Andrew M. Cuomo, Governor James S. Rubin, Commissioner/CEO

Annual Procurement Report

Fiscal Year 2015 – 2016

For the Period Commencing April 1, 2015 and Ending March 31, 2016

June 22, 2016

HOUSING TRUST FUND CORPORATION

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NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

HOUSING TRUST FUND CORPORATION

Annual Procurement Report

For the Period Commencing April 1, 2015 and Ending March 31, 2016

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Listing of Pre-qualified Panels

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

HOUSING TRUST FUND CORPORATION

Listing of Pre-qualified Panels

(excluding those funded by the U.S. Department of Housing and Urban Development's Community Development Block Grant Disaster Recovery Program)

Davis Bacon Prevailing Wage Monitoring Services (11 firms)

- BANC3, Inc.[1]
- Cashin Associates, PC
- Clampett Industries LLC (d/b/a EMG)
- Gandhi Engineering, Inc. [1]
- HAKS Engineers, Architects, and Land Surveyors, P.C.
- The Institute for Building Technology and Safety
- Inspection & Valuation International, Inc.
- Kenneth O. Wille & Associates, Inc.
- NobleStrategy NY, Inc. [1]
- Thacher Associates, LLC
- Works-In-Progress Associates[2]

[1]Minority-Owned Business Enterprise
[2]Women-Owned Business Enterprise
[3]Minority and Women-Owned Business Enterprise

HOUSING TRUST FUND CORPORATION

GOVERNOR'S OFFICE OF STORM RECOVERY

Residential Environmental Remediation of Lead, Asbestos, and Radon pre-qualified panel of the:

- New York State Housing Trust Fund Corporation/Governor's Office of Storm Recovery

  - Lead
    - SCE Environmental Group, Inc.
    - Tectonic CMI Corporation
  - Asbestos
    - SCE Environmental Group, Inc
    - Tectonic CMI Corporation
  - Radon
    - Tectonic CMI Corporation

Residential Construction Services pre-qualified panel of the:

- New York State Housing Trust Fund Corporation/Governor's Office of Storm Recovery

  - Advanced Builders & Land Development, Inc.
  - Almas Construction LLC
  - Cuccias Contractors, Inc.
  - DSW Homes LLC
  - EmpireHD, Inc.
  - Gordon L Seaman, Inc.
  - Irwin Contracting, Inc.

[1]Minority-Owned Business Enterprise
[2]Women-Owned Business Enterprise
[3]Minority and Women-Owned Business Enterprise

HOUSING TRUST FUND CORPORATION

GOVERNOR'S OFFICE OF STORM RECOVERY

Residential Construction Services pre-qualified panel of the:

- Lipsky Building Construction, Inc.
- Murtha Construction
- Rapid Construction & Management
- SLSCo, Ltd.
- Ducky Johnson Home Elevation LLC
- Emerson Builders
- Oneida Business Enterprises, Inc.
- Paramount Structure Home Improvement LLC[1]

Residential Design Services pre-qualified panel of the:

- New York State Housing Trust Fund Corporation/Governor's Office of Storm Recovery

  - Hirani Engineering & Land Surveying P.C.[1]
  - Philipp Kampf Architecture & Design

[1]Minority-Owned Business Enterprise
[2]Women-Owned Business Enterprise
[3]Minority and Women-Owned Business Enterprise

TAB 2

Summary of HTFC's Procurement Activities

HOUSING TRUST FUND CORPORATION
(EXCLUDING THE GOVERNOR'S OFFICE OF STORM RECOVERY "GOSR")
ANNUAL PROCUREMENT REPORT
FOR THE FISCAL YEAR ENDING MARCH 31, 2016

