



PROCUREMENT GUIDELINES 2026

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1. Definitions

- “Amendment” shall mean any material change to a duly executed Procurement Contract, including construction change orders, and, for the avoidance of doubt, work orders, which are construction change orders that do not impact the value of the underlying contract.
- “Authority” shall mean the Hugh L. Carey Battery Park City Authority.
- “Bid” shall mean an offer submitted by a prospective vendor in response to an Invitation to Bid or similar solicitation issued by the Authority, in which award is primarily determined by low price and becomes a contract by acceptance from the Authority.
- “Bid Log” shall mean a log maintained by the Chief Contracting Officer (“CCO”) documenting when physical or electronic Bids are received, secured, and distributed.
- “Bid Opening” shall mean the opening of sealed or electronic Bids, in the presence of one or more witnesses.
- “Bidder” shall mean any individual, business, Vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a Bid in response to a Solicitation.
- “Board” shall mean the Authority’s Board as described in Public Authorities Law, Chapter 43-A, Article 8, §1973.
- “Centralized Contract” shall mean Procurement Contracts let by other public entities pursuant to a competitive process, including but not limited to, those contracts of the State of New York (e.g., New York State Office of General Services (“OGS”), the United States General Services Administration (“GSA”).
- “Commodity” shall mean a material good, supply, product, construction item or standard article of commerce that is the subject of any purchase or exchange. For the avoidance of doubt, any Commodity that also includes, at no specifically mentioned additional charge, a warranty and technical support for using the Commodity as is shall be considered a Commodity.
- “Competitive Procurement Method” shall mean a formal solicitation detailing the needs and requirements of the Authority with the intent of receiving Bids or Proposals from interested Respondents within a prescribed time period. Types of Competitive Procurement Methods include, but may not be limited to, requests for proposals (“RFP”) and invitations for Bids (“IFB”).
- “Contacts” shall mean 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 governmental entity's conduct or decision regarding the governmental procurement.

- “Contract Term” shall mean the period of time given for performance under a Procurement Contract, as may be amended from time to time with the approval of the Authority.
- “Contractor” shall mean a person or organization that enters into a Procurement Contract with the Authority.
- “Cost Proposal” shall mean the part of any Bid or Proposal that sets forth the price for which the Respondent is offering to provide the Authority with the Services/Commodities described in a Solicitation.
- “Department Head” shall mean the President, General Counsel, Chief Financial Officer, Chief Operating Officer, Senior Vice President of Design and Construction, Chief Human Resources Officer, Vice President of Parks Operations, Vice President of Administration, Vice President of Communications and Public Affairs, Vice President of Parks Programming Operations, Assistant Vice President of Planning and Design, Assistant Vice President of Construction and such other individuals as designated by the President.
- “Designated Contact” shall mean the person or persons designated to receive Bids or Proposals, and, if necessary, to communicate with Respondents during the Restricted Period.
- “Discretionary Procurement” shall mean a purchase, to the extent permitted by law, either i) in an amount not to exceed \$50,000, or ii) awarded to New York State Small Business Concerns or for recycled or remanufactured Commodities or technology, in an amount not exceeding \$500,000, or awarded to certified MWBEs or SDVOBs, in an amount not exceeding \$1,500,000, provided however, that discretionary procurements for Construction Services shall not exceed \$500,000 regardless of vendor certification status.
- “Diversity Practices” shall mean a potential vendor’s past, present, and prospective practices with respect to 1) utilizing minority or women owned business enterprises and service-disabled veteran owned business certified by State agencies and other public or private entities, 2) entering into joint ventures and other arrangements with certified minority and women owned business enterprises, and 3) any other information requested by the Authority as part of a Procurement, supported by affidavit, that demonstrates the potential vendor’s commitment to a policy of diversity practices related to minority-or women owned business enterprises and service-disabled veteran owned business.
- “Emergency Circumstances” exist when an urgent and unexpected condition arises that threatens to significantly disrupt the Authority’s operations, disrupt or delay a project, or create or perpetuate an unsafe condition or environment. Poor or late planning does not constitute an Emergency Circumstance.

- “Final Award” shall mean the full execution of a Procurement Contract with a selected Vendor.
- “Foreign Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods which are sought by the corporation and which are substantially produced outside New York State, or services, other than construction services, sought by the corporation which are substantially performed outside New York State. For purposes of construction services, Foreign Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
- “Form, Function and Utility” shall mean the minimum essential requirements that will meet the Authority’s needs. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.
- “Guidelines” shall mean the Authority’s Procurement guidelines as delineated herein.
- “Invitation for Bid” (“IFB”) shall mean a competitive Solicitation seeking Bids for a specified Commodity or Service, pursuant to which award is made to the responsible Bidder(s) submitting the lowest price.
- “Minority and/or Women Owned Business Enterprise” shall mean any business enterprise, including a sole proprietorship, partnership or corporation that has been certified as a Minority and/or Women Owned Business Enterprise (“MWBE”) by the Minority and Women Owned Business Division of the New York State Department of Economic Development/Empire State Development (the “Division”) pursuant to §314 of New York State Executive Law Article 15-A (“Article 15A”) and related regulations.
- “New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods that are sought by the Authority and that are substantially manufactured, produced or assembled in New York State, or Services that are sought by the Authority and that are substantially performed within New York State.
- “Original Value” shall mean the value of a Procurement Contract at the time of its execution, exclusive of any subsequent Amendment(s).
- “President” shall mean the President and Chief Executive Officer of the Authority.
- “Procurement” shall mean the purchase or acquisition of Commodities or Services that, actually or by estimation, total \$5,000 or more. Any purchase under \$5,000 shall constitute a Procurement, however, where the Authority has purchased or intends to purchase substantially similar Commodities or Services from the same Vendor within the same fiscal year and the aggregate value of such purchases exceeds \$5,000. Procurements shall not include: payments required by law; Revenue Contracts; compliance obligations (e.g. services

provided by utility companies and their subcontractors); insurance or utility payments; payments required by existing Contracts or other agreements (e.g. payment to City, State, or Federal governmental entities); payments to credit rating agencies; memberships in industry groups, professional societies and similar cooperative associations; any cooperative projects or Procurement activities conducted or sponsored by such organizations in which the Authority participates; Sponsorships of Eligible Organizations (governed by standalone policy); tuition, fees for employees' attendance at conferences, seminars, and other comparable activities; employee transportation or other travel related expenses; rent and leases for facilities, equipment or other real property.

