



# **Hudson River Park Trust**

## **Procurement Guidelines**

(September, 2016)

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## **I. OVERVIEW**

### **A. OVERVIEW AND REQUIREMENTS**

The Hudson River Park Trust (the “Trust”) is a New York State public benefit corporation created for the purpose of designing, constructing, operating and maintaining an approximately 4 mile waterfront park along the Hudson River in Manhattan known as the Hudson River Park. The Trust is required to adopt procurement guidelines pursuant to the Hudson River Park Act and the New York State Public Authorities Law. The procurement guidelines (the "Guidelines") contained herein are applicable to the use, awarding, monitoring and reporting of procurement contracts of the Trust and are subject to the annual review and approval of the Trust’s Board of Directors ("Board").

The Guidelines are modeled upon the New York State Procurement Guidelines published by the New York State Procurement Council (the "SPC Guidelines"). The SPC Guidelines apply to all State agencies and thus provide the Trust (which is not a State agency as that term is defined in the SPC Guidelines) procurement guidance consistent with State practice.

### **B. GENERAL PROCUREMENT PRINCIPLES**

The Trusts procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet Trust’s needs;
- Provide for checks and balances to regulate and oversee the Trust’s procurement activities; and
- Protect the interests of the Trust, the State and its taxpayers.

Competition in the procurement process serves both the Trust and potential offerers by ensuring that the procurement process produces an optimal solution at a reasonable price, allowing qualified vendors an opportunity to obtain the Trust’s business, and helping the Trust meet State goals such as increasing Minority and Women-Owned Businesses (M/WBE) participation in State contracts. The Trust awards procurement contracts on a competitive basis to the maximum extent practicable. Such awards are generally made after notice is published in the New York State Contract Reporter where the amount of the contract is greater than \$50,000.

### **C. REASONS FOR PROCUREMENT CONTRACTS**

Procurement contracts may be required for products or services associated with park planning, design, construction and operation, including with respect to administrative functions. The reasons for the use of procurement contracts include:

- a. Requirements of special expertise or unusual qualifications;
- b. Nature, magnitude or complexity of services or products required;
- c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d. Lower cost; and
- e. Short-term or infrequent need for the services or products.

## **II. ORDER OF PURCHASING PRIORITY**

### **A. GENERAL**

The Trust generally follows the following order of precedence for procurement priority:

**First:** Preferred source offerings;

**Second:** OGS centralized contracts;

**Third:** Piggybacking (agency established contracts) where beneficial to the Trust; and

**Fourth:** An “open market” procurement that can either be discretionary or results from a formal, competitive procurement process based upon the total value of the procurement.

### **B. PREFERRED SOURCES**

Goods and services may be available, without the need for competitive procurement from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by the Trust, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. The Office of General Services' Preferred Sources Guide is located at: <http://www.ogs.state.ny.us/purchase/searchbrowse.asp>.

The Trust shall first notify the Preferred Sources of the goods or services required by the Trust. If, within ten (10) days thereafter, a Preferred Source notifies the Trust that it is able to provide

such goods or services, then the Trust must make such purchase from the Preferred Source. If the Preferred Source does not respond to the Trust's inquiry within ten (10) days of the notification, then the Trust may purchase from centralized contracts if the good or service is available, or conduct a competitive procurement. If the Preferred Source submits a proposal during the competitive procurement, the Trust shall award the contract to the respondent proposing the best value to the Trust, irrespective of the Preferred Source's status.

**C. CENTRALIZED CONTRACTS**

Centralized contracting refers to contracts created through either the State or Federal government. Two forms of centralized contracting are available to the Trust without the need for competitive procurement: (1) New York State's Office of General Services (OGS) Central Contracts and (2) U.S. General Services Administration (GSA) Cooperative Purchasing Program for Information Technology Products (Schedule 70).

The Trust, as a state public benefit corporation, is not required to utilize centralized contracts. Nevertheless, users of the centralized contracting system generally benefit from the buying power of the State or Federal Government as a single customer and through the reduction of administrative costs, taking advantage of bulk discounts and marketplace economies. Contracts are established both on a statewide and on a regional basis, and may be made with multiple contractors to allow purchasing flexibility while optimally meeting user needs. As a matter of best practice, the Trust shall investigate whether a centralized contract is available for the particular commodity/service sought.

**1. OGS Centralized Contracts.** New York State's OGS Procurement Services Group establishes centralized contracts for a wide range of commodities and services that may be required by the Trust. The index of OGS contracts is available at <http://www.ogs.state.ny.us/purchase/searchbrowse.asp>.

**2. Federal Cooperative Purchasing – Information Technology, Schedule 70.** Section 211 of the E-Government Act of 2002 amended the Federal Property and Administrative Services Act to allow for "Cooperative Purchasing." Cooperative Purchasing allows for the Administrator of the General Services to provide states and localities access to certain items offered through GSA's Federal Supply Schedule 70, Information Technology (IT), and Consolidated (formerly Corporate Contracts) Schedule contracts, containing IT Special Item Numbers (SINs). The information technology available to state and local governments includes automated data processing equipment, software, supplies, support equipment, and services.

Federal Cooperative Purchasing is voluntary for the Trust and the Schedule contractors. Schedule contractors may accept or reject orders placed by the Trust or any other governmental purchaser. See the GSA's website at [www.gsa.gov/cooperativepurchasing](http://www.gsa.gov/cooperativepurchasing) for more information.

