methodologies to achieve these milestones earlier than these dates will be evaluated favorably as set forth in *Section 6.4 – Comparative Evaluation Criteria*.

Table 2.3 – Project Milestone Schedule

Action	Dates/Times
Architectural Concrete Completion: Completion of all exterior architectural concrete associated with the Pavilion and retaining walls	Four-hundred and eighty-four (484) CCDs, or approximately sixteen (16) months, from NTP
Substantial Completion	Seven-hundred and twenty-nine (729) CCDs, or approximately twenty-four (24) months, from NTP
Final Completion	Eight-hundred and nineteen (819) CCDs, or approximately twenty-seven (27) months, from NTP

2.4 RFP Minimum Experience Requirements

The minimum experience requirements set forth below apply to the Proposer (the “Experience Requirements”). Compliance with the Experience Requirements will be determined solely by BPCA. Failure to comply with the Experience Requirements will result in rejection of the Proposal as non-responsive. The selected Proposer must have successfully completed in a timely fashion at least three (3) building construction projects with individual construction contract values that exceeds thirty million dollars (\$30,000,000) each within the last ten (10) years. The experience of the selected Proposer’s principal(s) may be used to fulfill these Experience Requirements.

If the Proposer intends to subcontract any element(s) of the Services that exceeds thirty percent (30%) of the total value of the Services to a single subcontractor or sub-subcontractor (referred to herein as a “Key Subcontractor”), the proposed Key Subcontractor must likewise demonstrate compliance with the Experience Requirements. Once approved, no substitution of a Key Subcontractor will be permitted, unless the qualifications of the proposed replacement have been approved in writing in advance by the BPCA.

2.5 BPCA Conflicts of Interest Policy

Persons or entities may also be prohibited from joining or assisting a Proposer team based on conflicts of interest. Potential Proposers are directed to BPCA’s conflict of interest policy available at https://bpcanyc.org/wp-content/uploads/2015/03/BPCA-83083-v1-Code_of_Ethics_-_June_2017-.pdf. Individuals or entities included in, participating with or assisting a Proposer team in violation of this policy will be grounds for disqualification of the Proposer or rejection of its Proposal. Potential Proposers are further directed to BPCA’s Procurement Guidelines available at <https://bpcanyc.org/public-information/>.

By executing *Qualification Form A – Transmittal Letter*, each Proposer will certify, represent, and warrant that Proposer has reviewed all of the engagements and pending engagements of Proposer and its proposed team members, and that no potential exists for any conflict of interest or unfair advantage. If a potential

Proposer has any concern regarding a potential conflict of interest, including the appearance thereof, or its ability to execute *Qualification Form A*, such potential Proposer should contact the Designated Contact and disclose all relevant facts. BPCA will review the disclosed information and make a final determination as to such potential Proposer's eligibility to be considered as a Proposer.

2.6 MBE/WBE/SDVOB Participation; Equal Employment (EEO) Opportunity

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

2.7 Project Labor Agreement

This Project will be subject to a Project Labor Agreement ("PLA") in accordance with Section 222 of the New York State Labor Law. The final, negotiated PLA (addressed in Exhibit I) will be incorporated into this RFP via an Addendum, upon completion of the document and prior to the due date for Proposals (the "Proposal Due Date," listed in Table 3.5 in *Section 3.5 – Procurement Schedule*, below).

2.8 Iran Divestment Act

By submitting a Proposal, Proposers certify that they are not on the Prohibited Entities List and further certify that, if chosen as the selected Proposer, they will not utilize any subcontractor or sub-consultant that is identified on the Prohibited Entities List in connection with the Contract. Any violation of these certifications will be grounds for disqualification of the Proposer and rejection of its Proposal. The Contract will further specify remedial action BPCA may take in the event of a violation of these certifications by the selected Proposer.

3 PROCUREMENT PROCESS

3.1 Procurement Process Overview

BPCA intends to evaluate and score each submitted Proposal pursuant to the process, and utilizing the criteria, described in this RFP to determine which Proposal represents the best value to BPCA with respect to the delivery of the Project. BPCA may cancel or re-advertise this procurement at any time in its discretion.

