

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

Meeting of the Members  
200 Liberty Street, 24<sup>th</sup> Floor  
New York, NY 10281  
January 29, 2019

Members Present

George Tsunis, Chairman  
Martha Gallo, Member  
Anthony Kendall, Member  
Catherine McVay Hughes, Member

Authority Staff in Attendance: Benjamin Jones, President and Chief Executive Officer  
Sharmila Baichu, Vice President of Human Resources  
Anthony Buquicchio, Senior Project Manager  
Marie Baptiste, Deputy Treasurer  
Gwen Dawson, Vice President, Real Property  
Abby Ehrlich, Director of Community Partnerships and Engagement  
Pamela Frederick, Chief Financial Officer/Treasurer  
James Gallagher, Assistant General Counsel  
Abigail Goldenberg, General Counsel  
Nimisha Haribaran, Executive Assistant/Contract Manager  
Craig Hudon, Director of Parks Programming  
Susie Kim, Deputy General Counsel  
Karl Koenig, Controller  
Eric Munson, Vice President of Administration & Strategic Planning  
Lauren Murtha, Paralegal/Assistant Corporate Secretary  
Robert Nesmith, Chief Contracting Officer  
Anthony Peterson, Director of Diversity Programs  
Bruno Pomponio, Director of Parks Operations  
Jason Rachnowitz, Director of Financial Reporting  
Nicholas Sbordone, Director of Communications and Public Affairs  
Nicole Stallworth, Associate General Counsel  
Markus Sztejnberg, Special Counsel for Ethics, Risk and Compliance  
Alexis Torres, Chief of Staff  
Ryan Torres, Associate Director of Parks Operations  
Kenneth Windman, Director of Facilities & Infrastructure Management

Others in Attendance:

Warren Ruppel, Marks Paneth  
Dan McElwee, Marks Paneth  
Bob Cheddar, PFM Asset Management  
Steve Faber, PFM Asset Management  
Samantha Meyers, PFM Asset Management  
Jim Haddon, Ramirez Asset Management  
Lou Sarno, Ramirez Asset Management  
Various Members of the Public

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 2:08 p.m.

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The first item on the agenda was the approval of the minutes of the December 11, 2018 meeting. Upon a motion made by Ms. Gallo and seconded by Ms. McVay Hughes the following resolution was unanimously adopted:

### **APPROVAL OF MINUTES OF THE DECEMBER 11, 2018 MEETING**

BE IT RESOLVED, that the minutes of the meeting of the Members of the Hugh L. Carey Battery Park City Authority held on December 11, 2018 are hereby approved.

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There were three individuals who presented during the period of public comment.

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The next item on the agenda was the M/WBE Utilization Report presented by Mr. Peterson.

Mr. Peterson reported that for the month of December, 2018, 37.94% or \$225,975.25 of the Authority's total allowable expenditures of \$595,563.99 was paid to M/WBEs.

Of this total amount, \$65,730.40, or approximately 11%, was paid to MBEs, and \$160,244.85, or approximately 27%, was paid to WBEs. 18.26% (\$108,745.60) of these amounts were paid directly to M/WBEs - 11.04% (\$65,730.04) to MBEs and 7.22% (\$43,015.20) to WBEs. 19.68% (\$117,229.65) was paid to MWBEs as Sub-Contractors - 0% (\$0) to MBEs and 19.68% (\$117,229.65) to WBEs. And for the Third Quarter of Fiscal year 2018-19, 3.36% (\$29,080.57) of the Authority's total allowable expenditures of \$864,518.07 was paid to SDVOBs.

The Chairman took a moment to acknowledge Mr. Peterson's efforts as a Director of Diversity. He noted that there's "...a 30% benchmark that we would expect people to hit on the Minority Women Owned Businesses and you consistently hit it every reporting period... You guys have done a most outstanding job."

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The next item on the agenda was the Resiliency Update presented by Mr. Jones.

Mr. Jones began by briefly updating the Board on the resiliency working group. He mentioned that the group met since the last Board meeting, and received status updates on both of the resiliency projects that are underway, the south BPC resiliency, and the ball fields resiliency. He said some of the information is still being finalized for our upcoming community meetings on these projects in early March, but with a coastal modeling and hydrology analysis, it's clear that the south area of Battery Park City and the ball fields are at serious threat for severe weather. He added that this analysis will be finalized, shared with the community, and will be used to inform the design decisions that we have to make about the types of protection, and where the protections should be.

He then mentioned we are in the midst of the procurement for the North Battery Park City Resiliency project which is the third phase of our plan and are expecting proposals next week for the

design and engineering phase of that project. He also noted that although this is a very big effort from a design and engineering construction perspective, it is also a huge inter-agency coordination effort and that we have kicked off both projects with almost all of the stakeholders at the table from various agencies who are all invested in this project and are going to be meeting with them again soon. There's a variety of touchpoints and permits and we have those built into our project schedule and are going to be collaborating closely with them to make sure we get everything done. In addition to the community he said we are keeping the local elected apprised of our progress; he met with Manhattan Borough President Brewer earlier this week and will be meeting with Council Member Chin later this week.

Ms. McVay Hughes then thanked Gwen and her amazing team and noted that she thinks there's going to be a lot of eye-opening information that will be revealed.

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The next item on the agenda, presented by Ms. Frederick, was an authorization to amend an agreement with J.P. Morgan for banking and cash management services.

Ms. Frederick stated this is a one-year extension to an existing three-year contract. She then noted that the contract started in 2016 and it culminates February 28, 2019. The time extension provides the Authority the time to implement a procurement for these services without interrupting our banking services and financing operations. There remains \$38,000 on what was a \$49,200 contract, so this is not a request for additional money just the extension of one year to complete the procurement.

Upon a motion made by Mr. Kendall and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

**AUTHORIZATION TO AMEND AN AGREEMENT WITH J.P. MORGAN TO EXTEND THE TERM FOR BANKING AND CASH MANAGEMENT SERVICES**

BE IT RESOLVED, that in accordance with the materials presented to this meeting, the President and Chief Operating Officer (the "President") of the Authority or her/his designee(s) be, and each of them hereby is, authorized and empowered to amend the agreement (the "Amendment") with J.P. Morgan to extend the term for one (1) year to continue to provide a full range of banking and cash management services for non-Trustee corporate accounts of the Authority and Battery Park City Parks Conservancy Corporation; and be it further

RESOLVED, that the President or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Amendment on behalf of the Authority, subject to such changes as the officer or officers executing the Amendment shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusively evidenced by the execution and delivery of the Amendment; and be it further.

RESOLVED, that the President or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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The next item on the agenda, presented by Ms. Frederick, was the acceptance of the audited financial statements for FY18 and the authorization to file.

Ms. Frederick began stating this item is for the acceptance of the audited financial statements for fiscal yearend October 31, 2018 and authorization to file. She added that the Audit Committee met, as chaired by Tony Kendall, and reviewed the annual audit presentation including the financial statements as presented by Warren Ruppel from Marks Paneth, the Authority's independent auditor. Mr. Ruppel then summarized the outcome of the Audit Committee presentation for the Board.

Mr. Ruppel noted that there were no significant audit findings to report. The audit went very smoothly. He mentioned we are required to have the auditor finish the statements filed with the State by the end of this month, and we'll be on track to do that once a few remaining items are cleared up. There were no significant audit adjustments to the financial statements. He said we had a couple of best practice recommendations in terms of vendor file cleanup and an updated firewall, but certainly nothing that rose to the level of being a significant deficiency or material weakness in internal control and, he continued, we discussed those comments in somewhat detail with the Audit Committee members and subject to those couple of open items that we have, which are the normal open items for this part of the audit, we'll be issuing the financials in the next couple of days.

Upon a motion made by Mr. Kendall and seconded by Ms. Gallo, the following resolution was unanimously adopted:

**RESOLUTION OF THE MEMBERS REGARDING THE AUTHORITY' S AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED OCTOBER 31, 2018**

BE IT RESOLVED, that the Members hereby accept the Audited Financial Statements for the Fiscal Year ended October 31, 2018 and be it further

RESOLVED, that the Members authorize the filing of the Audited Financial Statements, in the form presented to this meeting, with the required governmental entities and with the trustees under the Authority' s bond resolutions, and the posting of a copy of the Audited Financial Statements on the Public Authorities Report Information Systems and on the Authority' s website.

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The next item on the agenda, presented by Ms. Frederick, was an approval of the Prompt Payment Report and Prompt Payment Policy for Fiscal Year Ended October 31, 2018.

Ms. Frederick began by stating that this is an annual requirement of the Public Authority's Law. The only change this year was the identification of seven payments that were made in excess of the 30 day requirement. This resulted in the Authority owing a total of \$521 in interest. That interest is based on a mandated 10% rate on the number of days in excess of 30 days. She also mentioned planning to prepare a quarterly information only report for the Board so that we can provide more periodic updates and more quickly identify if there are any issues and resolve them more quickly.

Upon a motion made by Mr. Kendall and seconded by Ms. Gallo, the following resolution was unanimously adopted:

**APPROVAL OF THE PROMPT PAYMENT REPORT AND PROMPT PAYMENT POLICY  
FOR THE FISCAL YEAR ENDED OCTOBER 31, 2018**

BE IT RESOLVED, that the Prompt Payment Report of the Authority for the fiscal year ended October 31, 2018 and the Prompt Payment Policy in the form presented to this meeting, be, and hereby are approved; and be it further

RESOLVED, that the Treasurer of the Authority be, and hereby is, directed to file said Prompt Payment Report and Prompt Payment Policy with the (1) New York State Division of the Budget; (2) New York State Department of Audit and Control; the Chairman and ranking Minority Members of the (3) New York State Senate Finance Committee; and (4) New York State Assembly Ways and Means Committee, as required by Section 2880 of the Public Authorities Law; and be it further

RESOLVED, that the Assistant Corporate Secretary of the Authority be, and hereby is, directed to file the Prompt Payment Report and Prompt Payment Policy with the minutes of this meeting; and be it further

RESOLVED, that Prompt Payment Report and Prompt Payment Policy be posted to the Authority's website and the NY State Public Authorities Reporting System; and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the preparation of such policies and procedures is hereby ratified, confirmed and approved.

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The next item on the agenda, presented by Ms. Frederick, was an approval of the Investment Report & Guidelines for Fiscal Year Ended October 31, 2018.

Ms. Frederick stated that the Investment Committee met for its quarterly meeting and it was attended by members Catherine McVay Hughes, acting Chair, and Martha Gallo. In this meeting, we were provided a review of the materials by the Investment Advisors, PFM Asset Management represented by Steve Faber, Bob Cheddar and Samantha Meyers and Ramirez Asset Management represented by Jim Haddon and Lou Sarno. The Committee, she continued, reviewed the October quarter and Investment Report and Guidelines. There are two key changes just to make note of: one was including Section 2.3 which was amended in July 2018 that provided us the authorized five additional issuers and the inclusion of Section 2.6 which reflects the environmental, social and governance investment principals, referred to as ESG, and these were reported to the Board in December. The Committee voted unanimously to recommend to the Board to approve the Investment Report and Guidelines and also voted to recommend filing the Investment Report and Guidelines with the required government entities as well as posting on Paris and the Authority's website.

Upon a motion made by Ms. McVay Hughes and seconded by Mr. Kendall, the following resolution was unanimously adopted:

**APPROVAL OF THE INVESTMENT REPORT & GUIDELINES THE FISCAL YEAR  
ENDED OCTOBER 31, 2018**

BE IT RESOLVED, that the Investment Report & Guidelines of the Hugh L. Carey Battery Park City Authority (the "Authority") for the fiscal year ended October 31, 2018 in the form presented to this meeting, be, and hereby is approved; and be it further

RESOLVED, that the Treasurer of the Authority be, and hereby is, directed to file said Investment Report (including the Guidelines) with the: (1) NYS Division of the Budget; (2) NYS Department of Audit and Control; the Chairman and ranking Minority Members of the (3) New York State Senate Finance Committee; and (4) New York State Assembly Ways and Means Committee, as required by Section 2925 of the Public Authorities Law, Public Authorities Accountability Act of 2005 and the New York State Comptroller's Regulation 2 NYCRR (Part 203); and be it further

RESOLVED, that the Assistant Corporate Secretary of the Authority be, and hereby is, directed to file said Investment Report (including the Guidelines) with the minutes of this meeting; and be it further

RESOLVED, that Investment Report & Guidelines be posted on the Authority's website and the NY State Public Authorities Reporting System (PARIS); and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the negotiation or preparation of such policies and procedures are hereby ratified, confirmed and approved.

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The next item on the agenda, presented by Mr. Munson, was an approval of the Proposed 2019 Procurement Guidelines.

Mr. Munson began by stating that each year the Authority is required to file its Procurement Guidelines with the State, after those guidelines are reviewed and approved by the Board. As a part of this process, the Authority often takes the opportunity to review the guidelines with fresh eyes and when appropriate propose some changes to them. He then noted we are proposing a set of modest changes to make the guidelines clearer. Beyond a set of very minor drafting changes I'd like to draw your attention to two of the more substantive amendments we're proposing to the guidelines.

First, he explained, our guidelines currently prohibit the Authority from using a vendor through discretionary procurement for a six-month period after that vendor has provided similar goods or services. He added we are proposing amending that provision to mirror the NYS statute which requires purchases of goods and services to meet the discretionary thresholds on a rolling 12-month basis. Second, we propose clarifying the circumstances around which Board approval is required for time extensions and to services contracts. He then said we are proposing that such amendments should be brought to the Board in two instances: first, when a services contract is for the first time extended beyond one year and second when a services contract is extended by one year or more from the termination date last approved by the Board. He concluded that that these changes will provide clear guidance to staff in their daily work while at the same time ensuring the appropriate controls and transparency.

Upon a motion made by Ms. Gallo and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

**APPROVAL OF THE PROCUREMENT GUIDELINES**

BE IT RESOLVED, that the Procurement Guidelines in the form presented to this meeting, be, and hereby are approved; and be it further

RESOLVED, that the Chief Financial Officer of the Authority be, and hereby is, directed to file said Procurement Guidelines, subject to such changes as the officer or officers filing the Procurement Guidelines shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, with the New York State Division of the Budget and copies thereof with the New York State Department of Audit and Control, the Chairman and ranking Minority Member of the New York State Senate Finance Committee and the Chairman and ranking Minority Member of the New York State Assembly Ways and Means Committee, as required by Section 2879 of the Public Authorities Law; and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the preparation of such policies and procedures is hereby ratified, confirmed and approved; and be it further

RESOLVED, that the Assistant Corporate Secretary of the Authority be, and hereby is, directed to file the Authority's Procurement Guidelines with the Minutes of this meeting.

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The next item on the agenda, presented by Ms. Frederick, was an authorization of the use of Reserve Funds for Capital Expenditures.