**D. Piggybacking**

The Trust may use a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office political subdivision or instrumentality of any state or states pursuant to New York State Finance Law §163(10)(e). This type of procurement option is called "piggybacking". The Trust must evaluate multiple factors in order to determine the appropriateness of piggybacking, including: (1) determination of the need for the product or services; (2) consideration of the procurement method by which the original contract was awarded; (3) an analysis of alternative procurement sources including why a competitive procurement or use of a centralized contract is not in the Trust's best interest; and (4) the reasonableness of the cost. The Trust's evaluation of these factors and rationale for using piggybacking should be set forth in the procurement record. The consent of the originating agency must be obtained where the Trust proposes to piggyback by using an amendment to an existing contract of that originating agency. Alternatively, the Trust may execute an independent contract based upon the equivalency of product or services being procured and pricing contained in the original contract. For further guidance on the use of piggybacking, staff should refer to NYS Office of General Services guidelines found at <http://www.ogs.ny.gov/BU/PC/SFL.asp>.

**E. Discretionary Purchasing Guidelines**

**1. Purchases Valued at Less Than \$50,000.** Purchases up to \$50,000 for commodities, services and technology not available from Preferred Sources or OGS Centralized Contracts are not subject to formal competitive procurement such as a publically advertised RFP or bid. For these purchases the Trust shall justify the vendor selection and the reasonableness of the price by such means as (a) informal quotes; (b) cost to other governmental entities; (c) historical cost or price comparisons; or (d) cost to OGS or less, where applicable. The Trust shall, wherever feasible, obtain three (3) price quotes for the services or commodities sought to ensure that the cost is reasonable. The Trust shall document the price research and selection determination in the procurement record for such purchase.

In conducting such process, the Trust shall consider the anticipated annual expenditure for particular commodities, services or technology. Annual expenditures anticipated of \$50,000 or

greater, absent documented extenuating circumstances, should be aggregated and procured through one of the formalized competitive procurement methods described in the Guidelines.

Discretionary purchases of \$50,000 or more are subject to formal competitive procurement and shall be advertised in the New York State Contract Reporter. Although not required, Staff may nevertheless elect to advertise in the New York State Contract Reporter for purchases of less than \$50,000 should they determine that such advertisement provides an effective means to secure competitive pricing.

**2. Certain Purchases Valued at \$200,000 or Less.** In accordance with State Finance Law §163(6), the Trust may target the purchase of services or commodities to small business concerns or those certified pursuant to Article 15-A of the Executive Law (Minority and Women-Owned Businesses), or commodities or technology products that are recycled or remanufactured, in an amount not exceeding two hundred thousand dollars (\$200,000) without a formal competitive procurement such as a publically advertised RFP or bid. Certified M/WBEs are found on the NYS Department of Economic Development’s directory of certified minority and women-owned business enterprises at: <https://ny.newnycontracts.com>. The Trust shall, wherever feasible, obtain three (3) price quotes from eligible firms for the services or commodities sought to ensure that the cost is reasonable, and shall advertise in the New York State Contract Reporter if the contract value is in excess of \$50,000.

Example of recommended language for Contract Reporter notification:

“Hudson River Park Trust intends to procure (*insert project description*) pursuant to its discretionary purchasing authority under State Finance Law §163(6). This procurement opportunity is limited to New York State small businesses, businesses certified pursuant to Article 15-A of the New York State Executive Law and, if applicable, businesses selling commodities or technology that are recycled or remanufactured.”

**F. Sole or Single Source Procurements**

Sole Source procurement is one in which only one contractor can supply the commodities or perform the services required by the Trust. Procurement by this method must be documented in the procurement record by an explanation of: (i) the unique nature of the requirement; (ii) the basis upon which it was determined that there is only one known contractor able to meet the Trust’s need, i.e., the steps taken to identify potential competitors; and (iii) the basis upon which the Trust determined the cost to be reasonable, i.e., a “fair market price” that could be anticipated



had normal competitive conditions existed, and how that conclusion was reached. Examples of such a determination may include a comparison to product catalogs, published price lists, retail market surveys, records of previous similar purchases, consulting other purchasing officials, or using professional experience. Sole Source procurements may also be utilized following a failed competitive solicitation if the Trust concludes, and so documents, that it is in the Trust's best interest to proceed utilizing this procurement method rather than issuing another competitive solicitation and that the price is reasonable.

A Single Source procurement is one in which two or more contractors can supply the commodity or perform the service required by the Trust, but the Trust selects a specific contractor because of that contractor's specific expertise, previous experience with current or similar contracts, or expertise with a specific issue. In a Single Source procurement, the Trust must document in the procurement record: (i) the circumstances leading to the selection of the contractor, including the alternatives considered; (ii) its rationale for selecting the specific contractor; and (iii) the basis upon which it determined the cost was reasonable, as in the case of a Sole Source procurement, and how that conclusion was reached.

Sole or Single Source Procurements must be approved by the President or her designee in writing, with such writing to be made part of the procurement record maintained by the Trust.

**G. Emergency Procurement**

An emergency procurement is one in which an urgent and unexpected situation occurs where health and public safety or the conservation of public resources is at risk. The Trust may issue contracts without complying with formal competitive procurement requirements in the event of an emergency. However, the Trust shall make a reasonable attempt to obtain at least three (3) oral quotes for each such emergency procurement. Failure to properly plan in advance – which then results in a situation where normal practices cannot be followed – does not constitute an emergency. A waiver of the competitive procurement requirements must be approved by the Trust's President or her designee. The Trust shall document each emergency procurement in the procurement record which shall detail the nature of the emergency situation; the potential effect on public or employee health, public safety, or the conservation of public resources; and a detailed description of the commodities, services and/or technology provided.

