



Procurement Guidelines

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1. DEFINITIONS

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

- “Amendment” shall mean any material change to a contract, including 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 at a stated price or Services at a stated price for an approved 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.
- “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”).
- “Commodity” shall mean a material good, supply, product, construction item or standard article of commerce that is the subject of any purchase or exchange. For the avoidance of doubt, any Commodity that also includes, at no specifically mentioned additional charge, a warranty and technical support for using the Commodity as is shall be considered a Commodity.
- “Competitive Procurement Method” shall include: (i) Solicitations, including requests for proposals (“RFP”), requests for information (“RFI”), invitations for Bids (“IFB”), requests for quotations and requests for qualifications (“RFQ”); and (ii) Procurements made pursuant to Centralized Contracts.
- “Contacts” shall mean any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity’s conduct or decision regarding the governmental procurement.
- “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 Operating Officer, Vice President of Real Property, Vice President of Human

Resources, and Vice President of Parks Operations, Vice President of Administration, Vice President of Communications and Public Affairs, Vice President of Parks Programming, 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, SDVOBs, or MWBEs, or for recycled or remanufactured Commodities or technology, in an amount not exceeding \$500,000
- “Diversity Practices” shall mean a potential vendor’s past, present, and prospective practices with respect to 1) utilizing minority or women owned business enterprises certified by State agencies and other public or private entities, 2) entering into joint ventures and other arrangements with certified minority and women owned business enterprises, and 3) any other information requested by the Authority as part of a Procurement, supported by affidavit, that demonstrates the potential vendor’s commitment to a policy of diversity practices related to minority-or women owned business enterprises.
- “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 Commodity 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.
- “Minority and/or Women Owned Business Enterprise” shall mean any business enterprise, including a sole proprietorship, partnership or corporation that has been certified as a Minority and/or Women Owned Business Enterprise (“MWBE”) by the Minority and Women Owned Business Division of the New York State Department of Economic Development/Empire State Development (the “Division”) pursuant to §314 of New York State Executive Law Article 15-A (“Article 15A”) and related regulations.
- “New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods that are sought by the Authority and that are substantially manufactured, produced or assembled in New York State, or Services that are sought by the Authority and that are substantially performed within New York State.
- “Original 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 and Chief Executive Officer of the Authority.
- “Procurement” shall mean the purchase or acquisition of Commodities or Services that, actually or by estimation, total \$5,000 or more. Any purchase under \$5,000 shall constitute a Procurement, however, where the Authority has purchased or intends to purchase substantially similar Commodities or Services from the same Vendor within the same fiscal year and the aggregate value of such purchases exceeds \$5,000. Further, a blanket approval to purchase commodities – or commodities within a category of substantially similar individual commodities each priced less than \$250 – for a stated term and at designated prices in excess of \$5,000 in aggregate, shall be a “Procurement”. 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; transportation or other travel related expenses.
- “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.
- “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.
- “Services” shall mean duty or labor to be rendered by a person or entity.
- “Service-disabled Veteran Owned Business Enterprise” or “SDVOB” shall mean a business enterprise, including a sole proprietorship, limited liability company or corporation that has been certified as a Service Disabled Veteran Owned Business by the Division of Service-Disabled Veterans’ Business Development at OGS pursuant to §369 of the New York Executive Law (“Article 17-B”) and related regulations
- “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 (iii) other material or substantial reasons exist for awarding the contract on other than a competitive basis. For the avoidance of doubt, unique Vendors procured for live musical or artistic performances through the Authority's Parks Programming Department shall be considered Single Source.

- "Small Business Concern" shall mean a business enterprise which is resident in the state of New York, independently owned and operated, not dominant in its field and employs one hundred or less people. "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

The purpose of these Guidelines are to facilitate the procurement needs of Battery Park City Authority while protecting the interest of the State and City of New York and their taxpayers. The Guidelines are intended to advance the mission of the Authority by using the best business practices and best value when procuring goods and services. The Authority shall use its best efforts to secure Bids from Vendors by using a Competitive Procurement Method, except as otherwise provided in these Guidelines.

The applicable provisions of the Economic Development Law, the Executive Law, the Public Authorities Law, and the State Finance Law were considered in developing these Guidelines.

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

2.2. Application

These Guidelines apply to all Procurements.

2.3. Administration of the Guidelines

The Chief Operating Officer, 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 Chief Operating 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 SDVOB 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;
- MWBEs;
- SDVOBs;
- 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 Service-Disabled Veteran-Owned Business Enterprises

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

The Authority shall:

- 1) Conduct Procurements in a manner that will enable it to achieve the maximum feasible portion of the Authority's MWBE and SDVOB annual participation goals as set forth in the Master Goal Plan for both programs on Procurement Contracts;
- 2) Where practical, feasible and appropriate, include the Diversity Practices of Bidders in the evaluation criteria for selecting a successful Vendor for a Procurement;
- 3) Affirmatively promote and assist M/WBE and SDVOB participation in Procurement Contracts;
- 4) Assess all purchases for the possibility of MWBE and SDVOB participation;
- 5) Set goals as appropriate pursuant to Article 15-A and 17-B of the NY State Executive Law;
- 6) Consult federal requirements regarding such opportunities and consult the most recent disparity study available;
- 7) Consider encouraging joint ventures and other teaming arrangements, as well as the severability of bundled contracts, in each solicitation;
- 8) As practicable, provide a current list of certified MWBEs and SDVOBs to prospective Contractors; and
- 9) Ensure that all required provisions are present in relevant contracts pursuant to

Article 15-A, Article 17-B and promulgated regulations, and maintain a policy regarding remedies in the event these terms are violated.