Ms. Frederick explained that this item is an authorization of the use of reserve funds for capital expenditures. She added we are seeking approval to use up to \$10 million of an existing \$13.5 million operating contingency reserve fund in that those assets are currently held by the Authority. The Authority is in the process of initiating a bond financing to raise funds to support its capital budget, which includes several resiliency planning projects. We are seeking to bridge this bond funding until the bond proceeds are available. It is anticipated that the financing could take 4-6 months estimate spending \$26 million through July 2019, with \$18 million of that coming from the remaining 2009 and 2013 bond funds. She noted that the reserves were used in this manner in 2009 to allow capital projects to proceed while funds were being raised. We're also working with internal counsel, Nicole Stallworth and external bond counsel, Hawkins Delafield & Wood to bring forth a resolution to the Board for the reimbursement of capital spending from reserves. We're planning that for February. We recommend approval of the use of these operating contingency funds of up to \$10 million for spending on approved capital projects.

Upon a motion made by Mr. Kendall and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

**AUTHORIZATION OF USE OF RESERVE FUND FOR CAPITAL EXPENDITURES**

BE IT RESOLVED, that the use of up to \$10 million of the operating contingency reserve fund as a funding source for capital expenditures for fiscal year 2019 is hereby approved.

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The next item on the agenda, presented by Ms. Dawson, was an authorization to execute a contract with Deborah Bradley Construction & Management Services for the Rockefeller Park Playground Restoration project.

Ms. Dawson began by explaining that Rockefeller Park is one of the more beloved features of Battery Park City for area residents, and has also been rated as one of the top 10 playgrounds in NYC by a lot of the tourism websites, so it gets a lot of traffic from visitors and tourists as well. It is now over 25 years old and due to its high volume of use, as well as the marine environment, we need to refurbish and replace some of the elements of the playground. There are a number of timber elements that require replacement, to create a new concrete underlayment, a new play surface to refurbish all of the metal elements and to replace some of the non-metal elements such as slides, and the clatter bridge. An RFP was issued for the project in October and we received three proposals. We had an evaluation performed according to the standards provided in the RFP and based upon the evaluation the committee rated Deborah Bradley Construction as the highest technically rated firm. That proposal also has the benefit of being the lowest cost proposal.

Ms. McVay Hughes asked if this project would be performed in phases so the entire playground is not out of commission at the same time and during what time of year the work would be done. Ms. Dawson ensured that we are attempting to phase it out so the entire playground is not out of commission and noted that Deborah Bradley already has the necessary materials to get started so this can be completed before the summer. Ms. Gallo then requested signage be placed during the construction period so the community knows the original components are being preserved.

Upon a motion made by Ms. Gallo and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

**AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH DEBORAH BRADLEY CONSTRUCTION & MANAGEMENT SERVICES FOR THE ROCKEFELLER PARK PLAYGROUND RESTORATION PROJECT**

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the President and Chief Executive Officer (the "President") of the Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute an eighteen (18) month agreement (the "Agreement") with Deborah Bradley Construction & Management Services for the Rockefeller Park Playground Restoration Project in the lump sum amount of \$1,584,448.23; and be it further

RESOLVED, that the President of the Authority or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the Agreement on behalf of the Authority, subject to such changes as the officer or officers executing the Agreement shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusively evidenced by the execution and delivery of the Agreement; and be it further

RESOLVED, that the President of the Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other further actions heretofore taken are hereby ratified, and any actions hereafter taken are confirmed and approved.

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The next item on the agenda, presented by Ms. Dawson, was an authorization to enter into a contract with Conway Marine Construction, Inc. for the esplanade curtain wall repairs project.

Ms. Dawson explained that beneath the pedestrian esplanade, which is the feature that extends from the north end of Battery Park City to the south end along the waterfront, is what some people call the sea wall and what our engineers call a curtain wall. It is the vertical element that protects the area from tidal activity and damage from debris. The curtain wall, she further explained, was built in phases starting in the 1970s and has not undergone any kind of significant refurbishment or restoration since then. We have in recent years had one of our on-call engineers do periodic water inspections of the curtain wall to make sure that there is no damage that requires attention. That inspection in 2017 did reveal that there is some damage, some concrete spalling, some exposed rebar, deteriorating expansion joints, all which require some attention and some restoration work. We have had that work designed by our engineer and we issued an RFP for marine contractors to perform the work. We received five proposals from marine contractors and interviewed the top three.

Ms. Dawson explained that Conway had the lowest cost proposal and that the Evaluation Committee thoroughly reviewed the scope of work with them to make sure that their cost proposal was adequate to cover the cost associated with the scope of work and they were assured and have concluded that the cost proposal does adequately cover the scope of work.

Upon a motion made by Ms. Gallo and seconded by Mr. Kendall, the following resolution was unanimously adopted:

**AUTHORIZATION TO EXECUTE A CONTRACT WITH CONWAY MARINE CONSTRUCTION, INC. FOR THE ESPLANADE CURTAIN WALL REPAIRS PROJECT**

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the President and Chief Executive Officer (the "President") of the Battery Park City Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to enter into a nine (9) month contract (the "Contract") with Conway Marine Construction, Inc. for the Esplanade Curtain Wall Repairs Project in the lump sum amount of \$1,057,270.00; and be it further

RESOLVED, that the President or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the Contract on behalf of the Authority, subject to such changes as the officer or officers executing the Contract shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the Contract; and be it further

RESOLVED, that the President or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified, and any actions hereafter taken are confirmed and approved.

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The next item on the agenda, presented by Ms. Dawson, was an approval of the panel of pre-qualified general contractors (the “Pre-Qualified General Contractors”).

Ms. Dawson began by explaining that the Authority has historically maintained a series of on-call contracts that we utilize for small to medium size projects or unexpected, emergency types of projects for which a standalone procurement contract would not be feasible. One of the disciplines that we maintain on-call contracts for is on-call general contracting services and the last procurement that was performed by the Authority for on-call general contracting services was performed in 2016. So in November of 2018 we issued an RFP inviting qualified general contractors for designation as part of our pre-qualified on-call general contracting panel. We received six proposals and the Evaluation Committee concluded that five of the general contractors had submitted valid and compliant proposals and did possess the requisite capabilities and experience to perform on-call general contracting services for the Authority. Consequently, she stated, we are asking the Members to approve the list of general contractors, including Deborah Bradley, Paul J. Scariano, D’Onofrio General Contractors, Stalco Construction and Greenway USA, LLC as our five on-call general contractors for the next three years, with the option on the part of the Authority to extend the approval period for up to one additional year. The Authority will enter into on-call GC contracts as needed and assign work in accordance with the requirements of the Authority’s prequalified vendor policy.

Upon a motion made by Ms. Gallo and seconded by Mr. Kendall, the following resolution was unanimously adopted:

#### **APPROVAL OF PRE-QUALIFIED GENERAL CONTRACTORS PANEL**

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the President and Chief Executive Officer (the “President”) of the Battery Park City Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to approve the below list of Pre-Qualified General Contractors, for a period of three (3) years, with the option on the part of the Authority to extend the approval period for up to one (1) additional year, during which time the Authority will enter into On-Call GC Contracts with, and assign work to, the Pre-Qualified General Contractors on an as-needed basis, in accordance with the requirements of the Authority’s Pre-Qualified Vendor Policy:

- Deborah Bradley Construction & Management Services,
- Paul J. Scariano, Inc.,
- D’ Onofrio General Contractors Corp.,
- Stalco Construction, Inc., and
- Greenway USA, LLC

RESOLVED, that the President or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the Contract on behalf of the Authority, subject to such changes as the officer or officers executing the Contract shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the Contract; and be it further

RESOLVED, that the President or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified, and any actions hereafter taken are confirmed and approved.

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Mr. Tsunis made a motion to enter Executive Session, which was seconded by Ms. Gallo, to discuss the negotiations related to the lease of real property, the publicity of which could substantially affect the value of the relevant properties. The Members entered Executive Session at 2:59 p.m.

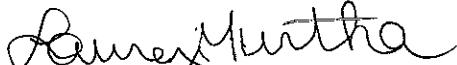
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Upon a motion made by Mr. Kendall and seconded by Ms. McVay Hughes. The Members exited Executive Session at 4:33 p.m.

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There being no further business, upon a motion made by Mr. Kendall and seconded by Ms. McVay Hughes, the Members unanimously voted to adjourn the meeting. The meeting thereupon adjourned at 4:35 p.m.

Respectfully submitted,



Lauren Murtha  
Assistant Corporate Secretary

**Public Comment**  
January 29, 2019 Board Meeting

1. **Maryanne Braverman:** So I'll be very quick. A week or two after the holidays ended and the Christmas trees have been collected for recycling, I took a walk down, some of us call it the Pataki Parkway but it's the big street in my walking path, and there were a lot of evergreen branches at the bases of the trees and it just made me happy. So thank you to the horticultural people and those who do that because it just added something really nice, and thank you.
2. **Ms. Ann Schwalbenberg:** This will also be real quick. The question is when are you going to start doing the work on South End Avenue? Okay. I propose that, I started asking about hanging flower baskets from the tallest of the street corner fixtures, and so I wanted to know do we have to wait until the South End Avenue project was completed before you can do that or can you, I think there's only about 6 or 7 corners with these tall light posts, and so can you consider doing that this year? Okay. And one last thing. If you would please consider when I talk about the rotunda which is the lobby downstairs, if you could please consider that they're going to have all that space across the street, so as far as I understand they're only using the upstairs of 225. It's not the downstairs. And so is there any other free space for people to go and sit? And if they say that there's nobody ever coming into the lobby of this building it's because they keep the lights so dim that if you're walking outside you don't know it's open. And the second point that I have to make is how many office buildings have a restaurant in them that they're trying to attract people and tourists to come in? And if you keep the lights dim you're never going to see anybody in there. That's all.
3. **Jonathan Jossin:** My name is Jonathan Jossin. I've been living down here 25 years and I've been actually working down here since '86. I'm a real estate broker down here, so I really have my thumb on what's going on for people who are asking. I probably did most contracts as an individual down here this year and everybody's asking the same thing, the land lease. What's happening with the land lease, are we getting any closer, we're watching valuations go down, never mind because what's going on in the city, what's going down because nobody asks us the first question and half the brokers down here don't even understand it, don't understand how each year the land lease goes up. They all think it's something awful. So that's the first thing. The second thing is LeFrak Gateway Plaza. Everybody wants to know what's going on with theirs. Is Brookfield in talks? Is everybody going to get pushed out? It ends the June 20 so are there any answers or any enlightenment?

**HUGH L. CAREY BATTERY PARK CITY AUTHORITY**  
**PROMPT PAYMENT REPORT FOR FISCAL YEAR**  
**ENDED OCTOBER 31, 2018**

**Explanation of Prompt Payment Policy**

The Hugh L. Carey Battery Park City Authority (the “Authority”) Prompt Payment Policy recites the requirements for prompt payment to contractors pursuant to Section 2880 of the Public Authorities Law.

**Types of Contracts**

The following is an outline of categories of contracts the Authority has entered into during the twelve month period covered by this report. All types and categories of contracts are subject to the prompt payment policy.

- a. Legal - all legal related services performed
- b. Construction Contracts - goods and services purchased for the construction of infrastructure or Authority Projects
- c. Other Procurement Contracts - all other contracts (consultants, vendors, etc.) related to the acquisition of goods or services of any kind

**Prompt Payment Report**

For the twelve month period ending October 31, 2018, there were \$521.45 interest charges owed to vendors or contractors on 7 invoices for products and/or services provided to the Authority, as summarized below.

**Hugh L. Carey Battery Park City Authority**  
**Summary of Interest Charges under the Prompt Payment Policy**  
**Fiscal Year Ended October 31, 2018**

<b>TYPE</b>	<b>NUMBER</b>	<b>INTEREST AMOUNT</b>	<b>TOTAL INTEREST DAYS</b>
Legal	0	\$0.00	0
Construction	3	\$301.29	28
Other	4	\$220.16	133
Total	7	\$521.45	161

**HUGH L. CAREY BATTERY PARK CITY AUTHORITY**  
**PROMPT PAYMENT POLICY**

Section 9002.1

Statement of Policy and Purpose. This Prompt Payment Policy is adopted pursuant to Section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

Section 9002.2

Definitions. For the purpose of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

- (a) “Authority” shall mean the Hugh L. Carey Battery Park City Authority.
- (b) “Contract” shall mean an enforceable agreement entered into by the Authority and a Contractor, including purchase orders. Bond resolutions and any leases to which the Authority is a party, including any leases between the Authority and any of its tenants or subtenants, as well as any related agreements which are an integral part of such leases or subleases, are not Contracts within the meaning of this Section.
- (c) “Contractor” shall mean any person, partnership, private corporation or association providing or performing any of the following pursuant to a Contract:
  - (i) Selling materials, equipment or supplies or leasing property or equipment to the Authority;
  - (ii) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Authority; or
  - (iii) rendering or providing services to the Authority pursuant to a contract.
- (d) “Designated Payment Office” shall mean that department within the Authority to which a proper invoice is to be submitted by a Contractor; unless otherwise, specified, the Designated Payment Office shall be:

Office of the Chief Financial Officer  
Hugh L. Carey Battery Park City Authority  
200 Liberty St., 24th Floor  
New York, New York 10281-1097

Attention: Accounts Payable

- (e) “Prompt Payment” shall mean payment of a debt due and owing by the Authority pursuant to a Contract before interest accrues thereon pursuant to the provisions of this Part.
- (f) “Proper Invoice” shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a Contractor, such request or invoice being both in accordance with the terms of the Contract and in such form, and supported by such other substantiating documentation, as the Authority may reasonably require.
- (g) “Receipt of a Proper Invoice” shall mean either:
  - (i) The date on which a Proper Invoice is received by the Designated Payment Office or
  - (ii) The date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.
- (h) “Set-off” shall mean the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

#### Section 9002.3

Applicability. This Part shall apply to all Contracts entered into on or after April 29, 1988.

#### Section 9002.4

- (a) Payment Request Procedure. Contractors’ owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor’s performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.
- (b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:
  - (i) For invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice.
  - (ii) For Contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided as in (i) above.

- (iii) This schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be there provided.
- (c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.
- (d) Funds Available to Pay Interest Penalties. The Authority will pay interest as provided herein with monies available to the Authority for operating and administrative expenses pursuant to its approved budget.
- (e) Extension of Payment Time. Any of the following facts, conditions or situations are determined by the Authority to be exceptions to the prompt payment schedule set forth in Section 9002.4(b) and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Authority's Treasurer consistent with this Part, with notice provided to the Contractor):
  - (i) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;
  - (ii) The absence of a state appropriation which is necessary to authorize payment;
  - (iii) A requirement for federal government examination of a Proper Invoice prior to payment;
  - (iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;
  - (v) Failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;
  - (vi) Where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.

- (f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):
- (i) A reasonable belief by the Authority in the existence of any defect(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;
  - (ii) A reasonable belief by the Authority in the existence of any defect(s) in the invoice; or
  - (iii) A reasonable belief by the Authority in suspected impropriety of any kind.

In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor, setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice provided that, in the event that the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and the date of the Authority's transmitting such notifications. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

## Section 9002.5

- (a) Annual Report. The Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:
  - (i) A listing of the types or categories of contracts which the Authority entered into during the twelve-month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
  - (ii) The number and amount of interest payments made for contracts, arranged according to each such type or category;
  - (iii) The number of interest chargeable days, and the total number of days taken to process each late contract payment; and
  - (iv) A summary of the principal reasons why such late payments occurred.
- (b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the

Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

- (c) Copies of its annual report shall be made available to the public upon reasonable request at the Authority's main office.