- “Procurement Contract” shall mean any written agreement for the acquisition of Commodities or Services of any kind, including for construction services (each, a Construction Contract”) in the actual or estimated amount of five thousand dollars (\$5,000) or more.
- “Proposal” shall mean an offer to provide goods or services in response to an RFP (as defined below) issued by the Authority where an award is made based on the best overall value to the Authority.
- “Proposer” shall mean any individual, business, Vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a Proposal in response to an RFP issued by the Authority.
- “Purchase Order” shall mean an agreement for the purchase of a Commodity or Service, as deemed appropriate by the Authority.
- “Reasonable” price means a fair market price based on normal competitive conditions and not necessarily the lowest possible price. Reasonableness of price can be documented in several different ways, including but not limited to: (i) Obtaining informal quotes (e.g., telephone or written), from at least three vendors if possible; (ii) Comparing costs of the same goods or services provided to other governmental entities; or (iii) Making historical cost or price comparisons.
- “Respondent” shall mean a prospective vendor, inclusive of a Bidder or Proposer, that submits a response to a Solicitation.
- “Restricted Period” shall mean the period from the date of the earliest notice of intent to solicit Bids or Proposals through the date of the Final Award, and, if applicable, approval of the contract by the Office of the State Comptroller.
- “Revenue Contract” shall mean a binding agreement between a governmental entity and another party that defines the terms under which revenue will be received by the governmental entity.

- “Requests for Expression of Interest” or “RFEI” shall mean requests generally submitted to the contracting community in order to gauge the interest and capabilities of prospective Vendors for a particular project in order to help inform the development of an RFP or IFB.
- “Request for Information” or “RFI” shall mean a request released by the Authority in order to gather information about types of Commodities or Services that may be available to address a particular need and to assist the Authority in drafting specifications to provide the best solution to meet that need.
- “Request for Proposal” or “RFP” shall mean a Competitive Procurement Method by which the Authority solicits and evaluates proposals against stated selection criteria based on characteristic such as quality of proposal, cost and delivery schedule, where a Final Award is determined based on the determination that a proposal provides the best overall value to the Authority.
- “Services” shall mean duty or labor to be rendered by a person or entity.
- “Service-disabled Veteran Owned Business Enterprise” or “SDVOB” shall mean a business enterprise, including a sole proprietorship, limited liability company or corporation that has been certified as a Service Disabled Veteran Owned Business by the Division of Service-Disabled Veterans’ Business Development at OGS pursuant to Article 3 of the New York Veterans’ Services Law and related regulations.
- “Single Source” shall mean the required goods or services are available from two or more vendors, but a compelling reason exists to make the award to particular vendor. Some reasons include, but are not limited to: (i) one particular Vendor has unique knowledge or expertise with respect to the required service, good or material rendering the use of competitive procedures impractical; (ii) there is a continuing need for existing Services to provide continuity to the orderly development and fiscal management of a project; or (iii) other material or substantial reasons exist for awarding the contract on other than a competitive basis. For the avoidance of doubt, Vendors procured for live musical or artistic performances and trainings shall be considered Single Source. Any justification of a Single Source Procurement must include information about the alternatives considered and justification that price is reasonable. In general, BPCA’s policy is to minimize the use of Single Source Procurements and to maximize the use of Competitive Procurement Methods.
- “Sole Source” shall mean only one Vendor is capable of supplying the required Commodities or Services. Three examples of Sole Source procurements are: (i) proprietary software compatible with BPCA operating systems that no one else offers; (ii) a printer’s warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty; (iii) a Vendor has developed a proprietary system for providing a service that is unavailable from anyone else.
- “Small Business Concern” shall mean a business enterprise which is resident in the state of New York, independently owned and operated, not dominant in its field and employs one hundred people or fewer.

- “Solicitation” shall mean an oral or written invitation, issued by the Authority, for vendors to submit Bids or Proposals to provide the Commodities or Services described in such invitation.
- “Subject Matter Expert” shall mean an individual who possesses a high level of expertise in the area that is subject to a particular Procurement, including but not limited to a software engineer, a helpdesk support operative, an accounts manager, a roads engineer, a scientific researcher.
- “Vendor” shall mean a person or organization that enters into a Procurement Contract with the Authority.

2. General Application

2.1 Introduction and Purpose

The purpose of these Guidelines is to facilitate the procurement needs of Battery Park City Authority while protecting the interest of the State and City of New York and their taxpayers. Procurement Contracts should be used to procure Commodities and Services needed to proceed with Authority projects and to support the administrative needs of the Authority. The Guidelines are intended to advance the mission of the Authority by using the best business practices and best value when procuring goods and services. The Authority shall use its best efforts to secure Bids or Proposals from Vendors by using a Competitive Procurement Method, except as otherwise provided in these Guidelines.

The applicable provisions of the Economic Development Law, Executive Law, Public Authorities Law, and State Finance Law were considered in developing these Guidelines. Any deviation from, or waiver of the requirements of, these Guidelines must be approved in advance and in writing by the President.

2.2 Application

These Guidelines apply to all Procurements.

2.3 Administration of the Guidelines

The Chief Operating Officer (COO), in consultation with the General Counsel, is responsible for ensuring that these Guidelines are followed by the Authority. The Authority must prepare and the Board must approve the Guidelines annually. Any interim modifications to the Guidelines must be approved by the COO, the General Counsel, and the President. The COO is responsible for developing and maintaining standard templates to be used in the Procurement process, as well as the records of all completed Procurements and Procurements in process, including but not limited to:

- Checklist of required actions and components to ensure each Procurement complies with these Guidelines;
- Respondent responsibility checklist;
- Requests for Proposals or other form(s) of Solicitation;
- Technical evaluation instruments, including the rating score sheet; and
- Approval Form in support of Procurements Valued Less than \$50,000.

2.4 Procurement Sources

When initiating a Procurement, the Authority must first evaluate each of the potential sources below as an option, where appropriate, in order of preference before proceeding to Discretionary or Competitive Procurements as set forth in Sections 4.2 and 4.3 of these Guidelines:

- Preferred source offerings, as set forth in Section 2.4.1 of these Guidelines;
- Centralized Contracts from OGS or GSA for Services, technology and commodities as set forth in Section 2.4.2 of these Guidelines;
- Established New York State Agency Contracts as set forth in Section 2.4.3 of these guidelines.

2.4.1 Preferred Source Offerings

The Authority must purchase Commodities from preferred sources in the following order, if available:

- First: The Department of Correctional Services' Correctional Industries Program; and
- Second: From the approved, charitable, non-profit making agencies for the blind.

With respect to Services, if more than one preferred source meets the Authority's Form, Function and Utility requirements, equal priority shall be accorded to the Services rendered and offered for sale among the approved charitable, non-profit making agencies for the blind, other severely disabled persons, qualified special employment programs for mentally ill persons, and qualified veterans workshops. If more than one preferred source meets the Authority's requirements, cost shall be the determining factor.

Even if using a preferred source, an attempt to obtain competing quotes must be made and documented in writing, and if applicable, the reason for selecting a preferred source that is not the lowest Respondent should be documented.

2.4.2 Centralized Contracts

The Authority may utilize Centralized Contracts such as established OGS or GSA contracts for the purchase of Commodities, Services or technology so long as such Centralized Contract meets the Form, Function and Utility for that Commodity, Service or technology required by the Authority. The Authority may utilize Centralized Contracts by following the processes set forth in that contract or in the guidelines specific to that contract located on the OGS website. The terms and conditions of a Centralized Contract may not be amended, however the Authority may agree to supplemental terms with the Vendor that are more favorable to the Authority, including but not necessarily limited to lower pricing. In no situation may the Authority agree to higher pricing than that contained in the Centralized Contract.

