



REQUEST FOR PROPOSALS
FOR
TREE MAINTENANCE SERVICES
CONTRACT NO. M5032

RFP Issued: January 7, 2019

Submission Deadline: February 6, 2019

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PART I INTRODUCTION

1. INVITATION TO SUBMIT PROPOSAL

Hudson River Park Trust (the “Trust”) is pleased to invite you to submit a proposal in response to this Request for Proposals (“RFP”). The Services to be performed, the Project and the Project Site are outlined in the RFP Summary below (Part I, Section 2), along with such other information as the anticipated dates for the execution of a Contract with the consultant, if one is selected pursuant to this RFP, and the anticipated Contract Term. All undefined capitalized terms set forth in this RFP shall have the same definitions as set forth in the draft Contract (the “**Contract Draft**”) annexed to this RFP as Exhibit 8.

Respondents are required to disclose any conflict of interest(s) that may preclude them from participating in this solicitation, including participation in other Project contracts.

Subject to the availability of funds and the responses to this RFP, the Trust will select one or more consultants(s) to provide the Services. The consultants(s) shall be experienced in all aspects of the Services. The consultants(s) will commence the Services upon a written Notice to Proceed from the Trust or upon execution of the Contract by the consultants(s) and the Trust substantially in the form of the Contract Draft. You should review the Contract Draft and be familiar with all of the terms and conditions set forth therein prior to submitting your proposal. **However, please note that the General Terms and Conditions (Part II) and the Appendices (Part III), other than Appendix B and Appendix C, are not negotiable.**

2. RFP SUMMARY

2.1 In General. This summary of terms, deadlines and requirements specific to this RFP is set forth for your immediate reference and convenience only. It does not set forth all of the requirements of this RFP, but should be read in conjunction with the Requirements (Part II) of this RFP. You should review and become familiar with all parts of this RFP prior to submitting your proposal.

2.2 Specific Terms, Deadlines and Requirements

2.2.1 Project Information.

2.2.1.1 The Project: a) On-call, upon request, parkwide tree maintenance, including pruning, tree removal and aeration, and emergency response; b) annual one-time comprehensive Chelsea Waterside Park tree maintenance, including pruning, removal and elevation.

2.2.1.2 **The Project Site:** On call tree maintenance to be conducted within Hudson River Park; Chelsea Waterside Park tree maintenance to be conducted in Chelsea Waterside Park, which is located at the terminus of West 23rd Street bound by New York State Route 9A, 24th Street and 11th Avenue.

2.2.1.3 **Type of Services:** Tree maintenance services (the “**Services**”), as more specifically described in the **Scope of Services** (Appendix B of the Contract Draft)

2.2.2 **The Consultant:**

2.2.2.1 **Type:** Tree maintenance services

2.2.2.2 **Minimum Experience Required:** The Consultant must meet the following requirements: The Consultant shall be an experienced, English-speaking ISA certified arborist. The Consultant must have a general knowledge of all landscape features, be able to identify the trees/shrubs within Hudson River Park, as well as diseases/ pests that may be associated with specific species. The personnel performing tasks shall be knowledgeable in performing tree maintenance tasks, trained to operate equipment properly, and maintain a safe work zone at all times.

2.2.3 **Contract Information**

2.2.3.1 **Anticipated Contract Date:** April 1, 2019

2.2.3.2 **Anticipated Contract Term:** Three (3) years

2.2.4 **Questions Regarding RFP**

2.2.4.1 **Question/Clarification Submission Deadline:**

(i) **Date:** January 18, 2019

(ii) **Time:** 5:00 p.m.

2.2.4.2 **Permitted Method:** in writing to Recipient at Recipient’s Mailing Address or Email Address as listed in Section 2.2.6 below only.

2.2.4.3 **Question Response Date:** January 25, 2019

2.2.4.4 Answers to Questions will be available at Trust website under Bids and Business Opportunities at <https://hudsonriverpark.org/about-us/bids-business-opportunities> (the “**Website**”)

2.2.5 **Pre-Proposal Meeting** Meeting place is at Pier 40 first floor lobby, 353 West Street, New York, NY 10014

(i) **Date:** January 16, 2019

(ii) **Time:** 1 p.m.