3.2 Informational Meeting

BPCA will hold an informational meeting prior to the Proposal Due Date (the "Pre-Proposal Meeting") for potential Proposers regarding this RFP and the Project on the date and time indicated in *Section 3.5 – Procurement Schedule*. Attendance at this Pre-Proposal Meeting is not a mandatory prerequisite to be considered as a Proposer, however it is strongly encouraged. The Pre-Proposal Meeting will be held using a virtual platform. Potential Proposers are requested to RSVP for the meeting via email to the designated contact at BPCA for this procurement (the "Designated Contact") by the date and time indicated in *Section 3.5 – Procurement Schedule*. Access information along with instructions for how to join the virtual platform to be used for the Pre-Proposal Meeting will be provided to each potential Proposer submitting an RSVP

for the meeting. Attendance at the Project Site walk-through, to occur after the Pre-Proposal Meeting, is mandatory for Proposers.

3.3 Communications Protocols

3.3.1 Communications to BPCA

Questions and requests for clarification regarding this RFP must be submitted via email to the Designated Contact listed below.

For purposes of this RFP, the following individual is hereby identified as the Designated Contact and may respond to any email inquiry submitted in accordance with this Section 3.3.1:

Michael LaMancusa
BPCA Assistant Contracting Officer
michael.lamancusa@bpcanyc.gov

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

To be considered, all questions and requests must be received in writing via email at the addresses designated above and by the date and time indicated in *Section 3.5 – Procurement Schedule*. Written communications must include the requestor’s name, e-mail address, and the Proposer represented. E-mails should include “SBPCR Wagner Pavilion Construction Services RFP” in the subject line.

3.3.2 Communications from BPCA

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

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

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

3.3.3 Restricted Period

State Finance Law Sections 139-j and 139-k apply to this RFP and procurement process, restricting Proposer contact with BPCA and its representatives. Proposers are restricted from making contact (defined as oral, written or electronic communications with BPCA under circumstances where a reasonable person

would infer that a communication was intended to influence BPCA’s conduct or decision with respect to a procurement) with anyone other than a Designated Contact during the period from the date of publication of the notice of this RFP in the New York State Contract Reporter through approval of the Contract or the cancellation of this procurement by BPCA. Employees of BPCA are required to record certain contacts during such restricted period, including, but not limited to, any oral, written or electronic communications that could reasonably be seen as intended to influence BPCA’s conduct or award under this RFP and procurement. Upon notice of an improper contact, BPCA will make a determination regarding the Proposer’s eligibility to continue participating in this procurement process. Failure of a Proposer to comply with these requirements may result in disqualification of the Proposer from the procurement process.

3.4 Addenda

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

3.5 Procurement Schedule

The procurement schedule for selection of a Proposer and awarding of the Contract pursuant to this RFP, is shown in the table below. This procurement schedule is subject to revision by any Addenda to be issued following BPCA’s issuance of the RFP.

Table 3.5: Procurement Schedule

Action	Dates/Times (Eastern Time)
RFP Issue Date	February 7, 2022
Pre-Proposal RSVP Date “Designated Contact”: Michael LaMancusa, Assistant Contracting Officer at BPCA, at michael.lamancusa@bpca.ny.gov	February 18, 2022 by noon EST (by email only)
Pre-Proposal Meeting	February 21, 2022 (VIRTUAL)
Pavilion Project Site Walk-Through (Mandatory)	February 22, 2022
Deadline to Submit Questions to BPCA (All questions regarding this RFP should be submitted in writing via email to the “Designated Contact”: Michael LaMancusa, Assistant Contracting Officer at BPCA, at michael.lamancusa@bpca.ny.gov	March 4, 2022 by 5 p.m. EST (by email only)
BPCA’s Response to Substantive Questions	March 11, 2022 (by email)
Proposal Due Date	April 11, 2022 by 1:00 p.m. EST
Approximate Contract Start Date	July 2022

3.6 Interviews

BPCA may opt to invite any or all of the Proposers to participate in one or more interviews with the internal selection committee that BPCA appoints for the awarding of the Contract associated with this RFP (the "Selection Committee"). Interviews may be conducted for any reason determined appropriate by BPCA, including to further assess the Proposer's capability to perform the Services or to seek information related to any evaluation criterion. If BPCA elects to conduct interviews, applicable Proposers will be notified in writing with relevant instructions. Participation in any such interviews will be required. BPCA reserves the right to limit the number of Proposers to be interviewed and to require specific key Proposer personnel ("Key Personnel") and/or Key Subcontractors to participate in the interview (both Key Personnel and Key Subcontractors collectively, "Key Proposer Team Members").