* Vendor Name	* Procurement Description	* Award Process	Begin Date	End Date	Amount	* Amount Expended For Fiscal Year	Amount Expended For Life To Date	Number of Bids	NYS or Foreign	MWBE
Barscan Inc.	Bar Scanning Services	Authority Contract - Non-Competitive Bid	5/1/2015	4/30/2016	10,917	10,917	10,917	1	Foreign	N
Clampett Industries, LLC d/b/a EMG Corp.	Davis Bacon Prevailing Wage Monitoring Services	Authority Contract - Competitive Bid	11/13/2015	11/12/2017	189,030	2,050	2,050	2	Foreign	N
Enhanced Business Systems, LLC	Automate Accounting Systems	Authority Contract - Non-Competitive Bid	1/17/2014	1/16/2019	245,500	68,600	189,075	1	NYS	N
RAM-TECH Engineers PC	Engineering Services	Authority Contract - Competitive Bid	2/16/2015	6/30/2015	30,840	30,840	30,840	3	NYS	N
Mullin & Lonergan Associates, Inc.	Analysis of Impediments to Fair Housing Choice	Authority Contract - Competitive Bid	7/1/2015	10/31/2015	442,458	380,436	380,436	3	Foreign	N
Nixon Peabody LLP	Legal Services	Authority Contract - Non-Competitive Bid	6/1/2015	12/31/2015	39,264	39,264	39,264	1	NYS	N
New York State Industries for the Disabled	Scanning Services	Authority Contract - Non-Competitive Bid	11/7/2014	11/6/2016	632,978	241,278	291,039	1	NYS	N
MPACT Strategic Consulting LLC	Section 3 Compliance	Authority Contract - Competitive Bid	7/17/2015	7/16/2016	355,242	214,804	214,804	3	NYS	Y
Elation Systems Inc.	Davis Bacon Compliance	Authority Contract - Non-Competitive Bid	1/14/2014	12/31/2017	245,500	178,000	178,000	1	NYS	Y
Community Preservation Corporation	Administrator Services	Authority Contract - Competitive Bid	6/26/2015	Upon Completion	1,000,000	60,424	60,424	1	NYS	N
Sax BST LLP	Independent Auditor Services	Authority Contract - Competitive Bid	3/1/2014	7/1/2015	76,675	63,770	69,770	3	NYS	N
AT&T MOBILITY	Telecommunication Server Licenses	Non Contract Procurement/Purchase Order				182,581			Foreign	N
BANK OF AMERICA	Financial Service	Authority Contract - Competitive Bid	12/15/2009	4/1/2016	200,547	29,424	200,577	1	Foreign	N
C.T. Male Associates Engineering, Surveying, Architecture, P.C.	Construction monitoring, environmental review, consulting engineering/architectural services	Authority Contract - Competitive Bid	7/1/2014	6/30/2015	10,630	10,630	10,630	33	NYS	N
CASHIN ASSOCIATES, P.C.	Construction monitoring, engineering/architectural, and environmental review services	Authority Contract - Competitive Bid	7/1/2014	6/30/2015	7,627	7,627	7,627	33	NYS	N
CGI Federal Inc.	Consulting Services	Authority Contract - Competitive Bid	12/1/2005	12/31/2017	130,766,251	14,319,174	130,766,251	2	Foreign	N
CITIBANK	Financial Services	Purchased Under State Contract				117,760			Foreign	N
CORE ENVIRONMENTAL CONSULTANTS, INC	Engineering/archtectural and environmental services	Authority Contract - Competitive Bid	7/1/2014	6/30/2019	60,424	60,424	60,424	33	NYS	Y
D L Morgan & Associates	Professional Services	Non Contract Procurement/Purchase Order				7,280			Foreign	N
Dadras Architects	Technical Assitance Services	Authority Contract - Competitive Bid	1/1/2004	12/31/2016	9,295	9,295	9,295	27	NYS	N
Franke Consulting Group	Technical Assitance Services	Authority Contract - Competitive Bid	1/1/2014	12/31/2016	37,098	37,098	37,098	27	NYS	N
GLOBAL EQUIPMENT COMPANY	Printer Parks and Supplies	Non Contract Procurement/Purchase Order				7,438			Foreign	N
Heber Associates, Inc.	Temporary Staffing Services	Purchased Under State Contract				22,160			NYS	N
HOUSING AND DEVELOPMENT	Software Services	Authority Contract - Non-Competitive Bid	6/23/2010		69,670	39,386	69,670	1	Foreign	N
JENNIFER TEMPS, INC.	Temporary Staffing Services	Purchased Under State Contract				19,064			NYS	Y
Mid-Hudson Pattern For Progress	Consulting Services	Authority Contract - Non-Competitive Bid	7/23/2014	7/22/2015	49,000	49,000	49,000	1	NYS	N
NATURAL HERITAGE TRUST	Historic Project Reviews	Authority Contract - Non-Competitive Bid	4/1/2011	Upon Completion	483,643	94,303	483,643	1	NYS	N
NEXUS STAFFING INC	Temporary Staffing Services	Non Contract Procurement/Purchase Order				31,281			NYS	Y
Tectonic Engineering & Surveying Consultants, PC	Construction monitoring, engineering/architectural, and environmental review services	Authority Contract - Competitive Bid	7/1/2014	6/30/2019	291,308	44,942	291,308	33	NYS	N
Thompson Economic Development Services, LLC	Technical Assitance Services	Authority Contract - Competitive Bid	9/1/2014	12/31/2016	217,738	85,233	217,738	27	NYS	Y