(iii) Email your confirmation to attend pre-proposal meeting to Jennifer Sosa at jsosa@hrpt.ny.gov

2.2.6 **Proposal Submission Requirements**

2.2.6.1 **Label on Envelope:**

2.2.6.1.1 **One for the Proposal Only:** “Proposal for Tree Maintenance- Contract M5032”

2.2.6.1.2 **One for Prices Only:** “Price Proposals for Tree Maintenance- Contract M5032”

2.2.6.2 **Number of Sets of Proposals to be submitted:** Three hardcopies and one electronic copy on thumb drive, USB or CD

2.2.6.3 **Submission Deadline:**

(i) **Date:** February 6, 2019

(ii) **Time:** 3:00 p.m.

2.2.6.4 **Method:** By Hand, Express Mail or other nationally-known overnight courier

2.2.6.5 **Submit to the following Recipient:**

Jennifer Sosa, Procurement Manager

2.2.6.6 **Recipient’s Mailing Address:**

Hudson River Park Trust
Pier 40, 2nd Floor
353 West Street, Rm. 201
New York, NY 10014
Attn: Jennifer Sosa

2.2.6.7 **Recipient’s E-mail address:** jsosa@hrpt.ny.gov

2.2.7 **M/WBE Participation Goal:** 30% (combined goal)

2.2.8 **SDVOB Participation Goal:** 6%

2.2.9 **Selection Criteria** The Trust will base its selection upon the following criteria:

- 50% The respondent's experience in providing services similar to the Scope of Services described herein; the quality of the respondent's management, reputation, and references; favorable history, if any, in contracting or doing business with government bodies similar to the Trust.
- 40% The proposed fee and cost schedules.
- 10% The respondent's proposed plans for encouraging participation by minority and women-owned business enterprises in connection with the Services, as provided in the respondent's Subcontractor Utilization Plan.

If you have a physical disability and cannot deliver your proposal as provided in this RFP, please contact Nicole Steele at (212) 627-2020 or email jsosa@hrpt.ny.gov at least forty-eight (48) hours prior to the Submission Deadline and the Trust will make appropriate arrangements for such delivery.

3. RESPONSIVENESS DETERMINATION

A respondent is deemed "responsive" when it submits a proposal containing the required items/information in the form required and as listed in the RFP by the Submission Deadline referenced in Part I, Section 2.2.6.3 of this RFP. If the Trust determines that a respondent did not submit the items/information required in the RFP, that respondent may be deemed "non-responsive" and may not be considered for contract award.

In order to be considered responsive, your proposal should be organized and include all of the items as listed below.

3.1 Envelope # 1. In one sealed envelope labeled as required by Part I, Section 2.2.6.1.1 complete and place the following:

3.1.1 Respondent's **Proposal Certification Form** and **Questionnaire** attached hereto as Exhibit 1, and the certifications attached hereto in Exhibit 3 (Doing Business Data Form), Exhibit 4 (Lobbying Form), Exhibit 5 (Non-Collusion Form), Exhibit 6 (Iran Divestment Form) and Exhibit 7 (M/WBE, SDVOB and EO No. 177 Forms).

3.1.2 In addition to three hard copies, one electronic copy of the materials required above must also be provided (i.e., on a CD, USB, thumb drive) and placed in the same Envelope#1

3.2 Envelope #2. In a second sealed envelope labeled as required by Part I, Section 2.2.6.1.2 place complete fee and cost schedules for all Services. All fee and cost schedules should be submitted in the forms attached hereto as Exhibit 2 to this RFP. The Fee Schedule provided in Exhibit 2 should be completed for each proposed contract year 2019, 2020, and 2021. Therefore, Envelope #2 should contain Three Fee Schedules to cover each year of a contract for a three-year term. The Trust may not consider fee and cost schedules that do not follow the prescribed formats. The submission shall include three hard copies and one electronic copy.

