



## NYPA GUIDELINES FOR PROCUREMENT CONTRACTS

Revision Date (For IBC Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
10/17/2023	7	Title change for SSM Department Head; Clarifications to Sections 7 and 8, Change Orders	7, 8	Liz Carl, Sr. Dir. Procurement Gov & Analytics COE
3/22/2023	6	Annual updates proposed for clarity, ease of use and include minor changes to reflect current regulatory and statutory changes.	Sections misc.	Liz Carl, Sr. Dir. Procurement Gov & Analytics COE
3/29/2022	5	Annual updates proposed for clarity, ease of use and include minor changes to reflect current regulatory and statutory changes.	Sections misc.	Liz Carl, Sr. Dir. Procurement Gov & Analytics COE
3/30/2021	4	Annual updates include definitions for Purchase Order Release, Value Contract and Design-Build; award of contracts updates on purchase order releases; carve out for Design-Build contract provisions on solicitation for future phases of work	Sections 2C, 2L, 2T, 6F, 7(3)	Liz Carl, Sr. Dir. Procurement Gov & Analytics COE
12/09/2020	3	Annual updates include definition of Non- Procurement; solicitation requirements for services and third party; award of contracts updates on personal services and construction value contracts; contract provisions on Appendix P	Sections 2,3,6,7	Liz Carl, Sr. Dir. Procurement Gov & Analytics COE
4/6/2020	2	Annual updates include definition of Software; statutory updates for procurement announcements and the dollar cap for MWBE discretionary spend	Sections 2, 3, 6	Diane Gil, Sr. Director, Procurement Governance & Analytics Center of Excellence
3/26/2019	1	Per PAL §2879, the Guidelines were adopted by resolution and are reviewed annually and	Sections 1,2,3,4,6,7,	Diane Gil,

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		approved (by the Trustees). Updates proposed for clarity, ease of use and include minor changes to reflect current regulatory and statutory changes.	10 and 13	Sr. Director, Procurement Governance & Analytics Center of Excellence
3/27/2018	0	Converting approved 2018 NYPA Guidelines for Procurement Contracts (“Guidelines”) to e-Scribe format. Per PAL §2879, the Guidelines were adopted by resolution and are reviewed annually and approved (by the Trustees).	N/A	Diane Gil, Sr. Director, Procurement Governance & Analytics Center of Excellence

## NYPA GUIDELINES FOR PROCUREMENT CONTRACTS

### **1. PURPOSE**

These Guidelines are adopted pursuant to the provisions of the Act (as defined below) and Section 2879 of the Public Authorities Law, as amended. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A of the Executive Law, Veteran Services Law Article 3, and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines. These Guidelines are designed to ensure the responsible and prudent use of the resources of the Authority; to guard against favoritism, extravagance, fraud and corruption; and, to facilitate the efficient and timely acquisition of goods and services for the Authority. To help ensure that the purposes of these Guidelines are met and that there is compliance with applicable law and procedures governing procurements by the Authority, each operating division within the Authority shall engage Strategic Supply Management in all purchases of goods and services by the Authority.

### **2. DEFINITIONS**

- A. “Act” shall mean the Power Authority Act.
- B. “Capital projects” generally refer to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment, or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment, or property.
- C. “Construction Contracts” are Procurement Contracts that employ craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services for the construction, reconstruction, alteration, maintenance, moving or demolition of any building, structure or improvement, or relating to the excavation of or other development or improvement to the land.
- D. “Contact” is any oral, written, or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the Authority’s conduct or decision regarding the procurement.
- E. “Design-Build” is a method of project delivery where there is one entity, one contract, one unified flow of work from initial concept through completion. Design-Build is also referred to as Engineer, Procure, Construct (EPC) in some instances.
- F. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$500,000 for the purchase of commodities and/or services from Small Business Enterprises or NYS-certified Minority- and Women-owned Business Enterprises (MWBE) firms, and NYS-certified Service Disabled Veteran Owned Business (SDVOB) firms as further set forth in Sections 3.D and 3.M.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 from the same provider 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 \$500,000, as that term is defined in State Finance Law § 163.