2.4.3 Established New York State Agency Contracts

Commodities or Services that are available through an already established, competitively procured New York State Agency (or multi-Agency) contracts may be obtained by the Authority through the use of a purchase order or purchase authorization in accordance with the Guidelines and applicable law.

2.5 Minority and Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Business Enterprises

In all Procurements, and in order to promote and assist participation by New York State Certified Minority and Women- Owned Business Enterprises (MWBE) and Service-Disabled Veteran-Owned Businesses (SDVOB), the Authority shall follow the relevant provisions of the New York State Executive Law. Wherever reasonable and appropriate, the Authority shall maximize participation by such enterprises and facilitate awarding New York State Certified MWBEs and SDVOBs a fair share of awarded contracts.

The Authority shall:

- Conduct Procurements in a manner that will enable it to achieve the maximum feasible portion of the Authority’s MWBE and SDVOB annual participation goals as set forth in the Master Goal Plan for both programs on Procurement Contracts;
- Where practical, feasible and appropriate, include the Diversity Practices of Proposers in the evaluation criteria for selecting a successful Vendor for a Procurement;
- Affirmatively promote and assist MWBE and SDVOB participation in Procurement Contracts;
- Assess all purchases for the possibility of MWBE and SDVOB participation;
- Set goals as appropriate pursuant to Article 15-A of the NY State Executive Law and Article 3 of the Veterans’ Services Law;
- Consult federal requirements regarding such opportunities and consult the most recent disparity study available;
- Consider encouraging joint ventures and other teaming arrangements, as well as the severability of bundled contracts, in each Solicitation;
- As practicable, provide a current list of certified MWBEs and SDVOBs to prospective Contractors; and
- Ensure that all required provisions are present in relevant contracts pursuant to Article 15-A, Article 3 of the Veterans’ Services Law and promulgated regulations, and maintain a policy regarding remedies in the event these terms are violated.
- The Authority shall appoint a Director of Diversity Contracting, who will promote and assist in participation by such enterprises, utilization of such enterprises as prime contractors, subcontractors and suppliers and the utilization of partnerships, joint ventures or other similar arrangements between such enterprises and other Contractors. Specifically, the Director of Diversity Contracting shall be responsible for:
 - Familiarity with the Authority’s Procurement needs;
 - Providing notice of opportunities to such enterprises and organizations that serve such enterprises;
 - Maintaining lists of such enterprises that are properly certified and updating such lists regularly;
 - Consulting lists of such enterprises maintained by the State’s Department of Economic Development, Office of General Services, and other organizations for potential MWBE and SDVOB firms;

- Reviewing the Authority's Solicitation and contract language to ensure appropriate inclusion of Diversity-related requirements;
- Establishing goals for such enterprises' participation and utilization as prime contractors, subcontractors and suppliers under Procurement Contracts and monitor the compliance of prime contractors with participation goals and contract terms, including review of waivers;
- Monitoring such enterprises' participation and utilization in Procurement Contracts to ensure utilization credit is being taken only for payments to New York Certified firms performing a Commercially Useful Function as that term is defined by the Division;
- Ensuring the Authority's compliance with all MWBE and SDVOB reporting requirements;
- Approval authority regarding diversity requirements for Contracts and invoices;
- Developing and maintaining standard templates to be used in the Procurement process including but not limited to:
 - Utilization Plans
 - MWBE and SDVOB Goal Setting Documents
 - Contractor Good Faith Effort Documentation

2.6 The Promotion of New York State Business Enterprises and Residents

In all Procurements, and in accordance with the State Finance Law Section 139(i), the Authority shall promote the participation by New York State Business Enterprises and New York State Residents in Procurement Contracts as follows:

- When applicable, the Authority shall, in consultation with OGS, consider the specifications of New York State Business Enterprises in developing Solicitations for the purchase of Commodities and shall utilize stock item specification forms prepared by OGS.
- With the cooperation of the President and CEO of Empire State Development and through cooperative efforts with Contractors, the Authority shall notify New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts with a value estimated to be equal or greater than one million dollars (\$1,000,000) and the Authority shall promulgate procedures which will assure compliance by Contractors with such notification as a condition of awarding Procurement Contracts.
- Contractors shall, as supplementary materials to their Bids or Proposals, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on Procurement Contracts equal to or greater than one million dollars (\$1,000,000) and attest to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.
- The Authority, with the cooperation of the President and CEO of Empire State Development and through cooperative efforts with Contractors, shall provide for the notification of New York State Residents of employment opportunities arising out of Procurement Contracts with a value estimated to be equal to or greater than one million dollars (\$1,000,000) and shall require Contractors to submit post-award compliance

reports documenting their efforts to provide such notification through listing any such positions with the community services division of the Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

- The Authority shall include in all Solicitations a statement that:
 - Information concerning the availability of New York State contractors and suppliers is available from Empire State Development, including the directory of certified MWBEs.
 - Information concerning the availability of New York State contractors and suppliers is available from the New York State Office of Governmental Services, including the directory of New York State Certified SDVOBs.
 - Notifies potential Respondents located in foreign countries that the Authority may assign or otherwise transfer offset credits created by a Procurement Contract to third parties located in New York State.
 - Informs potential Respondents that it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of MWBEs and SDVOBs, where possible, in the Procurement of Commodities and Services.
- The Authority shall notify the President and CEO of Empire State Development of the award of a Procurement Contract for the purchase of Commodities or Services from a Foreign Business Enterprise in an amount equal to or greater than one million dollars (\$1,000,000) simultaneously with notifying the successful Respondent therefor.

3. General Requirements

3.1 Advertising Procurement Opportunities

The Authority must advertise a Procurement opportunity in the New York State Contract Reporter when the actual or estimated amount of the Procurement is \$50,000 or more, except for Procurement Contracts being (i) awarded on an emergency basis, (ii) issued pursuant to a centralized contract or piggyback contract where the underlying master agreement was previously publicly advertised and competitively procured, or (iii) re-bid or re-solicited for substantially the same Commodities or Services, within forty-five business days after the date Bids or Proposals were originally due.

In addition, as a best practice, the Authority should also advertise its Procurement opportunities in other sources such as trade publications, journals, and newspapers when possible and appropriate, as well as the Authority website and mailing lists.

Advertisements shall provide prospective Respondents with an overview of the proposed Procurement, including a brief description of the Commodities or Services sought, the contract period, the Bid or Proposal due date, the address where Bids or Proposals are to be submitted, a description of any eligibility or qualification requirement or preference and contact information.

