

BATTERY PARK CITY AUTHORITY
AND
BATTERY PARK CITY PARKS CONSERVANCY CORPORATION

REQUEST FOR PROPOSALS
FOR
GENERAL LITIGATION SERVICES

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I. SUMMARY

Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority (“BPCA”) and the Battery Park City Parks Conservancy Corporation (“BPCPC”, and with BPCA, the “Organization”) requests proposals (each individually, a “Proposal” or collectively, the “Proposals”) from qualified private law firms (each individually, a “Proposer” or collectively, the “Proposers”) to provide general litigation services to the Organization. General litigation services shall include, but not be limited to: (1) general premises liability matters, such as personal injury and property damage; (2) commercial transactions and contract claims; (3) employment litigation; (4) construction litigation matters; (5) real estate litigation matters and (6) other litigation matters that may arise from time to time.

Minority-Owned Business Enterprises (“MBE”) and Women-Owned Business Enterprises (“WBE”) are encouraged to submit Proposals.

This request for proposals, the attachments and any additional information submitted herewith, (collectively, the “RFP”) does not obligate the Organization to complete the selection and contract award process. The Organization reserves the right: 1) to accept or reject any and all Proposals, 2) to request additional information from any or all Proposers to assist the Organization in its evaluation process, 3) to amend or withdraw this RFP prior to the announcement of the selected firm; and 4) to award the proposed services, in whole or in part, to one or more firms. In case of an amendment to the RFP, all Proposers will be provided with a copy of any such amendment(s) and will be afforded the opportunity to revise their Proposals in response to the RFP amendment.

II. DESCRIPTION OF THE ORGANIZATION

BPCA is a public benefit corporation created in 1968 under the laws of the State of New York for the purpose of financing, developing, constructing, maintaining, and operating a planned community development of the Battery Park City site as a mixed commercial and residential community.

Under the Battery Park City Authority Act (the “Act”), BPCA has the following powers, among others: to borrow money and to issue negotiable bonds, notes or other obligations and to provide for the rights of the holders thereof; to acquire, lease, hold, mortgage and dispose of real property and personal property or any interest therein for its corporate purposes; to construct, improve, enlarge, operate and maintain Battery Park City; to make bylaws for the management and regulation of its affairs, and, subject to agreements with bondholders, for the regulation of Battery Park City; to make contracts and to execute all necessary or convenient instruments, including leases and subleases; to accept grants, loans and contributions from the United States, or the State of New York or the City of New York (the “City”), or any agency or instrumentality of any of them, or from any other source and to expend the proceeds for any corporate purpose; to fix, establish and collect rates, rentals, fees and other charges; and to do all things necessary or convenient to carry out the powers expressly granted by the Act. BPCA has no taxing power.

Since its inception, BPCA has caused the staged development of Battery Park City, in individual parcels, creating a richly diversified mixed use community providing residential and commercial space, with related amenities such as parks, plazas, recreational areas and a waterfront esplanade. Most individual parcels of land in Battery Park City were developed into residential and commercial buildings by tenants (“Ground Lease Tenants”) under long-term ground leases with BPCA. The Ground Lease Tenants are responsible for the maintenance, insurance and defense and indemnification of BPCA with regard to those leased parcels.

One of BPCA’s key responsibilities under the Act is to operate, maintain and repair the parks and opens spaces in and around Battery Park City’s residential and commercial areas. This function has been delegated by BPCA to BPCPC through a written Management Agreement. The BPCPC carries out its mission by maintaining 36 acres of parks, playgrounds and open spaces, including a mile-long waterfront esplanade. The BPCPC also develops programs and

manages public events for the Battery Park City community. BPCA owns and has built out a commercial condominium unit in a residential building in Battery Park City, which serves as the BPCPC headquarters.

To obtain a copy of the Organization's most recently completed audited financial statements, please visit BPCA's official website at www.batteryparkcity.org. The audited financial statements and related reports found on BPCA's website will provide you with an overview of the operations for which BPCA is responsible and the areas of expertise in which the selected Proposer must be proficient. For an overview of BPCPC's operations, please visit its website at www.bpcparks.org.

