

M E M O R A N D U M

Re: Town+Gown Academic Consortium Contract

Systemic Action Research Platform

Town+Gown is an open-source systemic action research platform linking practitioners and academics to increase applied research that can support change in practice and policy.¹ The City’s physical built environment serves as a setting and laboratory for research providing a foundation for practice and policy change in New York and elsewhere.² The built environment provides an effective lens through which to study and resolve complex systemic issues, engaging the many built environment-related disciplines at academic institutions.³

The City participates in the built environment simultaneously in several roles—owner, regulator, financier and economic development catalyst. It is thus well suited to initiate and sustain built environment research and development. New York City Department of Design and Construction (“DDC”), has incubated and hosted Town+Gown, on behalf of all City agencies, since 2009. Town+Gown provides resources to support a culture of research in practice by supporting an open source research methodology that brings both academic and practitioner-based knowledge back into the system to create baseline collective understanding that will advance changes in practice and policy.

Distinct from academic research centers or institutes, private think tanks or industry/practitioner membership associations, Town+Gown supports them as well as academic institutions in a form of cooperative inquiry involving both the practitioner and the academic as equal partners in knowledge creation.⁴ This pragmatic and integrated approach to

¹ Systemic action research is a form of cooperative inquiry involving both practitioner and academic as equal partners in knowledge creation. This pragmatic and integrated approach to producing applied research accepts multiple modes of inquiry and analysis to generate research results that will, in time, support changes in practices and policies.

² See <http://www.brookings.edu/about/programs/metro>

³ Management, Geography, Economics, Law, Technology and Design (engineering and architecture); see Paul Chynoweth, *The Built Environment Interdiscipline: A Theoretical Model for Decision Makers in Research and Teaching* (Proceeding of the CIB Working Commission Building Education and Research Conference 2006), <http://www.lawlectures.co.uk/bear2006/chynoweth.pdf>, pp.1-5.

⁴ The systemic action research methodology provides a “learning architecture” within which system stakeholders can bring about changes in practice and policy in a complex and dynamic social system. In a system such as the built environment, where complex issues are embedded into its fabric, it is necessary to conduct research explicitly within the context of that system. The action research methodology facilitates changes in practices and policies through “the use of small working groups around participants’ practice—what action learning practitioners call ‘action learning sets’—with repeated cycles of action-reflection.” Sonia Ospina, Waad El Hadidy and Amparo Hofmann-Pinilla, “Cooperative Inquiry for Learning and Connectedness, *Action Learning: Research and Practice*, July 2008, 5:2, pp. 131-147. See also Danny Burns, *Systemic Action Research: A Strategy for Whole System Change* (Bristol: 2007), Chapter 1.

producing applied research accepts multiple modes of inquiry and analysis to generate research results that will, in time, support changes in practices and policies. The platform can bridge divides among and within academics and practitioners to facilitate and support their efforts in a way that will be greater than the sum of the parts.

Town+Gown supports all stages of academic-practitioner collaborations within a broad, open and cyclical process. The Research Agenda is the primary mechanism for Town+Gown members to engage with the program and with each other on projects. Town+Gown also develops and sponsors a series of symposium events, using completed research projects as the platform for open-ended conversations among Town+Gown members aimed at action, which can take the form of changes in practice and policy or future research projects. At the end of each academic year, Town+Gown abstracts all completed research projects and summary proceedings from the preceding year's symposium events in its annual review, *Building Ideas*, which sets the stage for reflection among participants and future action based on research.

Need for Consortium Contract

Town+Gown chose its initial strategy to focus on existing action learning and research programs (also known as experiential or service learning programs) within the public administration, public policy and urban planning masters programs at City academic institutions, for two reasons. First, as a “systemic action research” program that incorporates the importance of practice as a source of knowledge, it was important for Town+Gown to make headway with experiential learning programs that place value on practice as a valid source of knowledge. There was the added benefit of not having to rely on using the City's procurement process during the early phase of Town+Gown's operation. Working with experiential learning programs in the early years of Town+Gown highlighted the limited ability of these types of arrangements to support sustained research with complex data sets. It became clear that, at some point in the repeated cycles of “action-reflection”, it would become necessary for Town+Gown's practitioner members to engage with academic institutions for the types of skills that reside in programs with professional researchers in order to complete many of the projects begun with experiential program students.

The inspiration for such engagement derived from an academic consortium contract that had facilitated built environment research activities during the period from the Dinkins Administration and until the end of the Giuliani Administration. Under that requirements contract for academic research services with the engineering and/or architectural departments of seven professional schools within the City,⁵ the schools stood ready to provide the City's

⁵ City University of New York, Columbia University, Cooper Union, Manhattan College, The New School for Social Research, Polytechnic University and Pratt Institute.

construction agencies with resources for scientific, engineering, design, planning and development services. Construction agencies would access the consortium contract for a particular project, which would become a “sub-agreement” supported by the agency’s own funds. This contract also provided for a governance structure involving the Mayor's Office of Construction and a board, consisting of representatives of the seven institutions,⁶ which met with each other and with the agencies on a regular basis.