- G. "Disadvantaged Business Enterprise" (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, as that term is defined in 49 C.F.R Part 26.
- H. "Evaluation of Proposals," as further outlined in Section 4 below, includes as evaluating factors the Authority's consideration of a bidder's skill, judgment, and business integrity.
- I. "Goods" include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as Goods, where a majority of the total projected contract value will be for the purchase of equipment, material or supplies.
- J. "Minority- and Women-owned Business Enterprise" (MWBE) is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Alaskan Native, Asians, Pacific Islanders and/or women, and as further described in the Authority's Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- K. "Non-Personal Services Contracts" are Procurement Contracts for all other services that do not involve professional skill, knowledge or expertise and/or performance may be substituted by another individual or entity. By way of example, Non-Personal Services include, but are not limited to, maintenance, minor structural repairs, printing services, marine patrol and skilled or unskilled temporary personnel, including clerical office staff, technicians, or engineers working under Authority's supervision.
- L. "Non-Procurement Contracts" include contracts under \$5,000, contracts for energy with or without environmental attributes included, capacity, renewable energy certificates, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services; certain insurance and healthcare products that do not readily lend themselves to a competitive solicitation. In addition, Non-Procurement Contracts include direct and indirect placement of advertisements , periodicals, referential data subscriptions, reference materials or professional research tools, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, guest speakers, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and

procurement activities conducted or sponsored by such organizations in which the Authority participates.

- M. "Operation and Maintenance" (O&M) generally, refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an "asset") in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA's production/transmission facilities and energy programs.
- N. "Personal Services Contracts" are Procurement Contracts to provide either (i) a service by a named individual that involves a particular skill, cultivated judgment and the exercise of discretion, such that performance by a substituted individual would be unacceptable; or (ii) a professional service requiring professional skill, knowledge or expertise of a consulting, professional or technical nature in occupations that may require an advanced degree or specific licensure, certification or specialized training, for a fee, commission or other compensation, by a person or persons who are not providing such services as officers or employees of a state agency or public corporation. By way of example, such professional services include but are not limited to the areas of accounting, architectural, engineering, surveying, financial advisory, investment banking, legal, public relations, marketing, planning, management, consulting, surveying, training (when specifically developed by a consultant for the Authority), IT or cyber consulting, IT development and construction management.
- O. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, operations and maintenance (O&M) and, capital projects (as defined in Section 2.M and 2.B, respectively), including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.I and 2.K, 2.N, and 2.C.
- P. "Purchase Order Release" is a single order issued for goods or services in accordance with the terms and conditions of a Value Contract.
- Q. "Relative" is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant, as referred to in Subsection 9.E of these Guidelines. The term Relative may include, but is not limited to, the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.
- R. "SDVOB Set-Aside" are procurements identified at the discretion of the Authority to exclusively set-aside for the participation of NYS-certified SDVOBs, and are subject to the applicable laws, rules, and procedures governing procurements.

- S. “Single-Source” is a procurement in which the Authority, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.
- T. “Small Business” (or Small Business Enterprise, SBE), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- U. “Software” includes on-premise applications as well as Software-as-a-Service (SaaS) which is defined as a software distribution model in which a third-party provider hosts the application and makes access available to customers over the Internet. “Software” shall be considered “Equipment” where such term is used throughout these Guidelines.
- V. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.
- W. “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 Veteran Services Law Article 3.
- X. “Value Contract” master service agreement for goods and services with specific target value and term.

### **3. SOLICITATION REQUIREMENTS**

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the Strategic Supply Management (SSM) Department and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (RFP) or Request for Quotations (RFQ) will be made available to a minimum of three providers and/or firms (if available) commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP or RFQ (referred to as a Request for Qualifications and/or Request for Information (RFI)). In such cases, proposals are requested only from those provider(s) and/or firm(s) whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Authority may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Authority does so at its own cost or expense and will not be

reimbursed by the Authority for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Authority representative.

- D. To promote the use of MWBEs, SDVOBs and Small Business Enterprises (SBEs), the Authority will solicit offers from such firms known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.J, 2.W and 2.T, respectively.

To encourage meaningful participation of MWBEs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services not exceeding \$500,000, in the aggregate including all amendments, from a NYS-certified MWBE or an SBE that offers a fair and reasonable price for such goods and/or services. An SDVOB may be awarded on the basis of a single proposal that offers a fair and reasonable price for such goods and/or services without a dollar cap. The award of such proposal requires the written approval of the SSM Department Head. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall not violate the statutory requirements established for discretionary purchases. Furthermore, the award of such Procurement Contracts will be noticed as a single source award on the Contract Reporter website, as further set forth in Section 3.J.