The Authority shall appoint a Director of Diversity, who will promote and assist in participation by such enterprises, utilization of such enterprises as prime contractors, subcontractors and suppliers and the utilization of partnerships, joint ventures or other similar arrangements between such enterprises and other Contractors. Specifically, the Director of Diversity 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, Office of General Services, and other organizations for potential MWBE and SDVOB firms;
- Establishing goals for such enterprises' participation and utilization as prime contractors, subcontractors and suppliers under Procurement Contracts and monitor the compliance of prime contractors with participation goals and contract terms;
- Monitoring such enterprises' participation and utilization in Procurement Contracts to ensure utilization credit is being taken only for payments to New York Certified firms performing a Commercially Useful Function as that term is defined by the Division;
- Approval authority regarding diversity requirements for Contracts and invoices;
- Developing and maintaining standard templates to be used in the Procurement process including but not limited to:
 - Utilization Plans
 - MWBE and SDVOB Goal Setting Documents
 - Contractor Good Faith Effort Documentation

2.4.3 The Promotion of New York State Business Enterprises and Residents

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 President and CEO of Empire State Development and through cooperative efforts with Contractors, the Authority shall notify New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts with a value estimated to be equal or greater than one million dollars (\$1,000,000) and the Authority shall promulgate procedures which will assure compliance by Contractors with such notification as a condition of awarding Procurement Contracts.
- 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 President and CEO of Empire State Development and through cooperative efforts with Contractors, shall provide for the notification of New York State Residents of employment opportunities arising out of Procurement Contracts with a value estimated to be equal to or greater than one million dollars (\$1,000,000) and shall require Contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division of the Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

e) The Authority shall include in all Solicitations a statement that:

- (i) Information concerning the availability of New York State contractors and suppliers is available from Empire State Development, including the directory of certified MWBEs.
- (ii) Information concerning the availability of New York State contractors and suppliers is available from the New York State Office of Governmental Services, including the directory of New York State Certified SDVOBs.
- (iii) 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.
- (iv) 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 MWBEs and SDVOBs, where possible, in the Procurement of Commodities and Services.

f) The Authority shall notify the President and CEO of Empire State Development of the award of a Procurement Contract for the purchase of Commodities or Services from a foreign business enterprise in an amount equal to or greater than one million dollars (\$1,000,000) simultaneously with notifying the successful 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 contract to be piggybacked was awarded; (3) an analysis of alternative procurement sources including why a competitive procurement or use of a centralized contract is not in the Authority's best interest; and (4) reasonableness of the cost. The Authority's evaluation of these factors and rationale for using piggybacking should be set forth in the procurement record. The language in the original contract must include the allowance of piggybacking. Additionally, 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.

2.5 “Green” Purchasing

To the extent practicable, the Authority shall endeavor to purchase Commodities that are designed to minimize any adverse environmental impact on Battery Park City’s parks and the greater public, including the waste generated in packaging and single use plastics. Pursuant to section 4.3 of these Guidelines, Solicitations for Services shall include a request for a description of the Bidder’s environmentally sustainable business practices or activities, to the extent applicable.

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 Contact during the restricted period to any person at the Authority other than the Designated Contact or the Director of Diversity. Contact that is permitted during the restricted period is set forth in State Finance Law §139-j (3)(a).

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

3.4. Determination of Vendor Responsibility

Pursuant to New York State Law, The Authority must make a determination that a Bidder is responsible prior to awarding that Bidder a contract. The CCO, or his/her designee, are responsible for deciding whether there are sufficient assurances to determine that the Bidder is responsible based on factors enumerated in a Vendor responsibility checklist; the list includes, but is 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 Vice President of Administration's discretion, in person at a responsibility meeting. Any determination of non-responsibility shall be provided to the Bidder in writing.

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; (iii) the established starting and completion dates for major components of the contract are being/have been met; and (iv) that Utilization Plans, MWBE, and SDVOB participation is progressing as expected and being reported as required. All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head and the Director of Diversity.

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 MWBE or SDVOB Vendors ;
- Make a reasonable attempt to obtain Cost Proposals from at least three different Vendors capable of supplying the required Commodities and/or Services, including MWBE and/or SDVOB Vendors to the extent possible;
- Document the attempt to obtain such quotes and the quotes received, and include such information in the memorandum required by Section 5.1, along with facts sufficient to support the selection of the chosen Vendor, the reasonableness of the price to be paid; the effort of the staff member initiating the Procurement to include MWBE and SDVOB firms in the solicitation; and
- Verify with the CCO that the selected Vendor is responsible.