**H. Open Market Procurements**

Open market procurements are detailed in Section III below.

### III. TYPES OF SOLICITATION

#### A. Request For Proposals (“RFP”)

An RFP is generally used for the procurement of services, commodities or technology where price is not the sole determining factor and the award will be based upon a combination of cost, qualifications and technical factors.

**1. Developing a Request for Proposals.** RFPs provide prospective respondents with the information necessary to develop a responsive proposal. RFPs are uniquely drafted to meet specific Trust needs and objectives. Information provided to respondents must be clearly written such that all respondents understand the requirements of a responsive proposal, how their proposal will be evaluated, and the general method the Trust will use to select a successful respondent.

- At a minimum, an RFP shall: (1) describe the administrative process, including the proposal due date and time; (2) contain clear and descriptive specifications or requirements; (3) specify the required qualifications of respondents; (4) state the mandatory contract terms and conditions including setting goal percentages for M/WBE participation; and (5) contain a description of overall evaluation criteria.
- Written selection criteria shall be established for each proposed RFP and shall be included in the written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP; in the absence of written weighting, each stated criterion shall be deemed to have the same weight. Examples of selection criteria that may be appropriate include previous experience, proposed fee and schedules, experience and qualifications of the staff proposed for the project, and “best value.” State Finance Law, Section 163 has defined “best value” as a basis for awarding contracts to the offerer that optimizes quality, cost and efficiency, among responsive and responsible offerers.
- RFP procurements are generally based upon "best value," which includes an evaluation of such factors as price, levels of M/WBE participation, timeliness, the quality of goods and services, the experience of the vendor and specific expertise with respect to the services to be supplied. In assessing best value, non-price factors can be considered when awarding the purchase contract. Non-price factors can include, but are not limited to, reliability of a product, efficiency of operation, difficulty/ease of maintenance, useful lifespan, ability to meet needs regarding timeliness of performance, and experience of a service provider with similar contracts. The basis

for a best value award, however, must reflect, whenever possible, objective and quantifiable analysis.

- RFPs for architectural and engineering services are first evaluated on qualifications because of the lack of a definitive scope for such services at the time the RFP is issued and/or the importance of selecting the best qualified firm. The Trust will secondly negotiate with the highest qualified architectural or engineering consultant for a level of services that is sufficient to perform and a compensation amount that the Trust determines is fair and reasonable. Should the Trust be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Trust determines to be fair and reasonable to the Trust, negotiations with that firm shall be formally terminated. The Trust shall thereafter select additional firms in order of their competence and qualifications and continue negotiations until an agreement with the next most qualified firm is reached.

**2. Date for Submission of Proposals.** In developing the RFP, consideration should be given to time frames necessary for intervening activities, such as the pre-proposal meeting and the question and answer period, before selecting a submission date. Other factors, such as the complexity of the RFP, the time needed for vendors to prepare an effective response and obtain necessary internal approvals, and holidays that may impact availability, should also be taken into account. As a general rule, the date for submission of proposals should be at least thirty (30) days after the advertisement appears in the New York State Contract Reporter. Where thorough consideration is given to all of the factors listed above, and it is nevertheless determined that a response time of less than thirty (30) days would not negatively impact the competitive process, the earliest possible due date for submission of proposals is fifteen (15) business days after the advertisement appears in the New York State Contractor Reporter.

**3. Advertising.** The Trust requires that RFPs for procurement opportunities estimated to be in excess of \$50,000 be advertised in the New York State Contract Reporter. The Trust shall also post all such RFPs on the Trust's website and may further post RFP opportunities in the New York City Record or in other trade or local publications. Notice of RFP opportunities shall be provided directly to M/WBEs and to professional and organizations that serve M/WBEs. Further, the Trust shall make reasonable efforts to apprise potential respondents of solicitation opportunities through (1) mailings to industry associations; and (2) direct notifications to known potential offerers, where applicable. Addendum and Questions and Answers regarding competitive RFPs are also posted on the Trust's website.

**4. Evaluation and Award.** All proposals must be evaluated and awards made in accordance with a predetermined process. Wherever possible, evaluation criteria should be quantifiable. The procurement evaluation and selection process must be documented and maintained in the procurement record. A selection committee of three (3) or more persons, as designated by the President or her designee, shall conduct the review and selection of respondents in connection with RFP procurement contract(s) of \$100,000 or more. The selection committee shall provide its recommendation to the President for her review and approval and for subsequent submission for Board authorization.

**5. Failed RFP.** The goal of every competitive RFP procurement should be to secure at least three (3) qualified proposals. A failed RFP is a procurement whereby the Trust was unable to obtain at least two (2) qualified proposals in response to an RFP, or where the pricing of the submitted proposals were determined to be not reasonable. A qualified proposal is a proposal that meets the minimum requirements necessary for a responsiveness determination. In such event, the Trust may evaluate the remaining qualified proposal(s), and make a sole or single source award if the Trust concludes that it is in the Trust's best interest to proceed as provided in the Guidelines. The Trust shall document such award in the procurement record. Alternatively, the Trust may reissue the RFP with or without modifications.