- E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Authority will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:

1. "New York State Business Enterprise" is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Authority that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Authority that are substantially performed within New York State as further described in Public Authorities Law § 2879. For purposes of construction services, a New York State Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in New York state.
2. "New York State resident" is a person who maintains a fixed, permanent, and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
3. "Foreign Business Enterprise" is a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the Authority that are substantially produced outside New York State, or services other than construction services, sought by the

Authority that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.

4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
  5. Pursuant to Public Authorities Law § 2879, the Authority shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (DED). The provisions of this section may be waived by the Authority’s Chief Executive Officer if the Chief Executive Officer determines in writing that it is in the best interests of the Authority to do so, as further set forth in the above-referenced law.
  6. Pursuant to Public Authorities Law § 2879, the Authority will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (OGS) or Federal government (e.g., General Services Administration (GSA)) or any city or municipality where the SSM Department and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.

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.

- G. Procurement Contracts issued by the Authority 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. Such mini bids shall be conducted by the Authority’s SSM staff (or on behalf of the Authority by a contracted service provider) 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 be made jointly by SSM and the initiating departments and shall be documented for the Procurement Record.

- H Solicitations will include a scope of work that defines the goods required and/or the services to be performed; evaluation criteria (as defined in Section 4); milestone dates; the Authority's Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Authority requirements and any special methods or limitations that the Authority chooses to govern the work.
- I Telephone solicitation, for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All telephone solicitations made by SSM shall be documented and made part of the Procurement Record.
- J For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Authority will, prior to soliciting proposals, submit all required information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, ([www.nyscr.ny.gov](http://www.nyscr.ny.gov)). Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Authority will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.J does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.O, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Notwithstanding the foregoing, submittal of a notice of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$500,000 awarded to Small Business Enterprises or NYS-certified MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, for discretionary awards on a single or sole source basis to SDVOB's, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for Procurement Contract bidding opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- K 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 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. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of value and advertised as such on the *Contract Reporter* website as a SDVOB Set-Aside.
- L. Proposals for certain services not resulting in Procurement Contracts may also be solicited by the SSM Department to gather information from potential sources, that will include a description of the offeror/firm's qualifications, résumés of key personnel, past experience and proposed billing rates. SSM's effort is concluded when SSM furnishes the information solicited to the initiating department for their use.
- M. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
  2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
  3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
  4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
  5. The contract is awarded to a Small Business Enterprise, NYS-certified MWBE and/or a NYS-SDVOB firm, or a combination thereof, for discretionary purchases not exceeding \$500,000, pursuant to Section 3.D and as further set forth in Section 2.F.
  6. The contract is awarded to a NYS-certified SDVOB for a SDVOB Set-Aside.
  7. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$500,000, as further set forth in Section 2.F and subject to the approvals stated in Section 3.D.
  8. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in

New York State, in an amount not exceeding \$200,000, as further set forth in Section 2.F and subject to the approvals stated in Section 3.D.

9. Services are required on a more expedited basis than the competitive procurement process will allow. Requesting business units must demonstrate the urgency of the project and that awardee is cost-effective and qualified in the subject area. Services shall be for specific scopes of work in an amount not exceeding \$500,000 and are subject to the approvals stated in Section 3.D.

N Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations (2 NYCRR Part 206) and the State Authority Contract Manual, the Authority may be required to submit certain contracts to the New York State 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 in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or 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.

O Subject to the Authority's Expenditure Authorization Procedures (EAPs), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:

1. A threat to the health or safety of the public or Authority employees or workers arising out of (i) an accident; or (ii) other unforeseen occurrence or condition immediately affecting the property or other interest of the Authority.
2. Proper functioning of the Authority facilities or construction or operating projects, or other projects implemented by the Authority, requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.

P Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the compelling reasons therefor to the SSM Department. The award of such Procurement Contracts, regardless of value, requires the written approval of the SSM Department Head.

Q In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition

shall apply: “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the SSM Department Head or authorized designee.