III. SERVICES REQUIRED

A. If selected, Proposer will be responsible for conducting all phases of litigation for cases assigned by the Organization, including fact and site investigations; preparation of pleadings, motions, briefs and other legal documents; pre-trial discovery; statutory and/or court-mandated hearings; depositions and trials. The Proposer must keep the Organization fully informed through each step of the litigation process. Representation of the Organization will typically involve appearances in Federal and New York State trial and appellate courts, before Federal and New York State administrative tribunals and in mediations or other dispute resolution processes.

Historically, the Organization has managed a litigation portfolio consisting of approximately 10-15 lawsuits per year.

B. If selected, Proposer will be required, when applicable, to coordinate its services with the Organization, its insurance carriers, and any claims managers and investigators, and provide status reports on all claims and complete any and all documentation, reports, etc. as may be required by the Organization's insurance carriers. In addition, Proposer will be required to provide to the Organization, the Organization's insurance carriers, and claims managers copies of all pleadings, documents, etc.

C. If selected, Proposer will be required, when applicable, to pursue the defense and indemnification of certain claims by Ground Lease Tenants and to coordinate its services with the applicable Ground Lease Tenant and any law firm(s) handling the matter.

D. All work to be performed by the selected Proposer shall be performed under the supervision of a partner of the law firm in charge of this engagement (the "Lead Partner"), who must ensure that the work completed for the Organization is performed competently and in a timely manner.

E. If selected, Proposer shall provide the Organization with case summaries at the commencement of any action, including cost-benefit analyses, and updates on all matters on a quarterly basis, or more frequently, upon request.

IV. KEY DATES, CONTRACT TERM AND MINIMUM QUALIFICATIONS

A. Key Dates

The following is a list of key dates, up to and including the date Proposals are due to be submitted, which is subject to change at the Organization's discretion:

- Request for Proposals issued: Thursday, June 14, 2012
- Deadline to submit questions to the Organization: Thursday, June 21, 2012 by 4:00 p.m. (by email only)
All questions regarding this RFP should be submitted in writing via email to the "Designated Contact": Lauren Bruggess, Administrative Assistant, Battery Park City Authority, at lauren.bruggess@batteryparkcity.org.
- Deadline for the Organization's response to substantive questions: Thursday, June 28, 2012 (by email)

- **DUE DATE FOR RESPONSES TO RFP: Thursday, July 12, 2012 by 3:00 p.m. (the “Due Date”)**
- Selection and notification of successful Proposer: To be determined.
- Contract start date: To be determined.

B. Anticipated Contract Term

It is anticipated that the term of the contract awarded pursuant to this RFP (the “Contract”) will be two (2) years, with an optional one (1) year renewal, at the option of the Organization. The Organization reserves the right to terminate the Contract at any time, with or without cause, upon thirty (30) days written notice. The Organization reserves the right to terminate the Contract at any time, without prior notice, if the partner identified in the Proposal as the Lead Partner for this engagement ceases to be employed by the selected Proposer.

C. Minimum Qualification Requirements

The following are the Minimum Qualification Requirements for this RFP. **Proposals that fail to comply with these requirements will be rejected.**

- 1) The law firm must have an office in New York State (a New York City office is preferred); and
- 2) The Lead Partner for this engagement and all persons providing legal services to the Organization must be licensed in the State of New York; and
- 3) The proposed team for this engagement must have experience in New York State Federal District Courts.

V. GENERAL REQUIREMENTS

A. Questions regarding MBE/WBE participation, joint ventures and sub-contracting goals

Please see **Exhibit A** (attached) for contractor requirements and procedures for business participation opportunities for New York State certified MBEs/WBEs and equal employment opportunities for minority group members and women.

For questions relating to MBE/WBE participation, joint ventures and sub-contracting goals ONLY, please contact “MBE/WBE Designated Contact” Mr. Anthony Peterson at 212.417.2337.

B. Restricted Period

Applicants are restricted from making contact with anyone other than the Designated Contact or MBE/WBE Designated Contact specified above during the period from the date of publication of the notice of this RFP in the New York State Contract Reporter through approval of the Contract by the Organization (the “Restricted Period”). Employees of the Organization are required to record certain contacts during the Restricted Period, including, but not limited to, any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the Organization’s conduct or decision regarding the governmental procurement, and to make a determination of responsibility based, in part, upon any such contact. Failure to abide by this process may result in a finding that the firm is a non-responsive Proposer.