3.3 Non-compliant Proposals. Non-compliant proposals may, in the Trust's sole discretion, be considered "not responsive" and may be rejected by the Trust including, without limitation, proposals that are:

3.3.1 not enclosed in separate sealed envelopes as aforesaid;

3.3.2 not properly labeled;

3.3.3 received by a person other than the designated Recipient;

and/or

3.3.4 missing any information, certifications, supplemental forms or other documentation required by this RFP or by applicable law.

PART II REQUIREMENTS

1. SERVICES TO BE PERFORMED AND WORK PRODUCT

The selected Consultant shall perform all work and services and deliver all of the Services specifically described in and required by the Scope of Services annexed as Appendix B in Part III of the Contract Draft (see Exhibit 8 separately enclosed). **Prior to submitting your proposal, please be sure that you review and fully understand the Scope of Services.**

2. COMPENSATION

Subject to and in accordance with the final terms of the Contract, the Trust shall compensate the selected Consultant as follows:

2.1 In General. Under the Contract, the Trust will agree to pay to the Consultant an amount not to exceed the Maximum Contract Price to be negotiated between the Trust and the selected Consultant based upon its response to this RFP. The Maximum Contract Price shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract and all expenses of the Consultant in connection therewith, including costs of any Subcontractors. The Maximum Contract Price shall be payable as provided in Article II of the Contract and Appendix C of the Contract.

2.2 Sales and Use Tax. The Trust is exempt from state and local sales and use tax. SUCH TAX IS NOT TO BE INCLUDED IN PROPOSALS or in invoices submitted under the Contract. The Trust will provide the selected Consultant with an appropriate “sales and use tax exemption certificate”.

3. GENERAL CONDITIONS, TERMS, LIMITATIONS AND REQUIREMENTS

3.1 Proposal as Offer to Contract. Unless a specific exception is noted by the Trust, submission of a proposal in response to this RFP shall constitute an offer on the part of the successful respondent to execute the Contract substantially in the form annexed hereto as Exhibit 8. Any supporting documents or other items attached as exhibits to this RFP shall be incorporated into the Contract. The successful respondent shall cooperate in supplying any information as may be required by the Trust for background clearance, which is available on the PASSPort website at <https://www1.nyc.gov/site/mocs/systems/about-go-to-passport.page>, and any other government review and approval forms. Respondent’s proposal shall remain open for acceptance by the Trust and shall remain firm and binding upon the respondent for at least sixty (60) days after the date on which the proposals are received by the Trust, except that the Trust may by written notice to the respondent extend that date for an additional forty-five (45) days.

3.2 Freedom of Information Law. All proposals submitted to the Trust in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York (“FOIL”). A respondent may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm such entity’s competitive position. This characterization shall not be determinative, but will be considered by the Trust when evaluating

the applicability of any exemptions in response to a FOIL request.

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

3.4 Contractor Requirements and Procedures for Participation for Participation by New York State Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women.

3.4.1 New York State Law: Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, the Trust is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“M/WBEs”) and the employment of minority group members and women in the performance of the Trust contracts.

3.4.2 Business Participation Opportunities for MWBEs: For purposes of this solicitation, the Trust hereby establishes an overall goal of thirty percent (30%) for MWBE participation (based on the current availability of MBEs and WBEs). The Consultant must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that the Trust may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required M/WBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Trust will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

3.4.3 The respondent understands that only sums paid to M/WBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be twenty five percent (25%) of the total value of the contract.

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

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

that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Trust.

3.4.6 Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. A Subcontractor Utilization Plan with their proposal. If Respondent's proposed Subcontractor Utilization Plan provides for less than the stated goal in the RFP, Respondents must also submit an Application for Waiver of MWBE Participation Goals in support of the proposed goal. Any modifications or changes to an accepted Subcontractor Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Subcontractor Utilization Plan and submitted to the Trust for review and approval. The Trust will review the submitted Subcontractor Utilization Plan and advise the respondent of the Trust acceptance or issue a notice of deficiency within 30 days of receipt.
- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Trust at Pier 40, 353 West Street, 2nd Floor Administration, New York, NY 10014, 212-627-2020, Attn.: General Counsel, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Trust to be inadequate, the Trust shall notify the respondent and direct the respondent to submit, within five (5) business days of notification from the Trust, additional information to cure the noted deficiency. Failure to cure noted deficiency in a timely manner may be grounds for disqualification of the proposal.