3.2 Reserved Rights

Any published Solicitation should state the Authority's reserved rights in the conduct of such Bid or RFP process, including, where applicable, the right to:

- Reject any or all Bids or Proposals received in response to the Solicitation;
- Withdraw the Solicitation at any time, at the Authority's sole discretion;
- Make an award under the Solicitation in whole or in part;
- Disqualify any Respondent whose conduct and/or Bid or Proposal fails to conform to the requirements of the Solicitation;
- Seek clarifications and/or revisions of the Bid or Proposal or any part of the Bid or Proposal;
- Use information obtained by the Authority through site visits; interviews; investigation of a Respondent's qualifications, experience, ability or financial standing; and any other material or information provided by or received from the Respondent during the Solicitation process;
- Prior to the Bid or Proposal Opening, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- Prior to the Bid or Proposal Opening, direct Respondents to submit Bid or Proposal modifications addressing subsequent Amendments to the Solicitation;
- Request that Bidders or Proposers submit best and final offers subsequent to the Bid or Proposal Opening;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Respondents.

- Waive any non-material requirements;
- Accept and consider for contract awards Bids or Proposals with non-material deviations or non-material defects such as errors, technicalities, irregularities, or omissions.
- Negotiate with any one, multiple or all Respondents within the scope of the Solicitation and in the best interests of the Authority;
- Conduct contract negotiations with another responsible Respondent if the Authority is unable to finalize contractual terms with the first selected Respondent;
- Utilize any and all ideas submitted in the Bids and Proposals received regardless of whether a Contract is offered; and
- Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bid or Proposal and/or to determine a Respondent's compliance with the requirements of the Solicitation.

3.3 Restrictions on Contact during the Procurement Period

For any procurement with an annualized expenditure in excess of \$15,000, a Respondent is restricted from making Contact during the Restricted Period to any person at the Authority other than the Designated Contact or the Director of Diversity Contracting. Contact that is permitted during the restricted period is set forth in State Finance Law §139-j (3)(a). Any Authority member, officer or employee who becomes aware that a Respondent has made a Contact regarding the Procurement during the Restricted Period shall immediately notify the CCO, or other designated official, of such contact.

3.4 Determination of Vendor Responsibility

Pursuant to New York State Law, the Authority must make a determination that a Respondent is responsible prior to awarding that Respondent a contract. The CCO, or their designee, are responsible for deciding whether there are sufficient assurances to determine that the Respondent is responsible based on factors enumerated in a Vendor responsibility checklist. The list includes, but is not limited to, the Respondent's:

- Financial and organizational capacity;
- Legal authority to do business in New York state;
- Integrity of the owners/officers/principals/members and contract managers;
- Past performance on prior government contracts; and
- Compliance with the Procurement Lobbying Law and all material terms of the Solicitation.

Before finding a Respondent non-responsible, the CCO shall provide the Respondent with the opportunity to explain its position in writing, or, upon the Vice President of Administration's discretion, in person at a responsibility meeting. Any determination of non-responsibility shall be provided to the Respondent in writing.

3.5 Third Party Rights; Effect on Awarded Contracts

These Guidelines are intended for the guidance of officers and employees of the Authority only, and nothing contained herein is intended or shall be construed to confer on any Contractor, Vendor, person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.

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

3.6 Pre-Qualification of Vendors for Services

The Authority may, in accordance with these Guidelines, pre-qualify multiple Vendors to provide Services to the Authority. The selections and use of Pre-Qualified Vendors shall be governed by the Authority's Policy on the Pre-Qualification of Vendors.

3.7 Limitations on Contracts Involving Former Officers and Employees

The Authority shall not enter into Procurement Contracts with former officers or employees, or any entity employing such officers or employees, or any entity in which such officers or employees have an interest, unless such contract would otherwise be compliant with the Authority's policies regarding conflicts of interest and the applicable provisions of law, including the Public Officers Law.

3.8 Cancellation of a Solicitation

When, in the discretion of the Authority, a Solicitation fails to result in any satisfactory responses and the Authority wishes to pursue other methods of procurement, it shall: a) notify the public that the Solicitation is being cancelled; b) inform any Respondents via phone call (which should be documented for the Procurement Record), letter or email of the cancellation; and c) publish or post notice of the cancellation in each place that the Solicitation was published for no less than two (2) weeks. If the decision is made to re-advertise the Solicitation, the project team should scrutinize the initial Solicitation document to determine whether any restrictions can be lifted or the document can otherwise be revised to produce better results.

3.9 Sustainable Purchasing

Pursuant to New York State Executive Order 22 (EO22) enacted in September, 2022, the Authority must refer to the GreenNY Purchasing Specifications (<https://ogs.ny.gov/greenny/approved-greenny-specifications>) in its purchasing and shall endeavor to make purchases that meet these specifications to the greatest extent possible. As such, the Authority shall endeavor to ensure that Procurements for Commodities, Services, technology and all other applicable purchases at a minimum meet the approved green Procurement specifications approved by New York State with the goal to purchase Commodities and Services that minimize adverse environmental impacts. Environmental considerations in the

procurement of Commodities and Services shall include but are not limited to sustainable resource management, sustainable manufacturing and production, disposal and waste minimization, and the elimination of single use plastics. The Authority may consider other sustainability measures specific to the Procurement of Commodities or Services to be included in the Solicitation for Services but in all cases shall comply with the GreenNY specifications where practicable. In the event the Authority determines that an exemption is warranted, it may seek an exemption in accordance with Section V. of EO22. For specifications and more information about Executive Order 22 (EO22), visit the GreenNY website:

<https://ogs.ny.gov/greenny> and GreenNY Specifications <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools>

The Authority shall seek exemptions, when applicable, as stated in Section V. of EO22.

Solicitations for Services shall include a request for a description of the Proposer's environmentally sustainable business practices or activities, to the extent applicable.

4. Solicitation Processes

4.1 Introduction

A Solicitation issued by the Authority shall describe the Services or Commodities the Authority is seeking to procure. Each Solicitation shall clearly convey all the information needed for potential Respondents to submit a complete and competitive Bid or Proposal. Solicitations conducted via Request for Proposals must be approved by the General Counsel's Office.

Vendors that develop or draft specifications, requirements, statements of work, or requests for bids or proposals for a project or a Procurement must be excluded from competing in any resulting Procurement.

4.2 Procurement Methods

4.2.1 Discretionary Procurements

Discretionary Procurements do not require a Competitive Procurement. Before making a Discretionary Procurement, however, the employee initiating the Procurement must:

- Ensure that the Commodities and/or Services to be acquired meet the Authority's Form, Function and Utility needs;
- Consult with the Director of Diversity Contracting to identify any potential MWBE or SDVOB Vendors;
- Make a reasonable attempt to obtain Cost Proposals from at least three different Vendors capable of supplying the required Commodities and/or Services, including MWBE and/or SDVOB Vendors to the extent possible;
- Document the attempt to obtain such quotes and the quotes received, and include such information in the written justification required by Section 5.1, along with facts sufficient to support the selection of the chosen Vendor, the reasonableness of the price to be paid, and the effort of the employee initiating the Procurement to include MWBE and SDVOB firms in the Solicitation; and
- Verify with the CCO that the selected Vendor is responsible.