C. Submission of Proposals

Proposals are due no later than 3:00 p.m. on July 12, 2012

Proposers must submit ten (10) paper copies of their Proposals and one (1) electronic CD-Rom copy in a sealed package clearly marked “**Proposal Enclosed - General Litigation Services**” to the Designated Contact **by messenger, overnight courier or certified mail** to the following address:

Lauren Brugess
Battery Park City Authority
One World Financial Center, 24th Floor
New York, NY 10281

The Organization is not responsible for any internal or external delivery delays which may cause any Proposal to arrive beyond the stated Due Date. To be considered, Proposals must arrive at the time and place specified herein and be time stamped by BPCA’s time stamp prior to the Due Date. Please leave ample time for building security, as late Proposals will not be accepted. Proposals submitted by fax or electronic transmission will NOT be accepted. A Proposer may, after submitting a Proposal, amend its Proposal by submitting a second, amended Proposal, clearly labeled “**Amended Proposal Enclosed - General Litigation Services,**” as long as the amended Proposal is submitted by the Due Date.

Public access to Proposals shall be governed by the relevant provisions of the Freedom of Information Law, Article 6 of the New York State Public Officers Law, and regulations adopted pursuant thereto.

D. Mandatory Forms

Proposers must complete and include all “Mandatory Forms,” which can be found at the following URL address: http://www.batteryparkcity.org/pdf_n/Mandatory_Forms_Packet.pdf, by the Due Date.

These Mandatory Forms include the following:

- 1) NYS Standard Vendor Responsibility Questionnaire – **Submit with the Cost Proposal (as described below), one (1) original unbound set of a completed NYS Standard Vendor Responsibility Questionnaire with original ink signatures. Do not include the Standard Vendor Responsibility Questionnaire in the bound copies of the Cost Proposal.** The NYS Standard Vendor Responsibility Questionnaire must be notarized and signed by the individual(s) authorized to bind the firm contractually. Indicate the title or position that the signer holds within the firm.
- 2) State Finance Law § 139 Form 1 – **one original unbound completed SFL 139 Form 1: Professional’s Certifications Pursuant to SFL § 139-j and § 139-k with original signature.** State Finance Law § 139 Forms 1 must be signed by the individual(s) authorized to bind the firm contractually.
- 3) W-9 form.
- 4) Statement of Non-Collusion.
- 5) Diversity Forms.

VI. PROPOSAL FORMAT AND CONTENTS

A. Proposal Format

The Proposal must be printed on 8½" x 11" paper. Pages should be numbered. The Proposal will be evaluated on the basis of its content, not length and should be limited to no more than ten (10) pages, exclusive of the Transmittal Letter and the Appendices listed below. The Organization reserves the right to disqualify Proposals that fail to comply with any of these instructions.

B. Proposal Content

A Proposal in response to this RFP must include the following sections in the order listed:

- 1) Transmittal Letter, as follows:

The Proposal must include a signed Transmittal Letter from a person within the firm who is authorized to bind the firm, preferably the Lead Partner. **Transmittal Letters must be signed. Proposals with unsigned Transmittal Letters will be rejected.**

The Transmittal Letter must include a representation by the Proposer that, except as disclosed in the Proposal, no officer or employee of the Proposer is directly or indirectly a party to or in any other manner interested financially or otherwise in this RFP.

- 2) Executive Summary.
- 3) Firm's discussion of its understanding of the Services Required (see Section III).
- 4) Firm's Responses to the RFP Questions and RFP Additional Information Request, set forth below.
- 5) Firm's Cost Proposal, as described below.