HTFC ANNUAL PROCUREMENT REPORT - ANALYSIS OF EXPENDITURES FOR MWBE PARTICIPATION (Excluding GOSR)
(for the Period Commencing April 1, 2015 and ending March 31, 2016)

Vendor	Description	Sel Method	Begin Date	End Date	Amount Paid	MWBE	Exclusion	Exemption	Justification	Life	MBE	WBE	Goods	Services	Subcontracting
Barscan Inc.	Bar Scanning Services	Non-Competitive	5/1/15	4/30/16	10,917			10,917	< or = $25,000	10,917				X	
Clampett Industries, LLC d/b/a EMG Corp.	Davis Bacon Prevailing Wage Monito	Competitive	11/13/15	11/12/17	2,050	2,050				2,050				X	X
Enhanced Business Systems, LLC	Automate Accounting Systems	Non-Competitive	1/17/14	1/16/19	68,600		68,600			189,075				X	
RAM-TECH Engineers PC	Engineering Services	Competitive	2/16/15	6/30/15	30,840	30,840				30,840				X	
Mullin & Lonergan Associates, Inc.	Analysis of Impediments to Fair Hous	Competitive	7/1/15	10/31/15	380,436	380,436				380,436				X	X
Nixon Peabody LLP	Legal Services	Non-Competitive	6/1/15	12/31/15	39,264	39,264				39,264				X	
New York State Industries for the Disabled	Scanning Services	Non-Competitive	11/7/14	11/6/16	241,278		241,278			291,039				X	
MPACT Strategic Consulting LLC	Section 3 Compliance	Competitive	7/17/15	7/16/16	214,804	214,804				214,804	214,804			X	
Elation Systems Inc.	Davis Bacon Compliance	Non-Competitive	1/14/14	12/31/17	178,000	178,000				178,000	178,000			X	
Community Preservation Corporation	Administrator Services	Competitive	6/26/15		60,424	60,424				60,424				X	X
Sax BST LLP	Independent Auditor Services	Competitive	3/1/14	7/1/15	63,770	63,770				69,770				X	X
AT&T MOBILITY	Telecommunication Server Licenses	Purchase Order			182,581			182,581	Utilities					X	
BANK OF AMERICA	Financial Service	Competitive	12/15/09	4/1/16	29,424		29,424			200,577				X	
C.T. Male Associates Engineering, Surveying, Archit	Construction monitoring, environmen	Competitive	7/1/14	6/30/15	10,630	10,630				10,630				X	
CASHIN ASSOCIATES, P.C.	Construction monitoring, engineering	Competitive	7/1/14	6/30/15	7,627	7,627				7,627				X	
CGI Federal Inc.	Consulting Services	Competitive	12/1/05	12/31/17	14,319,174		14,319,174			130,766,251				X	
CITIBANK	Financial Services	State Contract			117,760			117,760	State Contract					X	
CORE ENVIRONMENTAL CONSULTANTS, INC	Engineering/archtectural and environ	Competitive	7/1/14	6/30/19	60,424	60,424				60,424		60,424		X	
D L Morgan & Associates	Professional Services	Purchase Order			7,280			7,280	< or = $25,000					X	
Dadras Architects	Technical Assitance Services	Competitive	1/1/04	12/31/16	9,295			9,295	< or = $25,000	9,295				X	
Franke Consulting Group	Technical Assitance Services	Competitive	1/1/14	12/31/16	37,098	37,098				37,098				X	
GLOBAL EQUIPMENT COMPANY	Printer Parks and Supplies	Purchase Order			7,438			7,438	< or = $25,000					X	
Heber Associates, Inc.	Temporary Staffing Services	State Contract			22,160			22,160	State Contract					X	
HOUSING AND DEVELOPMENT	Software Services	Non-Competitive	6/23/10		39,386		39,386			69,670				X	
JENNIFER TEMPS, INC.	Temporary Staffing Services	State Contract			19,064	19,064						19,064		X	
Mid-Hudson Pattern For Progress	Consulting Services	Non-Competitive	7/23/14	7/22/15	49,000		49,000			49,000				X	
NATURAL HERITAGE TRUST	Historic Project Reviews	Non-Competitive	4/1/11		94,303		94,303			483,643				X	
NEXUS STAFFING INC	Temporary Staffing Services	Purchase Order			31,281	31,281					31,281			X	
Tectonic Engineering & Surveying Consultants, PC	Construction monitoring, engineering	Competitive	7/1/14	6/30/19	44,942	44,942				291,308				X	X
Thompson Economic Development Services, LLC	Technical Assitance Services	Competitive	9/1/14	12/31/16	85,233	85,233				217,738	85,233			X	
					16,464,483	**1,265,887**	**14,841,165**	**357,431**			**509,318**	**79,488**			
						7.69%	**90.14%**	**2.17%**			**40.23%**	**6.28%**	**46.51%**		
					30	**16**	**7**	**7**			**4**	**2**	**6**		
						53.33%	**23.33%**	**23.33%**			**25.00%**	**12.50%**	**37.50%**		