Innovative Procurement

To recreate the elements of that contract under the City’s current procurement rules to support Town+Gown, it was necessary to proceed using the innovative procurement method.⁷ Like the prior contract, the structure of the Town+Gown academic consortium contract will make it as easy as possible for public agencies to access academic resources quickly, when the need for research coincides with the availability of expense funds. The existence of the Town+Gown program created a community of participating schools with ongoing collaborative relationships with the City to generate a common knowledge base. These ongoing relationships within the program provided the foundation for an innovative procurement to authorize Town+Gown to (a) to draft the master consortium contract terms and provisions, especially those related to academic research operations and governance features, in collaboration with the then current group of schools,⁸ (b) eliminate the requirement for competition among interested educational institutions from participating in the first level of the vendor pool and move the required competitive process of vendor selection to the task order stage, and (c) provide a year-long solicitation period after initial registration to bring on all interested academic institutions into the vendor pool to create the conditions for robust competition on individual task orders.

Structural Elements of the Contract

NOTE: The following summary of provisions of the Contract have been made available for the sake of convenience, and all parties should refer to the actual provisions when acting under the Contract. To the extent there is any conflict between a summary description of a provision in this document and the Contract provision itself, the Contract provision will be legally effective.

Contract Type. The Consortium Contract (the “Contract”) is a multi-agency, multi-vendor master requirements contract for academic research services in conjunction with Town+Gown. In addition to being available for use by any City agency and certain corporations associated

⁶ A representative from CUNY served as the Chair of the Board.

⁷ The innovative procurement request under Section 3-12 of the Procurement Policy Board (“PPB”) Rules was approved by the Mayor’s Office of Contract Services on December 2, 2010.

⁸ New York University, Manhattan College and City University of New York were active in providing alternative language and helpful commentary during the contract drafting period.

with the City, the Contract is also available for use by state agencies, public entities created under State law and certain corporations associated with them.⁹ The Contract has an initial term of 10 years with one option to renew for a five-year term.¹⁰

Process to Become a Consultant (First Level). Academic institutions can become parties to the Contract, which means they become a Consultant member of the vendor pool at the master contract level, by complying with the minimal requirements of joining Town+Gown and filing the City’s basic vendor integrity and related forms as described in greater detail in the *Interest in Participation for Town+Gown and the Academic Consortium Contract* form available on the Town+Gown website: <http://www.nyc.gov/html/ddc/html/design/tg.shtml> All Contracts must be registered by no later than June 2, 2015.¹¹

Procurement Process (Second Level). The competitive procurement process under the Contract, briefly summarized below, begins with any combination of City agencies, public entities and certain corporations, using their own funds (collectively the “requesting entity”),¹² submitting a Mini RFP document to DDC, as manager of Town+Gown and as administrator of the Contract, for DDC to transmit to all Consultants.¹³ It is at the task order level of the Contract where competition among vendors, a hallmark of public procurement, takes place. Consultants submit their Proposals in Response, in the form of Appendix C to the Contract, to the requesting entity, which evaluates the responses and awards the Task Order.¹⁴ At the point of Task Order award, the Contract uses a different set of defined terms for the parties—the Consultant becomes an Academic Partner and the requesting entity a Practitioner Partner. The change in terms is intended to signify the value that action research places on equality of practitioners and academics in producing knowledge. The Task Order, which uses the successful Proposal in Response as the template for the agreement between/among the parties, becomes the agreement, along with the master Contract, for the requesting entity-funded project.¹⁵

⁹ See definition of Public Entity in Article 1 of the Contract.

¹⁰ See Section 2.6 of the Contract.

¹¹ See Section 2.5 of the Contract; provided, however, until and unless the PPB rules are amended to make the innovative procurement method permanent pursuant to PPB Rules § 3-12(f), academic institutions can become Consultants during the one-year period immediately following initial registration with the Comptroller. While each Consultant will execute a copy of the Contract, which will be separately registered with Comptroller, all individually registered Contracts will be entered into the Financial Management System (FMS) under code MMA1 so that the individually registered Contracts will be treated as a single multi-vendor requirements contract.

¹² The Contract also provides for the use of third-party funding for research projects; see Section 2.7 of the Contract.

¹³ See Sections 2.1, 2.3 and 3.2 of the Contract.

¹⁴ See Sections 2.2, 3.3 and 3.4 of the Contract.

¹⁵ Appendix C serves as the template for both the Proposal in Response and the Task Order. Notes in Appendix C are intended to provide guidance to users of the template document during different phases of the procurement process.