**6. Responsiveness Determinations.** All RFPs are subject to a responsiveness determination. A responsive RFP must meet the mandatory and material specifications of the RFP as determined by the Trust.

**7. Late Proposals.** A late proposal may only be accepted when it is determined by the President that it is in the best interests of the Trust to do so. In such event, the Trust may hold open the receipt of proposals by no more than three (3) hours during which time no other competing proposal may be opened. An opened proposal shall eliminate the possibility of accepting any late proposals. The President shall review the reasons that it is in the best interests of the Trust to approve the time extended, the name of the vendor(s) submitting the proposal received during the extension period, as well as an affirmative statement that no proposals were opened prior to acceptance of the late proposal and that any other late proposal received during the extension period was similarly accepted. The President must approve, in writing, the above referenced documentation and such documentation shall be made part of the procurement record maintained by the Trust. A "Register of Proposals" shall be prepared in accordance with the Guidelines and shall be open for public inspection after contract award.

**8. Best and Final Offers.** If requested by the Trust, best and final offers are the revised and corrected final proposals submitted by proposers. Proposers shall be informed by the Trust that if they do not submit a best and final offer, their immediate previous offer will be construed as their best and final offer.

**B. Invitation For Bids (“IFB”)**

An IFB is the appropriate solicitation to be used when the method of award is to be based upon lowest price only, provided the respondent is responsive and otherwise meets all qualifications stated in the IFB. An IFB describes the administrative process; defines specifications; establishes required delivery terms, bidder qualifications, method of award, and terms and conditions; and provides instructions for responding.

Steps for Conducting an IFB

- Develop specifications for the commodity/service needed referring to State green purchasing requirements where available and appropriate;
- Prepare the solicitation document including all bid requirements, such as M/WBE compliance;
- Advertise the procurement opportunity;
- Distribute the IFB to all potential bidders;
- Conduct site visits and pre-bid conferences (as necessary);
- Receive questions and provide responses (as necessary);
- Receive bids;
- Conduct the bid opening;
- Conduct administrative review of bid submissions;
- Verify responsiveness and responsibility of apparent low bidder;
- Seek waiver if M/WBE goal cannot be met;
- Make award;
- When necessary, obtain approvals; and,
- Issue purchase order or contract.

**1. Date for Submission of Bids.** In developing the IFB, consideration should be given to time frames necessary for intervening activities, such as the pre-bid meeting and the question and answer period, before selecting a submission date. Other factors, such as the complexity of the bid, the time needed for vendors to prepare an effective response and obtain necessary internal approvals, and holidays that may impact availability, should also be

taken into account. As a general rule, the date for submission of bids should be at least thirty (30) days after the advertisement appears in the New York State Contract Reporter. Where thorough consideration is given to all of the factors listed above, and it is nevertheless determined that a response time of less than thirty (30) days would not negatively impact the competitive process, the earliest possible due date for submission of bids is fifteen (15) business days after the advertisement appears in the New York State Contractor Reporter.

**2. Advertising.** The Trust requires that IFBs for procurement opportunities estimated to be in excess of \$50,000 be advertised in the New York State Contract Reporter. The Trust shall also post all IFBs on the Trust's website and may further post procurement opportunities in the New York City Record or in other trade or local publications. Notice of IFB opportunities shall be provided directly to M/WBEs and to professional and organizations that serve M/WBEs. Further, the Trust shall make reasonable efforts to apprise potential bidders of solicitation opportunities through (1) mailings to industry associations; and (2) direct notifications to known potential offerers, where applicable. Addendum and Questions and Answers regarding competitive solicitations are also posted on the Trust's website.

**3. Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The amount of each bid, and such other relevant information as may be specified by the Guidelines, together with the name of each bidder shall be recorded; the record and each bid sheet shall be open to public inspection.

**4. Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in the Guidelines. Bids shall be evaluated based upon the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The IFB shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the IFB.

**5. Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with the Guidelines. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Trust or fair competition shall be permitted. Except as otherwise provided by

the Guidelines, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination approved by the President or her designee.

**6. Award.** A bid contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB.

**7. Negotiation with the Apparent Lowest Responsive and Responsible Bidder.** In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the apparent lowest responsive and responsible bid does not exceed such funds by more than ten percent, the Trust is authorized, in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the apparent lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds. In addition, if the apparent lowest responsive and responsible bid indicates that it does not meet the M/WBE goal identified in the IFB, the Trust may work with the bidder to increase qualified M/WBE participation from a listing of certified M/WBEs maintained by the State to meet the Trust's published M/WBE goal. The bidder may not increase the price of its submitted bid in connection with the potential retention of additional certified M/WBEs as detailed herein. The Trust shall document such award in the procurement record.

**8. Failed IFB.** The goal of every competitive procurement should be to secure at least three (3) qualified bids. A failed IFB is a procurement whereby the Trust was unable to obtain at least two (2) qualified bids in response to an IFB, or where the pricing of the submitted bids were determined to be not reasonable. A qualified bid is a bid that meets the minimum requirements necessary for a responsiveness determination. In such event, the Trust may evaluate the remaining qualified bidder(s), and make a sole or single source award if the Trust concludes that it is in the Trust's best interest to proceed as provided in the Guidelines. The Trust shall document such award in the procurement record. Alternatively, the Trust may reissue the IFB with or without modifications.