Pursuant to Section 3.1, Discretionary Procurements must be advertised as a Procurement opportunity in the New York State Contract Reporter when the actual or estimated amount of the Discretionary Procurement is \$50,000 or more.

In determining whether a purchase meets the required threshold amounts for a Discretionary Procurement, the employee initiating the Discretionary Procurement shall consider (and document such consideration) the reasonably expected aggregate amount of all purchases of the same Commodities or Services to be made within the twelve-month period commencing on the first date of purchase. Purchases of Services or Commodities shall not be artificially divided for the purpose of satisfying the thresholds required for a Discretionary Procurement. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring

the reasonably expected aggregate amount of all purchases of the same commodities or services from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount.

4.2.2 Non-Discretionary Procurement Methods

The following types of Procurements are exempt from the requirement that a Competitive Procurement method be used but must satisfy all other applicable requirements set forth in these Guidelines:

- Sole Source - the Authority must document in writing the findings demonstrating that the proposed Vendor is a Sole Source.
- Single Source - the Authority must document in writing the findings demonstrating that the proposed Vendor is a Single Source.
- Emergency - the Department Head, or their designee, initiating the Procurement must first document in writing and receive approval by the President that Emergency Circumstances exist. After such approval is received, the Department Head, or their designee, shall make a reasonable attempt to obtain quotes from at least three Vendors. Procurement Contracts and Amendments entered into in response to an Emergency are exempt from the requirement that they be fully executed and delivered by both parties prior to the commencement of work. However, all Procurement Contracts and Amendments entered into in response to an Emergency must subsequently be approved in the manner set forth in Section 5. In the event the work necessitated by the Emergency is completed within one week of the date the Emergency is documented and has a value of \$25,000 or less, the President may approve payment for the Vendor upon presentation of an invoice and documentation from the Department Head, or their designee, that the work has been so completed. Except as specifically provided in this paragraph, all contracts and Amendments involving Emergency Circumstances shall be subject to these Guidelines.
- Piggybacking – The Authority may use a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (this type of procurement referred to as “Piggybacking”) subject to an evaluation of the appropriateness of piggybacking, including: (1) determination of the need for the product or services; (2) consideration of the procurement method by which the contract to be piggybacked was awarded; (3) an analysis of alternative procurement sources including why a competitive procurement or use of a Centralized Contract is not in the Authority’s best interest; and (4) reasonableness of the cost. The Authority’s evaluation of these factors and rationale for using piggybacking should be set forth in the procurement record. While an Amendment to the piggybacked contract explicitly providing that piggybacking is permissible is not required, the Authority should notify the original contracting agency and must obtain the consent of the Vendor it wishes to enter into the Piggyback agreement with. The Authority may execute an independent contract based upon the equivalency of product or services being procured and pricing contained in the original contract using the original Contract Terms as may be supplemented by the Authority’s

own requirements, as agreed to by the Authority and the Vendor.

Contracts awarded under this Section may be exempted from any advertising requirements prior to award, however a reasonable attempt should be made wherever practicable to solicit at least three competitive Bids or Proposals, with written confirmation of the Bids or Proposals furnished within a reasonable time and maintained in the contract file. In the event any Single or Sole Source Contract awarded hereunder exceeds \$50,000, notice of the award shall be published in the Contract Reporter pursuant to Economic Development Law §143(4). This publication requirement shall not be deemed to apply to contract Amendments.

4.3 Competitive Procurement Methods

In general, the Authority will award a Contract resulting from an RFP to a selected Contractor that is deemed to provide the best overall value to the Authority. In some instances where the provision of Commodities or certain Services where qualifications can be determined on a pass-fail basis is sought, an IFB may be more appropriate. In that case, the Authority will make a determination based solely on which Vendor offers the Commodity or Service at the lowest price. In either case, Contracts may only be awarded to a responsive, responsible Vendor, and all Solicitations for Competitive Procurements must describe the selection criteria to be used.

The CCO shall maintain templates, incorporating all relevant requirements set forth in these Guidelines, to be used by the Authority for all written Solicitations. Solicitation templates may differ for RFPs, which include weighted evaluation criteria, and IFBs, which will be awarded to the responsive Bidder offering the lowest cost.

4.3.1 Requests for Proposals

All RFP's must include the criteria to be used in evaluating Proposals and how those criteria will be weighted. Solicitations for Services should also include:

- Description of program objectives and background;
- Scope of Services to be provided;
- Detailed requirements and specifications;
- Required qualifications of a successful Vendor;
- Statement of non-collusion requiring Proposers to certify that they have not colluded with any other proposer(s) in their proposal;
- Any diversity requirements, including MWBE and SDVOB goals, if applicable; and
- Request for description of the Proposer's environmentally sustainable business practices or activities.

4.3.2 Invitation for Bids

IFBs are generally used for Solicitations for Commodities where the Authority desires to purchase a specific item or product from the lowest-priced responsive and responsible Vendor. Solicitation for Commodities should include product specifications in one of the following

manners:

- Make and Model or Equal – If the Procurement is not limited to a specific brand, the Solicitation may use a brand name and model as a reference to describe requirements such as functionality, style or capacity.
- Make and Model Specific - If the Procurement is limited to a specific brand, the Solicitation should state that only Bids for the specified items and brands will be considered, and that no substitutions will be considered where only one product(s) (i.e., specific brand(s)) meets the Authority's needs.
- Technical Specifications - The Solicitation may describe the product, usually detailing the physical components, method of assembly and, in some cases, chemical composition.
- Performance Specifications - The Solicitation may describe the performance standards required for the product and/or service being procured, and the Bidder must ensure that the product or service offered will meet the performance specifications.

Nothing in this section shall preclude the use of an RFP as a Solicitation for Commodities, in which case the above criteria must be included in addition to the criteria set forth in section 4.3.1.

4.4 Pre-Procurement Methods

The following types of requests do not constitute Competitive Procurement Methods and should be used before developing an RFP or IFB in situations where the Authority needs to obtain additional information in order to inform its development of a formal Solicitation.

4.4.1 Requests for Expression of Interest

The Authority may issue an RFEI as a tool to gather specific information from the contracting community related to a particular project that has already been identified by the Authority. RFEIs should contain a brief description of a project or Service which the Authority is considering, but about which it does not have sufficient information to advertise an RFP or IFB. RFEIs can be used in situations including, but not limited to:

- The Authority desires to obtain feedback on a particular idea or project from the contracting community at large;
- The Authority desires to assess the market interest and viability of a specific project; or
- The Authority desires to identify a pool of potential Vendors to which it can ultimately issue a specific IFB, RFP or other type of agreement such as a license agreement.

