

## Introduction to and Summary of Procurement and Personal Property Disposal Guidelines

Pursuant to the Authority's implementation of the Public Authorities Accountability Act of 2005 ("PAAA"), as amended, the Authority's Governance Committee reviews the Guidelines for Procurement Contracts ("Procurement Guidelines") and the Guidelines and Procedures for Disposal of Personal Property ("Personal Property Disposal Guidelines") annually and, if appropriate, recommends adoption by the full Board at the annual meeting (to be held on March 29, 2016).

### PROCUREMENT GUIDELINES

In compliance with the applicable provisions of § 2879 of the Public Authorities Law ("PAL"), as amended, the Authority has established comprehensive Guidelines detailing its operative policy and instructions concerning the use, awarding, monitoring and reporting of procurement contracts. The Guidelines describe the Authority's process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Minority- and Women-owned Business Enterprise ("M/WBE") and Service-Disabled Veteran-Owned Business ("SDVOB") requirements, employment of former officers and reporting requirements. These Guidelines, approved by the Authority's Trustees, were initially implemented on January 1, 1990, and have been amended as deemed advisable and necessary, and reviewed and approved by the Board annually since that date, most recently on March 26, 2015.

Staff has reviewed the Procurement Guidelines and recommends a number of changes to make them more consistent with the law or to improve or clarify the Authority's procurement process. The most significant of such changes pertain to **Definitions, Solicitation Requirements, Evaluation of Proposals, Contract Provisions, and Contracting Decisions Involving Current or Former Employees**, as well as the **Service-Disabled Veteran-Owned Business ("SDVOB") program**, which are highlighted below:

- **DEFINITIONS** as set forth in Article 2 of the Procurement Guidelines:

The following new definitions have been added:

*"Service-Disabled Veteran-Owned Business" ("SDVOB") is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a*

*Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.*

*“Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$200,000 for the purchase of commodities and/or services from Small Businesses or NYS-certified MWBE or SDVOB firms, and as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Authority, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase, shall be considered. 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 and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$200,000, pursuant to State Finance Law § 163.*

- **SOLICITATION REQUIREMENTS** include the use of “**MINI-BIDS**,” where applicable, as summarized below and more fully set forth in Section 3.F of the Procurement Guidelines:

*Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a “mini-bid” (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Authority (e.g., for on-call consulting or contracting services) may also utilize a mini-bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Authority’s bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini-bids shall be conducted by the Authority’s Procurement staff (or on behalf of the Authority by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini-bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Authority’s needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini-bid shall typically be made jointly by the Procurement and initiating departments, and shall be documented for the procurement record.*

- **EVALUATION OF PROPOSALS** may include a new Supplier Diversity Program factor, assessment of the bidder's **DIVERSITY PRACTICES**, based on **"BEST VALUE,"** as summarized below and more fully set forth in Sections 4.B and 4.D, respectively, of the Procurement Guidelines:

*Another Supplier Diversity Program factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D [of the Procurement Guidelines] (but not when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or procurement contract proposal based on lack of adherence to diversity practices.*

*As a best practice, and pursuant to State Finance Law § 163, the Authority will be transitioning to a "Best Value" basis for awarding contracts for services to the offerer that optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerers that are Small Businesses or NYS-certified SDVOB or MWBE firms.*

- **PROHIBITIONS RELATING TO VENDOR PREPARATION OF CONCEPTUAL STUDIES, DESIGNS OR SPECIFICATIONS AND AWARD OF FUTURE WORK, INCLUDING IMPLEMENTATION**, as summarized below and more fully set forth in Section 7.C of the Procurement Guidelines:

*..... Furthermore, any firm, person or other entity retained by the Authority to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work. The above restrictions shall not apply where.....3. There is no qualified response to the solicitation for future phases of work, including implementation; or 4. The originating Authority Business Unit determines in writing that the restrictions are not in the best interests of the Authority.....*

- **CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER AUTHORITY EMPLOYEES**, as summarized below and more fully set forth in new paragraph 9.B.3 of the Procurement Guidelines:

*Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Authority officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Authority, if, prior to engaging in such service, the President and Chief Executive Officer certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Authority's needs and is otherwise unavailable at a comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.*

- **SERVICE-DISABLED VETERAN-OWNED BUSINESS (“SDVOB”) PROGRAM – NEW STATUTORY REQUIREMENTS**, as summarized below and more fully set forth in updated Section 3.I and new Article 11 of the Procurement Guidelines, respectively, pursuant to Article 17-B of the Executive Law and State Finance Law § 163:

*In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business (“SDVOB”) Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services (“OGS”) is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases not exceeding \$200,000 in the aggregate. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of value, and advertised as such on the Contract Reporter website.*

*The Authority also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Authority contracts, as set forth in Sections 2.L and 3.I of these Guidelines and pursuant to Article 17-B of the*

*Executive Law. One tool is the use of SDVOB discretionary purchasing, as further described in Sections 3.D, I and K of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Authority's form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.*

It may also be noted that non-substantive and stylistic changes have also been made throughout the document.

The Governance Committee is requested to review the revisions to the Procurement Guidelines (as set forth in the redlined copy attached hereto as Exhibit 2c-1) and, if appropriate, to recommend adoption by the full Board at the annual meeting to be held on March 29, 2016. The approved Guidelines will become effective on March 31, 2016 and will be posted on the Authority's internet website. On or before the 31<sup>st</sup> day of March, such Guidelines will also be filed with the Director of the Division of the Budget, the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee, the Assembly Ways and Means Committee and the Authorities Budget Office.

## **PERSONAL PROPERTY DISPOSAL GUIDELINES**

In compliance with Public Authorities Law ("PAL") § 2896, enacted as part of the Public Authorities Accountability Act of 2005 ("PAAA") and amended by the Public Authorities Reform Act of 2009 ("PARA"), the Authority established and is required to annually review and approve Guidelines for the Disposal of Personal Property. For the purposes of these Guidelines, such Property may include, but is not limited to, Authority-owned materials, tools, equipment and vehicles regardless of value. The Personal Property Guidelines set forth the methodology detailing the Authority's policy regarding the use, award, monitoring and reporting of the disposal of Personal Property and designate a Contracting Officer responsible for the Authority's compliance with, and enforcement of, such Guidelines. The Guidelines were initially approved by the Trustees in March 2006 and have been amended as deemed advisable and necessary, and reviewed and approved annually since that date, most recently on March 26, 2015.

Staff has reviewed the Personal Property Disposal Guidelines and recommends several substantive changes. These changes are set forth in the redlined copy attached hereto as Exhibit 2c-2 and are proposed to improve internal controls with respect to personal property disposals based on staff's review and recommendations in conjunction with the ongoing Office of the State Comptroller Management Audit.

The Governance Committee is requested to review the revisions to the Personal Property Disposal Guidelines (as set forth in the redlined copy attached hereto as Exhibit 2c-2) and, if appropriate, to recommend adoption by the full Board of Trustees at the annual meeting to be held on March 29, 2016. The approved Guidelines will become effective on March 31, 2016 and will be posted on the Authority's internet website. On or before the 31<sup>st</sup> day of March, such Guidelines will also be filed with the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the Authorities Budget Office.