- R It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Authority will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following shall apply:

The “Restricted Period” is the period of time commencing with the earliest posting, on the Authority’s website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., New York State *Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors intending to result in a Procurement Contract with the Authority and ending with the final contract award and approval by the Authority and, where applicable, the State Comptroller. The “Restricted Period” also applies to a “mini-bid” process that may be utilized in certain established OGS, GSA or Authority multiple award contracts, as provided in Section 3.F and 3.G.

The Authority shall designate a person or persons who may be contacted, with respect to each Authority procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Authority’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period. Any contacts received by persons other than those designated by the Authority shall make a contemporaneous record of such contact and report it to the designee(s).

- S In furtherance of the Authority’s commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Authority who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987 and as further set forth in the Authority’s Company Policy, Lobbying Contacts CP 9-2, regarding this matter.

- T Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Authority to record in a database maintained by the New York State Office of General Services certain appearances between the Authority and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal “Restricted

Period.” Covered individuals at the Authority means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Authority means both “external” (e.g., a lobbyist) and “internal” (e.g., sales representative) representatives of an entity, individuals appearing on behalf of themselves, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Authority’s Ethics and Compliance Office for recording in the Project Sunlight database.

U Prior to entering into any binding commitment with a third party (e.g., written agreement or memorandum of understanding (MOU)) in pursuit of any joint or collaborative development project, the office of SSM and the Law Department (Law) must be notified regarding the procurement and on the issue of whether and to what extent the projects falls within the constraints of the Authority’s procurement regulations and enabling legislation. SSM and Law should be brought into any such project during the development phase.

Provided that the Authority has statutory authority to develop or otherwise participate in a project developed, in whole or in part, in collaboration with a third party, the following minimum criteria must be met:

- (i) the Authority’s participation must be in response to a solicitation issued by the State or other public entity pursuant to a competitive selection process; and
- (ii) the construction of any asset to be owned by the Authority must comply with all applicable laws, including but not limited to prevailing wage requirements and goals established for the use of minority enterprises (e.g., MWBE, SDVOB, or DBE); and
- (iii) goods and/or services required to develop and implement the project must be sourced and procured in accordance with, and subject to, either (a) the Authority’s Procurement Guidelines; or (b) the requirements of the third party collaborator governing the competitive procurement of goods and services, provided that SSM has been furnished with a copy of such requirements which demonstrate, in SSM’s judgement, that a competitive procurement or equivalent has been or will be undertaken.

Prior to execution any underlying agreement (i.e. joint development agreement, MOU, etc.) an internal award recommendation must be memorialized and approved by the SSM Department Head, the Executive Vice President and Chief Financial Officer (or their designee) and the responsible Business Unit head.

#### **4. EVALUATION OF PROPOSALS**

A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not

limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the SSM Department and the appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the bidder(s) to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific procurement (e.g.: capital construction project) or specific circumstances (e.g.: outage at an operating facility), the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to comply with Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another 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 based on "Best Value" as described in Section 4.F. (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.

- C. For Personal Services Contracts, Non-Personal Services Contracts, and Construction Contracts (as defined in Sections 2.N, 2.K and 2.C of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.

- D. For Procurement Contracts for Goods (as defined in Section 2.I of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to “other than low bidder”.)
- E. Pursuant to § 139-k of the State Finance Law, the Authority shall not award a Procurement Contract to an offeror who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the offeror is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder’s/contractor’s knowing and willful violation of the Authority’s policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such offeror pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render an offeror ineligible to submit bids for four years from the second determination of non-responsibility.

- F. The Authority may award on a “best value” basis for awarding contracts to the offeror that optimizes quality, cost and efficiency, among all qualified bidders. The Authority may award to “other than low bidder” or “best value” only with the approval of appropriate management as stipulated in the EAPs and should be based on such a proposal providing a clear advantage to the Authority over the lower-priced proposal. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms. Other factors may include, but are not limited to, improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders’ financial resources or the ability to meet or exceed Supplier Diversity goals; and overall, the bidder’s skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Authority may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Authority deems it prudent considering its experience, the circumstances of the solicitation and/or potential cost savings.

**5. RECOMMENDATION OF AWARD**

A written recommendation for approval of a proposed award of a Procurement Contract, when required per SSM procedures, must include an evaluation of all proposals received, as well as any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents.

