

**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**2010 ANNUAL REPORT OF PROCUREMENT CONTRACTS**

**EXECUTIVE SUMMARY**

The Power Authority of the State of New York (the "Authority") is a corporate municipal instrumentality and political subdivision of the State of New York. The Authority generates, transmits and sells electric power and energy principally at wholesale. The Authority's primary customers are municipal and investor-owned utilities and rural electric cooperatives located throughout New York State, high-load-factor industries and other businesses, various public corporations located within the metropolitan area of New York City and certain out-of-state customers. The Authority does not use tax revenues or State funds or credit. It finances construction of its projects through bond and note sales to private investors and repays the debt holders with proceeds from operations.

In 2010, the Authority continued a major effort to implement Energy Services and Technology ("EST") programs that include the installation of high-efficiency lighting, motors and controls; conversion to more efficient chiller and boiler plants and clean renewable distributed generation at customer sites statewide. Other efforts include an electric transportation program to promote the use of electric-drive vehicles (cars, pick-up trucks and buses) throughout the State.

The Authority requires the services of outside firms for accounting, engineering, legal, public relations, surveying and other work of a consulting, professional or technical nature to supplement its own staff, as well as to furnish varied goods and services and perform construction work. Many of these contracts are associated with the construction, maintenance and operation of the Authority's electric generating facilities and transmission lines, as well as with support of the energy efficiency projects noted above.

**PROCUREMENT GUIDELINES (Exhibit "A-2")**

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/Women-owned Business Enterprise ("M/WBE") 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 reviewed and amended annually as deemed advisable and necessary since then. The previous revised Guidelines for Procurement Contracts, as presented to the Governance Committee on February 23, 2010, were reviewed and approved by the full Board of Trustees at their meeting held on the same date.

Chapters 174 and 175 of the Laws of 2010 made substantial amendments to the PAL, with several changes governing procurement contracts. In order to make the Procurement Guidelines compliant with the law, staff recommends a number of changes, the most significant of which are highlighted below:

- **DEFINITIONS** as set forth in Article 2:
  - The existing definition of “**Minority and Women-owned Business Enterprise**” (**M/WBE**) has been modified to reference the expanded definition found in Executive Law § 310.
  - The following new definitions have been added:
    - “**Small Business**” shall mean a business that is resident in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
    - “**Single Source**” shall mean a procurement in which although two or more offerers can supply the required good or services, the Authority, upon written findings setting forth the material and substantial reasons therefore, may award a contract or amendment to a contract to one offerer over the other.
    - “**Sole Source**” shall mean a procurement in which only one offerer is capable of supplying the required goods or services.
- **MINORITY / WOMEN-OWNED BUSINESS ENTERPRISE (“M/WBE”)-RELATED REQUIREMENTS** as more fully set forth in Sections 3.D and 3.J.5 and Article 10 of the Guidelines and § 2879 of the PAL:
  - A Procurement Contract may be awarded on a sole source, single source or other **non-competitive basis**: \*
    1. **to a Small Business or to a NYS-certified M/WBE firm for purchases of goods and/or services not exceeding \$200,000**, or
    2. where the contract is for the purchase of goods and/or technology that are **recycled or remanufactured**, in an amount not exceeding \$200,000.

(\* see related note on next page for additional NYPA requirements)

- **Additional guidelines** to foster the increased use of NYS-certified M/WBEs include, but are not limited to:

- Identifying those areas or types of contracts for which M/WBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises;
  - Providing notice to professional and other organizations that serve M/WBEs providing the types of services procured by the Authority;
  - Maintaining and regularly updating lists of qualified NYS-certified M/WBEs, including professional firms that have expressed an interest in doing business with the Authority;
  - Establishing appropriate goals for participation by M/WBEs in procurement contracts awarded by the Authority and for the utilization of M/WBEs as subcontractors and suppliers by entities having procurement contracts with the Authority, and conducting procurement in a manner that will enable the Authority to achieve the maximum feasible portion of such goals.
- **NYS COMPTROLLER’S APPROVAL OF CERTAIN CONTRACTS:**
  - Pursuant to PAL § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain contracts to the NYS Comptroller for approval that are awarded on a sole source, single source, or other **non-competitive basis** for the purchase of goods and/or services in an amount **equal to or greater than \$1 million**, and shall notify the successful bidder therefor. Such contracts and contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations, as set forth in 3.K.

Additionally, the more significant recommended changes not related to the PAL are highlighted below:

- **The definition of Non-Procurement contracts was expanded** to include direct placement of advertisements with electronic media, as well as written materials associated with continuing education courses, as set forth in 2.B.
- **The following new Contract Attachment was added:** “15. Appendix M (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology (“BART”) for Heavy Duty Vehicles),” as set forth in 7.B.
- **\* The award of a contract to a NYS-certified M/WBE**, where a single proposal was sought, negotiated and accepted for purchases of goods and/or services not exceeding \$200,000 in the aggregate including all amendments, **requires the written approval of the Vice President of Procurement.** Any subsequent alteration to the accepted proposal,

including, but not limited to, change orders, amendments or supplemental terms shall also necessitate the written approval of the Vice President of Procurement, as described in 3.D.