3.7 Expenses of the Proposers

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

3.8 Intellectual Property Rights

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

Intellectual property rights with respect to information submitted pursuant to the Contract will be subject to the terms and conditions of the Contract.

3.9 Freedom of Information Law

All information submitted in response to this RFP is subject to the Freedom of Information 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 RFPs considered to be confidential and exempt from FOIL. However, BPCA is obligated to disclose information consistent with the requirements of FOIL, New York State Public Officer's Law Section 87.

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

- (a) Clearly mark all confidential information as such in its Proposal at the time such Proposal is submitted and include a cover sheet stating “DOCUMENT CONTAINS CONFIDENTIAL INFORMATION” and identifying each section and page which has been so marked;
- (b) Include a statement with its Proposal justifying the Proposer’s determination that the marked information is confidential and exempt from FOIL; and,
- (c) Submit a copy of the full Proposal that has all confidential information redacted from the Proposal and label such copy of the Proposal: “Proposal Public Copy”.

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

3.10 Non-Collusion

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

3.11 BPCA’s Reserved Rights

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

- (a) Appoint the members of the Selection Committee;
- (b) Investigate the qualifications of any Proposer;
- (c) Seek or obtain data from any source related to the Proposals;
- (d) Require confirmation of information furnished by a Proposer;
- (e) Hold interviews, meetings and conduct discussions and correspondence with one or more Proposers to seek an improved understanding and evaluation of the Proposals;
- (f) Require additional information from a Proposer or Proposer concerning its Proposal;
- (g) Subject to any required approvals by the relevant property owners/operators, visit and examine any of the projects referenced in the Proposals, and observe and inspect the operations at these projects;
- (h) Seek and receive clarifications and conduct negotiations with respect to any Proposal;

- (i) Require additional evidence of qualifications to perform the Services;
- (j) Modify the procurement process;
- (k) Waive minor deficiencies or irregularities in a Proposal;
- (l) Disqualify any Proposer that fails to comply with this RFP, submits a nonconforming, nonresponsive, incomplete, inadequate, or conditional Proposal, or is otherwise deemed during any stage of the procurement process to be unqualified or unable (due to inadequate financial capacity, litigation, past performance or otherwise) to perform the Contract Services;
- (m) Re-score a Proposal in the event a Proposer substitutes a Key Proposer Team Member;
- (n) Supplement, amend or otherwise modify this RFP via Addendum, including the modification of any dates set or projected in this RFP;
- (o) Reject any or all of the Proposals;
- (p) Issue a new RFP;
- (q) Issue a request for best and final offers (BAFOs) to any Proposer(s);
- (r) Cancel the Contract signed by the selected Proposer but not yet executed by BPCA;
- (s) Not issue any NTP after execution of the Contract; and/or,
- (t) Take any action affecting the RFP process or the Project that would be in the best interests of BPCA.

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

4 PROPOSER TEAMING REQUIREMENTS

4.1 Team Continuity and Changes to Organizational Structure

Following submittal of the Proposal, those firms identified by the Proposers as Key Proposer Team Members may not be removed or replaced without prior notice to BPCA. BPCA reserves the right to disqualify a Proposer if a Key Proposer Team Member is removed or replaced without notice to BPCA. BPCA further reserves the right to re-score a Proposal, consistent with the criteria set forth in Package 2, if a Proposer substitutes a Key Proposer Team Member.

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

The 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 for this RFP are attached as Exhibit F. The requirements set forth in Exhibit F are material requirements of this RFP, and failure to comply with any requirement set forth therein may result in a Proposer's disqualification from the RFP process.

4.3 Encouraging Use of New York State Businesses in Contract Performance

State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in the State, Proposers are strongly encouraged and expected to consider 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 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 State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its State business partners. State businesses will promote the Proposer'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 State businesses by its contractors. New York State therefore expects bidders/Proposers to provide maximum assistance to State businesses in their contracts. The potential participation by all kinds of State businesses will deliver great value to the State and its taxpayers.

5 PROPOSAL SUBMITTAL REQUIREMENTS

5.1 General Instructions

Proposers must follow the requirements stated in this RFP. Adherence to these requirements will ensure a fair and objective analysis of each Proposal. Proposals that do not meet the Technical Submittal Requirements (attached hereto as Exhibit D) may be deemed to be non-responsive and may be rejected.