**9. Responsiveness Determinations.** All bids are subject to a responsiveness determination. A responsive bid must meet the mandatory and material specifications of the IFB as determined by the Trust.

**10. Late Bids.** A late bid may only be accepted when it is determined by the President that it is in the best interests of the Trust to do so. In such event, the Trust may hold open the receipt of bids by no more than three (3) hours during which time no other competing bid may be opened. An opened bid shall eliminate the possibility of accepting any late bids. The President shall review the reasons that it is in the best interests of the Trust to approve the time extended, the name of the vendor(s) submitting the bid received during the extension period, as well as an affirmative statement that no bids were opened prior to acceptance of the late bid and that any other late bid received during the extension period was similarly accepted. The President must approve, in writing, the above referenced documentation and such documentation shall be made part of the procurement record maintained by the Trust. A "Register of Bids" shall be prepared in accordance with the Guidelines and shall be open for public inspection after contract award.

**C. Requests for Qualification ("RFQ")**

RFQs may also be appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by the Trust on a regular or semi-regular basis as the need arises; or to select professional services to be rendered at pre-established rates. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of attorneys, repair contractors for specialized services where the need to perform work may be timely (for example, plumbers), or for frequently needed services, such as fencing contractors. If the Trust has established a list of pre-qualified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a pre-set maximum, three (3) quotes should be obtained from vendors on the list, and/or from vendors known to the Trust outside the list. In addition, the Trust may issue RFQs for specific consultant services, such as architectural and construction management, to evaluate and establish a list of qualified consultants that would be eligible to receive a correlative RFP.

**IV. VENDOR PROTEST OF SOLICITATION AND AWARDS**

**A. Right to Protest**

Any actual or prospective bidder or respondent who believes that he/she is aggrieved in connection with the solicitation or award of a contract may file a protest with the Trust's General Counsel. The protest shall be submitted in writing within 10 days after such allegedly aggrieved person knows or should have known of the facts giving rise thereto and shall briefly state the facts or other basis upon which the bidder or respondent contests the Trust's decision.



**B. Authority to Resolve Protests**

The Trust's General Counsel, or designee, shall have the authority, prior to the commencement of an action in court concerning the controversy, to resolve the protest of an allegedly aggrieved bidder or respondent regarding the solicitation or award of a contract.

**C. Decision**

If the protest is not resolved by mutual agreement, the Trust's General Counsel, or designee, shall promptly issue a decision in writing. The decision shall (a) state the reasons for the action taken; and (b) inform the allegedly aggrieved bidder or respondent of its right to judicial review.

**D. Notice of Decision**

A copy of the decision shall be mailed or otherwise furnished immediately to the allegedly aggrieved bidder or respondent within (30) thirty days of the Trust's decision.

**E. Finality of Decision**

The Trust's General Counsel determination shall be final. The procurement action under protest shall not be stayed unless the Trust's General Counsel determines that it is the Trust's best interest to delay the action.

**V. OTHER LEGAL REQUIREMENTS**

**A. Determinations of Responsibility**

Prior to the award of a procurement contract, the Trust must make a responsibility determination with respect to the offerer to be recommended for the award of the contract based upon, among other things, the information supplied by that offerer. The offerer must disclose whether it has been found non-responsible within the last four years by any Governmental Entity for: (1) failure to comply with State Finance Law §139-j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the offerer and must affirmatively state that the information supplied by the offerer to the Trust is complete, true and accurate.

The procurement contract must include a provision allowing the Trust to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the offerer of past findings of non-responsibility may constitute a basis for rejection of the offerer by the Trust.

The Trust may award a contract to the offerer despite the past findings of non-responsibility if it determines that the award of the procurement contract to the offerer is necessary to protect public property or public health or safety, and that the offerer is the only source capable of supplying the required commodity or service within the necessary time frame. The basis of such findings must be included in the procurement record of the contract.

The Trust should only engage in procurements with contractors that are responsible. Contractor responsibility is generally described as including requirements of financial capacity, legal authority, integrity, and past performance. While all contracts must be awarded to a responsible contractor, the scope of the Trust's responsibility review efforts is generally based on the Trust's determination of its level of risk. One risk factor may be the dollar value of the contract. Apart from dollar value and contract complexity, Trust staff's responsibility review may consider other procurement-related factors. For example, procurements that are critical to the Trust's mission may require extensive contractor reviews as would a procurement in which a proposal is significantly lower than those of the competition.

Responsibility determinations should involve a review of the following four major categories: Financial Capacity, Legal Authority, Integrity and Past Performance (FLIP Review). The Trust may identify and emphasize the evaluation of certain criteria deemed critical depending upon the nature and scope of the proposed contract. For example, a responsibility determination for a management or information technology consulting contract may emphasize a contractor's past performance, resumes of project team members, etc. while a commodity award may focus on the firm's capacity to produce and/or supply the commodity. The Trust has established a vendor evaluation process that is a precondition to making payments to vendors.

Procurements of \$100,000 or more must also include review under New York City's VENDEX system.

**B. Compliance with State Finance Law §139-j and §139-k (Lobbying)**

State Finance Law ("SFL") §139-j and §139-k apply to all procurement contracts over \$15,000, regardless of whether the contract was competitively bid.