4.4.2 Requests for Information

The Authority may use an RFI as a preliminary information-gathering tool in order to assess the market, identify potential suppliers and understand the capabilities and offerings of potential Vendors. The RFI should be used to help inform an overall procurement strategy and identify potential risks before issuing an RFP or IFB. RFIs can be used in situations including, but not limited to:

■ The Authority desires to obtain more information about products, services or suppliers;

- The Authority desires to understand supplier capabilities, experience and product(s); or
- The Authority desires to explore its available options and possibilities before proceeding to a formal procurement.

4.5 Distribution of Solicitations and Receipt of Bids and Proposals

Any Competitive Procurement Method utilized by the Authority must include the following steps:

4.5.1 Advertisement of the Solicitation

The requirement to advertise Solicitations in the New York State Contract Reporter is discussed in Chapter 3.

4.5.2 Distribution of the Solicitation

Once the Solicitation is finalized, the Authority shall make reasonable attempts to distribute the Solicitation to all known potential Respondents and any Respondent that requests a copy as a result of the advertisement. Each Solicitation must be posted to the Authority's website and also may be distributed via postal mail, e-mail, or other means. Solicitations should, where practicable, be published in trade publications related to the type(s) of Commodity or Services sought.

4.5.3 Receipt of Bids and Proposals

As noted above, the Solicitation must state the date and time that Bids or Proposals are due. Late Bids and Proposal cannot be accepted, except, upon written approval by the President. Such exception must be documented in the Procurement Record. The CCO must certify that Bids were received in accordance with the terms of the Solicitation.

All Bids and Proposals must be submitted in the manner specified in the RFP or Solicitation. Except where the specific details of the project may render this impractical, electronic submissions are preferred for all Solicitations.

All physical Bids or Proposals shall be received at one designated location at the Authority's offices and, immediately upon receipt, the envelope shall be stamped with the time and the date received. Electronic Proposals shall be submitted to separate email addresses for Technical Proposals and Cost Proposals.

Any sealed physical copies of Bids or Proposals shall be locked immediately in a secure location. The Bid or Proposal Log of physical copies of any Bids or Proposals received shall be maintained at the Authority's reception desk. Comments on the condition of the envelopes shall also be recorded in the Bid or Proposal Log.

Pursuant to Section 4.7, Cost Proposals submitted separately from Technical Proposals will not be provided to the Evaluation Committee for review until after the initial technical evaluation is conducted by the Evaluation Committee.

4.5.4 Bid and Proposal Openings

A Bid and Proposal Opening shall occur after the due date and time for receipt of Bids or Proposals set forth in the Solicitation. All Bids or Proposals shall be opened at the same Bid or Proposal Opening.

During the Bid or Proposal Opening, any physical Bids or Proposals received shall be signed out in the Bid or Proposal Log by the person removing them. The Designated Contact shall have a pre-prepared list of Bid or Proposal Opening Attendees, which shall become part of the Procurement record for each Procurement Contract.

At least two of the following people shall be present at the Bid or Proposal Opening: the Designated Contact, the project manager assigned to the project, and the CCO or their designee(s) at which time each Proposal shall be reviewed for compliance with the minimum mandatory qualifications set forth in the RFP and for inclusion of all required information and documentation. The compliance of each bid shall be documented by the Designated Contact and such documentation added to the procurement record.

All Bids or Proposals, including the time stamp and envelope, or shipping label from the shipping materials for physical bids, shall be retained for a period no less than that prescribed by the Authority's Document Retention Guidelines.

4.6 Award Based on Lowest Bidder

In the case of an IFB where selection is based on the lowest price, upon Bid Opening, the Authority shall:

- Ensure that the Bid is complete and accurate, including confirming that the Bidder understood the specifications and can perform/deliver at the Bid price (particularly if there is a large discrepancy between the low Bid and the second low Bid) and ascertaining that all materials are submitted and appendices are signed;
- Verify that the low Bid is responsive by meeting all mandatory requirements and specifications of the IFB and that the Bidder is responsible. In the event the Authority determines that the low Bid is not responsive or that the Bidder is not responsible, then the Bid should be rejected and the Authority should review the next low Bid for responsiveness/responsibility. Notice should be given to any Bidder that is being rejected for non-responsiveness or non-responsibility.
- In the event of tie Bids where all offers are found to be substantially equivalent, including price, the President shall make the final determination to award the Contract to one or more Bidders. The basis for such determination shall be documented in the Procurement Record.

Upon identification and verification of the lowest responsible and responsive Bidder, the Authority shall award the Contract in accordance with the method of award in the IFB subject to first obtaining all necessary approvals set forth in Section 5 of these Guidelines. All supporting documentation should be maintained in the Procurement Record.

4.7 Award Based on Best Value

Award of a Contract based on best value pursuant to an RFP shall be made in accordance with this Section 4.7 as follows:

4.7.1 Evaluation Team

For each RFP¹, there shall be an evaluation committee consisting of employees nominated by the Department Head or their designee and approved by the CCO (the “Evaluation Committee”) who are responsible for evaluating each Proposal; however, for any RFP, the Director of Diversity Contracting, or their designee, shall be solely responsible for evaluating the portions of proposals that relate to Diversity Practices. The Designated Contact shall provide the Evaluation Committee with all relevant Proposal materials, in accordance with these Guidelines, including, but not limited to, the Proposals (including the Cost Proposal, when appropriate), the RFP, and any addenda to the RFP. The evaluation process, including any numerical scores, shall be documented by the Designated Contact in reasonable detail.

4.7.2 Conducting the Evaluation

The evaluation measures the extent to which a Proposal will meet the Authority’s needs and assesses the strengths and weaknesses of each Proposal. The main steps for performing the evaluation are discussed below.

4.7.3 Evaluation Criteria Best Practices

Criteria for evaluation of Proposals shall be developed on a case-by-case basis based on the needs of the end-user of the Contract and in consultation with the applicable Department Head or their designee. Some areas to be considered in the development of evaluation criteria may include, but are not limited to, the following:

- Work plan and methodology to achieve desired end results;
- Degree to which the Proposal satisfies mandatory, optional, desirable and/or alternative green performance standards;
- Experience of the Proposer in providing the required Services and/or deliverables;
- Management capability of the Proposer;
- Proposer’s overall past performance;
- Quality of responses to Diversity Practices and MWBE/SDVOB Utilization Plans or MWBE/SDVOB certification status of the Proposer;
- Qualifications and experience of the Proposer’s proposed staff;

¹ For convenience, Sections 4.7 through 4.10 discuss the evaluation process of an RFP but are applicable to any Solicitation for competitive Proposals requiring an evaluation.

- Conformance with the schedule of work set forth in the RFP; and
- Proposer references.

4.7.4 Assignment of Values to Evaluation Criteria

The methodology for evaluating Proposals must be established before the initial receipt of Proposals. Once the evaluation criteria have been determined, values must be assigned to the criteria and any sub-criteria. The evaluation criteria and the assigned values must be provided in the RFP.

Alternative concepts for assigning value to the technical criteria may be permissible to account for the nature of the Procurement. In such instances, the CCO shall verify with the General Counsel before issuance of the RFP.