#### Section 9002.6

- (a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.
- (b) Contract Incorporation. The policy statement in effect at the time that a Contract is entered into is hereby incorporated into and made a part of that Contract.
- (c) Public Access. The Authority shall make copies of this policy statement available to the public upon reasonable request at the Authority's main office. The Authority shall also provide a copy of this policy statement to each Contractor at or prior to the time a Contract is entered into.
- (d) Inapplicability. This policy is not applicable to payments due and owing by the Authority to any other governmental entity, agency, public benefit corporation or the employees thereof when acting in or incidental to their public employment capacity, to interest on judgments rendered by a court against the Authority pursuant to any other provision of law, or to situations where the Authority exercises a legally authorized Set-off against all or part of a payment due a Contractor.
- (e) Legal Processes. The Authority is under no liability to pay interest pursuant to this policy for any period after a Contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable.
- (f) Interpretation. This Part shall be interpreted consistent with and to fulfill the purposes of Section 2880 of the Public Authority Law.



# Battery Park City Authority

**BATTERY PARK CITY AUTHORITY**

**INVESTMENT REPORT & GUIDELINES**

**FISCAL YEAR ENDED**

**OCTOBER 31, 2018**

**January 2019**

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## **1. OVERVIEW OF INVESTMENT GUIDELINES**

### **1.1. Definitions**

“Authority” means the Battery Park City Authority, a corporate municipal instrumentality of the State of New York, established pursuant to the Act (“Act” shall mean the Battery Park City Authority Act, Title 12 of Article 8 of the Public Authorities Law [constituting Chapter 43-a of the Consolidated Laws of the State of New York] as added by Chapter 343 of the Laws of 1968, as amended).

“Board” means the Members of the Battery Park City Authority Board.

“Investment Funds” means monies and financial resources available for investment by the Authority.

“Investment Securities” means any or all of the investment obligations.

“Rating Agencies” means Standard & Poor’s Corporation, Moody’s Investor Service, and Fitch Ratings.

“State” means the State of New York.

### **1.2. Purpose and Scope**

The purpose of these guidelines (“Guidelines” or “Investment Guidelines”) is to establish the parameters, responsibilities, and controls for the investment and the management of Investment Funds. These Guidelines have been adopted by, and can be changed only by, the Board.

These Guidelines shall govern the investment and reinvestment of Investment Funds and the sale and liquidation of Investment Securities, as well as the monitoring, maintenance, accounting, reporting, and internal controls by and of the Authority with respect to such investment and reinvestment of Investment Funds and sale and liquidation of Investment Securities.

The guidance set forth herein is to be strictly followed by all those responsible for any aspect of the management or administration of these funds.

### **1.3 Compliance**

Section 2925 (6) of the State Public Authorities Law requires the Authority to annually prepare and approve an investment report which describes the Authority’s Investment Guidelines and any amendments to the Guidelines, investment policies and procedures, the results of the annual independent audit, the Authority’s investment income and a list of the fees associated with those investments, as well as commissions or other charges paid to each investment banker, broker, agent, dealer and advisor (**SEE - APPENDIX B – INVESTMENT REPORT FYE OCTOBER 31, 2018**).

### **1.4. Roles and Responsibilities**

It shall be the responsibility of the Chief Financial Officer to ensure that all investments and investment practices meet or exceed all statutes and guidelines governing the investment of public funds in New York and the guidelines established by the State Comptroller’s Office and the Governmental Accounting Standards Board (GASB). The Deputy Treasurer, acting on behalf of the Board as custodian of the Investment Policy, is responsible for ensuring that all aspects of the investment management program are executed in a manner

consistent with the Guidelines. A description of operating controls is attached as Appendix A to these Guidelines.

An investment committee (“Investment Committee”) will be appointed by the Board to develop and execute investment strategy for the Authority’s Investment Funds. In the event that the Board is not fully constituted, the entire Board may meet in lieu of the Investment Committee. The Investment Committee may consult with a qualified investment advisor/manager in the course of fulfilling its responsibilities.

The Authority’s external auditor will conduct an annual audit of the investment management activity to ensure compliance with the Investment Guidelines by Treasury and the external investment manager, if any. The findings of the audit shall be formally documented and submitted annually to the Chief Financial Officer and the Board.

### **1.5. Standard of Prudence**

The standard of prudence to be applied to the investment of the Authority’s Investment Funds shall be the “Prudent Person Rule” that states:

*“Investments shall be made with judgment and care, under circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”*

Authorized Authority officials and employees involved in the investment process acting in accordance with the laws of the State, these Guidelines and any other written procedures pertaining to the administration and management of the Investment Funds and who exercise the proper due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided that any negative deviations are reported in a timely fashion to the Chief Financial Officer or another authorized official and that reasonable and prudent action is taken to control and prevent any further adverse developments.

### **1.6. Conflict of Interest**

Authority Officers and employees involved in the investment process (“Investment Officials”) shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Investment Officials shall not:

1. accept any money, loan, gift, favor, service, or business or professional opportunity that could influence them in the performance of their official duties;
2. accept any business or professional opportunity when they know there is a reasonable likelihood that the opportunity is being afforded to influence them in the performance of their official duties;
3. enter into any personal investment transactions with the same individual with whom business is conducted on behalf of the Authority; or,
4. disclose or use confidential information that is not generally available to the public for their own or another person’s financial benefit.

### **1.7. Review, Amendments, Updates and Revisions**

The Deputy Treasurer and the Chief Financial Officer will review the Guidelines on an annual basis, or as required, to ensure continued effectiveness of the Investment Guidelines. The Guidelines shall be submitted to the Board annually for review and approval. Modifications to the Investment Guidelines may be required as business needs and requirements change. Any amendments must be reviewed and approved by the Chief

Financial Officer and submitted to the Board for final approval. Subsequent to any modifications to the Investment Guidelines, revised Guidelines must be distributed to Authority personnel on the approved distribution list as well as any external investment advisor/manager and financial institutions.

### **1.8 Diversity –MBE/WBE Participation**

It is the Authority's standard practice to reach out to MBE/WBE brokers/dealers to provide them opportunities to trade for Investment Securities. The Authority required that thirty percentage (30%) of annual costs under the 2015 service agreement for investment advisory services be allocated to a certified MBE/WBE firm.

### **1.9 Oversight – Investment Committee**

An Investment Committee was established to formalize oversight of the Authority's investment portfolio with the charter below. In the event that the Board is not fully constituted, the entire Board may meet in lieu of the Investment Committee.

#### **BATTERY PARK CITY AUTHORITY INVESTMENT COMMITTEE CHARTER**

##### **PURPOSE & FORMATION**

Pursuant to Article IV, Section 3 of the Authority's bylaws, The purpose of the Investment Committee is to assist the Board in fulfilling its oversight responsibilities by establishing the Authority's investment policies and overseeing its investments.

##### **COMPOSITION**

Pursuant to Article IV, Section 3 of the Authority's bylaws, the investment committee ("Investment Committee) shall consist of at least three (3) Members who shall be appointed by the Chair, one of whom the Chair shall appoint as chair of the committee ("Investment Committee Chair"). The Chair shall be an additional non-voting member of the Investment Committee, provided that if there shall be any vacancy or vacancies in the whole number of the Members as prescribed by law, the Chair may serve as a voting member of the Investment Committee. Each member of the Investment Committee shall be an "independent member," as defined in Public Authorities Law § 2825(2). Members of the Investment Committee shall possess the necessary skills to understand the duties and functions of the Investment Committee and shall be familiar with general investment policies and best practices.

##### **DUTIES OF THE INVESTMENT COMMITTEE**

The Investment Committee's duties and responsibilities are set forth in the bylaws. Whenever the Investment Committee takes action, it exercises its independent judgment on an informed basis that the action is in the best interests of BPCA. In doing so, the Investment Committee may rely to a significant extent on information and advice provided by management and independent advisors.

The Investment Committee has the authority, including, but not limited, to:

- Approve the investment and risk limits for the investment portfolio.
- Review the investment policies for the Authority, including, where applicable, asset classes, liquidity, the use of debt, and risk management.
- Approve the annual investment program.

- Authorize investments and ratify investments made pursuant to delegated authorities.
- Review the investment performance of BPCA's accounts and funds, including benchmarks and attribution.
- Review the organization and staffing of the investment management advisory function.
- Review the quality of the investment services provided to the Authority, such as: a) oversee the business and investment strategy, b) evaluate investment performance benchmarks and attribution, and c) review costs, pricing and profitability.

## **MEETINGS**

The Investment Committee shall meet four (4) times a year or more frequently, as may be necessary and appropriate to carry out its responsibilities. The Investment Committee may ask members of management or others to attend the meetings and provide pertinent information as appropriate. Meetings may be in person or by video conference, if necessary.

In addition, the Investment Committee:

- Shall act only on the affirmative vote of a majority of the members present at a meeting.
- Is expected to maintain free and open communication with management and the Board.
- Shall have authority to retain independent legal, accounting or other advisors if determined appropriate, in its sole judgment, provided such consultants are approved by the full Board.
- Submit the minutes of all Investment Committee meetings to the Board and regularly report to the Board on Investment Committee matters, actions taken and issues discussed at its meetings.
- Review and reassess the adequacy of this Charter annually and propose to the Board any changes.
- The Investment Committee shall evaluate its performance annually and report its conclusions to the Board.

## **2. INVESTMENT MANAGEMENT OBJECTIVES**

### **2.1. Investment Objectives**

The Authority's Investment Funds shall be managed to accomplish the following hierarchy of objectives:

1. **Legality** - The Authority shall comply with all investment guidelines required for public authorities in the State with regards to general investment practices and the management of public funds.
2. **Safety** - Next to legality, safety of principal is the foremost objective of the investment program. Investments of the Authority shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
3. **Liquidity** - The portfolio shall be managed in such a manner that assures that funds are available as needed to meet those immediate and/or future operating requirements of the Authority, including but not limited to payroll, accounts payable, capital projects, debt service and any other payments.
4. **Return** - The Authority's portfolio shall be managed in such a fashion as to maximize the return on all investments (up to the "arbitrage allowance" in bond funds) within the context and parameters set forth by the investment objectives stated above.

## **2.2. Authorized Investment Securities**

The investment of Authority funds is limited by the law creating the Authority to “obligations of the State or of the United States of America or obligations the principal of and interest on which are guaranteed by the State or the United States of America” or any other obligations in which the Comptroller of the State of New York (the “Comptroller”) is authorized to invest pursuant to Section 98 (Investment of state funds) of the State Finance Law. As effective on November 20, 2015, the Act allows any monies of the Authority, including the proceeds of bonds or notes, not required for immediate use, at the discretion of the Authority to be invested in obligations of the State, U.S. Government and its agencies, or in any other obligations in which the Comptroller is authorized to invest pursuant to Section 98 of the State Finance Law. The 2003 General Bond Resolution and the 2009 and 2013 Revenue Bond Resolutions allow all investments alternatives included in the Act, as follows:

1. Bonds and notes of the United States.
2. Bonds and notes of this State.
- 2-a. General obligation bonds and notes of any state other than this State, provided that such bonds and notes receive the highest rating of at least one independent rating agency designated by the Comptroller.
3. Obligations for the payment of which the faith and credit of the United States or of this State are pledged.  
3-a. Notes, bonds, debentures, mortgages and other evidences of indebtedness of the United States Postal Service; the federal national mortgage association; federal home loan mortgage corporation; student loan marketing association; federal farm credit system or any other United States government sponsored agency, provided that at the time of the investment such agency or its obligations are rated and the agency receives, or its obligations receive, the highest rating of all independent rating agencies that rate such agency or its obligations, provided, however, that no more than five hundred million dollars may be invested in the obligations of any one agency.
4. Judgments or awards of the court of claims of this state.
5. Stocks, bonds, or notes of any county, town, city, village, fire district or school district of this State issued pursuant to law.
6. Mortgage bonds or any obligations for the payment of money, no matter how designated, secured by another instrument representing a lien on specific real property or a leasehold thereof, heretofore or hereafter and at the time of the assignment thereof to the Comptroller insured by the federal housing administrator or any of his successors in office and guaranteed by the United States under the provisions of the national housing act, as amended or supplemented. Any such mortgage bonds or obligations as aforesaid in which the Comptroller has invested or shall have invested pursuant to this subdivision shall be serviced by the Comptroller or in his discretion, by mortgagees, as such are defined by the national housing act, as amended or supplemented, duly appointed by him and subject to the inspection and supervision of some governmental agency. The Comptroller may receive and hold such debentures and certificates or other obligations as are issued in payment of such insurance or guarantee.
7. Bonds and notes of the Savings and Loan Bank of the State of New York.
8. Bonds or notes of any housing authority of this State duly issued pursuant to law.
9. Bonds or notes of any regulating district of this State duly issued pursuant to law.
10. Bonds or notes of any drainage improvement district of this State duly issued pursuant to law.

11. Bonds or notes of the authorities or commissions set forth below when issued pursuant to law:

- a. Port of New York Authority.
- b. Niagara Frontier Authority.
- c. Triborough bridge and tunnel authority.
- d. Thousand Islands Bridge Authority.
- e. New York State Bridge Authority.
- f. New York City Tunnel Authority.
- g. Lake Champlain Bridge Commission.
- h. Lower Hudson Regional Market Authority.
- i. Albany Regional Market Authority.
- j. Repealed.*
- k. American Museum of Natural History Planetarium Authority.
- l. Industrial Exhibit Authority.
- m. Buffalo Sewer Authority.
- n. Whiteface Mountain Authority. (see footnote 2, Repealed)
- o. Pelham-Portchester Parkway Authority.
- p. Jones Beach State Parkway Authority.
- q. Bethpage Park Authority.
- r. Dormitory Authority.
- s. Central New York Regional Market Authority.
- t. Erie County Water Authority.
- u. Suffolk County Water Authority.
- v. New York State Thruway Authority.
- w. Genesee Valley Regional Market Authority.
- x. Onondaga county water authority.
- y. Power Authority of the state of New York.
- z. Ogdensburg Bridge and Port Authority.
- aa. [See, also, par. aa below] East Hudson Parkway Authority.
  - aa. [See, also, par. aa above] Niagara Frontier Port Authority.
- bb. Northwestern New York Water Authority.
- cc. Metropolitan Commuter Transportation Authority. (see footnote 3, now Metro. Transp. Auth.)
- dd. [See, also, par. dd below] Niagara Frontier Transportation Authority.
  - dd. [See, also, par. dd above] New York State Pure Waters Authority.
- ee. Rochester-Genesee Regional Transportation Authority.
- ff. [See, also, par. ff below] Capital District Transportation Authority.
  - ff. [See, also, par. ff above] Central New York Regional Transportation Authority.

12. Obligations of the International Bank for Reconstruction and Development duly issued pursuant to law.

13. Obligations of the Inter-American Development Bank duly issued pursuant to law.

13-a. Obligations of the Asian Development Bank duly issued pursuant to law.

13-b. Obligations of the African Development Bank duly issued pursuant to law.

13-c. Obligations of the International Finance Corporation duly issued pursuant to law.

14. [See, also, subd. 14 below] Collateral trust notes issued by a trust company, all of the capital stock of which is owned by not less than twenty savings banks of the State of New York.