Among other things, SFL §139-j and §139-k: (i) govern permissible communications between potential vendors, and staff of the Trust during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and willful violations of such provisions, including

disqualification from eligibility for an award of any contract. Specifically, SFL §139-j and §139-k require that only permitted Trust contact person(s) identified in solicitation materials may communicate with potential bidders/respondents regarding the solicitation, from the issuance of the earliest written notice of a request for proposal/bid through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL §139-j(6)(b) also requires potential vendors to complete the Offerer's Affirmation of Understanding and Agreement to comply with the Trust's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by the Trust after an initial affirmation is received with an initial proposal/bid.

SFL §139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k(5) requires potential vendors to certify that the information they provide to the Trust for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL §§139-j and §139-k as part of their proposals: (1) the Offerer's Affirmation of Understanding and Agreement; and (2) the Offerer's Disclosure of Prior Non-Responsibility Determinations.

When contacted during the Restricted Period, the Trust's staff must obtain the following information: the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact. Further, Trust staff must inquire whether the person or organization making the contact was the offerer or retained, employed or designated by the offerer. If after review the Trust's Legal Department finds sufficient cause to believe that an offerer may have violated the procurement lobbying restrictions, the offerer will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. If, after investigation, the Trust's Legal Department finds that the offerer knowingly and willfully made prohibited contact in violation of these procedures, then the offerer shall be disqualified. All such recorded contacts must be included in the procurement record for the contract.

In addition, Trust staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL § 139- j and §139-k do not prohibit an offerer from communicating with a member of the state legislature or legislative staff about a government procurement, provided such member of the state legislature or legislative staff is acting in his or her official capacity. If a vendor is found

to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

Permissible communications include communications that a reasonable person would infer are not intended to influence a governmental procurement. As such, these communications are not considered contacts and do not need to be documented as such in the procurement record. Such permissible communications include:

- Inquiries as to the status of the procurement process.
- Requests to be included on the Trust's offerer's list.
- Receipt of advertising material.
- Intra-agency communications of administrative details concerning the procurement.
- Responses to Trust-issued Requests for Information.
- Written questions submitted by offerers regarding a solicitation during the allowable time period of a competitive procurement.
- Complaints about the procurement process or outcome.
- Participation in an offerer's conference as provided in a request for proposal.
- Submission of a bid in response to a request for proposal.
- Contract negotiations.
- Debriefing of an offerer after a contract award has been made.

Note that, once a recommended vendor has been selected after compliance with the competitive procurement process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such.

Procurement Lobbying forms are posted on the Trust's website and are made part of these Guidelines.

**C. Compliance with State Tax Law§ 5-a (Sales Tax Registration)**

State Tax Law §5-a prohibits the Trust from approving any contract valued at more than \$100,000 with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

In all cases where a contract is subject to State Tax Law §5-a, a contractor must file (1) Form ST-220-CA, Contractor Certification to Covered Agency, with the covered agency and (2) Form ST-220-TD with DTF before a contract may take effect. If a contractor is not registered with DTF because of a lack of sales of over \$300,000 within the relevant period, the vendor must submit an affidavit so certifying.

NYS Sales Tax Certification forms are posted on the Trust's website and are made part of these Guidelines.

**D. Compliance with Iran Divestment Act of 2012**

Every bid or proposal submitted to the Trust pursuant to a competitive solicitation as provided in the Guidelines must include a signed affidavit certifying that the respondent is not engaged in investment activities in Iran as defined by the laws of the State of New York, nor will it invest or participated in such activities during the term of the resultant contract.

Iran Divestment forms are posted on the Trust's website and are made part of these Guidelines.

**E. Certification of Non-Collusion**

Every bid or proposal submitted to the Trust pursuant to a competitive solicitation as provided in the Guidelines must include a signed affidavit of non-collusion certifying that the prices in the bid/proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/respondent or with any other competitor.

Non-collusion forms are posted on the Trust's website and are made part of these Guidelines

**F. Minority & Women-owned Business Participation ("M/WBE") Requirements**

To promote and assist participation by M/WBEs, in accordance with the applicable provisions of Article 15 A of the New York State Executive Law and recent amendments to Public Authorities

Law Section 2879, the Trust shall maintain an M/WBE program to:

1. Promote participation by certified M/WBEs in Trust procurement opportunities and facilitate the award of procurement contracts to such M/WBEs;
2. Encourage the utilization of certified M/WBEs as subcontractors and suppliers by entities having procurement contracts with the Trust; and
3. Encourage the utilization of partnerships and joint ventures between certified M/WBEs and other entities having procurement contracts with the Trust.

The Trust shall maintain and update regularly, lists of qualified, certified M/WBEs, including professional firms that have expressed an interest in doing business with the Trust. Trust personnel shall consult the Trust's M/WBE list as well as the list of certified M/WBEs maintained by the NYS Department of Economic Development at <http://www.esd.ny.gov/MWBE/directorySearch.html>. The Trust should also use the State Utilization Management Program ("SUMP") to set M/WBE goals, conduct outreach and obtain price quotes from listed vendors/businesses where appropriate. Trust personnel shall document the price and selection determination in the procurement record for such purchase.

The Trust requires a 30% goal for participation by M/WBEs in procurement contracts awarded by the Trust for purchases of commodities/services greater than twenty five thousand dollars (\$25,000) and for construction and construction-related contracts greater than one hundred thousand dollars (\$100,000) (the "Article 15-A Threshold"). In addition, all contracts above the Article 15-A Threshold, unless exempted or excluded, must be assessed M/WBE goals, and the Governor's office must grant a waiver for any instance when the Trust seeks to advertise the procurement with less than the required 30% combined M/WBE goal, or for any instance for which the contractor can demonstrate in good faith that it could not meet the 30% requirement. The Trust may not proceed with any procurement requiring a waiver unless the Governor's office has granted such waiver. Waiver requirements for a reduction or elimination of the M/WBE goals are outlined in 5 NYCCR Part 142.7.