3.4.7 The Trust may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an Subcontractor Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If the Trust determines that the respondent has failed to document good faith efforts.

3.4.8 The successful respondent will be required to attempt to utilize, in good faith, any M/WBE identified within its Subcontractor Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Trust, but must be made no later than prior to the submission of a request for final payment on the Contract.

3.4.9 The successful respondent will be required to submit a monthly Subcontractor Utilization Plan to the Trust.

3.4.10 Equal Employment Opportunity Requirements. By submission of a proposal in response to this solicitation, the respondent agrees with all of the terms and

conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women OR Authority equivalent to Appendix A. The respondent is required to ensure that it and any subcontractors awarded a subcontract undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside of New York State.

3.4.11 If awarded a Contract, respondent shall submit a Workforce Utilization Form EEO-101 and shall require each of its Subcontractors to submit a Workforce Utilization Form EEO-101, in such format as shall be required by the Trust on a monthly basis during the term of the Contract. Further, pursuant to Article 15 of the Executive Law (the “NYS Human Rights Law”), Title 8 of the New York City Administrative Code, and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of actual or perceived age, race, creed, color, national origin, gender identity or expression, sexual orientation, predisposing genetic characteristics; military status, marital status, partnership status, domestic violence victim status, or alienage or citizenship status, and shall also follow the requirements of the NYS Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

3.5 SDVOB Requirements. Contractor Requirements and Procedures for Participation of Service Disabled Veteran-Owned Business.

3.5.1 SDVOB Requirements. The Division of Service-Disabled Veterans' Business Development (“DSDVBD”) is housed within the New York State Office of General Services (“OGS”) and is tasked with promoting and encouraging the continuing economic development of Service-Disabled Veteran-Owned Businesses (“SDVOBs”). Through the DSDVBD, the State of New York aims to assist service-disabled veterans in playing a greater role in the economy of the state and to provide additional assistance and support to disabled veterans to better equip them to form and expand small businesses, thereby enabling them to realize the American dream they fought to protect. The Trust recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Trust contracts.

3.5.2 In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York

State, Respondents are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

3.5.3 New York State Law. New York State Executive Law Article 17-B governs requirements for the participation of SDVOBs in New York State contracting. The objective of Article 17-B is to expand opportunities for SDVOBs, primarily through increased participation in New York State contracting. The DSDVBD maintains a Directory of NYS Certified SDVOBs. The directory is updated regularly with the addition of any newly certified SDVOBs or necessary changes requested by the listed SDVOBs or DSDVBD staff. State personnel and other interested parties may contact the DSDVBD and request they be added to a distribution list to receive the directory and its regular updates via email. The Directory of NYS Certified SDVOBs is also posted on the OGS website.

3.5.4 Contract Goals. The Trust hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Respondent should reference the directory of New York State Certified SDVOBs found at: <http://ogs.ny.gov/Core/SDVOBA.asp>. Additionally, following Contract execution, the selected Consultant is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

3.5.5 SDVOB Utilization Plan.

3.5.5.1 In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on the Subcontractor Utilization Plan form attached hereto with their proposal. If Respondent's proposed Subcontractor Utilization Plan provides for less than the stated goal in the RFP, Respondents must also submit an Application for Waiver of SDVOB Goal in support of the proposed goal.

3.5.5.2 The Subcontractor Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the SDVOB to perform to meet the goals on the Contract an estimate of the percentage of Contract work the SDVOB will perform. By signing the Subcontractor Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Trust.

3.5.5.3 The Trust will review the submitted SDVOB Utilization Plan and advise the Respondent of the Trust acceptance or issue a notice of deficiency within twenty (20) days of receipt.

3.5.5.4 If a notice of deficiency is issued, selected Respondent agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to the Trust a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Trust to be inadequate, the Trust shall notify the Respondent and direct the Respondent to submit, within five (5) business days of notification by the Trust, additional information to cure the noted deficiency. Failure to cure the noted deficiency in a timely manner may be grounds for disqualification of the proposal.