14. [See, also, subd. 14 above] Bonds and notes issued for any of the corporate purposes of the New York State housing finance agency.

15. Bonds and notes issued for any of the corporate purposes of the New York State medical care facilities finance agency.
16. Bonds and notes issued for any of the corporate purposes of the New York State project finance agency.
17. Bonds and notes issued for any of the corporate purposes of the municipal assistance corporation for New York City.
18. Obligations of any corporation organized under the laws of any state in the United States maturing within two hundred seventy days provided that such obligations receive the highest rating of two independent rating services designated by the Comptroller and that the issuer of such obligations has maintained such ratings on similar obligations during the preceding six months provided, however, that the issuer of such obligations need not have received such rating during the prior six month period if such issuer has received the highest rating of two independent rating services designated by the Comptroller and is the successor or wholly owned subsidiary of an issuer that has maintained such ratings on similar obligations during the preceding six month period or if the issuer is the product of a merger of two or more issuers, one of which has maintained such ratings on similar obligations during the preceding six month period, provided, however, that no more than five hundred million dollars may be invested in such obligations of any one corporation.
19. Bankers' acceptances maturing within ninety days which are eligible for purchase in the open market by federal reserve banks and which have been accepted by a bank or trust company, which is organized under the laws of the United States or of any state thereof and which is a member of the federal reserve system and whose short-term obligations meet the criteria outlined in subdivision eighteen of this section. Provided, however, that no more than five hundred million dollars may be invested in such bankers' acceptance of any one bank or trust company.
20. No-load money market mutual funds registered under the Securities Act of 1933, as amended, and operated in accordance with Rule 2a-7 of the Investment Company Act of 1940, as amended, provided that such funds are limited to investments in obligations issued or guaranteed by the United States of America or in obligations of agencies or instrumentalities of the United States of America where the payment of principal and interest are guaranteed by the United States of America (including contracts for the sale and repurchase of any such obligations), and are rated in the highest rating category by at least one nationally recognized statistical rating organization, provided, however, that no more than two hundred fifty million dollars may be invested in such funds.

The State Comptroller, whenever he deems it for the best interest of any of such funds, may dispose of any of the securities therein or investments therefor, in making other investments authorized by law, and he may exchange any such securities for those held in any other of such funds, and the Comptroller may take such action as may be necessary to obtain the benefits of the insurance provided for in the national housing act, and may draw his warrant upon the treasurer for the amount required for such investments and exchanges.

Notwithstanding the provisions of any other general or special law, the State Comptroller shall not invest the moneys of any fund in any security or securities except as above described, provided, however, that: a) the State Comptroller may, in order to maximize the rate of return on investments, invest the moneys belonging to the New York interest on lawyer account fund in notes, securities and deposits of banking institutions which accept IOLA accounts, and b) the provisions of this section shall not limit the types of investments that may be made with moneys belonging to the volunteer ambulance service award fund established by section two hundred nineteen-h of the general municipal law.

### **2.3. Authorized Investments of Project Operating Funds – Additional Bond Issuers**

The Authority has two classification of Funds; Pledged Funds and Project Operating Funds. Pledged Funds, subject to the 2003 General Bond Resolution, may only be invested in securities specifically listed in Section 98 of the State Finance Law, as listed in Section 2.2 above. Project Operating Funds, those that are not pledged to bond holders, are also limited to Section 98 of the State Finance Law, but may include bond issuers of the State whose authorizing statute specifically provides that bodies of the State are authorized to legally invest in the stated bond issuers' securities. The additional bond issuers ("Additional Bond Issuers"), while not specifically listed in Section 98 of the State Finance Law, and therefore are not eligible for investments of the Pledged Fund, but do qualify for investments of the Project Operating Fund, are as follows:

1. New York City Transitional Finance Authority.
2. New York Municipal Water Finance Authority.
3. New York City Housing Development Corporation.
4. New York State Urban Development Corporation.
5. Nassau County Interim Finance Authority.

### **2.4. Portfolio Diversification**

The Authority's Investment Funds shall be structured to diversify investments to reduce the risk of loss resulting from over-concentration of assets in a specific maturity, a specific issuer or a specific type of security. The maximum percentage of the aggregate portfolio of Investment Funds, based on book value at the time of purchase, permitted in each eligible security is as follows:

US Treasuries	100%
Federal Agencies	100% (\$250 million max per issuer)
Commercial Paper	Lesser of 5% or \$250 million per issuer
Bankers' Acceptances	Lesser of 5% or \$250 million per issuer
Money Market Funds	Lesser of 25% or \$250 million
Municipal Bonds	20%

In addition, the Authority requires:

- a) Minimum "A" credit rating for all municipal securities permitted by the Policy (NY State, other states, and issues of local NY governments).
- b) Maximum allocation of no greater than 10% per issuer, or such lower limit as specified above.

### **2.5. Investment Maturity**

Maintenance of adequate liquidity to meet the cash flow needs of the Authority is essential. Accordingly, the portfolio will be structured in a manner that ensures sufficient cash is available to meet anticipated liquidity needs. Selection of investment maturities must be consistent with the cash requirements of the Authority in order to avoid the forced sale of securities prior to maturity.

Investments shall have a stated maturity or weighted average life of not more than ten (10) years unless specifically approved by the Investment Committee.

## **2.6. Environmental, Social, and Governance Investment Principles**

The Battery Park City Authority's investment philosophy is anchored in the following core principle, which is fundamental and constant. Assets controlled by the Authority must be managed in accordance with this principle, regardless of the ebbs and flows likely to arise due to markets, politics and personalities.

The primary principle guiding the Authority's investments is the consideration of financial impact(s) on current and future requirements of the Authority. This manifests itself through investment practices that generate the greatest possible return, subject to an appropriate amount of risk, to support the Authority's mission of planning and sustaining a balanced community of commercial, residential, retail, and park space on the lower west side of Manhattan.

Within the context of this primary principle, the Authority must consider a holistic view of risk that accounts for various factors which could modify a return/risk objective. These include:

- Maintaining appropriate levels of liquidity for the Authority's operational needs;
- Mitigating downside financial risks;
- Understanding and appropriately managing reputational risk or legal liability; and,
- Protecting Authority assets from external pressures.

The Authority, as well as the Office of the New York State Comptroller, supports the practice of incorporating environmental, social, and governance ("ESG") factors with other conventional financial analytical tools when evaluating investment opportunities as these factors not only support the Authority's mission but they may help identify potential opportunities and risks which conventional tools miss. The Authority encourages its investment managers to include ESG factors in their analytical processes. The Authority prohibits investment in companies that are heavily reliant on fossil fuels. However, ESG considerations are only one factor in analyses and should not be used as exclusionary screens to eliminate specific entities or sectors from consideration. Relevant ESG factors will vary by industry and should be applied appropriately to help assess both risk and return.

## **3. OPERATING PARAMETERS & CONTROLS**

### **3.1. Authorized Officers and Employees**

Investment decisions on behalf of the Authority shall be made by the Chief Financial Officer, or by the Deputy Treasurer or the external investment manager, under the supervision of the Chief Financial Officer. Investment transactions shall be implemented by the Chief Financial Officer, or by the Deputy Treasurer, or the professional investment and advisory management firm on the Investment Committee, under the supervision of the Chief Financial Officer.

### **3.2. Competitive Selection**

For each transaction, a minimum of three quotes shall be obtained and documented from Dealers and/or Banks, except in the purchase of government securities at their initial auction or upon initial offering, and the most favorable quote accepted.

### **3.3. Compliance Audit**

An annual independent audit of all investments will be performed by the external auditors. The Authority's financial statements with respect to investments, which are required to be prepared in conformance with generally accepted accounting principles for governments ("GAAP"), shall contain all of the note disclosures on

deposits with financial institutions and investments required by the Governmental Accounting Standards Board Statements No. 3 “Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements”, dated April 1986. The Annual Investment Audit shall:

- Determine whether: the Authority complies with its own investment policies; investment assets are adequately safeguarded; adequate accounts and records are maintained which accurately reflect all transactions and report on the disposition of the Authority’s assets; and a system of adequate internal controls is maintained.
- Determine whether the Authority has complied with applicable laws, regulations and these Investment Guidelines.
- Be designed to the extent practical to satisfy both the common interest of the Authority and the public officials accountable to others.

The results of the Annual Investment Audit shall be set forth in a report (the “Annual Investment Audit Report”) which shall include, without limitation:

- A description of the scope and objectives of the audit;
- A statement that the audit was made in accordance with generally accepted government auditing standards;
- A statement of negative assurance on items tested;
- A description of any material weakness found in the internal controls;
- A description of any non-compliance with the Authority’s own investment policies as well as applicable laws;
- Regulations and the Comptroller’s Investment Guidelines;
- A statement on any other material deficiency or reportable condition as defined by *Governmental Auditing Standards* identified during the audit not covered above; and
- Recommendations, if any, with respect to amendment of these Guidelines

Investment practices and controls will be subject to review and testing by internal auditors on a surprise basis at the discretion of the VP of Administration (who is also the Internal Controls Officer), President, CEO and/or the Board.

### **3.4. Written Contracts and Confirmations**

A written confirmation shall be required for each investment transaction. However, the Authority shall not be required to enter into a formal written contract provided that the Authority’s oral instructions to its broker, dealer, agent, investment manager/advisor, or custodian with respect to such transactions are confirmed in writing at the earliest practicable moment.

### **3.5. Safekeeping and Custody**

All investment securities purchased by the Authority or held as collateral on deposits or investments shall be held by a third-party custodian who may not otherwise be a counterparty to the investment transaction.

All securities shall be held in the name of the Authority and will be free and clear of any lien.

All investment transactions will be conducted on a delivery-vs.-payment basis. Payment for investments shall be made only upon receipt by the custodian of the physical security, or in the case of securities in book-entry form, when credited for the custodian’s account, which shall be segregated for the Authority’s sole use. The custodian shall issue a safekeeping receipt to the Authority listing the specific instrument, rate, maturity and other pertinent

information. On a monthly basis, the custodian will also provide reports that list all securities held for the Authority, the book value of holdings and the market value as of month-end.

The custodian may act on oral instructions from the CFO, Deputy Treasurer or investment advisor under the direction of the CFO. Such instructions are to be confirmed in writing immediately by an authorized signatory of the Authority.

Representatives of the custodian responsible for, or in any manner involved with, the safekeeping and custody process of the Authority shall be bonded in such a fashion as to protect the Authority from losses from malfeasance and misfeasance. If required by the Chief Financial Officer, appropriate Authority Officials may also be bonded in such a fashion.

### **3.6. Internal Controls**

An operating procedures manual were developed to control all Authority investment activity. The manual is consistent with these Guidelines, shall be approved by the Chief Financial Officer, and shall include the following:

- the establishment and maintenance of a system of internal controls;
- methods for adding, changing or deleting information contained in the investment record, including a description of the document to be created and verification tests to be conducted;
- a data base or record incorporating descriptions and amounts of investments, transaction dates, interest rates, maturities, bond ratings, market prices and related information necessary to manage the portfolio; and
- requirements for periodic reporting and a satisfactory level of accountability.

### **3.7. Notification Concerning Violations of Investment Guidelines**

In the event that these Investment Guidelines are violated, the Chief Financial Officer shall be informed immediately and advised of any corrective action that should be taken, as well as the implication of such action.

## **4. QUALIFIED FINANCIAL INSTITUTIONS**

### **4.1. Qualifications for Brokers, Dealers and Agents**

The Authority's investment manager's Director of Treasury Operations and/or the Authority's Investment Manager shall maintain a list of broker/dealers that are approved for investment purposes ("Qualified Institutions"). Only firms meeting the following requirements will be eligible to serve as Qualified Institutions:

- "primary" dealers and regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule);
- registered as a dealer under the Securities Exchange Act of 1934;
- member in good standing of the Financial Industry Regulatory Authority (FINRA);
- registered to sell securities in the State; and
- the firm and assigned broker have been engaged in the business of effecting transactions in U.S. Government and agency obligations for at least five (5) consecutive years.

When selecting trading partners, the Authority will also consider the firm's quality, size, and reliability, the Authority's prior experience with the firm, the firm's level of expertise and prior experience with respect to the contemplated transactions.

## **4.2. Qualifications for Investment Advisors/Managers**

For the purpose of rendering investment management/advisory services to the Authority, the Authority may qualify any bank or trust company organized under the laws of any state of the United States of America, any national banking association, and any partnership, corporation, or person which is:

- Authorized to do business in the State as an investment manager/advisor; and
- Registered with the Securities & Exchange Commission under the Investment Advisor Act of 1940 or exempt from registration.

The Authority shall also consider the firm's capitalization, quality, size and reliability, the Authority's prior experience with the firm, the firm's level of expertise and prior experience with respect to the contemplated engagement.

## **4.3. Qualifications for Custodial Banks**

To be eligible to hold Investment Securities purchased by the Authority or collateral securing its investments, a custodial bank shall be a member of the Federal Reserve Bank or maintain accounts with member banks to accomplish book-entry transfer of Investment Securities to the credit of the Authority. The custodian should not be the same party that is selling the Investment Securities. To be eligible to perform custodial services, the Chief Financial Officer must affirmatively find that the proposed custodial bank is financially sound. This shall be determined by review of the financial statements and credit ratings of the proposed custodial bank.

## **4.4. Ongoing Disclosure**

All brokers, dealers and other financial institutions described in sections 4.1, 4.2, and 4.3 shall be provided with current copies of the Authority's Investment Guidelines. A current audited financial statement is required to be on file for each financial institution and broker/dealer with which the Authority has investment transactions.

## **4.5. Affirmative Action**

Article 15-A of the Executive Law and 9 NYCRR Part 4.21 regarding affirmative action shall apply with respect to the Authority's investment activities. The Authority shall seek to utilize minority and women-owned financial firms in the conduct of the Authority's investment activities. Management reporting is required by the Authority in order to track compliance with policy guidelines, assess the performance of the portfolio and to inform appropriate management personnel.

# **5. REPORTING**

## **5.1. Management Reporting**

In order to manage the Investment Funds effectively and to provide Authority management with useful information, it is necessary for the Treasury Department to report reliable and timely information regarding the investment transactions that take place.

A Quarterly Management Report on the investment management program shall be prepared and presented to the CFO and the Authority's Board. The Quarterly Management Report shall include:

- An indication of all new investments;
- A portfolio inventory;
- Credit quality of each holding;

- Duration (or average maturity) of each fund;
- Mark-to-market valuations on investments and collateral; and
- A breakdown of the portfolio by counterparty.

An Annual Investment Report shall be submitted to the Authority's Board and filed with the State Division of the Budget, State Comptroller, State Senate Finance Committee, and State Assembly Ways and Means Committee. The Annual Investment Report shall include the following:

- The investment guidelines in compliance with Section 2925(3) of the Public Authorities Law and any amendments since last reported;
- An explanation of the investment guidelines and amendments;
- The results of the Annual Independent Audit (described in Section 3.3.);
- Investment income record of the Authority; and
- A list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and manager/advisor rendering investment associated services to the Authority since the date of the last investment report.

The attached report is being presented to you in accordance with this requirement.