4.7.5 The Evaluation Instrument

Each member of the Evaluation Committee must use the evaluation instrument to apply the evaluation criteria to the Proposals, including the assigned value for each criterion. The evaluation instrument consists of a series of documents used during the evaluation process, including but not limited to:

- Rating sheet which defines allocation of points for each criterion;
- Completed rating sheets recording each evaluation committee members' scores;
- Cost Proposal evaluation, when evaluating cost pursuant to Section 4.6;
- Summary rating sheet tallying the scores of all committee members; and
- Reference checks.

A Subject Matter Expert who is not a member of the Authority's staff may be used to assist with evaluations. The Evaluation Committee should consider whether a confidentiality agreement with the subject matter is appropriate.

4.7.6 Scoring Methodology

Scores for the pre-determined criteria must be recorded by the Evaluation Committee on the evaluation instrument in accordance with the pre-determined criteria and sub-criteria, if applicable. Provided that prospective Proposers are so advised, information beyond that provided in the written Proposals may be considered in order to determine a score, such as:

- Product or service demonstrations and presentations;
- Reference checks (staff and/or company performance);
- Site visits;
- Interviews of key representatives and proposed staff of the Proposer;
- Consultation with relevant technical advisors;
- Written Proposal clarifications; and
- Rating services (such as Moody's or Dun & Bradstreet).

Upon written approval of the General Counsel or the Vice President of Administration, the Authority may waive mandatory requirements in the RFP that are not material, provided that the waiver neither:

- Disadvantages the Authority;
- Uniquely benefits the selected Proposer;
- Prejudices any non-winning Proposer; nor
- If known at the time of proposing, could reasonably be assumed to have caused additional potential Proposers to submit Proposals.

After performing an initial evaluation, the Evaluation Committee may determine certain Proposer(s) should be eliminated from consideration based solely on the content of the Technical Proposal(s). The determination to eliminate a Proposer(s) from consideration must be justified and documented, with any initial scoring or other memoranda explaining the determination added to the Procurement Record. After determining which Proposers will be eliminated from further consideration, if any, based on comparative low scoring or other documented reasons justifying such elimination, the Evaluation Committee may open and review the Cost Proposals of the remaining Proposers before conducting interviews. Absent advance approval from the President or their designee, only Evaluation Committee members, Subject Matter Expert, and the Designated Contact may be present at such interviews. Upon completion of the evaluation as set forth in the evaluation instrument and the RFP, the initial evaluation scores shall be adjusted and finalized, as necessary.

4.7.7 Request for Best and Final Offer

In circumstances where it would be in the best interest of the Authority, the Authority is authorized to request from all Respondents determined to be eligible for being awarded a contract, prior to award, an Amendment to its Bid or Proposal that would represent its best and final offer if: (1) the project manager provides a written memorandum justifying the request for a best and final offer; (2) such request is approved by the CCO in consultation with the Department Head, and (3) such request does not materially change the scope of work or evaluation criteria for the Procurement. Respondents receiving a Best and Final Offer request shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers.

4.7.8 Determining the Best Value Proposer

For Solicitations in which cost is not the only evaluation criteria, the Authority should award the Contract to the highest rated Proposer whose Proposal is determined to be responsive and in the best interests of the Authority, subject to a determination that the Cost Proposal, as amended by any Best and Final Offer response, is fair, reasonable and provides the best value to the Authority given the requirements of the project. Even if using a Centralized Contract, the reason for selecting a specific Vendor that is not the lowest priced Vendor should be documented.

4.8 Award Based on Single Bid

The Authority may award a contract to a Respondent if only one Bid or Proposal was submitted, provided that the Project Manager delivers a memorandum to the President explaining that, based on the documentation contained in the Procurement Record, adequate opportunity was given to ensure competition, including but not limited to proper outreach and advertising and that the sole Bid or Proposal was reasonable in cost, and the President provides written approval of the Project Manager's memorandum.

4.9 Selection

At the conclusion of the evaluation process, the project manager shall inform their Department Head of the proposed award. At the Department Head's request, the Evaluation Committee shall consider such additional facts and/or information as the Department Head deems necessary prior to the Authority's approval of the proposed award and notification of any Respondent of a Final Award.

4.10 Letters of Intent

Where the Department Head initiating the Procurement provides a written memorandum explaining the need for a letter of intent ("LOI") in order to ensure timely completion of a project by a selected Contractor, and that memorandum is approved by the President, the Chief Operating Officer, and the General Counsel, a LOI may be issued to a Contractor. Such LOIs may be issued prior to the execution of Procurement Contracts for a value of up to 10% of the total anticipated Procurement Contract amount, subject to approval requirements for a Procurement of that amount. Such LOIs shall authorize Contractors to proceed with work pending the execution of the Procurement Contract, and shall expressly provide that the Contractor is granted no rights against the Authority in the event a Contract is not executed except for the reasonable value of the preliminary work to be performed, not to exceed an amount set forth in the LOI.

4.11 Notification of Award

Upon execution of the contract, the Designated Contact may notify all non-selected Proposers of the Final Award. Where practicable, all MWBEs and SDVOBs designated on the Utilization Plans of the selected Proposers will be notified of the award at this time by the Designated Contact.

4.12 Post-Award Advertisement

For any Procurement Contract with a value exceeding \$50,000, initially or through Amendment, that was not awarded pursuant to a Competitive Procurement Method, the Authority shall publish in the New York State Contract Reporter a notice of the award of such contract and the reasons for the method used, including any justification for using a non-Competitive Procurement Method, if applicable.

5. Approvals

Further guidance regarding the approval process, including the purpose of each approver's review, in the *Standard Operating Procedures for Procurement*, which may be modified from time to time at the discretion of the staff.

5.1 Commencing the Approval Process

The department initiating the Procurement shall request approval of the award of a Procurement Contract by: i) entering the procurement details into the Authority's Procurement Site; and ii) uploading all supporting documentation for electronic approval by the initiating Department Head within the Procurement Site, including, but not limited to:

- A written justification of the Procurement, detailing the Procurement Method used, the evaluation process conducted, and the basis for determining the selected Respondent;
- Copies of all Cost Proposals received;
- The Selected Respondent's Vendor Responsibility Report and W-9 IRS Tax Form; and
- The Selected Respondent's Financial Statements, when requested.