Additional M/WBE information is posted on the Trust's website.

**G. Local Law 34 – New York City's Doing Business Database**

Local Law 34 of 2007 (LL 34), a New York City campaign finance reform law, seeks to limit the actual or perceived influence that campaign contributions could have on the City's procurement and award processes. LL 34 limits municipal campaign contributions from principal officers,

owners and senior managers of entities that do business with the City, city-affiliated public authorities and similar entities, and mandates the creation of a Doing Business Database to facilitate enforcement of the law. Competitive sealed bids and emergency contracts are specifically exempted from LL 34. All other Trust procurements over \$5,000 (including purchase orders, sole and single sourcing, piggybacking, centralized contracts, and government lists), are subject to the requirements of LL34. As such, the respondents of all such Trust procurement contracts must provide a completed “Doing Business Data Form” to the Trust. The LL 34 forms are posted on the Trust’s website and are made part of these Guidelines.

**H. Participation by New York State Business Enterprises**

To maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as contractors, subcontractors and suppliers on its procurement contracts, the Trust shall promote the participation by New York State business enterprises and New York State residents in its procurement contracts.

**I. Contracts Subject to Approval by the Office of the NYS Comptroller**

All contracts valued in excess of one million dollars (\$1,000,000) (a) to be awarded to a single source, sole source or pursuant to any other method of procurement that is not competitive, or (b) which are paid in whole or in part from monies appropriated by the New York State to the Trust are subject to prior approval by the Office of the NYS Comptroller.

**J. Service Disabled Veteran-Owned Business Act**

The Act established a six percent (6%) goal for participation on state contracts by service disabled veteran owned firms in addition to other measures to support these companies and allows eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB) in order to increase participation in New York State's contracting opportunities. The Act creates the new Division of Service-Disabled Veterans' Business Development (DSDVBD) within the New York State Office of General Services for the establishment of a statewide certification program. The division will be responsible for certifying eligible SDVOBs, and assist and promote the compliance of SDVOB participation in the state's procurement activities. Additional information can be found at: <http://ogs.ny.gov/Core/SDVOBA.asp>.

**K. MacBride Fair Employment Practices**

In instances where there are one or more contractors from which the Trust can contract for the supply of particular commodities or services of comparable quality and cost, the Trust shall not

contract for such commodities or services with any contractor who does not stipulate to the following: the contractor and any individual or legal entity in which it holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles as set forth in Section 165 of the State Finance Law, and shall permit independent monitoring of their compliance with such principles.

**L. Prohibition on Purchase of Tropical Hardwoods**

Tropical hardwoods, as defined in Section 165 of the New York State Finance Law, shall not be used in the performance of any contract issued by the Trust except as expressly permitted by the foregoing provision of law.

**M. VENDEX**

Contracts in excess of \$100,000 require that the respondent/bidder submit New York City VENDEX questionnaires.

**VI. GREEN PERFORMANCE STANDARDS**

**A. Environmentally Preferred Products**

The Trust shall procure and use cleaning products having properties that minimize potential impacts to human health and the environment consistent with maintenance of the effectiveness of these products for the protection of public health and safety in conformity with NYS Executive Order No. 134 (2005). Copy paper, janitorial paper and other paper supplies purchased by the Trust should be composed of 100% post-consumer recycled content to the maximum extent practicable, and all copy and janitorial paper shall be process chlorine-free to the extent practicable, unless such products do not meet required form, function or utility, or the cost of the product is not competitive. Such products are made available through an OSG Centralized Contract. For additional information see <http://www.ogs.ny.gov/BU/PC/Green.asp>.

**B. Energy Efficient Purchasing**

In accordance with NYS Executive Order 111 (2005), the Trust shall select ENERGY STAR energy-efficient products when acquiring new energy-using products or replacing existing equipment. The Trust shall procure increasing percentages of alternative-fuel vehicles, including



hybrid-electric/electric vehicles, as part of its vehicle acquisition plan. Additional information on procuring energy efficient products can be found at <http://www.ogs.ny.gov/BU/PC/Green.asp>.

## VII. Procurement Administration

### A. Authorization Of Procurement Contracts and Amendments

**Procurements and Amendments valued at less than \$200,000:** Procurements valued at less than two hundred thousand dollars (\$200,000) may be approved by designated Trust officers to the extent specified below:

- Procurements and Amendments valued at up to \$5,000. Require approval from the head of the department initiating the procurement.
- Procurements and Amendments valued at greater than \$5,000 and up to \$150,000. Require approval from the head of the department initiating the procurement and from an Executive Vice President or the President.
- Procurements and Amendments valued at greater than \$150,000 but less than \$200,000. Require approval from the head of the department initiating the procurement and from either the President or her designee.
- All legal retainers regardless of value must also be approved by the General Counsel.