After approval of the report, it will be submitted or posted to:

- State Division of the Budget,
- State Department of Audit and Control,
- State Comptroller,
- State Public Authorities Information Reporting System (PARIS),
- Authority website, and
- The Chairmen and Ranking Minority Members of the Senate Finance Committee and Assembly Ways and Means Committee.

## **5.2. Performance Reporting**

In order to ensure the effectiveness of the Authority's investment strategy, it is important to measure the performance of the portfolio. The performance measurement process can be broken into four categories:

- Investment benchmark – The Authority will continuously measure its performance against a benchmark having an average maturity comparable to the portfolios.
- Performance measurement – Each quarter the Authority must measure the performance of its investment portfolio versus its benchmark. By continuously measuring results against this standard benchmark, the Authority can determine a pattern of over/under performance.
- Identify sources of over/under performance – The Performance Reports distributed to the CFO must include information on the source of over/under performance.
- Disseminate results – Results shall be distributed to the CFO and the Board in a timely manner.

## **APPENDIX A – OPERATING CONTROLS**

### **Distribution of the Investment Guidelines**

The guidelines and all subsequent amendments, revisions and updates shall be distributed to Authority personnel per the approval of the Chief Financial Officer.

During the period in which the Authority retains an investment manager, the investment manager must also receive the investment guidelines and all amendments, updates, or revisions to insure compliance with the most current guidelines.

#### ***Exhibit –Investment Guidelines Distribution Matrix***

<b>Distribution List</b>	<b>Frequency</b>
Board of Members	As Necessary
Chief Financial Officer	As Necessary
Controller	As Necessary
Deputy Treasurer	As Necessary

### **Roles and Responsibilities in Executing the Investment Guidelines**

The roles and responsibilities for investment management at the Authority rest primarily with the Finance Department although other departments have important roles. The matrix below defines the roles and responsibilities of all parties involved in the execution of the Investment Guidelines.

#### ***Exhibit –Policy Roles & Responsibility Matrix***

<b>Roles</b>	<b>Responsibility</b>	<b>Frequency</b>
Board	<ul style="list-style-type: none"><li>• Final Approval of the guidelines</li><li>• Approval of exceptions to the guidelines (e.g. new investment types)</li><li>• Approval of revisions to the guidelines</li></ul>	<ul style="list-style-type: none"><li>• Annual</li><li>• As necessary</li><li>• As necessary</li></ul>
Chief Financial Officer (“CFO”)	<ul style="list-style-type: none"><li>• Approval of the guidelines</li><li>• Approval of investment strategy</li><li>• Approval of performance measurements</li><li>• Approval of minor exceptions to the guidelines (i.e. amounts, maturities)</li></ul>	<ul style="list-style-type: none"><li>• Annual</li><li>• Annual</li><li>• Ongoing</li><li>• As necessary</li></ul>
Deputy Treasurer	<ul style="list-style-type: none"><li>• Serve as custodian of the guidelines</li><li>• Develop investment strategy</li><li>• Review investment strategy</li><li>• Establish performance measurements</li><li>• Distribution of guidelines and amendments</li><li>• Annual review of guidelines</li><li>• Oversight of investment activity</li><li>• Invest funds as provided for in the guidelines</li><li>• Keep abreast of developments in the markets</li><li>• Review performance information</li><li>• Management reporting</li></ul>	<ul style="list-style-type: none"><li>• Ongoing</li><li>• Annual</li><li>• Ongoing</li><li>• Ongoing</li><li>• As necessary</li><li>• Annual</li><li>• Ongoing</li><li>• Ongoing</li><li>• Ongoing</li><li>• Monthly</li><li>• Daily, Weekly Monthly</li></ul>

Assistant	<ul style="list-style-type: none"> <li>• Collect performance information</li> <li>• Distribute performance information</li> <li>• Prepare Investment Instruction Letter</li> </ul>	<ul style="list-style-type: none"> <li>• Weekly</li> <li>• Weekly</li> <li>• Ongoing</li> </ul>
Investment Manager	<ul style="list-style-type: none"> <li>• Develop investment strategy</li> <li>• Review investment strategy</li> <li>• Invest funds as provided for in the guidelines</li> <li>• Reporting investment portfolio</li> </ul>	<ul style="list-style-type: none"> <li>• Annual</li> <li>• Ongoing</li> <li>• Ongoing</li> <li>• Daily, Weekly, Quarterly</li> </ul>

### Segregation of Duties

The Authority requires adequate segregation of duties to prevent possible fraud, operational errors, misappropriation of funds, unauthorized trades, concealment of trades, and manipulation of accounting records. Personnel involved in risk monitoring activities should be segregated from risk taking (i.e. executing transactions).

#### *Exhibit – Segregation of Duties Matrix*

Activity to be Performed	Segregation Level
Trade Execution	Individuals who are authorized to execute transactions should not confirm and settle the trades or conduct account reconciliation activities.
Trade Confirmation	Individuals who conduct confirmations should not execute transactions.
Settlement – Disbursing and Receiving Funds	Individuals who handle cash settlement on the trades should not execute the trades. Cash settlement shall be transacted by any one of the authorized Authority signatories who did not participate in the trade execution. Only one signature is required due to the nature of the transaction, i.e., transfer of assets (including transfers in excess of \$25,000).
Account Reconciliation	Account reconciliation activities must be segregated from trade execution activities.

### Management Reporting

#### *Exhibit – Summary of Management Reporting*

Report	Contents	Audience	Frequency
Management Report	Investment portfolio, mark-to-market valuations, collateral, counterparty breakdown	Chief Financial Officer, Board	Quarterly

Annual Investment Report	Investment Guidelines, explanation of Investment Guidelines & amendments, annual investment audit, annual investment income, total fees and commissions paid	Chief Financial Officer, Board (File with Division of the Budget, State Comptroller, State Finance Committee, Assembly Ways and Means Committee)	Annually
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***Exhibit – Summary of Treasury Performance Reporting***

Report	Contents	Audience	Frequency
Performance Report	Investment performance vs. benchmark variance analysis	CFO, Board	Quarterly

### **Operating Procedures**

Operating procedures for the administration of the Authority's investment program should include the following:

- Each disbursement of funds (and corresponding receipt of Investment Securities) or delivery of Investment Securities (and corresponding receipt of funds) shall be based upon proper written authorization. If the authorization is initially given orally, there shall be written or telegraphic confirmation from an authorized signatory of the Authority to the custodian;
- The process of initiating, reviewing and approving requests to buy and sell Investment Securities shall be documented and retained for audit purposes. Dealer limits should be established and reviewed regularly;
- Custodians must have prior authorization from the Authority to deliver obligations and collateral. All transactions must be confirmed in writing to the Authority. Delivery of obligations sold shall only be made upon receipt of funds;
- Custodial banks shall be required to report whenever activity has occurred in the Authority's custodial account;
- There shall be at least monthly verification of both the principal amount and the market values of all investments and collateral. Appropriate listings shall be obtained from the custodian and compared against the Authority's records;
- A record of investments shall be maintained. The records shall identify the Investment Security, the fund for which held, the place where kept, date of disposition and amount realized, and the market value and custodian of collateral;
- The establishment and maintenance of a system of internal controls;
- Methods for adding, changing or deleting information contained in the investment record, including a description of the documents to be created and verification tests to be conducted;
- A database of records incorporating descriptions and amounts of investments, transaction dates, interest rates, maturities, bond ratings, market prices, and related information necessary to manage the portfolio; and
- Requirements for periodic reporting and a satisfactory level of accountability.

The procedures below describe in more detail the methods employed by the investment officers (Treasurer and Deputy Treasurer) to formulate and initiate investment transactions and include the records and documentation

used in processing an investment from the time of its initiation to the recording and reconciliation on the Authority's accounting records.

1. The Treasurer or Deputy Treasurer maintains a schedule of all current investments and updates schedule on a timely (daily) basis as securities mature and/or new investments are initiated. A Calendar of investment maturities is maintained and updated as chronological reminder (tickler file) or maturities.
2. All investments are initiated via:
  - a. specific written investment instruction sent to the Trustee or
  - b. verbal investment instructions followed up by written confirmation
3. The Treasurer or Investment Advisor will initiate the investments by reviewing the investment schedule and calendar on a daily basis to determine investments to be made over the following week based on Investment Committee strategies agreed to by the Investment Committee and weekly phone meetings working group. All investments are available online on a real time (next day) basis.

The Treasurer considers many factors in forming investment decisions, such as:

- a. existing bond resolution requirements and conditions;
  - b. other existing agreements affecting investments/cash flow (i.e. Settlement Agreement; Agreement and Consent dated September 22, 1988, as amended, Agreement for Certain Payments, Lease Agreements etc.);
  - c. BPCA Cash Flow Requirements and Internal Investment Policies;
  - d. current and future market conditions (i.e. interest rates);
  - e. New York State Comptroller's Guidelines; and
  - f. published market surveys, consultant reports, etc., relating to securities available, interest rates and investment strategies.
4. Copies of the bank trade confirmation letters sent to the Trustee Bank are filed in the Treasurer's chronological file and in a monthly folder for that particular Bank account.
  5. All investments are available to the President and others for review and discussed at Investment Committee meetings. A copy of the Investment Instructions Letter is retained in the Treasurer's file and a copy is maintained in the bank reconciliation files.

Documentation for securities purchased including the information as to brokers solicited for quotes shall be retained and filed by the Authority, the Trustee, or Investment Advisor. Corporate funds which are not invested are collateralized or insured by FDIC and balances receive compensating interest at the 90 day T-bill rate to mitigate banking fees. Reconciliation of monthly Trustee statements are performed. This includes reconciliation of investment transactions, investment income, and portfolio holdings.

Corresponding journal entries are subsequently posted to the Authority's general ledger. The BPCA Controller or Director of Financial Reporting initials and dates these reconciliations when reviewed to signify timely approval and completion.

6. Quarterly investment schedules are reviewed by the Investment Committee and made available to the Board. Investment schedules are audited by the Authority's public accountants at year end. The auditors request and receive confirmation of our cash and security holdings as of fiscal year end. In addition, the Authority's Internal Audit department periodically audits investments.

The procedures will be subjected to regular audits by internal and external auditors as required. Procedures are to be revised and updated on an annual basis and referenced in the Investment Policy and Procedure Statement, approved by the Members, in accordance with Section 2925(6) of the Public Authorities Law.

## **APPENDIX B**

### **INVESTMENT REPORT FYE OCTOBER 31, 2018**

#### ***Investments***

The Authority carries all investments at fair value. Inherent risks that could affect the Authority's ability to provide services and meet its obligations as they become due are reported in accordance with U.S. GAAP. The Authority's permitted investments include: (i) 100% U.S. government guaranteed securities (U.S. Treasury notes, bonds, strips, T-bills, Ginnie Mae securities); (ii) notes, bonds, debentures, and mortgages of U.S. government-sponsored agencies provided that its obligations receive the highest credit rating at the time of purchase from all rating agencies that rate the obligation; (iii) obligations of any corporation organized under the laws of any state in the United States maturing within 270 days provided that such obligations receive the highest rating of two independent rating services (commercial paper); (iv) municipal bonds issued by the State of New York, its counties, towns and cities and New York authorities; and (v) the general obligations of any state provided that such obligations receive the highest rating by at least one rating agency. The Organization maintains its cash in bank accounts that are fully collateralized or backed by the Federal Deposit Insurance Corporation ("FDIC") or letters of credit. All investments held in funds and accounts established in accordance with bond resolutions are held as trust assets by the trustee banks in the Authority's name.

Total investments held by the Authority at October 31, 2018 and 2017 included within the balance sheet investments, corporate designated, escrowed and OPEB funds, bond resolution funds (see note 8) and residential lease required fund accounts, are as follows:

	October 31, 2018			October 31, 2017		
	Cost	Fair value	Weighted average maturity (years) (a)	Cost	Fair value	Weighted average maturity (years) (a)
<b>U.S. Treasury securities:</b>						
Treasury Bills	\$ 226,595,757	227,862,341	0.05	\$ 204,969,350	205,483,095	0.04
Treasury Bonds	97,341,850	93,195,332	3.10	127,214,877	125,708,856	2.81
Treasury Strips	<u>343,043</u>	<u>326,245</u>	6.20	<u>343,043</u>	<u>333,915</u>	7.21
<b>Total U.S. Treasury securities</b>	<b><u>324,280,650</u></b>	<b><u>321,383,918</u></b>		<b><u>332,527,270</u></b>	<b><u>331,525,866</u></b>	
Commercial paper	63,024,475	63,476,945	0.05	39,705,945	39,800,777	0.03
Federal agency securities	2,002,830	1,859,912	0.40	11,797,705	11,714,172	0.22
Federal agency mortgage backed securities	5,075,643	4,974,729	2.49	6,875,021	6,911,215	2.36
Municipal bonds	15,020,253	14,509,198	1.61	24,577,759	24,314,418	1.30
Small Business Administration	2,115,086	2,032,288	4.92	2,480,445	2,480,908	6.04
Supra National Agency	<u>27,390,282</u>	<u>27,006,522</u>	1.64	<u>22,843,203</u>	<u>22,759,706</u>	2.12
<b>Total investments</b>	<b><u>438,909,219</u></b>	<b><u>435,243,512</u></b>	0.91	<b><u>440,807,348</u></b>	<b><u>439,507,062</u></b>	1.09
Cash and cash equivalents	<u>35,638,035</u>	<u>35,638,035</u>		<u>32,060,205</u>	<u>32,060,205</u>	
<b>Total investments</b>	<b><u>\$ 474,547,254</u></b>	<b><u>470,881,547</u></b>		<b><u>\$ 472,867,553</u></b>	<b><u>471,567,267</u></b>	

(a) Portfolio weighted average effective duration

As of October 31, 2018 and 2017, restricted assets included cash and cash equivalents and investments with less than 91-day maturities amounting to \$135,527,007 and \$166,595,352, respectively.

The Authority's investment objectives for the portfolio are legal compliance, safety of principal, to meet liquidity requirements and to maximize legally allowable return.

Interest rate risk is the probability of loss on investments from future changes in interest rates, which can adversely affect their fair value. Duration is a measure of a debt investment's exposure to fair value changes arising from changes in interest rates. It uses the present value of cash flows, weighted for those cash flows as a percentage of the investment's full price. Effective duration takes into account the change in cash flow expectations of securities with embedded options such as callable bonds and mortgage-backed securities. The interest rate risk of the Authority's portfolio is measured according to effective duration.

Investments of amounts in funds and accounts established under the various 2003 General Bond Resolution, and the 2009 and 2013 Revenue Bond Resolutions are presently restricted to obligations of the State, U.S. government and its agencies, or in any other obligations in which the Comptroller of the State of New York is authorized to invest pursuant to Section 98 of the State Finance Law.

Corporate-designated and escrowed funds represent funds designated by the Authority's board of directors for specific purposes such as budget reserves, the Special Fund (see note 12), project contingency reserves, restoration reserves, insurance reserves, and arbitrage reserves and funds designated for the payment of medical benefits to the Authority's retirees (OPEB funds).

Residential lease required funds represent funds held by the Authority in accordance with its residential leases. These funds are largely comprised of security and escrow deposits held by the Authority for the residential buildings.