Use of Contract by City Agency Practitioners. Any City agency, by itself, with one or more other City agencies and/or with one or more non-City agencies, can utilize the Contract for built environment research in the broad context of Town+Gown, so long as they have funding to support a Task Order (Sections 2.1 and 2.7).

NOTE: Items City agencies must remember to do at the Task Order level.

- *Each agency awarding a Task Order will be responsible for registering the Task Order with the Comptroller under FMS code CTA1.*
- *Consistent with Section 3.2 of the contract, DDC will direct any City agency entering into and registering a Task Order to include language with respect to a “fair and reasonable determination” in accordance with the National Science Foundation Cost Guidelines. Based on the contract protocols, Mini RFPs (Section 3.2), Proposals in Response (Section 3.3) and Task Orders (Sections 3.4) are subject to the requirements of the PPB Rules. Section 3.3 contains a list of cost elements, with related policies and procedures, adapted from the National Science Foundation’s grant requirements. Section 3-03(g) of the PPB covers the essence of the National Science Foundation’s fair and reasonable standard, requiring that the awarded Task Order represent the best value to the City by optimizing quality, cost and efficiency and be determined to be the most advantageous to the City, taking into consideration price and other factors/criteria set forth in the Mini RFP.*
- *Section 4.1 of Appendix C, the form of the Task Order, refers to the requirement for an insurance certificate in Section 7.08, Appendix A, which provides: “For each policy required under the Consortium Contract, . . . the Consultant shall file a certificate of insurance with the Department within ten (10) Days of award of a Task Order to it under the Consortium Contract.”*
- *The requirement for a Doing Business Data Form (DoingBusiness@cityhall.nyc.gov) is triggered by a contract of more than \$5,000; thus a Consultant will not have to comply with this requirement until it is awarded a Task Order in the amount of more than \$5,000.*

Use of Contract by Non-City Agency Practitioners. Any non-city agency member of Town that complies with the definition of a Public Entity (see definition in Article 1) can by itself, with one or more City agencies and/or with one or more Public Entities utilize the Contract for built environment research within the broad context of Town+Gown, so long as they have funding to support an eventual Task Order and comply with all applicable state procurement- and budget-related laws (Sections 2.1, 2.7 and 2.8).¹⁶ Moreover, to the extent that applicable laws for

¹⁶ Section 163(10)(e) of the New York State Law: "The commissioner may authorize purchases required by state agencies or other authorized purchasers by letting a contract pursuant to a written agreement, or by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political

Public Entities conflict with provisions of Appendix A, applicable laws would prevail with respect to the Public Entities.¹⁷

DDC's Roles. DDC manages Town+Gown on behalf of all its participating members and will work with the Gown Advisory Council (Section 2.4) in that capacity. DDC may also use the Contract as a Requesting City Agency, as provided in Sections 2.3.

How the Appendix C Template Works. Appendix C is the template for both the Consultant's Proposal in Response, subject to the requirements in the Contract (such as Section 3.3) and the Task Order, subject to the requirements of the Contract (such as Section 3.4). Appendix C contains drafting guides to help the Consultant modify the template for the Proposal in Response and to help the Practitioner Partner and Academic Partner revise the awarded Proposal in Response to become the related Task Order. One animating feature of the Contract, as a master requirements contract, is to make the process of procurement as quick as possible in order to encourage applied research. Thus, the Contract intends to leave only few aspects of the awarded Proposal in Response, such as the nature of the work, the people who will do the work, with related materials, and the costs of both people and materials, subject to further negotiation between the apparent Consultant awardee and the Practitioner Partner.

Contract Features reflecting the Academic Setting

Gown Advisory Council. Long-term contracts, in the context of ongoing relationships in which mutual trust and respect are essential for solving problems, cannot predict the future and anticipate all problems. Amendment of the Contract remains a contractually designated method to resolve issues that arise during its operation.¹⁸ The Gown Advisory Council provides an alternative or supplemental method to resolve some of these issues within the Contract and within the context of Town+Gown, the purpose for which the Contract was created. The pool of Consultants reflects significant diversity of organizational structure among institutions of higher education, with small colleges and large universities. And, among the large universities, experience to date suggests another level of operational diversity—there are those that operate in a more centralized manner and those that do not. The creation of the Gown

subdivision or instrumentality of any state or states. A state agency purchaser shall document in the procurement record its rationale for the use of a contract let by any department, agency or instrumentality of the United States government or any department, agency, office, political subdivision or instrumentality of any other state or states. Such rationale shall include, but need not be limited to, a determination of need, a consideration of the procurement method by which the contract was awarded, an analysis of alternative procurement sources including an explanation why a competitive procurement or the use of a centralized contract let by the commissioner is not in the best interest of the state, and the reasonableness of cost."