3.5.5.5 The Trust may disqualify a Respondent's proposal as being non-responsive under the following circumstances:

- (i) If a Respondent fails to submit an SDVOB Utilization Plan on the Subcontractor Utilization Plan Form;
- (ii) If a Respondent fails to submit a written remedy to a notice of deficiency;
- (iii) If a Respondent fails to submit a request for waiver; or
- (iv) If the Trust determines that the Respondent has failed to document good faith efforts.

3.5.5.6 If awarded a Contract, the Consultant shall certify that it will follow the approved Subcontractor Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth in the Contract.

3.5.5.7 Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Trust shall be entitled to any remedy provided herein, including but not limited to, a finding of Consultant's non-responsibility.

3.5.6 Request for Waiver. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Recipient at the Trust for guidance.

3.5.6.1 In accordance with 9 NYCRR § 252.2(m), a Respondent that is able to document good faith efforts to meet the goal requirements may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its Subcontractor Utilization Plan. If a request for waiver is submitted with the Subcontractor Utilization Plan and is not accepted by the Trust at that time, the provisions of sections 3.5.5.3, 3.5.5.4 and 3.5.5.5 herein shall apply. If the documentation included with the Respondent's waiver request is complete, the Trust shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

3.5.6.2 The selected Respondent shall attempt to utilize, in good faith, the SDVOBs identified within its Subcontractor Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the

Trust, but must be made no later than prior to the submission of a request for final payment on the Contract.

3.5.6.3 If the Trust, upon review of the Subcontractor Utilization Plan and Monthly SDVOB Compliance Report determines that Consultant is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the Trust may issue a notice of deficiency to the Consultant. The Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

3.5.6.4 Waiver requests should be sent to the Trust.

3.5.7 Good Faith Efforts. In accordance with 9 NYCRR § 252.2(n), the Consultant must document its good faith efforts toward utilizing SDVOBs on the Contract and providing meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- 1) Copies of solicitations to SDVOBs and any responses thereto.
- 2) Explanation of the specific reasons each SDVOB that responded to Respondent/Consultants' solicitation was not selected.
- 3) Dates of any pre-bid, pre-award or other meetings attended by Respondent/Consultant, if any, scheduled by the Trust with certified SDVOBs whom the Trust determined were capable of fulfilling the SDVOB goals set in the Contract.
- 4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- 5) Other information deemed relevant to the waiver request.

3.5.8 Monthly SDVOB Contractor Compliance Report. In accordance with 9 NYCRR § 252.2(q), the Consultant shall be required to report Monthly SDVOB Contractor Compliance to the Trust during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals.

3.5.9 Breach of Contract and Damages. In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

3.6 Costs. The Trust shall not be liable for any cost incurred by the respondent in the preparation of its proposal or for any work or services performed by the respondent prior to the execution and delivery of the Contract. The Trust is not obligated to pay any costs, expenses, damages or losses incurred by any respondent at any time unless the Trust has expressly agreed to do so in writing.

3.7 The Trust Rights. This is a "Request for Proposals" and **not** a "Request for Bids".

The Trust shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual proposals. Notwithstanding anything to the contrary contained herein, the Trust reserves the right to take any of the following actions in connection with this RFP: amend, modify or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any respondents to this RFP; award a contract to as many or as few or none of the respondents as the Trust may select; accept or reject any or all proposals received in response to this RFP; extend the deadline for submission of proposals; negotiate or hold discussions with one or more of the respondents; permit the correction of deficient proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP with respect to one or more respondents; reject any or all proposals and cancel this RFP, in whole or in part, for any reason or no reason, in the Trust's sole discretion. The Trust may exercise any such rights at any time, without notice to any respondent or other parties and without liability to any respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a proposal or otherwise. All proposals become the property of the Trust.

3.8 Proposals From Principals. Only proposals from principals and authorized officers will be considered responsive.

3.9 Disclaimer. The Trust and its respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the Trust does not warrant or make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or any other facet of this RFP once it has been downloaded or printed from any server, and hereby disclaim any liability for any technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

3.10 Protest Procedures. The procedures set forth in this section shall apply to all protests (collectively, "Protests" and each individually, a "Protest") related to this procurement. The Trust will not entertain any Protest that is untimely or fails in any manner to comply fully with the procedures set forth in this section.