- **Every potential sole source or single source contract with a value of \$1 million or more must be approved by the President and CEO or the COO** prior to processing by the Procurement Department, as set forth in 3.N.

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

These amended Guidelines, as reviewed by the Governance Committee, will be presented to the full Board of Trustees for review and approval at the March 29, 2011 meeting. The approved Guidelines will become effective on March 31, 2011 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.

## ACCOMPLISHMENTS

Major procurement efforts in 2010 included purchase of goods, services and construction work in support of the Authority's operating projects and headquarters facilities, Life Extension and Modernization ("LEM") Programs at Blenheim-Gilboa, Niagara and St. Lawrence and the EST programs mentioned above. The Authority's Procurement Department is continuing efforts to enhance the SAP procurement and materials management system, as well as supporting the requirements of the Authority's operations and maintenance work, capital projects ES&T programs and headquarters operations.

### Supplier Diversity Program ("SDP")

In the fourth fiscal quarter October – December 2010, NYPA awarded \$11.9 Million, or 13.6 % of our reportable expenditures, to New York State Certified Minority and Women-Owned Business Enterprises (M/WBEs). Through the fourth fiscal quarter, January – December 2010, the Authority awarded \$35.7 million or 11.7% of our reportable expenditures to NY State Certified M/WBEs. This includes both direct contracts and subcontracts, including construction-related work. NYPA's goal for 2010, as established with NYS Economic Development Corporation, is 6% of "Reportable Expenditures". Reportable expenditures exclude specialty procurements (such as transformers, circuit breakers, turbine runners and other major electrical generating equipment, and commodities such as natural gas, where no M/WBEs are available to provide such goods or services). Attachment I illustrates the Authority's Supplier Diversity program history since 1990.

The new Deputy Director for Empire State Development Corp provided NYPA with the template for the submittal of our 2011-2012 agency goal plans, which is due March 21<sup>st</sup> 2011. This template incorporates new requirements set forth in the recent M/WBE legislation and the new

Article 15-A regulations adopted on December 22, 2010. The goal plan is more extensive than past plans and will require substantially more work for its completion. A major component of this 2011-2012 goal plan is to increase the Authority's M/WBE annual goal to help meet the Governor's goal for minority and women-owned firms to account for 20 percent of the state's business. The Authority's new annual goal, as well as the other components of the goal plan, is currently being assessed.

Empire State Development Corporation amended M/WBE Guidelines and made them available in January of 2011. They were used to update NYPA's Appendices C and G, the Authority's M/WBE and EEO contract language respectively, as well as the Authority's procurement policies and procedures. The Guidelines also increased monitoring and reporting requirements to facilitate transparency in state procurement. Additional Guidelines with respect to the recent laws are expected in the coming weeks.

An inquiry was submitted to all agencies and authorities by the new Chief Diversity Office for New York State requesting specific information on the Authority's Supplier Diversity Program and practices. This information was prepared and submitted on 2/09/11.

It should also be noted that during calendar year 2010 seven (7) different NYS certified MBE financial dealers transacted over \$421 million or 27.6% in principal sales and purchases for the Authority.

The Authority continues an active outreach program with various M/WBE organizations and trade associations. A significant part of its outreach efforts include Annual Purchasing Exchanges. The Authority's 20th exchange was held at its White Plains office in June 2010. Representatives of nearly 500 M/WBEs and more than 50 New York State, federal, New York City, local and corporate entities participated in the exchange.

## **ANNUAL REPORT – 2010 PROCUREMENT CONTRACTS (Exhibit “A-3”)**

The Annual Report includes specific details for procurements of \$5,000 or greater awarded since January 1, 1990 that were active in 2010. There were 2,172 such contracts with an estimated value of more than \$5.3 billion, which also includes fossil fuel and corporate finance expenditures. Total procurement expenditures in 2010 exceeded \$561 million. This amount included more than \$213 million for the purchase of fossil fuels and related services. Approximately 57% of the contracts active in 2010 were closed in 2010.

As noted in Attachment II:

- Approximately 9% of these contracts were for construction work;
- More than 45% were for the purchase of equipment and commodities;
- More than 15% were for consulting contracts (e.g., engineering, design, specialized analysis);
- Other services, such as technician work and contracted personnel, accounted for 31%.

Attachment III indicates that, based on the total value of the contracts included in the Annual Report, approximately 97% (including fuels and corporate finance) were for contracts that were competitively bid. The major reasons for the amount of sole-source awards in 2010 included the purchase of spare parts and services from original equipment manufacturers, procurements from proprietary sources, ongoing Southeastern New York maintenance/repair contracts and procurements required on an emergency basis.