C. RFP Questions

- 1) Briefly describe your firm's background, size, and history as it may be relevant to the Services Required, with an emphasis on personal injury and tort defense litigation credentials. If your offices are located in more than one city, indicate which office will provide the services.
- 2) Describe the relevant special services your firm provides, particularly those that may not be offered by other law firms.
- 3) Describe your experience and methodology for coordinating with insurance carriers, claims managers, investigators and clients.
- 4) Please describe your experience handling tenders of indemnification to, among others, city and state agencies, commercial tenants, contractors, developers or others who may be responsible for maintenance activities, such as snow removal or sidewalk repairs.
- 5) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the near future? If so, please describe.
- 6) Describe the on-line services, publications, training/seminars and other resources maintained by your firm that would be available to the Organization.
- 7) How does your firm identify and manage conflicts of interest?
- 8) Has your firm or any of the firm's partners/employees been disciplined or censured by any regulatory body within the last 5 years? If so, please describe the relevant facts.
- 9) Within the last five years, has your firm, or a partner or employee in your firm, been involved in litigation or other legal proceedings relating to the provision of legal services? If so, please provide an explanation and the current status or disposition of the matter.
- 10) Are there any potential conflict of interest issues in representing the Organization?

- 11) List any professional or personal relationships your firm's attorneys may have with the Organization's Board and/or staff members of the Organization.
- 12) List all the attorneys you intend to assign to this engagement and the area(s) of specialization for each attorney. Describe the role of each attorney who will be assigned to this engagement.
- 13) Identify the Lead Partner who will be the primary contact and lead attorney in providing services to the Organization, and who will be listed as a "key person" in any contract with the Organization.
- 14) Describe your proposed team's experience with similar work for other public agencies and authorities, with a particular emphasis on New York State agencies and authorities.
- 15) Describe your firm's "backup plan" in the event one or more of the attorneys assigned to this engagement leave the firm.
- 16) What "management protocols" would you recommend to assist the Organization in the oversight and management of its litigation portfolio? What strategies do you employ to avoid litigation and to help your clients mitigate costs spent on litigation? Explain your experience in implementing risk assessment and risk management protocols.
- 17) Describe your experience working with commercial property owners.
- 18) What procedures would you employ to keep the Organization abreast of significant legal cases, decisions, legislation and governmental regulatory rulings that may affect the Organization's business activities or policies?
- 19) In the past five years, have any public sector clients terminated their working relationship with your firm? If so, please provide a brief statement of the reasons. Provide the name of the client and each such client's in-house counsel's name, address and telephone number.
- 20) Please provide any additional information which would serve to distinguish your law firm from other firms and that you believe may be relevant to this RFP and your capability to perform the services requested.

D. RFP Additional Information Request

1) Insurance:

- a. Do you impose any limitations on liability through your contracts?
- b. Describe the levels of coverage for legal malpractice insurance and any professional liability insurance your firm carries. List the insurance carrier(s).

2) Appendices:

- a. Include professional biographies for all attorneys listed in your proposal.
- b. Attach a sample contract or retainer agreement your firm uses for the provision of legal services to governmental clients.

3) References:

Please provide at least three client (3) references for whom your firm has performed similar work to that requested in this RFP. For each client, please provide the name, address and telephone number for the client's in-house legal counsel.

E. Cost Proposal

Each "Cost Proposal" must state an "hourly" fee structure for the services contemplated herein. Each Cost Proposal must detail the hourly rates to be billed for work performed by partners, senior associates, junior associates, law clerks, paralegals and others (e.g., investigators).

The submission of a “blended” rate as an alternative cost proposal or a flat fee arrangement, based on a projected 15 cases per year, is permissible.

In no event will the Organization pay a rate for any attorney, including a partner level attorney, or class of attorneys, exceeding \$400/hour.

VII. THE EVALUATION PROCESS

A. Objectives

The primary objective of the evaluation process is to select a firm:

- That demonstrates a thorough understanding of the scope of the engagement and the specific responsibilities which it entails;
- Possesses adequate resources to handle assigned responsibilities and to handle unforeseen circumstances that may arise;
- Assigns highly skilled, experienced, diligent, responsible and professional personnel to perform the required services;
- Maintains high ethical standards and has an unblemished reputation;
- Has no conflict of interest between its representation of the Organization and that of other clients.