¹⁷ See Section 1.01 of Appendix A.

¹⁸ See Sections 2.4 and 5.4 and the definition of "Consultants" in Article 1.

Advisory Council is intended to provide a governance structure among the Gown member Consultants in order to support the Town+Gown program as the program evolves as well as provide a mechanism in the Contract to resolve operational issues that arise over time.¹⁹

- For example, even though Consultants agree in Section 2.2 to receive and distribute Mini RFPs within the institution to achieve the widest practicable exposure, it is likely that as the organizational structure the Consultant institutions and Town+Gown evolve over time, the best methods to disseminate a Mini RFP within each Consultant institution will change over the term of the Contract. Thus, one of the enumerated items that the Gown Advisory Council in Section 2.4 will focus on is developing a process aimed at refreshing the institutional memory at Consultant institutions over the Contract term to assure that Mini RFPs get the widest possible exposure.
- Another example of the purpose of the Gown Advisory Board relates to the Consultants' obligation to respond to every Mini RFP. The City's procurement rules require this language as well as an ability to declare a Consultant in default if it does not respond to every Mini RFP. Even with the safety valve of being able to submit a "no bid" response, diversity in size and organizational structure among the Consultant institutions requires a nuanced approach to handle the reality that Consultants may not submit "no bid" responses and simply not respond due to a multitude of factors that should be handled through the mechanism of the Gown Advisory Council. To the extent the underlying reason for a high percentage of "no bid" responses and failure to respond at certain Consultant institutions has roots in the Town+Gown program itself, the Gown Advisory Council, made up of representatives from each Consultant institution, is responsible for focusing on aspects of the program with DDC, as administrator for both program and Contract.

As a related matter, the Contract provision requiring each Consultant to "respond to every RFP" is not intended to limit a Consultant institution to making one Proposal in Response. In view of the organizational diversity among Consultant institutions, it is possible that a decentralized institution may send more than one Proposal in Response from component schools, centers and departments. The objective of the Contract's structure is to provide Requesting Entities with the highest level of competition in the form of the greatest number of Proposals in Response reflecting a diversity of approaches to a problem. The Requesting Entity will evaluate each Proposal in Response in accordance with the process set for the in the Mini RFP and required by the PPB Rules.

¹⁹ See Section 2.4 of the Contract.

Other Provisions that Reflect Academic Setting and/or Town+Gown Systemic Action Principles.

The City's standard Appendix A for service contract terms and provisions has been significantly amended for the Contract in ways that reflect the academic setting and practices and/or the unique nature of the Town+Gown program. Within some of those provisions, there is flexibility for parties to negotiate, pursuant to the terms of those provisions, something different.

- For example, some provisions of Section 3.3, which outlines elements of the Consultant's Proposal in Response, such as the cost elements and related policies and procedures, are expressly adapted from grant requirements established by the National Science Foundation (NSF), in order to express the City's standard "time and materials" provisions in a way that reflects current generally accepted academic practice. Some provisions reflect standard City practice, but contain an option for the requesting entity to deviate from these requirements in their Mini-RFP (see Sections 3.3(e)(1), (6)) and for the proposing Consultant to request an alternative to them (see Sections 3.3(e)(2), (4) and (10)). The only item for which there can be no flexibility is long-distance travel (see Section 3.3(e)(7)), which is constrained by the City's audit rules.²⁰
- As noted in Section 3.2(f), there are several provisions in Appendix A (Sections 5.05 (Removal of Records), 5.08 (Confidentiality), 6.01 (Copyrights) and 6.02(Patents) that have been amended to reflect both standard academic practice with federal contracting agencies as well as Town+Gown's action research principle that both practitioner and academic are equal partners in knowledge creation. Sections 5.05, 5.08 and 6.01 reverse the pattern of rights on standard City contracts, so that the standard academic practice is the default provision with the option for requesting entities to revert to standard City provisions if they follow the process to elect the optional provision. Section 6.02 contains provisions that more closely adhere to standard academic practice but differs from that practice to reflect the equal partnership between academics and practitioners in knowledge creation under Town+Gown.
- The Contract is not intended to be used as a vehicle for subcontracting, but to the extent a Consultant proposes the use of subcontractors, the Contract has been revised to make it as clear as possible how that process works for the purpose of the Proposal in Response as well as drafting and managing the subcontracts themselves in the context of City rules (Section 3.3(e)(8)).

²⁰ See Comptroller's Directive No. 6.

- Article 7 of Appendix A relates to insurance requirements and has been revised to reflect the academic setting.
- Article 10 of Appendix A provides for handling reductions in various funding streams in a way that permits a negotiation between the parties as an alternative to the City's standard right to unilateral action (Section 10.01), and provides, to both parties, the right to terminate the Contract in the best interest of such party, a right most City contracts provide for the City agency alone (Section 10.02).