5.2 Required Procurement Approvals

The award of Procurement Contracts, and any subsequent Amendments, must be approved as follows:

- The Project Manager may approve once they have verified that all information and documentation is complete and accurate.
- Each Department Head may approve once they have verified that all information and documentation is complete and accurate and the department's budget has funds allocated for the project.
- The Engineering Audit Officer may approve construction change orders pursuant to the terms of the Construction Contract, once they have verified that all information and documentation is complete and accurate. Note that, for construction change orders, the Engineering Audit Officer's review supplants the CCO's review.
- The CCO may approve a Procurement Contract once the CCO has i) verified that the Respondent is responsible (and, in the case of a Centralized Contract from OGS, that the Respondent's OGS certification is valid) and has submitted certificates of insurance in accordance with the Solicitation requirements; ii) as applicable, that the selection was made pursuant the BPCA Procurement Guidelines, related policies and procedures, and the terms of the Solicitation; and iii) that the correct people have conducted the required approvals in the procurement record. Note that, for construction change orders, the Engineering Audit Officer's review supplants the CCO's review.
- The Director of Diversity Contracting may approve a Procurement Contract once he/she has confirmed accuracy of MWBE/SDVOB status of the proposer; completeness of MWBE/SDVOB reporting, if any; approval of MWBE/SDVOB utilization plan, and any updates to those plans required for Amendments; and MWBE/SDVOB contract goals.

- For Procurements valued at more than \$50,000, or requiring Board approval, the General Counsel shall approve to confirm that they have conducted a review of the procurement, based on the representation of the Originating Department Head and prior approvals, and provided any feedback to the Originating Department Head.
- The Chief Financial Officer or their designee may approve a Procurement Contract once they have confirmed that the accompanying documentation includes a consistent record of the commitment of funds associated with the Procurement.
- Contracts exceeding \$150,000 must also be approved by the President, who does so based on prior approvals and signs off on commitment to the project and the associated Procurement; and
- Contracts exceeding \$500,000 must also be approved by the Board.

5.2.1 Board Approval for Contracts

In addition to the approvals required above, Board approval is required for any Procurement Contract for Services to be rendered over a period in excess of one year. For the avoidance of doubt, contracts for equipment, vehicle leases, warranties, or software licenses are excluded from this requirement, as they are not contracts for services. Independent Auditors for the Authority shall be retained only with the prior approval of the Board.

5.3 Contract Amendment Approvals

In addition to all applicable requirements set forth in Section 5.2, each request for an Amendment to a Procurement Contract shall require the following approvals:

5.3.1 Board Approval for Contract Amendments

The Board must approve any Amendment that:

- Causes the aggregate amount of any Procurement Contract to exceed \$500,000 for the first time; or that
- Increases the aggregate amount of a Procurement Contract by \$500,000 or more above the amount the Board previously approved.

In addition, except for those types of contracts listed in Section 5.3 above, Board approval is required for any extension of an existing Services Contract that a) for the first time, extends the Contract Term beyond one year; or b) extends the Contract Term by more than one year from the Contract Term last approved by the Board.

5.3.2 Amendment Presidential Approvals

The President must approve any Amendment that would cause the value of a Procurement Contract, either originally or as amended, to exceed its Original (or amended) Value by twenty five percent (25%) or more or that would raise the total contract value above \$150,000 for the first time.

5.3.3 Diversity Amendment Review

Contract Amendments must be reassessed for MWBE and SDVOB participation goals, current MWBE and SDVOB Utilization Compliance of the project, and may require Vendors to provide updated MWBE and SDVOB Utilization plans prior to approval by the Director of Diversity Contracting.

5.4 Office of the State Comptroller Approvals and Reporting

Any Procurement Contract exceeding \$1,000,000, originally or as amended, which was awarded non-competitively or will be paid in whole or in part from monies appropriated by the State, and any Amendment to a Procurement Contract previously approved by the New York State Office of the State Comptroller (“OSC”) where the value of the Amendment is ten percent (10%) or more of the Procurement Contract value as originally approved by the OSC, shall be submitted to OSC for filing within sixty days after execution and if the Contract/Amendment is the subject of an active written notice by OSC, such Amendment shall be submitted to OSC for prior approval.

Pursuant to Title 2 of the New York Codes, Rules and Regulations (NYCRR) §206.3, the Authority shall annually submit to the New York State Office of the State Comptroller a report identifying every eligible contract and eligible contract amendment that the Authority reasonably anticipates entering into during the following fiscal year.

The Authority shall submit such Annual Report even if it reasonably anticipates that no eligible contracts or eligible contract amendments will be entered into during the applicable fiscal year.

The Annual Report shall be submitted to the Office of the State Comptroller no later than thirty (30) days prior to the end of the Authority’s fiscal year, in accordance with NYCRR §206.3.

Submission of the Annual Report is a reporting obligation separate and distinct from OSC contract approval requirements, and does not substitute for, waive, or satisfy any required OSC approval, filing, or authorization otherwise applicable to an individual contract or amendment.

5.5 Contracts Requiring Economic Development Corporation Notification

The Authority shall notify the Commissioner of Economic Development Corporation (EDC) of the award of a Contract from a Foreign Business Enterprise in an amount equal to or greater than \$1,000,000 at the same time as notice is given to the successful Respondent. Such notice shall include the name, address, telephone, email, and fax number for the Foreign Business Enterprise as well as a brief description of the Commodities or Services to be provided, the Contract value and Term and the name of the point of contact for the Foreign Business Enterprise. No Contract may be entered into until at least fifteen (15) days from notice to the Commissioner unless in the event of an emergency where the Commissioner waives the requirements hereunder. For the purposes of this paragraph, the phrase Foreign Business Enterprise shall mean any business enterprise which proposes to supply the Authority with Commodities produced or Services

performed outside of New York State.

5.6 Designation of Approval Authority

Any approver who seeks to designate another employee to exercise approval authority as provided for under these Guidelines must first ensure the proposed designee be trained on how to conduct sufficient reviews and approvals and be so designated in writing.

5.7 Reporting

Any Procurement Contract the Authority enters into with an Original Value between \$250,000 and \$500,000 must be documented by the CCO and reported to the Board at the first meeting subsequent to such Contract's execution. In addition, on a quarterly basis, management must provide a report to the Board listing all projects for which a Procurement may potentially be performed in that quarter.

5.8 Final Contract Approvals

Upon completion of all applicable requirements set forth in these Guidelines, each request for a Procurement Contract shall require the following approvals, completed per the same criteria set forth in Section 5.2: Subsequent to execution by the selected Vendor and before execution by the Authority, each Procurement Contract shall be approved by the initiating Department Head or their designee, as well as the following employees or their designees: Director of Diversity Contracting, Chief Financial Officer, General Counsel for procurements in excess of \$50,000 or for those requiring Board approval, and the President. Presidential approval shall also be required, but may be delegated, at the discretion of the President, to the Chief Financial Officer and/or the Chief Operating Officer.

5.9 Monitoring of Procurement Contracts

Performance of Procurement contracts must be monitored by the initiating department to ensure that: (i) the scope of work or Services to be provided are being/have been timely performed; (ii) cost escalations are identified at the earliest possible opportunity; (iii) the established starting and completion dates for major components of the contract are being/have been met; and (iv) that Utilization Plans, MWBE, and SDVOB participation is progressing as expected and being reported as required. All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head and the Director of Diversity Contracting.

6. Effect on Awarded Contracts

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. These Guidelines reflect best customary practice but are not intended to be rules of law. Note, however, that certain contracts may not be “valid or enforceable” without OSC approval. (See Section 5.4)