As a general matter, the Proposal should provide a clear, concise description of the Proposer's qualifications and Project approach to satisfy the requirements of this RFP.

5.2 Proposal Format and Content

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

5.3 Technical and Cost Proposal Submissions

5.3.1 Technical Proposal Submission

Each Proposer shall submit the technical portion of its Proposal (the "Technical Proposal") in both of the following mediums:

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

Proposers seeking to protect any information contained in their Technical Proposals from disclosure pursuant to *Section 3.9 – Freedom of Information Law* shall also submit an additional USB flash drive of the redacted Proposal in a PDF file, labeled in accordance with Section 3.9.

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

200 Liberty Street

24th Floor

New York, NY 10281

Attention: Michael LaMancusa, Assistant Contracting Officer

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

- A return address including the Proposer's name, contact person's name, and mailing address;
- The address of the BPCA Designated Contact, as indicated above;
- The name of the submission: "Technical Proposal – South BPC Resiliency Project, Wagner Park Pavilion Construction Services"; and,
- The date of the Proposal.

The Technical Proposal shall include all required Qualification Forms (attached hereto as Exhibit E) as well as all requirements of the Technical Proposal (attached hereto as Exhibit D). No cost proposal information shall be included in the Technical Proposal. Refer to *Section 5.3 – Technical and Cost Proposal Submissions*, for further information. Please note that Proposals received after the time indicated in Section 3.5 – Procurement Schedule on the Proposal Due Date will not be considered.

5.3.2 Cost Proposal Submission

Each Proposer shall submit its Cost Proposal in the following form via email to the following email address: costproposals@bpc.ny.gov. The email must be clearly labeled "Cost Proposal – South BPC Resiliency Project, Wagner Park Pavilion Construction Services"

Each Proposer shall submit the Cost Proposal organized, separated and labeled in accordance with the below guidance.

The Cost Proposal Submission, shall consist of the following elements:

- A firm pricing offer to BPCA, valid for the duration of the Contract, using the Cost Proposal Form. The offer shall be executed by the Proposer or by its legally authorized representative. If the Proposer is a joint venture or a partnership, the offer shall be executed by all joint venture members or all general partners, as applicable.
 - Bid Breakdown Form: BPCA's template bid breakdown form (the "Form of Bid Breakdown") must be completed filled out by the Proposer. Proposals prices are to be filled out in figures. In case of any discrepancy between the two, the price in words will generally be considered to be the bid price.
 - Price in US dollars (\$);
 - A lump-sum price for each cost item on the Bid Breakdown Form (attached hereto as Exhibit C-2), which correspond to the relevant divisions of work set forth in the Construction Documents;

- The lump-sum amount for each cost item shall be the total price to complete all work for that cost item in accordance with the Project requirements which may include such planning, management, overhead, design, materials, labor, use of tools and equipment, hazardous material and environmental inspections and remediation, utility work, and other work as required to complete such work and such costs necessary to integrate the work with the work of other cost items except those costs included in other cost items; and,
- The total value of the lump-sum amount for each cost item, subject to negotiations, and inclusive of the allowance items set forth in the Bid Breakdown Form (the template version of such Form is attached hereto as Exhibit C-2), shall be the Proposal Cost. The negotiated Proposal Cost will become the total Contract Price, as agreed to by BPCA, once the Contract is awarded.

Unless otherwise and explicitly indicated on specific Forms, the supplied Forms are not to be altered. Alterations to the BPCA template Cost Proposal form (the “Form of Cost Proposal,” attached hereto as Exhibit C-1) will only be permitted where expressly allowed by BPCA. Failure to provide the requested information on the Cost Proposal form and in the format specified, may result in BPCA declaring the Cost Proposal non-responsive. Additionally:

- All required information must be contained in the Cost Proposal Form;
- Photographs or external web links are not to be included in the Cost Proposal Form;
- Additional lines or pages only allowed when indicated on the Cost Proposal Form.

