

FIRST AMENDED AND RESTATED
PROCUREMENT POLICY OF THE TRUST
FOR CULTURAL RESOURCES OF THE CITY OF NEW YORK

*As approved by the Board of Trustees of The Trust for Cultural Resources
of The City of New York at its meetings on March 25, 2021 and March 29, 2022*

Recitals

WHEREAS, The Trust for Cultural Resources of The City of New York (the “Trust”) is primarily a conduit issuer of bonds for the benefit of cultural institutions in The City of New York (the “City”);

WHEREAS, the Trust’s Enabling Legislation set forth in Section 21.07 of the Arts and Cultural Affairs Law of the State of New York provides that “[i]n addition to such powers as are conferred elsewhere in article twenty of this chapter and this article, the trust shall have the following powers which may be exercised, at the discretion of the board of trustees, solely and exclusively in furtherance of its corporate purposes with or without public auction or bidding”;

WHEREAS, the Trust has no employees;

WHEREAS, the Trust relies on the services of professionals and other consultants to advise the Board of Trustees of the Trust and to carry out the mission of the Trust;

WHEREAS, administrative and accounting services have been provided to the Trust since 1992 by the New York City Economic Development Corporation (“EDC”) pursuant to a contract between the Trust and EDC;

WHEREAS, the Trust’s policy since its inception has been that each Cultural Institution (as defined in Section A.1 hereof) for which the Trust issues bonds selects the underwriter, the bond trustee, counsel to the Cultural Institution and the financial advisor to the Cultural Institution, if any;

WHEREAS, all payments for Services (as defined in Section A.1 hereof) made from the proceeds of bonds issued by the Trust are subject to review by the Comptroller of New York State and the Comptroller of The City of New York pursuant to the Enabling Legislation;

WHEREAS, the Trust is a local authority pursuant to the Public Authorities Law;

WHEREAS, Section 2824(1)(e) of the Public Authorities Law requires that “[b]oard members of state and local authorities shall . . . (e) establish written policies and procedures on . . . the procurement of goods and services” and, accordingly, the Trust is required by applicable law to adopt this Procurement Policy (this “Policy”); and

WHEREAS, due to the nature of the Trust’s operations, the Trust does not have the need to procure goods.

Section A. General

1. **Definitions.** The following terms shall have the meanings set forth below:

“**Board**” means the Board of Trustees of the Trust.

“**City**” means The City of New York.

“**Cultural Institution(s)**” means the cultural institutions located in The City of New York for whose benefit the Trust has issued bonds or made other benefits available pursuant to the Enabling Legislation.

“**EDC**” means the New York City Economic Development Corporation.

“**Enabling Legislation**” means Article 20 of the Arts and Cultural Affairs Law of the State of New York (New York State Cultural Resources Act) and Article 21 of the Arts and Cultural Affairs Law of the State of New York (Trust for Cultural Resources of the City of New York).

“**Offerors**” has the meaning provided in Section A(6).

“**Procurement Officer(s)**” has the meaning provided in Section A(6).

“**Restricted Period**” means, with respect to any procurement for Services through a competitive sealed bid process conducted directly by the Trust, the period of time commencing when the Trust initially seeks proposals to provide such Services and ending with the final approval and authorization for the contract for such Services.

“**Selection Committee**” has the meaning provided in Section A(3).

“**Services**” means professional and consulting services.

“**Service Provider**” means any provider of Services to the Trust.

“**State**” means the State of New York.

“**Trust**” means The Trust for Cultural Resources of The City of New York.

2. **Applicability of this Policy.** This Policy shall apply to the procurement of contracts for all Services to be purchased by the Trust for its own use and account, expressly excluding underwriters of bonds issued by the Trust and the bond trustees for such bonds, which shall be selected by the Cultural Institution for whose benefit the bonds are issued. For the avoidance of doubt, this Policy shall not apply to Services procured by any Cultural Institution in connection with any transaction between the Trust and such Cultural Institution, including, without limitation, counsel and financial advisors (including advisors in connection with any interest rate protection agreement) retained by such Cultural Institution.

3. **Board of Trustees.**

a. As provided by Section 6.3 of the Bylaws of the Trust, no contract or other agreement shall be entered into by or on behalf of the Trust unless such contract or agreement

has been authorized by the Board.

b. The Board may (but shall not be obligated to) appoint at any time a Service Provider Selection Committee (the “Selection Committee”) to evaluate and recommend Service Providers to the Trust. If the Board appoints a Selection Committee, the Selection Committee shall be responsible for recommending Service Providers to the Board, except that proposals for audit services shall be evaluated and recommended to the Board by the Audit Committee. The recommendations of the Selection Committee shall be considered and acted upon by the Board.

4. **Selection Criteria.** All contracts for Services shall take into account such factors as the Selection Committee, in consultation with the Board, may determine, including, without limitation, that the Trust has no employees and that operating and administering the activities of the Trust without employees has proved to be efficient and cost-effective for the Cultural Institutions, which share the costs of operating and administering the activities of the Trust.

5. **Procurement through EDC.** The Trust may procure contracts for Services through EDC as contractor whereby EDC obtains the desired services from a third party as subcontractor, provided that EDC shall procure the subcontractor in question in accordance with EDC's then-current procurement policy and procedures.

6. **Direct Procurement by the Trust.** If the Trust elects to procure any contract for services through competitive sealed bids directly and not through EDC, the Board shall name one or more individuals (the “Procurement Officer(s)”) to act on behalf of the Trust for purposes of receiving questions from, and providing information to bidders, respondents or other offerors (or, if individuals are acting on behalf of entities that are bidders, respondents or other offerors, to such individuals) (collectively, the “Offerors”). During any Restricted Period, permitted contacts between the Trust and the Offerors shall be limited to those described in Permitted Contacts, Appendix I, attached hereto.

7. **Compliance with Applicable Laws.** All contracts entered into by the Trust shall contain all provisions required by applicable laws.

APPENDIX I

Permitted Contacts

During a Restricted Period the only contacts that an Offeror may have with the Trust in connection with the procurement to which the Restricted Period pertains are the following:

1. Offerors may submit a response to the Procurement Officer.
2. When the Trust's solicitation provides that all questions submitted by Offerors, and the answers provided by the Trust to such questions will be disseminated to all other Offerors, then, in such instance, Offerors may submit questions in respect of the solicitation to the Procurement Officer.
3. Offerors may participate in conferences with the Trust when the solicitation provides that conferences will occur as part of the procurement process.
4. Offerors may file written complaints with the Secretary of the Trust in respect of authorized, written contacts with the Procurement Officer to which the Procurement Officer did not respond in a timely fashion.
5. Offerors who have been conditionally designated as contractors may negotiate with the Trust in connection with the potential contract.
6. Offerors may request the Procurement Officer to review the award of the contract.
7. Offerors (including the apparent successful Offeror) may contact the Trust to protest, appeal or other wise cause the review of the Trust's procurement, and seek final administrative determination and subsequent judicial determination.
8. Offerors may file complaints alleging the improper conduct of procurement by the Trust with the State Attorney General, the State Inspector General, the City District Attorney, or a court of competent jurisdiction.
9. Offerors may file written protests, appeals or complaints to the State Comptroller's Office during the process of contract approval, where the State Comptroller's approval is required by law.
10. Offerors may file complaints of alleged improper conduct during the course of the Trust's procurement to the State Comptroller's Office.