**6. AWARD OF CONTRACT**

- A. Procurement Contracts must be approved in writing by the appropriate management as set forth in the EAPs. Trustee approval at the next Trustees' meeting is required as detailed in this Section 6.
- B. If the proposed term of a Personal Services contract will exceed five (5) years, including any extensions authorized in the contract, the SSM Department Head must first approve the Business Unit's written justification for the term exceeding 5 years prior to the issuing of the contract.
- C. The SSM Department prepares the contract for execution by the Authority and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Authority signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- D. Pursuant to Economic Development Law § 143, the Authority shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter at the time it enters into a contract. Such announcement shall identify the contract, specify the date of the award of the contract and provide the name of and contact information for each recipient of the contract.
- E. Pursuant to Public Authorities Law § 2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder thereof. The Authority shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.
- F. Prior to award, contracts meeting the following criteria must be approved by the Trustees:
  - a. The value of a contract (or the aggregate amount for multiple awards) meets or exceeds the minimum value requiring Trustee approval as set forth in the EAPs;
  - b. A Services Contract (which include contracts for Construction, Personal and Non-personal services, as defined in Section 2.) valued or estimated to be \$5,000 or greater that will be awarded for a period of more than 12 months;
  - c. Extending a contract for Services with an initial duration of less than 12 months beyond 12 months. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, the Business Unit Head, with the prior concurrence of the SSM



Department Head or equivalent(s) or designee, may authorize in writing extending such contract, subject to the Trustees ratifying such action as soon as practicable; or

- d. Extending a previously approved contract for services beyond the allowable “grace period” as further described in Section 6G.
- G. Extending a Services Contract, previously approved by the Trustees, for 12 months or less (“grace period”) requires approval by the Vice President of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the SSM Department Head.
- H. The Business Unit head, with the prior concurrence of the SSM Department Head, may authorize, in writing, the commencement of services or the purchase of goods prior to obtaining the required Trustee approval under the following limited circumstances:
  - a. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, and immediate work is required.
  - b. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year.

The initial compensation limitation may not exceed the authorization level for the Business Unit head as set forth in the EAPs. Such contracts will be subject to the Trustees’ approval, which will be solicited at their next scheduled Trustee meeting.

- I. For Personal Services Contracts, Non-Personal Service Contracts, and Construction Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next Trustees’ meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs and the Business Unit head. Such contract is subject to the Trustees’ approval, at the next Trustees’ meeting. If such approval is not granted, the contract will be terminated immediately.
- J. A Personal Services Contract, Non-Personal Service Contract, and Construction Contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any “continuing services” contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Trustee-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a “Change Order,” “Purchase Order” or “Task Number”) is considered a separate commitment and must be separately approved in accordance with the EAPs.

- K. For work performed by service providers at customer sites pursuant to a Value Contract, Purchase Order Releases may extend beyond the term of the Value Contract with the written approval of the SSM Department Head provided that the Purchase Order Release is issued prior to the expiration of the Value Contract; and provided further that the Value Contract allows for the extended term of the Purchase Order Release. The term of the Purchase Order Release shall be only as required to complete the work committed to the customer and the extension of the Value Contract is solely for the completion of the work outlined in the Purchase Order Release and no new Purchase Order Releases shall be issued thereafter, however Purchase Order Releases for multiple projects may be extended in this manner.

**7. CONTRACT PROVISIONS**

- A. Standard forms of boilerplate contracts are available including but not limited to the following more common forms: purchase orders; furnish-and-deliver format; consulting services agreements and maintenance agreement formats; contract work orders; construction contracts and furnish, deliver and install contracts. These contract forms are intended to govern the routine purchase of goods and/or performance of services.

Authority departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the SSM Department, which is solely responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefore, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices

14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. Supplier Diversity (MWBE/SDVOB/DBE/EEO) requirements
19. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Design Requirements For New York Power Authority Drawings)
9. Appendix "G" (Equal Employment Opportunities Requirements) - inactive
10. Appendix "H" (Tax Law Requirements)
11. Appendix "I" (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/or Unescorted Physical Access Training Requirements)
12. Appendix "J" (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures) - inactive
13. Appendix "K" (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) ("ARRA") Funded Projects) - inactive
14. Appendix "L" (DOE Federal Contract Provisions) - inactive
15. Appendix "M" (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology ("BART") for Heavy Duty Vehicles)
16. Appendix "N" (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment) - inactive
17. Appendix "O" (Encouraging Use of New York State Businesses in Contract Performance) – inactive
18. Appendix "P" (Non-Bulk Electric System (BES)) (Information Security Requirements for Vendors and External Partners non-Bulk Electric System)
19. Appendix "P" for BES (Information Security Requirements for Vendors and External Partners for Bulk Electric System)
20. Omnibus Procurement Certification

- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts

for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

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 name(s) of any vendor(s) providing goods or services as outlined in this section C shall be disclosed during the bidding event.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service.
2. More than one vendor has been involved in preparing the specifications for a procurement proposal.
3. There is no qualified response to the solicitation for future phases of work, including implementation.
4. Construction projects using delivery models of Design-Build or Engineer, Procure Construct; or
5. The originating Authority Business Unit determines in writing that the restrictions are not in the best interests of the Authority. Such originating Business Unit shall obtain the approval of the applicable Business Unit Head or equivalent(s), SSM Department Head or equivalent(s) or designee, Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

## **8. CHANGE ORDERS**

- A. Change Orders to existing contracts are justified in circumstances such as the following
  1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope.
  2. To exercise options previously included in the original contract to perform additional work or to extend the contract term.
  3. To accommodate emergency conditions, defined in Section 3.0 herein, that require the immediate performance of work by a firm already under contract.
  4. When rebidding would not be practical or in the best interests of the Authority's customers; or
  5. To meet the Authority's Supplier Diversity Program goals in accordance with Executive Law Articles 15-A and Veterans Services Law Article 3, respectively.
- B. Change Order requests for an increase to the value of a Purchase Order, Value Contract or Purchase Order Release must be approved in accordance with the Authority's EAPs.

- C. Change Order requests to extend the term of a services contract, inclusive of Personal Services, Non-Personal Services and Construction contracts, from a term of less than one year to more than one year must be approved by the Board of Trustees prior to the execution of the Change Order.
- D. The Authority will not execute a Change Order and will engage in a competitive bidding process when a proposed change order would result in a contract value (or aggregate) exceeding the thresholds set forth below:
  - a. For contracts with an original approved amount (or latest Trustee approved amount) of less than \$100,000:
    - i. \$25K more than the original authorized amount (or latest trustee approved amount)
  - b. For contracts with an original approved amount (or latest Trustee approved amount) of \$100,000 or greater:
    - i. \$500K more than the original authorized amount (or latest trustee approved amount) for Personal Services contracts  

- OR -
    - ii. \$6M more than the original authorized amount (or latest trustee approved amount) for all contracts that are not Personal Services contracts  

- OR -
    - iii. 125% of the original authorized amount of the contract (or latest trustee approved amount).
  - c. Should a competitive bidding process not be feasible:
    - i. A memo must be presented to and signed by the SSM Department head explaining why rebidding pursuant to a competitive solicitation process is not feasible. The memo must be signed by the proposing business unit representative following the appropriate column of the EAPs for the proposed new value of the contract(s).
    - ii. The SSM Department Head has the right to reject the proposed change order to the contract and direct rebidding pursuant to a competitive solicitation process. The SSM Department Head has the right to accept the change order and may direct the end user to advise the Trustees of the resultant increase at the next Trustee meeting.
    - iii. For contracts with an original approved amount (or latest approved trustee amount) of greater than \$100,000, if the change order proposed meets criteria (b.iii) above and meets either (b.i) or (b.ii), the change order must be presented to the Board of Trustees.

- iv. When the change order has been presented and accepted by the Trustees, the latest Trustee approved amount will become the new contract value.
- E. All Change Orders should include a defined scope of work and all impacts to price and schedule.
- F. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

**9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES**

- A. Former Authority officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Commission on Ethics and Lobbying in Government that such engagement is permissible; and upon approval of the President and Chief Executive Officer, as well as the Chairman of the Board of Trustees.
- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
  - 1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
  - 2. No Authority officer or employee is eligible, at any time after the termination of Authority service, to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during their period of service, or which was under their active consideration.
  - 3. 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 Chairman of the Board of Trustees 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 Commission on Ethics and Lobbying in Government must review and approve all such certifications.

- C. No Authority employee who is involved in the award of Authority grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Authority employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Authority employee or a Relative of such Authority employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing their supervisor and the Office of Ethics and Compliance of the relationship and must be recused from any and all discussions or decisions relating to the matter.