#### **Trust Board Approval Required:**

- **Procurements and Amendments valued at \$200,000 or more** require approval by the President and subsequent authorization by the Board of Directors.
- **Procurements for services to be rendered over a period in excess of one year** require approval by the President and subsequent authorization by the Board of Directors.
- **Contracts for Auditing Services** - The selection of the certified independent audit firm required for the Trust's annual audit shall be made by the Board of Directors - Audit Committee, in consultation with designated Trust staff. All auditing contracts are subject to approval by the Board of Directors. Note that the certified independent public accounting firm that provides the Trust's annual independent audit will be prohibited from providing such services for the current year if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for the Trust in each of the five previous fiscal years. Further, while performing a Trust audit, that audit firm is prohibited from performing any contemporaneous non-audit functions for the Trust absent prior approval from the Board of Directors – Audit Committee.

**B. Contract Extensions by Amendment**

- An amendment to extend the term of a contract by less than one year requires approval from the head of the department initiating the procurement and from an Executive Vice President or the President.
- An amendment to extend the term of a contract by one year or more requires approval by the President and subsequent authorization by the Board of Directors.

**C. Procurement Record**

The Trust shall maintain a procurement record for each procurement which shall document all decisions made and the approaches taken by the Trust in the procurement process, particularly the quantification of the application of award criteria based upon best value or where not quantifiable and the justification that demonstrates that best value will be achieved. For all open market solicitations, such record should include: a reasonable process for ensuring a competitive field; documentation that demonstrates a fair and equal opportunity for offerers to submit responsive offers; the solicitation documents, any requests for information and responses thereto, the IFB/RFP submissions, a memorandum setting forth the methodology employed for selecting the consultant/contractor; the identity of the Trust staff involved in the procurement; a determination of vendor responsibility; and other decisions made by the Trust during the procurement process. Non- competitive solicitation documentation shall include the name of the selected consultant/contractor, the Trust staff involved in the procurement, a memorandum setting forth the procurement technique employed, and the justification for the selected process.

**D. Contract Renewals**

A contract can only be renewed for an additional term if there is specific language in the original contract providing for such a renewal option. Where such renewal language is present in the contract and Trust staff determines that it is in the best interest of the Trust to continue the contractual relationship with the contractor by renewing for the term specified in the original contract documents, then Trust staff, in consultation with the Legal Department, shall issue a binding renewal letter to such effect.

**E. Contract Amendments**

A contract may be amended for an extension of time, as provide herein, and when an expansion of the scope of services is necessary to complete a particular project. If the amended work exceeds twenty percent (20%) of the original contract amount, the Trust shall either use a competitive process to award the additional work or document the reasons why a competitive

process is not in the best interests of the Trust, with such documentation made part of the procurement record.

**F. Procurement Reporting Requirements**

Within ninety (90) days of the close of the Trust's fiscal year, the Trust shall prepare for Board approval an annual report, in accordance with the Hudson River Park Act and Section 2879 of the Public Authorities Law, summarizing procurement activity by the Trust for the prior year. Following Trust Board approval, copies of such report shall be provided to:

- The NYS Division of the Budget
- The NYS Department of Audit and Control
- The NYS Department of Economic Development
- The Senate Finance Committee
- The Assembly Ways and Means Committee

The Annual Report shall include:

- The Procurement Guidelines,
- Status of existing procurement contracts including procurement contracts for services to be rendered over a period in excess of one year (multi-year contracts),
- List of procurement contracts entered into since the last annual report,
- Amount of fees, commissions or other charges paid to procurement contractors,
- All contracts entered into with New York state business enterprises and the subject, matter and value thereof,
- All contracts entered into with foreign business enterprises and the subject matter and value thereof, and
- The selection process used to select such contractors.

Such report shall be available on the Trust's webpage and shall be made available to the public, upon request.

**G. Procurement Contracts Involving Former Trust Officers/Employees**

Except to the extent permitted under the Trust's Code of Ethical Conduct and applicable State law, the Trust shall not enter into procurement contracts with its former officers or employees, or with firms employing such officers or employees.

## VIII. IMPLEMENTATION OF GUIDELINES

### A. Preparation and Implementation of Guidelines

The Trust's Vice President of Finance, or such other Trust officer as shall be designated by the President, shall be responsible for:

- Preparing for approval by the President or his/her designee such supplemental procedures as may be required to effectively implement the approved Guidelines, and
- Monitoring compliance with these Procurement Guidelines.

The General Counsel shall be responsible for preparing proposed amendments to the Guidelines for approval by the President and the Board of Directors as required.

### B. Monitoring Compliance With Guidelines

Each contract awarded must contain a scope of work or services to be provided, identify the product to be delivered, if any, the use of corporate supplies and facilities, and the use of corporate personnel, and must establish starting and completion dates for major components of the contract.

As designated by the President, authorized Trust staff shall be responsible for monitoring the performance of the contract to assure that the contract is performed efficiently and in accordance with its terms. Such monitoring shall include verifying compliance with these Guidelines.

### C. Procurement Manual

The Trust shall establish a "Procurement Manual" for its staff in connection with the processing, approvals and dollar limits for the various procurements, such as for contracts, purchase orders, and petty cash. The Procurement Manual must be consistent with the Guidelines.

### D. Effect on Awarded Contracts

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines.

The Trust shall have the power from time to time to amend the Guidelines in accordance with the Hudson River Park Act and Section 2879 of the Public Authorities Law.

**E. Effective Date**

The Guidelines, and any amendments hereafter, shall take effect on and apply to contracts entered into after the date of approval by the Board of Directors, except as otherwise provided by law.

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