5.4 Amendment or Withdrawal of Proposals

A Proposer that submits an Proposal prior to the Proposal Due Date may amend its Proposal by submitting an amended Proposal, clearly labeled “Amended Technical Proposal – South Battery Park City Resiliency Wagner Park Pavilion Construction Services Project” as long as the amended Proposal is submitted on or before the time indicated in *Section 3.5 – Procurement Schedule* on the Proposal Due Date. Any such amended Proposal shall be submitted in accordance with *Section 5.3.1 – Technical Proposal Submission*. A Proposer may withdraw its Proposal at any time before the time indicated in *Section 3.5* on the Proposal Due Date by delivering a written request for withdrawal to the Designated Contact. Individuals submitting any amendment to a Proposal or seeking to withdraw a Proposal will, if requested by a Designated Contact, provide the Designated Contact with evidence that the individual is an authorized representative of the Proposer.

6 PROPOSAL EVALUATION AND SELECTION

6.1 Selection Committee

BPCA will appoint members of the Selection Committee (previously defined above, in *Section 3.6 – Interviews*) on or before the Proposal Due Date listed in *Section 3.5 – Procurement Schedule*, above. While only Selection Committee members will score Proposals, the Selection Committee may consult with other BPCA employees or officials and with its technical consultants and advisors in the evaluation of Proposals.

6.2 General Evaluation Procedure

The Selection Committee will review and evaluate the Proposals according to the requirements and criteria outlined in this Section. If a Proposal is responsive (per *Section 6.3 – Responsiveness Review*, below), the Selection Committee will evaluate Proposals in accordance with the evaluation criteria set forth in *Section 6.4 – Comparative Evaluation Criteria*, below. Reference checks and any post-Proposal submittal interviews will inform BPCA in scoring the Technical Proposal but will not be separately scored. The Evaluation Committee reserves the right to revise scores of the Technical Proposals based on clarifications received during any post-Proposal interviews. The Technical Proposal and the Cost Proposal, as set forth in *Section 5.3 – Technical and Cost Proposal Submissions* will be separately evaluated.

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

- (a) BPCA will open the technical portion of the Proposals;
- (b) BPCA will review the Proposals to determine if they are responsive;
- (c) For those Proposals that are determined to be responsive, the Proposals will be scored (one hundred (100) total points possible) by the Selection Committee using the Proposal criteria established in this RFP;
- (d) Upon completion of the initial scoring of the technical portion of the Proposals, the cost portion of the Proposals will be distributed to the Selection Committee;
- (e) One or more Proposers may be invited to interview with the Selection Committee; and
- (f) If interviews are conducted, one or more additional rounds of scoring may be conducted following the interviews by the Selection Committee.
- (g) In the event that any best and final offer requested by BPCA includes new technical information, an additional round of scoring may be conducted following receipt of the best and final offers.
- (h) At any point during the course of evaluation following the initial technical evaluation, BPCA may eliminate from further consideration any Proposer whose prospects of becoming the Selected Proposer is deemed implausible by the Selection Committee due to its technical score and/or its cost proposal.

Proposals received from Proposers will not be returned to the Proposers. Information gained during any optional interview pursuant to *Section 3.6 – Interviews* and any reference checks will be considered by the Selection Committee in arriving at final scores.

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

6.3 Responsiveness Review

Each Proposal will be reviewed to determine whether it is responsive to this RFP. Each Proposal will be reviewed to determine whether it is responsive to this RFP. Failure to comply with the requirements of this RFP may result in a Proposal being rejected as nonresponsive. Failure to comply with the requirements of this RFP may result in a Proposal being rejected as nonresponsive. At its sole discretion, however, the

Selection Committee may waive any failure to meet a minor requirement of this RFP and may request clarification or additional information to remedy any failure to fully respond to this RFP in the Proposal.

The responsiveness review will include:

- (a) Compliance with RFP: The Proposer must comply with all terms and conditions of this RFP.
- (b) Financial Strength/Material Adverse Condition: The Proposers must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide a contract bond or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate and absorb associated risks. As part of this evaluation, the Selection Committee will consider the financial information provided by each Proposer in accordance with Package 1 of Exhibit D – Technical Submittal Requirements.
- (c) Business Integrity: The Proposers must have a satisfactory record of business integrity, considering all factors covered by the vendor responsibility questionnaire included in Qualification Form B-1. Business Integrity: The Proposers must have a satisfactory record of business integrity, considering all factors covered by the vendor responsibility questionnaire included in Qualification Form B-1.
- (d) Licensing and Registration: Each Key Proposer Team Member must be licensed in New York State, or be reasonably capable of being licensed in the State prior to award of the Contract, for the type of work to be performed.