For purposes of this Section 9.E, the term "Relative" is defined in Definitions, Section 2.Q of these Guidelines.

## **10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS**

- A. MWBE and Equal Employment Opportunity (EEO)
  - 1. The Authority is committed to the inclusion and participation of MWBEs on Authority contracts for MWBEs. Article 15-A of the Executive Law established the Division of Minority and Women's Business Development ("DMWBD") that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.H of these Guidelines. In addition, specific subcontracting goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders' proposals will include a completed Utilization Plan for MWBEs, as well as applicable EEO and Diversity Practices Questionnaire Forms, where required. Such bidders' failure to meet these requirements may be grounds for rejection of the proposal during the solicitation process, or cancellation of the contract if a contractor did not make a good faith effort to meet its

goals after contract award. Approved MWBE Utilization Plans and Request for Waivers will be posted on the Authority's procurement website.

2. Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Supplier Diversity Program documents, the following guidelines apply:
  - a. Identify those areas or types of contracts for which MWBEs 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.
  - b. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Authority.
  - c. The Authority shall also consult the NYS directory of certified MWBEs pursuant to Executive Law Article 15-A. The Authority will provide prospective bidders with an electronic link to the NYS directory to encourage maximum participation of MWBEs in its contracts.
  - d. Establish practical, feasible and appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Authority and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the criteria set forth in Public Authorities Law § 2879.
  - e. Conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Authority's procurements.
  - f. Monitor compliance with data related to workforce utilization and/or EEO goals as practical, feasible and appropriate.

**B. Service-Disabled Veteran-Owned Business (SDVOB) Program Requirements**

1. The Authority is also committed to promote business opportunities for NYS-certified SDVOBs in Authority contracts, as set forth in Sections 2.W and 3.K of these Guidelines and pursuant to Veteran Services Law Article 3. One tool is the use of SDVOB discretionary purchasing, as further described in Sections 3.D, 3.K, and 3.M.6 of these Guidelines. Another tool authorized by the law is the use of SDVOB Set-Aside, 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. Approved SDVOB Utilization Plan and Request for Waivers will be posted on the Authority's website.
2. Pursuant to Veteran Services Law Article 3, the following guidelines apply:



1. Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Authority contracts. Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.
  2. Achieve an overall goal of six percent for SDVOB participation on Authority contracts through prime and subcontracting opportunities.
- C. Disadvantaged Business Enterprise (DBE) Program Requirements on Federally Funded Contracts
1. The Authority strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in NYPA Federally funded contracts. The Authority aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Authority follows the DBE guidelines as set out by the Federal Department of Transportation (DOT). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.
  2. The Authority is committed to promoting participation of DBEs in NYPA contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:
    1. To ensure nondiscrimination in the award and administration of Federally funded contracts.
    2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts.
    3. To ensure that the Authority's DBE program is narrowly tailored in accordance with applicable law.
    4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs.
    5. To help remove barriers to the participation of DBEs in Federally funded contracts.
    6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
    7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
    8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.
    - 9.

## **11. PROCUREMENT RECORD AND REPORTING**

### **A. Procurement Record**

The SSM Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made, and the approach taken in the procurement process. Such records are transmitted to

the Digital Warehouse for electronic storage and retrieval. Under State Finance Law §§ 139-j and 139-k, the Procurement Record must also include:

- i. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Authority's decision not to award an offeror the Procurement Contract.
- ii. All forms entitled "Record of Contact".
- iii. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the Procurement Record.

The Authority shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders or debarred due to violations of State Finance Law § 139-j.

**B. Procurement Report**

The SSM Department Head or equivalent(s) will prepare and submit an annual report to the Trustees for their approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
5. The type of contract (equipment, services, personal services or construction);
6. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source);
7. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
8. The number of bids received and
9. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.

- C. Such annual report, as approved by the Trustees, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual

procurement report is posted on the Authority's website and copies shall be made available to the public upon reasonable written request therefor.

- D. The Authority may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the Public Authorities Accountability Act (PAAA) or other statutes regulating the procurement of goods and services, such as the New York State Authorities Budget Office through the Public Authorities Reporting Information System (PARIS).
- E. The SSM Department Head or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15<sup>th</sup> day of July, October, January and April.

**12. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS**

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.