### **Fees**

There were no fees, commissions or other charges paid to investment bankers, brokers, agents, or dealers for rendering investment related services to the Authority during the fiscal year and all investments are competitively bid. Consultant fees in the amount of approximately \$350,000 were paid to PFM Asset Management LLC during the current fiscal year for professional money management advice to the Authority's Investment Committee.

## **APPENDIX C**

### **BPCA FY2018 - A YEAR IN REVIEW** *(Prepared by PFM Asset Management LLC)*

#### **Summary of Bond Market and Authority Portfolio Strategy**

##### **Annual Summary**

Fiscal year 2018 started off strong, with positive U.S. economic indicators, tax reform, synchronized global growth, and the S&P Index logging multiple new record highs. As the fiscal year progressed, however, political uncertainty and risk grew both internationally and domestically, and markets saw heightened volatility and eventually both equity and fixed income performance suffered. Still, the U.S. economy continued its positive momentum throughout the year, with solid Gross Domestic Product (“GDP”) growth, low unemployment, and strong government and consumer spending. As expected, the Federal Open Market Committee (“FOMC”) raised the federal funds rate four times during the fiscal year, each by 0.25%.

#### **Summary of Bond Market and Authority Portfolio Strategy**

##### ***First Quarter: November 1, 2017 – January 31, 2018***

##### **Market Summary**

The market reacted positively, with increases in both bond yields and equity prices, when Washington cut the corporate tax rate from 35% to 21% and reduced personal tax levels. The S&P 500 Index logged 14 new record highs in January, ultimately tallying a 5.7% return for the month and was the 15<sup>th</sup> consecutive month of positive total return for the Index. During its December meeting, the FOMC stayed true to its “dot plot” forecasts by raising the federal funds target rate one quarter of a percent to a range of 1.25% to 1.50%. The January FOMC meeting marked the final one for Janet Yellen, as she passed the Federal Reserve (“Fed”) chair seat to Jerome Powell. Across the pond, the Bank of England (“BOE”) bumped its overnight rate back up to 0.50%, following a temporary cut to 0.25% following the 2016 Brexit vote.

The U.S. economy notched back-to-back quarters of solid growth with GDP increasing at a 3.2% real rate for the 3-months ended December 31, 2017, following a second quarter tally of 3.1%. 2017 capped the 8th straight year of recovery from the 2008-09 Great Recession – the third longest expansion of the past century. The U.S. labor market remained strong, with the unemployment rate holding at a 15-year low of 4.1%. The economy added over 2 million net new jobs in 2017. At the same time, the labor force participation rate improved modestly, while wage growth over the past year was modest. Outside of inflation, economic indicators were strong: manufacturing, services and consumer confidence indexes reached multi-year highs and the housing market strengthened further.

Shorter-term Treasury yields (5 years and under) increased during the quarter, largely on the run-up to the December FOMC rate hike. The yield on the 2-year Treasury increased by 56 basis points (bps) (0.56%) over the quarter to 2.18%. As inflation expectations increased, long-term Treasury yields (10 years and longer) also moved higher in January, but to a lesser extent, which resulted in a flattening yield curve. The yield on the 10-year Treasury increased by 34 bps over the quarter to 2.72%.

##### **Portfolio Strategy Recap**

- The Authority’s long-term portfolios outperformed their respective benchmarks for the quarter. The majority of fixed income indices, including 1-5 year and 1-10 year U.S. Treasury indexes, posted negative returns for the quarter as investment income was not able to fully offset the adverse impact of rising rates on fixed income prices. Although the Authority’s longer-term portfolios also posted negative returns, the portfolios’ durations were positioned shorter than the respective benchmarks which was a positive for relative performance.

- Both short-term portfolios slightly underperformed the benchmark for the quarter. Portfolio positioning was influenced by expected cash flows, which in turn impacted performance. The 2003 Pledged Revenue portfolio experienced substantial activity as intra-fund transfers related to the beginning of the fiscal year were initiated.
- Commercial paper offered incremental value relative to both short and intermediate-term government securities. The incremental yield advantage offered in this sector was a valuable return attribute in the face of rising rates.

***Second Quarter: February 1, 2018 – April 30, 2018***

***Market Summary***

The quarter kicked off with a spike in volatility associated with an equity market correction, talks of tariffs and trade wars, a modest uptick in inflation, and a panoply of geopolitical concerns. Market volatility subsided by the end of the quarter, even as interest rates marched higher. Economic data was generally favorable, but the political situation remained uncertain on trade, immigration, and policies involving North Korea and the Iran nuclear deal. During the quarter, President Trump signed a \$1.3 trillion omnibus spending bill which averted a government shutdown, significantly increased military spending, and increased funding in a variety of discretionary areas. At its March meeting, the FOMC raised the federal funds target rate by 0.25% to a new range of 1.50% to 1.75%.

On the economic front, the U.S. economy posted solid results for 2017, as GDP for the last quarter of 2017 was revised up to a rate of 2.9%, after back-to-back readings in excess of 3.0%. In the midst of eight straight years of domestic economic expansion, global growth was now in synchrony, with nearly every advanced economy around the globe, including the Eurozone, Japan, and China, showing positive growth rates. Although net job gains in the U.S. were below expectations for April, the unemployment rate fell to 3.9%, the lowest level since 2000. In another sign of strength of the U.S. labor market, the weekly tally of initial claims for unemployment insurance reached the lowest level since 1969.

Bond yields continued their ascent over the quarter, with the 2-year Treasury reaching a near-decade high, resulting in a further flattening of the yield curve. The 2-year Treasury increased 34 bps to 2.52%, while the 10-year Treasury increased 23 bps to 2.95%.

***Portfolio Strategy Recap***

- All longer-term portfolios outperformed their respective benchmark for the quarter, benefitting from a short duration bias.
- Short-term portfolio performance for the quarter was significantly impacted by cash flow needs. The 2003 Pledged Revenue portfolio experienced a decrease in net cash flows of over \$65 million over the quarter for debt service.
- The continued federal fund rate hikes resulted in negative returns for most bond indices for the quarter, with longer maturities performing worst. Although higher yields provide greater income over time, that income was not sufficient to offset the adverse impact of rising interest rates on fixed income prices.
- Short-term commercial paper offered great incremental value in the quarter as short-term yields rose in response to the burgeoning Treasury supply, and credit spreads widened.

### *Third Quarter: May 1, 2018 – July 31, 2018*

#### Market Summary

The trade war expanded during the quarter as the Trump administration continued to threaten significant increases in tariffs on imports. Positive economic data released during the quarter included job gains, housing starts, new home sales, factory orders, manufacturing survey indices and consumer sentiment. The Fed once again increased the overnight federal funds rate at its June meeting by 25 bps, to a new range of 1.75% to 2.00%.

The first estimate for second-quarter U.S. GDP growth breached 4% for the first time since the third quarter of 2014. A strong rebound in consumer spending, sustained business investment, strong federal government defense spending and a surge in exports boosted economic expansion to a 4.1% annual rate. After a slight move up to 4.0% in June, the unemployment rate ticked lower to 3.9% in July, while average hourly earnings held steady at 2.7% year over year.

U.S. Treasury yields generally rose over the quarter, with maturities less than 3 years increasing 17 to 19 bps, while maturities greater than 5 years increased by a lesser amount and 30-year Treasury yields were slightly lower. The yield curve remained near its flattest level in more than a decade. The difference between 10-year and 2-year Treasury yields narrowed to 28 bps (0.28%) by quarter-end.

#### Portfolio Strategy Recap

- Longer-term portfolios and the 2003 Pledged Revenue portfolio performed in line with the respective benchmarks for the quarter, while the 2003 Project Operating portfolio outperformed its benchmark.
- With expectations that interest rates would continue to trend higher and a flat yield curve, portfolios were strategically positioned with a modestly-defensive duration bias relative to benchmarks.
- Although the available supply of commercial paper issuers with the appropriate rating had declined, some issues were sourced and added to the 2003 Pledged Revenue portfolio that offered incremental value relative to both short- and intermediate-term government securities.
- Allocation to the federal agency sector benefitted the longer-term portfolios as this sector slightly outperformed similar-duration U.S. Treasury securities for the quarter.
- As expected, the 2003 Pledged Revenue account experienced significant cash inflows during the quarter.
- Large outflows during the quarter were due to transfers from the 2003 Residual Fund to New York City in June.

### *Fourth Quarter: August 1, 2018 – October 31, 2018*

#### Market Summary

U.S. growth remained healthy during the quarter as the unemployment rate hit historical lows and confidence rose further. This occurred despite ongoing concerns about a trade war with China, a disorderly Brexit, Italian budget concerns, Iran sanctions, a Turkish debt crisis and other geopolitical risks. The U.S. housing market weakened as rising home prices, higher mortgage rates, a scarcity of materials and lack of construction labor slowed activity. Residential investment fell 4% in the third calendar year quarter, the third consecutive quarter as a drag to GDP growth. Even with this drag, the advance release of third-quarter U.S. GDP growth showed surprisingly strong growth of 3.5%, boosted by consumer spending, government spending and inventory replenishment.

The U.S. stock market gave up nearly all of its gains for the calendar year at the end of the quarter as investors became concerned about rising rates, midterm elections, future corporate earnings, a trade war with China, Brexit, Italian budget woes and general geopolitical uncertainty. The FOMC increased the overnight lending rate by 25 bps to a new target range of 2% to 2.25% at its September meeting, marking the fourth hike during the fiscal year. In a surprisingly unanimous decision, the BOE raised its benchmark interest rate in August for only the second time in a decade, as inflation worries trumped concerns about Brexit.

U.S. Treasury yields rose in early October to new highs for this phase of the cycle, with 10-year and 2-year yields reaching their highest levels since 2011 and 2008, respectively. But, the equity market sell-off triggered a brief rally that left bond yields higher at the end of the quarter, though off their highs. Overall, yields rose by 20 to 30 bps during the quarter. The yield on the 2-year Treasury rose 21 bps to 2.90%, while the yield on the 10-year rose 19 bps to end the quarter at 3.16%. The result was a flatter yield curve, but the pace of flattening moderated near quarter-end. The yield difference between 10-year and 2-year U.S. Treasury notes ended the quarter at 0.25%, only 9 bps off of the decade low.

*Portfolio Strategy Recap*

- All of the Authority's portfolios outperformed their respective benchmarks for the quarter. The portfolios were positioned with a defensive interest rate risk profile – durations remained short relative to benchmarks.
- The longer-term portfolios benefitted from allocations to the supranational sector, as the combination of tighter spreads and incremental income led to the sector posting attractive returns relative to both Treasuries and federal agencies.
- Commercial paper was utilized in the short-term portfolios where appropriate and as value presented itself. However, the allocation to this sector was impacted due to shortening the duration of the portfolios and reduced supply as we approached the final quarter of the calendar year.
- Liquidity considerations were the primary determinant of the portfolio structure and duration positioning. The 2003 Pledged Revenue portfolio was positioned to facilitate the movement of funds after the end of the fiscal year to other Authority portfolios.

## **Portfolio Performance Update**

Absolute returns for fiscal year ended October 31, 2018 were strong for the Authority's short-term investment strategies. The 2003 Project Operating Fund outperformed its benchmark, the BAML 3-month U.S. Treasury Bill index return by 5 bps. The 2003 Pledged Revenue portfolio slightly underperformed its benchmark for the fiscal year, and was impacted largely by cash flow needs. Short-term strategies benefitted throughout the fiscal year from attractive high quality commercial paper and short duration positioning in the rising rate environment.

The Authority's longer-term investment strategies all outperformed their respective benchmarks. The 2003 Reserve Fund outperformed its benchmark by 26 bps. All other long-term strategies managed to the BAML 1-10 Year U.S. Treasury Note Index outperformed by an average of nearly 35 bps. The increase in interest rates over the fiscal year hurt longer-term investment strategies over the short run. Outperformance versus the benchmarks for the long-term strategies was driven by a short duration position relative to the benchmark, which proved beneficial throughout the fiscal year as interest rates rose.

	<b>1 Year Ending October 31, 2018</b>	<b>3 Years Ending October 31, 2018</b>	<b>Since Inception</b>
<b>Long-Term Strategy:</b>			
<b>2003 Reserve Fund</b>	<b>-0.10%</b>	<b>0.67%</b>	<b>3.13%</b>
<i>BM: BAML 1-5 Year US Treasury Note Index</i>	-0.36%	0.41%	2.96%
<b>BPCPC Operating Reserve Contingency</b>	<b>-0.62%</b>	<b>0.65%</b>	<b>3.44%</b>
<b>Insurance Fund</b>	<b>-0.66%</b>	<b>0.47%</b>	<b>3.39%</b>
<b>Operating Budget Reserve</b>	<b>-0.57%</b>	<b>0.61%</b>	<b>3.54%</b>
<i>BM: BAML 1-10 Year US Treasury Note Index</i>	-0.98%	0.33%	3.07%
<b>BPCA Other Post-Employment Benefits</b>	<b>-0.65%</b>	<b>0.56%</b>	<b>2.54%</b>
<i>BM: BAML 1-10 Year US Treasury Note Index</i>	-0.98%	0.33%	2.28%
<b>BPCPC Other Post-Employment Benefits</b>	<b>-0.65%</b>	<b>0.55%</b>	<b>1.86%</b>
<i>BM: BAML 1-10 Year US Treasury Note Index</i>	-0.98%	0.33%	1.85%
<b>Short-Term Strategy:</b>			
<b>2003 Pledged Revenue</b>	<b>1.56%</b>	<b>0.90%</b>	<b>1.23%</b>
<b>2003 Project Operating Fund</b>	<b>1.73%</b>	<b>1.03%</b>	<b>1.24%</b>
<i>BM: BAML 3 Month US Treasury Bill Index</i>	1.68%	0.90%	1.16%

### *Notes:*

1. Performance on trade date basis, gross-of-fees in accordance with the CFA Institute's Global Investment Performance Standards.
2. Merrill Lynch Indices provided by Bloomberg Financial Markets.
3. The total returns shown for periods longer than a year are the annualized returns for the stated period.
4. Since inception performance for all portfolios other than 'BPCA Other Post Employment Benefits' and 'BPCPC Other Post Employment Benefits' is calculated from January 31, 2006 to present.
  - Since inception performance for the BPCA Other Post Employment Benefits performance is calculated from January 31, 2008 to present.
  - Since inception performance for the BPCPC Other Post Employment Benefits performance is calculated from February 12, 2010 to present.
  - For the 'Reserve Fund,' the inception of the BAML 1-5 Year Treasury Index as the performance benchmark is July 31, 2013. For prior periods, the BAML 1-10 Year Treasury Index was utilized.