3.10.1 Types of Protests. There are three types of procurement Protests:

3.10.1.1 Pre-Proposal Protest: A protest submitted prior to the Submission Deadline to challenge the notice procedures followed by the Trust;

3.10.1.2 Pre-Award Protest: A protest submitted after the Submission Deadline but before Contract execution; and

3.10.1.3 Post-Award Protest: A protest submitted after the Contract has been executed, but only to the extent that the protest is based on newly discovered information that was not available prior to execution of a Contract.

3.10.2 Submission of Protests/Deadlines. All Protests must be in writing and must be submitted in accordance with the following timeline for the following types of Protests:

3.10.2.1 A Pre-Proposal Protest must be submitted at least two (2) business days prior to the Submission Deadline set forth in Part I, Section 2.2.6.3 of the RFP;

3.10.2.2 A Pre-award Protest must be submitted five (5) business days from the later of receipt of Notice of the Trust's contingent award of the Contract and the date proposals are made publicly available; and

3.10.2.3 A Post-award Protest must be submitted five (5) working days from the date the protesting party knew or should have known the newly discovered evidence that serves as the grounds of its Protest.

A Protest will be considered submitted when the Protest is received by the Trust.

3.10.3 Contents of Protest: The Protest should include, without limitation, the following information:

3.10.3.1 name, address and telephone number of the protester;

3.10.3.2 appropriate identification of the procurement, including the Contract Number;

3.10.3.3 statement of the basis of the Protest;

3.10.3.4 supporting exhibits and documentary evidence to substantiate the grounds for the Protest; and

3.10.3.5 form of relief requested.

3.10.4 Address for Submission of Protests:

Hudson River Park the Trust
Pier 40, 2nd Floor
353 West Street
New York, NY 10014
Attention: General Counsel

3.10.5 Method of Submission: Hand, Express Mail, or other nationally-known overnight courier

3.10.6 Envelope: The envelope enclosing the Protest must be clearly labeled "PROTEST" and must list the Contract Number to which the Protest relates.

- 3.10.7 Additional Information: The Trust may request that the protestor submit additional information that it may need in order to consider the Protest. Any additional information requested by the Trust must be submitted within the time period established by the Trust in order to expedite consideration of the Protest. Failure of the protestor to comply with a request for information within the specified time period will result in a resolution of the Protest without consideration of any information subsequently submitted by the protestor in an untimely manner.
- 3.10.8 Determinations. The Trust's General Counsel or his/her designee has the authority to make a final determination. The Trust will respond to each substantive issue in the Protest. The Trust may, in its sole discretion, meet with the protesting respondent and any affected party to discuss the Protest. The Trust shall have the right to take such appropriate action as may be in the best interests of the Trust and the City in light of the determination.

The Trust's determination shall be final. The respondent shall have been deemed to have received the Trust's determination notice no later than five (5) days from the date of mailing or upon delivery, if delivered by hand of the Trust's determination.

4. PASSPort (Formerly, VENDEX).

The Procurement and Sourcing Solutions Portal (PASSPort) is the City's new online portal which moves VENDEX online and makes it easier to submit and keep disclosure documents up-to-date. PASSPort will become the primary platform to do business with the City of New York. Consultants must register on PASSPort with the Mayor's Office of Contracts for itself and Subcontractors for all contracts totaling \$100,000 or more. All contractors wishing to do business with the City and Hudson River Park Trust must create an account by clicking <https://www1.nyc.gov/site/mocs/systems/about-go-to-passport.page>.

5. INTERVIEWS

Interviews may be held with any or all of the respondents after the receipt of proposals. Interviews with the Trust will be scheduled after its initial review of proposals.

6. SELECTION

The Trust will review each respondent's proposal in its totality. The selected respondent, if any, will be a respondent whose proposal is most advantageous to the Trust's goals. See Part I, Section 2.2.9 for an explanation of the criteria upon which the Trust will base a selection.