The Authority may select a Vendor if only one Cost Proposal was submitted, provided that the President provides written approval of the project manager's assertion that, based upon review of the Procurement record, the Solicitation did not restrict competition and the cost is reasonable.

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

In determining whether a purchase meets the required threshold amounts for a Discretionary Procurement, the 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 and receive approval by the President 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 two of the following Board-appointed positions: the President and Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, or the General Counsel. Each Department Head shall submit all such contracts and Amendments exceeding \$500,000 in value or one year in term, 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 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.

4.3. Solicitation Content

All Solicitations for Competitive Procurements must include the criteria to be used in evaluating Bids and how those criteria will be weighted. Solicitations for Services should also include:

- Description of program objectives and background;
- Scope of Services to be provided; and
- Detailed requirements and specifications; and
- Request for description of the Bidder's environmentally sustainable business practices or activities.

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 shall 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 written 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 Authority's reception desk. Comments on the condition of the envelopes shall also be recorded in the Bid Log.
- A Bid Opening shall occur after the due date and time 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 two of these three—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 the manner specified in the RFP or Solicitation. 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 RFP¹, there shall be an evaluation committee consisting of staff members designated by the CCO 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 portions of proposals that relate to Diversity Practices. 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 by the Designated Contact in reasonable detail and furnished to the CCO.

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;

¹ 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.

- Experience of the Bidder in providing the required Services and/or deliverables;
- Management capability of the Bidder;
- Bidder's overall past performance;
- Diversity Practices;
- 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 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).

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

- disadvantages the Authority;
- uniquely benefits the selected Bidder;
- prejudices any non-winning Bidder; nor
- if known at the time of bidding, could reasonably be assumed to have caused additional potential Bidders to submit Bids.

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 and the Designated Contact may be present at such interviews. Upon completion of the evaluation as set forth in the evaluation instrument and the RFP, the initial evaluation scores shall be adjusted and finalized, as necessary.

4.7. 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 Authority, 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 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 provides written approval of the project manager's assertion that, based upon review of the Procurement record, 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 **Chief Operating Officer**, and the General Counsel, a LOI may be issued to a Contractor. Such LOIs may be issued prior to the execution of Procurement Contracts for a value of up to 10% of the total anticipated Procurement Contract amount, subject to approval 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. Where practicable, all MWBEs and SDVOBs designated on the Utilization Plans of the selected Bidder will be notified of the award at this time by the Designated Contact.

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. Requesting Approvals

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

- 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 as best value;
- copies of all Cost Proposals received;
- the Selected Bidder’s Vendor Responsibility Report and W-9 IRS Tax Form; and
- the Selected Bidder’s Financial Statements.

5.1.2 Award Package Reviews

The award of Procurement Contracts, and any subsequent Amendments, must be approved by the CCO, Director of Diversity and the General Counsel’s office as follows:

- The CCO may approve a Procurement Contract once the CCO has i) verified that the Bidder is responsible (and, in the case of a Centralized Contract from OGS, that the Bidder’s OGS certification is valid) and has submitted certificates of insurance in accordance with the Solicitation requirements, and, ii) as applicable, that the selection was made pursuant to New York State Law, these Guidelines, and the terms of the Solicitation.

- The Director of Diversity may approve a Procurement Contract once he/she has verified that MWBE and SDVOB requirements have been met pursuant to Article 15-A and Article 17B respectively, including the approval of initial Bidder's Workforce Participation, SDVOB, and MWBE Utilization Plans or updates to those plans which may be required for Amendments.
- The General Counsel shall review and approve documentation supporting the Procurement, including the supporting memorandum.

5.1.3 Approval Thresholds

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

- Up to \$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 Vice President of Administration;
- Exceeding \$150,000 must also be approved by the President; and
- Exceeding \$500,000 must also be approved by the Board.

5.1.4 Additional Approvals

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 they exceed the \$500,000 approval threshold required pursuant to Section 5.1.3 or 5.2.1: (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 Board Approvals

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 Amendment Presidential Approval

The President must approve any Amendment that would cause the value of a Procurement Contract, either originally or as amended, to exceed its Original (or amended) Value by twenty five percent (25%) or more.

5.2.3 Extension Board Approval

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.

5.2.4 Diversity Amendment Review

Contract Amendments must be reassessed for MWBE and SDVOB participation goals, current MWBE and SDVOB Utilization Compliance of the project, and may

require vendors to provide updated MWBE and SDVOB Utilization plans prior to approval by the Director of Diversity.

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 New York State Office of the State Comptroller ("OSC") where the value of the Amendment is ten percent (10%) or more of the Procurement Contract value as originally approved by the OSC, shall be submitted to OSC for filing within 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 be trained on how to conduct sufficient reviews and approvals and be so designated in writing.

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 shall be approved by the initiating Department Head, Director of Diversity, Chief Financial Officer, General Counsel and the President. Presidential approval authority can be delegated, at the discretion of the President, to the Chief Financial Officer and/or the Chief Operating Officer