The selection process will begin with the review and evaluation of each of the written Proposals. The purpose of this evaluation process is twofold: (1) to examine the responses for compliance with this RFP and (2) to identify the complying firms that have the highest probability of satisfactorily performing the scope of services at a reasonable cost to the Organization. The evaluation process will be conducted in a comprehensive and impartial manner. The evaluation process will be conducted by a committee of the Organization’s employees selected by BPCA (the “Committee”). **The Committee will evaluate the Proposals based upon the evaluation criteria for selection set forth below.**

The Organization reserves the right to reject and return unopened to the Proposer any Proposal received after the RFP Due Date. All timely submitted Proposals will be reviewed to determine if they contain all required submittals specified herein. Incomplete Proposals may be rejected.

B. Interviews

The Organization reserves the right to determine whether interviews will be necessary for any or all of the Proposers. The purpose of the interview is to further document a Proposer’s ability to provide the Services Required, and to impart to the Committee an understanding of how specific services will be furnished. The proposed Lead Partner, as well all other key personnel proposed to provide the services must be present and participate in the interview. The firm will be evaluated on the basis of whether the interview substantiates the characteristics and attributes claimed by the Proposer in its written response to this RFP and any other information requested by the Committee prior to the interview.

C. Evaluation Criteria for Selection

Selection will be based upon the following criteria:

- 1) Demonstrated experience in general litigation services, including, but not limited to: (a) general premises liability matters, such as personal injury and property damage; (b) commercial transactions and contract claims; (c) employment litigation; (d) construction litigation and (e) real estate litigation: **25%**

- 2) Experience and expertise of proposed team members, availability of partners and interview feedback (if applicable): **25%**
- 3) Overall firm depth and resources: **15%**
- 4) Demonstrated relevant experience with the Organization, municipalities or other similar governmental entities: **15%**
- 5) Fees: **10%**
- 6) Proposed MBE/WBE utilization plan (the “Utilization Plan”) and/or Firm MBE/WBE status: **10%**

D. Basis for Contract Award

The Contract will be awarded to the highest technically rated Proposer whose Proposal is determined to be responsive and in the best interests of the Organization, subject to a determination that the Cost Proposal is fair and reasonable.

VIII. NON-COLLUSION

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

EXHIBIT A

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

Pursuant to New York State Executive Law Article 15-A, BPCA recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified MBE/WBEs and the employment of minority group members and women in the performance of BPCA contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title “The State of Minority and Women-Owned Business Enterprises: Evidence from New York” (the “Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that BPCA establish goals for maximum feasible participation of New York State Certified MBEs/WBEs and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MBE/WBEs

For purposes of this solicitation, BPCA hereby establishes an overall goal of 20% for MBE/WBE participation, 10% for MBE participation and 10% for WBE participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the Contract must document good faith efforts to provide meaningful participation by MBE/WBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that BPCA may withhold payment pending receipt of the required MBE/WBE documentation. The directory of New York State Certified MBE/WBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how BPCA will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MBE/WBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and BPCA may withhold payment from the Contractor as liquidated damages.

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

By submitting a bid or Proposal, a Proposer agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Proposers are required to submit a Utilization Plan with their bid or Proposal. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan and submitted to BPCA.

B. BPCA will review the submitted Utilization Plan and advise the Proposer of BPCA's acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Proposer agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to BPCA, at the address specified in this RFP, or by telefax at 212-417-2279 a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by BPCA to be inadequate, BPCA shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MBE/WBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or Proposal.

D. BPCA may disqualify a Proposer as being non-responsive under the following circumstances:

- 1) If a Proposer fails to submit a Utilization Plan;
- 2) If a Proposer fails to submit a written remedy to a notice of deficiency;
- 3) If a Proposer fails to submit a request for waiver; or
- 4) If BPCA determines that the Proposer has failed to document good faith efforts.

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

Contractors are required to submit a Contractor's MBE/WBE Contractor Compliance & Payment Report to BPCA on a monthly basis over the term of the Contract documenting the progress made toward achievement of the MBE/WBE goals of the Contract.

Equal Employment Opportunity Requirements

The Contractor is required to ensure that it shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract or (ii) employment outside New York State.

Proposer further agrees, where applicable, to submit with the Proposal, a staffing plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Organization a workforce utilization report identifying the workforce actually utilized on the Contract, if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other New York State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

For questions on MBE/WBE participation, joint ventures and sub-contracting goals ONLY, please contact Mr. Anthony Peterson at 212.417.2337.