**APPENDIX D – SEE ATTACHED “REVIEW OF INVESTMENT PERFORMANCE  
QUARTER ENDED OCTOBER 31, 2017 REPORT”**

(SEPARATE FILE ATTACHED)



**Battery Park  
City Authority**

# Procurement Guidelines

## January 29, 2019

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## **1. DEFINITIONS**

The following terms, for the purposes of these Guidelines, shall mean:

- “Amendment” shall mean both amendments and change orders.
- “Authority” shall mean the Hugh L. Carey Battery Park City Authority.
- “Bid” shall mean an offer or Proposal submitted by a Bidder to provide a specified Commodity or service at a stated price for the stated contract term.
- “Bid Log” shall mean a log maintained by the Chief Contracting Officer (“CCO”) documenting when bids are received, secured and distributed.
- “Bid Opening” shall mean the opening of sealed Bids, in the presence of one or more witnesses, at the time and place specified in the Solicitation.
- “Bidder” shall mean any individual, business, Vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a Bid in response to a Solicitation.
- “Board” shall mean the Authority’s Board of Directors and/or Battery Park City Parks Conservancy’s (“BPCPC”) Board of Directors.
- “Centralized Contract” shall mean Procurement Contracts let by other public entities pursuant to a competitive process, including those contracts of the State of New York (e.g., New York State Office of General Services (“OGS”)) and the United States General Services Administration (“GSA”).
- “Commodities” shall mean material goods, supplies, products, construction items or the standard articles of commerce that are the subject of any purchase or exchange.
- “Competitive Procurement Method” shall include: (i) Solicitations, including requests for proposals (“RFP”), requests for information, invitations for Bids (“IFB”), requests for quotations and requests for qualifications; (ii) Procurements made pursuant to Centralized Contracts; and (iii) any other competitive method of Procurement that is consistent with these Guidelines.
- “Contractor” shall mean a person or organization that enters into a Procurement Contract with the Authority.
- “Cost Proposal” shall mean the part of any Bid that sets forth the price for which the Bidder is offering to provide the Authority with the Services/Commodities described in a Solicitation.
- “Department Head” shall mean the President, General Counsel, Chief Financial Officer, Chief Administrative Officer, Vice President of Real Property, Vice President of Human Resources, and Director of Parks Operations, and such other individuals as designated by the President.
- “Designated Contact” shall mean the person or persons designated to receive Bids, and, if necessary, to communicate with Bidders during the Restricted Period.

- “Discretionary Procurement” shall mean a purchase either i) in an amount below \$50,000, or ii) made from New York State small business concerns, SDVs, or M/WBEs, or for recycled or remanufactured Commodities or technology, in an amount not exceeding \$200,000.
- “Emergency” shall mean an urgent condition that, as determined by a Department Head, and as approved, prior to commencement of any work related to the Emergency, by the President, threatens to significantly disrupt the Authority’s operations, disrupt or delay a project, or create or perpetuate an unsafe condition or environment.
- “Final Award” shall mean a communication to a Vendor from the Authority that he or she has been selected by the Authority to provide a Good or Service.
- “Form, Function and Utility” shall mean the minimum essential requirements that will meet the Authority’s needs. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.
- “Guidelines” shall mean the Authority’s Procurement guidelines as delineated herein.
- “Invitation for Bid” (“IFB”) shall mean a competitive Solicitation seeking Bids for a specified Commodity, pursuant to which award is made to the responsible Bidder(s) submitting the lowest price.
- “M/WBE” shall mean any certified business enterprise, including a sole proprietorship, partnership or corporation that is: i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are Minority Group Members, as defined below, or women, or in the case of a publicly-owned business, ownership of at least fifty one percent of the common stock or other voting interests by Minority group members or women; ii) an enterprise in which ownership by Minority Group Members or women is real, substantial and continuing; iii) an enterprise in which the Minority Group Members or women own and exercise the authority to independently control the day-to-day business decisions of the enterprise; and iv) an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.
- “Minority Group Member” shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: i) Black persons having origins of any of the Black African racial group not of Hispanic origin; ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; iii) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or iv) Native American persons having origins in any of the original peoples of North America.
- “New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods that are sought by the Authority and that are substantially manufactured, produced or assembled in New York State, or Services that are sought by the Authority and that are substantially performed within New York State.
- “New York Resident” shall mean a natural person who maintains a fixed, permanent and principal home located within New York State, to which such person, whenever temporarily located, always intends to return.

- “Original Termination Date” means the date a Procurement Contract, at the time of its execution, will expire and is exclusive of any subsequent Amendment(s).
- “Original Value” means the value of a Procurement Contract at the time of its execution, exclusive of any subsequent Amendment(s).
- “President” means the President of the BPCA and his or her designee(s).
- “Procurement Contract” shall mean any written agreement to which the Authority is a party for the acquisition of Commodities or Services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more.
- “Procurement” shall mean the purchase or acquisition of Commodities or Services, that, actually or by estimation, total \$5,000 or more. Any purchase under \$5,000 shall constitute a Procurement, however, where the Authority has purchased or intends to purchase substantially similar Commodities or Services from the same Vendor within the same fiscal year and the aggregate value of such purchases exceeds \$5,000. Procurements shall not include: annual operating expenditures such as payments required by law; Revenue Contracts; compliance obligations; payments to utility and insurance providers; payments required by existing Contracts, agreements, and leases (e.g. payment to City or State, rent, insurance premiums, credit rating agencies, etc.); memberships in various industry groups, professional societies and similar cooperative associations; any cooperative projects or Procurement activities conducted or sponsored by such organizations in which the Authority participates; direct purchase advertising through radio, television or print media; tuition, conferences, seminars and other comparable activities; or transportation or other travel related expenses.
- “Professional Firm” shall mean any individual or sole proprietorship, partnership, corporation, association or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.
- “Proposal” shall mean a Bid received by the Authority in response to an RFP.
- “Purchase order” shall mean a document evidencing the procurement of a Commodity where a contract is not required but such procurement is subject to these Guidelines.
- “Restricted Period” shall mean the period from the date of the earliest notice of intent to solicit Bids through the date of the Final Award, and, if applicable, approval of the contract by the Office of the State Comptroller, during which all Bidders or potential Bidders are restricted from making contact with anyone other than the Designated Contact or the Director of Diversity.
- “Revenue Contract” shall mean a binding agreement between a governmental entity and another party that defines the terms under which revenue will be received by the governmental entity.
- “Service-disabled Veteran” or “SDV” shall mean (i) in the case of the United States army, navy, air force, marines, coast guard, army national guard or air national guard and/or reserves thereof, a veteran who received a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty; and (ii) in the case of the New York guard or the New York naval militia and/or reserves thereof, a veteran who certifies, pursuant to the rules and regulations

promulgated by the director, to having incurred an injury equivalent to a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty.

- “Services” shall mean duty or labor to be rendered by a person or entity.
- “Single Source” shall mean that although two or more vendors can supply the required Commodities or Services, upon written findings setting forth the material and substantial reasons therefor, the Authority concludes that: (i) one particular Vendor has unique knowledge or expertise with respect to the required service, good or material rendering the use of competitive procedures impractical; or (ii) there is a continuing need for existing Services to provide continuity to the orderly development and fiscal management of a project; or (ii) other material or substantial reasons exist for awarding the contract on other than a competitive basis.
- “Sole Source” shall mean only one Vendor is capable of supplying the required Commodities or Services.
- “Solicitation” shall mean an oral or written invitation, issued by the Authority, for vendors to submit Bids to provide the Commodities or Services described in such invitation.
- “Vendor” shall mean a supplier/seller of Commodities or Services.

## **2. INTRODUCTION.**

### **2.1. Introduction and Purpose**

These Guidelines apply to the use, award, monitoring and reporting of Procurement Contracts by the Authority.

The Authority shall use its best efforts to secure Bids from Vendors by using a Competitive Procurement Method, except as otherwise provided in these Guidelines.

Any deviation from, or waiver of the requirements of, these Guidelines must be approved in advance and in writing by the President.

### **2.2. Application**

These Guidelines apply to all Procurements.

### **2.3. Administration of the Guidelines**

The most senior administrative officer, in consultation with the General Counsel, is responsible for ensuring that these Guidelines are followed by the Authority. The Authority must prepare and the Board must approve the Guidelines annually. Any interim modifications to the Guidelines must be approved by the most senior administrative officer, the General Counsel and the President. The CCO is responsible for developing and maintaining standard templates to be used in the Procurement process, including but not limited to:

- Checklist of required actions and components to ensure each Procurement complies with these Guidelines;
- Bidder responsibility checklist;
- Request for proposals or other form(s) of Solicitation;
- Technical evaluation instrument, including the rating score sheet; and
- Memo in support of the Procurement.

All requirements, including but not limited to insurance and M/WBE and SDV compliance, shall be tracked in a database by the CCO, or his or her designee.

### **2.4. Procurement Sources**

When undertaking a Procurement, the Authority must consider, as appropriate, each of the potential sources below:

- Preferred source offerings, as set forth in Section 2.4.1 of these Guidelines;
- Centralized Contracts from OGS or GSA for Services, technology and commodities;
- Minority and Women-Owned Business Enterprises;
- SDV-Owned Business Enterprises;
- New York State Business Enterprises; and
- Piggybacking (agency established contracts) where beneficial to the Authority, as set forth in Section 2.4.5.

#### **2.4.1. Preferred Source Offerings**

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

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

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

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

#### **2.4.2. Minority and Women-Owned Business Enterprises and SDV-Owned Business Enterprises**

To promote and assist participation by M/WBEs and SDVs certified by the Empire State Development Corporation, the Authority shall follow the relevant provisions of the New York State Executive Law. The Authority shall identify those areas or types of contracts for which such vendors may best provide Bids so as to maximize participation by such enterprises and facilitate a fair share of awarded contracts to such enterprises.

The Authority shall:

- 1) Conduct Procurements in a manner that will enable it to achieve the maximum feasible portion of the M/WBE and SDV goals established for Procurement Contracts.
- 2) Affirmatively promote and assist M/WBE and SDV participation in Procurement Contracts.
- 3) Set and evaluate goals for M/WBE and SDV participation, including joint ventures, in each Solicitation.
- 4) Consider the severability of bundled contracts; and
- 5) As practicable, provide a current list of certified M/WBEs and SDVs to prospective Contractors. The Authority shall consult federal requirements regarding such opportunities and consult the most recent disparity study available.

The Authority shall appoint a Director of Diversity, who will promote and assist in participation by such enterprises, utilization of such enterprises as subcontractors and suppliers, and the utilization of partnerships, joint ventures or other similar arrangements between such enterprises and other Contractors. Specifically, the Director of Diversity shall be responsible for:

- Providing notice of opportunities to such enterprises and organizations that serve such enterprises;
- Maintaining lists of such enterprises that are properly certified and updating such lists regularly;
- Consulting lists of such enterprises maintained by the State's Department of Economic Development, among others;
- Establishing goals for such enterprises' participation and utilization as subcontractors and suppliers under Procurement Contracts; and
- Monitoring such enterprises' participation and utilization in Procurement Contracts.

#### **2.4.3. New York State Business Enterprises**

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

- a) When applicable, the Authority shall, in consultation with OGS, consider the specifications of New York State Business Enterprises in developing Solicitations for the purchase of Commodities and shall utilize stock item specification forms prepared by OGS.
- b) With the cooperation of the Commissioner of Economic Development and through cooperative efforts with Contractors, the Authority shall notify New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts with a value estimated to be equal or greater than one million dollars (\$1,000,000) and the Authority shall promulgate procedures which will assure compliance by Contractors with such notification as a condition of awarding Procurement Contracts.
- c) Contractors shall, as supplementary materials to their Bids, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on Procurement Contracts equal to or greater than one million dollars (\$1,000,000) and attest to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.
- d) The Authority, with the cooperation of the Commissioner of Economic Development and through cooperative efforts with Contractors, shall provide for the notification of New York State Residents of employment opportunities arising out of Procurement Contracts with a value estimated to be equal to or greater than one million dollars (\$1,000,000) and shall require Contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division of the Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.
- e) The Authority shall include in all Solicitations a statement that:
  - (i) Information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development, including the directory of certified M/WBEs.
  - (ii) Notifies potential Bidders located in foreign countries that the Authority may assign or otherwise transfer offset credits created by a Procurement Contract to third parties located in New York State.
  - (iii) Informs potential Bidders that it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of M/WBEs and SDVs, where possible, in the Procurement of Commodities and Services;
- f) The Authority shall notify the Commissioner of Economic Development of the award of a Procurement Contract for the purchase of Commodities or Services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful Bidder therefor.

#### **2.4.4. Piggybacking**

The Authority may use a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states pursuant to New York State Finance Law Section 163(10)(e). This type of procurement option is called “piggybacking”. The Authority must evaluate multiple factors in order to determine the appropriateness of piggybacking, including: (1) determination of the need for the product or services; (2) consideration of the procurement method by which the original contract was awarded; (3) an analysis of alternative procurement sources including why a competitive procurement or use of a centralized contract is not in the Authority’s best interest; and (4) reasonableness of the cost. The Authority’s evaluation of these factors and rationale for using piggybacking should be set forth in the procurement record. The consent of the originating agency must be obtained where the Authority proposes to piggyback by using an amendment to an existing contract of that originating agency. Alternatively, the Authority may execute an independent contract based upon the equivalency of product or services being procured and pricing contained in the original contract.

### **3. GENERAL REQUIREMENTS**

#### **3.1. Advertising Procurement Opportunities**

The Authority must advertise a Procurement opportunity in the New York State Contract Reporter when the actual or estimated amount of the Procurement is \$50,000 or more, except for Procurement Contracts being (i) awarded on an emergency basis or (ii) re-bid or re-solicited for substantially the same Commodities or Services, within forty-five business days after the date Bids were originally due. In addition, as a best practice, the Authority should also advertise its Procurement opportunities in other sources such as trade publications, journals, and newspapers when possible and appropriate, as well as Authority websites and mailing lists.

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

#### **3.2. Reserved Rights**

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

- Reject any or all Bids received in response to the Solicitation;
- Withdraw the Solicitation at any time, at the Authority’s sole discretion;
- Make an award under the Solicitation in whole or in part;
- Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- Seek clarifications and/or revisions of the Bid or any part of the Bid;
- Use information obtained by the Authority through site visits; interviews; investigation of a Bidder’s qualifications, experience, ability or financial standing; and any other material or information provided by or received from the Bidder during the Bid process;
- Prior to the Bid Opening, direct Bidders to submit Bid modifications addressing subsequent amendments to the Solicitation;
- Request that Bidders submit best and final offers subsequent to the Bid Opening;
- Change any of the scheduled dates;
- Waive any non-material requirements;
- Negotiate with the selected Bidder within the scope of the Solicitation and in the best interests of the Authority;

- Conduct contract negotiations with the next responsible Bidder if the Authority is unable to finalize contractual terms with the first selected Bidder;
- Utilize any and all ideas submitted in the Bids received; and
- Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation.

### **3.3. Restrictions on Contact During the Procurement Period**

A Bidder is restricted from making "contacts," defined as any oral, written or electronic communication that a reasonable person would infer that the communication was intended to influence the Procurement during the restricted period to any person at the Authority other than the Designated Contact or the Director of Diversity. Contacts permitted during the restricted period are set forth in State Finance Law §139-j (3)(a).

Any Authority member, officer or employee who becomes aware that a Bidder has made a contact (as defined in the previous paragraph) regarding the Procurement during the Restricted Period shall immediately notify the CCO, or other designated official, of such contact.

### **3.4. Determination of Vendor Responsibility**

The Authority must make a determination that a Bidder is responsible prior to awarding that Bidder a contract. The CCO, or his/her designee, shall determine whether there is a reasonable assurance that the Bidder is responsible based on factors enumerated in a Vendor responsibility checklist, including, but not limited to, the Bidder's:

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

Before finding a Bidder non-responsible, the CCO shall provide the Bidder with the opportunity to explain its position in writing, or, upon the most senior administrative officer's discretion, in person at a responsibility meeting. Any determination of non-responsibility shall be in writing and provided to the Bidder.