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

6.4 Comparative Evaluation Criteria

BPCA will evaluate and rank the responsive Proposals based on the information required to be provided in Exhibit D – Technical Submittal Requirements, with respect to the five (5) evaluation criteria set forth below. The total points that will be used in evaluating all of the factors for this Proposal is one hundred (100) points, allocated as shown in the Evaluation Criteria Scoring Table located on the top of the next page of this document.

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Table 6.4 – Evaluation Criteria Scoring

Evaluation Criterion	Maximum Possible Points
Experience of Contractor and Sub-contractors (Package 2 of <u>Exhibit E</u>)	30
Technical Approach (Package 3 of <u>Exhibit E</u>)	25
Key Personnel / Organizational Structure (Package 4 of <u>Exhibit E</u>)	15
Project Schedule (Package 5 of <u>Exhibit E</u>)	20
Diversity (Package 6 of <u>Exhibit E</u>)	10
TOTAL	100

The factors the Selection Committee will consider for each evaluation criterion are summarized in the following subsections, with further details specified in Exhibit D – Technical Submittal Requirements.

6.4.1 Experience of Firms and Sub-Contractors

The Selection Committee will evaluate the Proposers based on the demonstrated experience of the members of each Proposer’s team, including their individual and collective performance history, experience on previous or current “Projects of Similar Scope and Complexity” (as defined below, in Package 2 of Exhibit D – Technical Submittal Requirements). The Selection Committee reserves the right to award more points to Proposers with experience on projects that have more of the characteristics set forth in the definition of Projects of Similar Scope and Complexity. As part of this criterion, the Selection Committee may consider feedback from the Proposer’s references as to the quality of its prior work on Projects of Similar Scope and Complexity.

6.4.2 Technical Approach

The Selection Committee will evaluate the proposed Pavilion Project approach based on the Proposer’s ability to demonstrate understanding of the objectives, elements, and challenges associated with the Project and the approaches most likely to result in a successful execution of the Project. As part of this evaluation, the following plans are required:

1. Initial Construction Management Plan;
2. Initial Quality Plan; and,
3. Initial Overall Safety Management Approach.

6.4.3 Key Personnel / Organizational Structure

The Selection Committee will evaluate the Proposers based on each Proposer’s team structure, including its legal structure and organization, team roles and responsibilities, clarity in team members’ functional relationships, and their capability to perform assigned work responsibilities as an integrated cohesive team to serve as the selected Proposer. The Selection Committee will evaluate the Proposers based on the qualifications, demonstrated experience, and past performance of the Key Personnel, with the evaluation considering among other things, his/her experience working on similar roles to those proposed for the Project based on Projects of Similar Scope and Complexity, and their overall suitability to fulfill their

described role individually and as an integrated team. The entirety of this package will receive a combined score, and the Proposer's Key Personnel will not be scored individually. The Selection Committee reserves the right to award more points to Proposers with experience on projects that have more of the characteristics set forth in the definition of Projects of Similar Scope and Complexity.

6.4.4 Schedule

The Selection Committee will evaluate an initial Pavilion Project schedule. Strong preference shall be given to Project schedules that adequately address project risk mitigation and credibly demonstrate both constructability and achievability of BPCA's Project schedule targets.

6.4.5 Diversity

The Selection Committee will review all information submitted as part of the Diversity package in accordance with the terms set forth with the documents annexed to this RFP as Exhibit F. However, the Diversity score will solely comprise the results of the BPCA Diversity Department's scoring of the Diversity Practices Questionnaire, attached as part of Exhibit F.

6.5 Debriefing

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

7 PROTEST PROCEDURES

7.1 Protests Generally

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

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

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BPCA Address:
200 Liberty Street
24th Floor
New York, NY 10281
Attention: Procurement Department

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

7.2 Protests Regarding the RFP

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

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

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

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

The failure of a Proposer to raise the grounds for a protest regarding this RFP within the applicable time period shall constitute an unconditional waiver of the right to protest the terms of this RFP and shall preclude consideration of that ground in any protest regarding responsiveness.

7.3 Protests Regarding Responsiveness

A Proposer may protest the results of this solicitation solely in accordance with the terms of this Section 7.3. Notice of protest of any decision to accept or disqualify a Proposal or Proposer on responsiveness grounds must be filed within five (5) calendar days after BPCA's notification of non-responsiveness.

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

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

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

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

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

7.4 Costs and Damages

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

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