### **3.5. Monitoring of Procurement Contracts**

Performance of Procurement contracts must be monitored by an individual designated by the President to ensure that: (i) the scope of work or Services to be provided are being/have been timely performed; (ii) cost escalations are identified at the earliest possible opportunity; and (iii) the established starting and completion dates for major components of the contract are being/have been met. All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head.

### **3.6. Third Party Rights; Effect on Awarded Contracts**

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

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

### **3.7. Pre-qualification of Vendors for Services**

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

### **3.8. Limitations on Contracts Involving Former Officers and Employees**

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

## **4. SELECTION PROCESS**

### **4.1. Introduction**

A Solicitation issued by the Authority shall describe the Services or Commodities the Authority is seeking to procure. Each Solicitation shall clearly convey all the information needed for potential Bidders to submit a complete and competitive Bid. Solicitations conducted via Request for Proposals must be approved by the General Counsel's Office and the President, or her/his designee, before publication.

A Vendor who participates in the development or writing of the specifications for a Solicitation, or as an advisor during the evaluation process, as set forth in Sections 4.5 and 4.6, is prohibited from being a Bidder for that Procurement.

### **4.2. Procurement Methods**

#### **4.2.1. Discretionary Procurements**

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

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

In determining whether a purchase meets the required threshold amounts for a Discretionary Procurement, the staff member initiating the Discretionary Procurement

shall consider (and document such consideration) the reasonably expected aggregate amount of all purchases of the same commodities or services to be made within the twelve-month period commencing on the date of purchase. Purchases of services or commodities shall not be artificially divided for the purpose of satisfying the thresholds required for a Discretionary Procurement. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchase of the same commodities or services from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount.

#### **4.2.2. Non-Discretionary Procurement Methods**

##### **4.2.2.1 Non-Discretionary Procurements that are Exempt from the Requirement that a Competitive Procurement Method be Used:**

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

- Sole Source - the Authority must document in writing the findings demonstrating that the proposed Vendor is a Sole Source.
- Single Source - the Authority must document in writing the findings demonstrating that the proposed Vendor is a Single Source.
- 
- Emergency - the Department Head initiating the Procurement must document in writing that an Emergency exists and shall make a reasonable attempt to obtain quotes from at least three Vendors. Procurement contracts and Amendments entered into in response to an Emergency are exempt from the requirement that they be fully executed and delivered by both parties prior to the commencement of work. However, all procurement contracts and Amendments entered into in response to an Emergency must be approved in advance by the President, the most senior administrative officer, and the General Counsel. Each Department Head shall submit all such contracts and Amendments exceeding \$500,000 to the Board for their approval at the Board meeting next following the authorization of the work necessitated by the Emergency. In the event the work necessitated by the Emergency is completed within one week of the date the Emergency is documented and has a value of \$25,000.00 or less, the President may approve payment for the Vendor upon presentation of an invoice and documentation from the Department Head that the work has been so completed. Except as specifically provided in this paragraph, all contracts and Amendments involving Emergencies shall be subject to these Guidelines.

##### **4.2.2.2 Competitive Procurements**

As set forth more fully within these Guidelines, such procurements are: (i) Solicitations, including RFP, requests for information, IFBs, requests for quotations and requests for qualifications; (ii) Procurements made pursuant to Centralized Contracts; and (iii) any other competitive method of Procurement that is consistent with these Guidelines.

#### **4.3. Solicitation Content**

All Solicitations must include the criteria to be used in evaluating Bids and how those criteria will be weighted. Solicitations for a Commodity of a specific make and model may have cost as the only evaluation criteria.

Solicitations for Services should also include:

- Description of program objectives and background;
- Scope of Services to be provided; and
- Detailed requirements and specifications.

Solicitation for Commodities should include product specifications in one of the following manners:

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

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

#### **4.4. Distribution of Solicitations and Receipt of Bids**

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

##### **4.4.1. Advertisement of the Solicitation**

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

##### **4.4.2. Distribution of the Solicitation**

Once the Solicitation is finalized, the Authority should make reasonable attempts to distribute the Solicitation to all known potential Bidders and any Bidder that requests a copy as a result of the advertisement. Each Solicitation must be posted to the Authority's website but may also be distributed via postal mail, e-mail or other means.

##### **4.4.3. Receipt of Bids**

As noted above, the Solicitation must state the date and time that Bids are due. Late Bids cannot be accepted, except, upon approval by the President, in extraordinary instances where a public emergency prevented timely submission. The CCO must certify that Bids were received in accordance with the terms of the Solicitation.

##### **4.4.4. Other Requirements:**

- All Bids shall be received at one designated location at the Authority's offices and, immediately upon receipt, the envelope shall be stamped with the time and the date received.

- Sealed Bids shall be immediately locked in a secure location.
- The Bid Log shall be maintained at the reception desk. Comments on the condition of the envelope shall also be recorded in the Bid Log.
- A Bid Opening shall occur after the due date for receipt of Bids set forth in the Solicitation. All Bids shall be opened at the same Bid Opening.
- During the Bid Opening, Bids shall be signed out in the Bid Log by the person removing them. The persons attending the Bid Opening shall sign a pre-prepared list of their names, which shall become part of the Procurement record for each Procurement Contract.
- The Designated Contact, the project manager assigned to the project, and the CCO, or his/her designee, shall be present at each Bid Opening, at which time each Proposal shall be reviewed for compliance with the minimum mandatory qualifications set forth in the RFP and for inclusion of all required information and documentation.
- All Bids, including the time stamp and envelope, or shipping label from the shipping materials, shall be retained for 6 years.
- All Bids must be submitted in writing, but can also be submitted in electronic form.

Note, where a Solicitation requires submission of the Cost Proposal in a sealed envelope separate from the rest of the Bid documents, the Cost Proposals received in response to that Solicitation will remain sealed at the Bid Opening and, pursuant to Section 4.6.4, will not be provided to the Evaluation Committee for review until after an initial scoring for the technical evaluation.

#### **4.5. Evaluation Team**

For each RFP<sup>1</sup>, there shall be an evaluation committee consisting of staff members designated by the President or his/her designee (the “Evaluation Committee”) who are responsible for evaluating each Proposal; however, for any RFP, the President or his/her designee, may designate the Director of Diversity as solely responsible for evaluating the W/MBE part of each Proposal. The CCO shall provide the Evaluation Committee with all relevant Proposal materials, in accordance with these Guidelines, including, but not limited to, the Proposals (including the Cost Proposal, when appropriate), the RFP, and any addenda to the RFP. The evaluation process, including any numerical scores, shall be documented in reasonable detail.

#### **4.6. Conducting the Evaluation**

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

##### **4.6.1. Development of the Evaluation Criteria**

The criteria selected for evaluation must reflect the Authority’s objectives, scope of work, and requirements as set forth in the RFP. Examples of typical technical evaluation criteria include, but are not limited to:

- Work plan and methodology to achieve desired end results;
- Degree to which the Proposal satisfies mandatory, optional, desirable and/or alternative green performance standards;
- Experience of the Bidder in providing the required Services and/or deliverables;
- Management capability of the Bidder;
- Bidder’s overall past performance;

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<sup>1</sup> For convenience, Sections 4.5 through 4.8 discuss the evaluation process of an RFP but are applicable to any solicitation for competitive Bids requiring an evaluation.

- Qualifications and experience of the Bidder's proposed staff;
- Conformance with the schedule of work set forth in the RFP; and
- Bidder references.

#### **4.6.2. Assignment of Values to Evaluation Criteria**

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

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

#### **4.6.3. The Evaluation Instrument**

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

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

A subject matter expert who is not a member of the Authority's staff may be used to assist with evaluations, provided that the General Counsel's Office determines there is no conflict of interest and approves a confidentiality and conflict of interest statement signed by such subject matter expert.

#### **4.6.4. Scoring Methodology**

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

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

The Authority may waive mandatory requirements in the RFP that are not material, provided that the waiver neither:

- disadvantages the Organization;
- uniquely benefits the selected Bidder;
- prejudices any non-winning Bidder nor

- could reasonably be expected to have caused additional potential Bidders to submit Bids if known at the time of bidding.

After performing an initial evaluation, the Evaluation Committee may determine certain Bidder(s) should be eliminated from consideration based solely on the content of the Proposal(s). The determination to eliminate a Bidder(s) from consideration must be justified and documented, including but not limited to recording of the initial rating sheets. After determining which Bidders will be eliminated from further consideration, if any, and documenting the reasons justifying such elimination, the Evaluation Committee may open and review the Cost Proposals of the remaining Bidders before conducting interviews. Absent advance approval from the President or his/her designee, only Evaluation Committee members may be present at such interviews. Upon completion of the evaluation as set forth in the evaluation instrument and the RFP, the initial evaluation scores shall be adjusted and finalized, as necessary.

#### **4.7. Determining the Best Value Bidder**

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

#### **4.8. Request for Best and Final Offer**

In circumstances where it would be beneficial to the Authority, the Authority is authorized to request from one or more Bidders an amendment to its Bid that would represent its best and final offer if: (1) the project manager or Department Head provides a written memorandum justifying the request for a best and final offer; (2) such request is be approved by the President, and (3) such request does not materially change the scope of work or evaluation criteria for the Procurement.

#### **4.9. Award Based on Single Bid**

The Authority may award a contract to a Bidder if only one Bid was submitted, provided that the President determines, based upon review of the Procurement record, that the Solicitation did not restrict competition and the cost is reasonable.

#### **4.10. Selection**

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

#### **4.11. Letters of Intent**

Where the Department Head initiating the Procurement provides a written memorandum explaining the need for a letter of intent ("LOI") in order to ensure timely completion of a project by a selected Contractor, and that memorandum is approved by the President, the most senior administrative officer, and the General Counsel, a LOI may be issued to a Contractor. Such LOIs may be issued prior to the execution of Procurement Contracts for a value of up to 10% of the total anticipated Procurement Contract amount, subject to approval limitations. Such LOIs shall authorize Contractors to proceed with work pending the execution of the Procurement Contract, and shall expressly provide that the Contractor is granted no rights

against the Authority in the event a Contract is not executed except for the reasonable value of the preliminary work to be performed, not to exceed an amount set forth in the LOI.

#### **4.12. Notification of Award**

Upon receipt of all approvals required in Section 5.1, the Designated Contact may notify all non-selected Bidders of the Final Award.

#### **4.13. Post-Award Advertisement**

For any Procurement Contract with a value exceeding \$50,000, initially or through Amendment, that was not awarded pursuant to a Competitive Procurement Method, the Authority shall publish in the New York State Contract Reporter a notice of the award of such contract and the reasons for any exemption from the Competitive Procurement Method.

### **5. APPROVALS**

#### **5.1. Contract Award Approvals**

**5.1.1.** The department initiating the Procurement shall request approval of the award of a Procurement Contract by submitting to the CCO: i) a completed Bidder approval checklist as well as all accompanying materials as set forth in such checklist; ii) a written memorandum detailing the Competitive Procurement Method, or justifying an exemption, and describing the evaluation process and the basis for determining the selected Bidder (i.e., lowest cost, best value); and iii) written approval of the initiating Department Head.

**5.1.2.** The award of Procurement Contracts, and any subsequent Amendments, shall be approved by the CCO, Director of Diversity and the General Counsel's office as follows:

- The CCO shall verify that the Bidder is responsible (and, in the case of a Centralized Contract from OGS, that the Bidder's OGS certification is valid), has submitted certificates of insurance in accordance with the Solicitation requirements, and, as applicable, that the selection was made pursuant to these Guidelines and the terms of the Solicitation.
- The Director of Diversity shall verify that M/WBE requirements have been met, including the Bidder's Workforce Participation and M/WBE plan.
- The General Counsel's Office shall review and approve documentation supporting the Procurement, including the supporting memorandum.

**5.1.3.** In addition to the approvals required above, any award of a Procurement Contract with a value:

- Less than \$150,000, must be approved by the Chief Financial Officer, except if the Chief Financial Officer is the initiating Department Head of the Procurement, then the most senior administrative officer;
- Exceeding \$150,000 must also be approved by the President; and
- Exceeding \$500,000 must also be approved by the Board.

**5.1.4.** In addition to the approvals required above, Board approval is required for all contracts with a term exceeding one year. However, the following types of contracts with terms exceeding one year do not require approval by the Board unless otherwise required pursuant to Sections 5.1.3, 5.3.1 or 5.3.2 herein: (1) equipment and vehicle leases; (2) warranties and maintenance contracts relating

to leased or owned equipment and vehicles; (3) renewals of software licenses; and (4) software support contracts

## **5.2. Contract Amendment Approvals**

In addition to all applicable requirements set forth in Section 5.1, each request for an Amendment to a Procurement Contract shall require the following approvals:

**5.2.1.** The Board must approve any Amendment that:

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

**5.2.2.** The President must approve any Amendment that would cause the value of a Procurement Contract, either originally or as amended, to exceed its Original (or amended) Value by twenty percent (20%) or more.

**5.3.3** Except for those types of contracts listed in Section 5.2 above, Board approval is required for any extension of an existing Services Contract that a) for the first time, extends the contract term beyond one year; or b) is extended by one year or more from the Termination Date last approved by the Board.

## **5.3. Contracts Requiring OSC Approval**

Any Procurement Contract exceeding \$1,000,000, originally or as amended, which was awarded non-competitively or will be paid in whole or in part from monies appropriated by the State, and any Amendment to a Procurement Contract previously approved by the OSC where the value of the Amendment is ten percent (10%) or more of the Procurement Contract value as originally approved by the OSC, shall be submitted to OSC for filing within 60 days after execution and if the contract/Amendment is the subject of an active written notice by OSC, such Amendment shall be submitted to OSC for *prior* approval.

## **5.4. Designation of Approval Authority**

Any officer or Department Head who seeks to designate another employee to exercise approval authority as provided for under these Guidelines must first have such designation approved by the most senior administrative officer, General Counsel, and Chief Financial Officer.

## **5.5. Additional Approvals and Reports**

### **5.5.1. Independent Auditors**

Independent auditors for the Authority shall be retained only with the prior approval of the Board of the Authority.

### **5.5.2. Contract Approval Subsequent to Commencement of Work**

Upon consultation with the President, the General Counsel is authorized to approve and execute Procurement Contracts and amendments related to the provision of legal services after the work contemplated in the proposed contract or amendment begins.

### **5.5.3. Contracts with a Value between \$250,000 and \$500,000**

Any Procurement Contract the Authority enters into with an Original Value between \$250,000 and \$500,000 must be documented by the CCO and reported to the Board at the first meeting subsequent to such contracts' execution. In addition, on a quarterly basis,

management must provide a report to the Board listing all projects for which a Procurement may potentially be performed in that quarter.

#### **5.6. Final Contract Approvals**

Upon completion of all other approvals required by these Guidelines, subsequent to execution by the selected Vendor and before execution by the Authority, each Procurement Contract with a value:

- i) less than \$150,000 shall be approved by the Chief Financial Officer, General Counsel, Director of Diversity, and the initiating Department Head; and
- ii) of \$150,000 or above shall also be approved by the President.