Schedule I

HOUSING TRUST FUND CORPORATION

Procurement Summary with MWBE Comparative Data (excluding GOSR)

for Fiscal Years 2016 & 2015

	Fiscal Year 2016		Fiscal Year 2015	
Total Number of Contracts ("Ks") & POs	30		27	
# of Ks & POs with MWBE Opportunities ◆	16	53.33%	13	48.15%
Excluded ◆	7	23.33%	5	18.52%
Exempt ◆	7	23.33%	9	33.33%
# of Ks & POs entered into with MWBE ●	6	37.50%	9	69.23%
# of Agency MBE Ks and POs ●	4	25.00%	7	53.85%
# of Agency WBE Ks and POs ●	2	12.50%	2	15.38%
Total Amount Paid under Ks and POs	$ 16,464,483		$ 15,462,158	
Total amount paid under Ks and POs with MWBE Opportunities ✸	$ 1,265,887	7.69%	$ 637,987	4.13%
Excluded ✸	$ 14,841,165	90.14%	$ 14,298,573	92.47%
Exempt ✸	$ 357,431	2.17%	$ 525,598	3.40%
Paid to MWBEs under Ks and POs ▲	$ 588,806	46.51%	$ 557,325	87.36%
Paid to MBEs under Ks and POs ▲	$ 509,318	40.23%	$ 488,228	76.53%
Paid to WBEs under Ks and POs ▲	$ 79,488	6.28%	$ 69,097	10.83%

◆ Denominator: Total Number of Ks & POs

● Denominator: # of Ks & POs with MWBE Opportunities

✸ Denominator: Total Amount Paid under Ks & POs

▲ Denominator: Total Amount Paid under Ks & POs with MWBE Opportunities

NEW YORK STATE OF OPPORTUNITY. Homes and Community Renewal

HOUSING TRUST FUND CORPORATION
GOVERNOR'S OFFICE OF STORM RECOVERY
ANNUAL PROCUREMENT REPORT
FOR THE FISCAL YEAR ENDING MARCH 31, 2016

* Vendor Name	* Procurement Description	* Award Process	Begin Date	End Date	Amount	* Amount Expended For Fiscal Year	Amount Expended For Life To Date	Number of Bids	NYS or Foreign	MWBE
22nd Century Technologies, Inc.	Chairs	Authority Contract - Competitive Bid	2/9/2015	8/8/2016	702,788	702,788	702,788	15	Foreign	Y
Affordable Interior Systems, Inc	Demolition - Batch 5	Non Contract Procurement/Purchase Order				18,668			Foreign	N
A. Russo Wrecking Inc	Web Based Grant Administration Software	Authority Contract - Competitive Bid	9/15/2014	3/15/2015	967,545	967,545	967,545	10	NYS	Y
Agate Software, Inc.	Development and Configuration of IntelliG	Authority Contract - Competitive Bid	3/15/2011	4/4/2014	998,250	47,563	955,155	3	Foreign	N
Agate Software, Inc.	Planning, Technical and Professional Serv	Authority Contract - Non-Competitive Bid	9/14/2015	9/13/2016	897,563	209,748	246,120	1	Foreign	N
AKRF, Inc.	Environmental Review, Management and T	Authority Contract - Competitive Bid	6/19/2013	6/19/2015	3,013,951	782,523	2,884,228	15	NYS	N
AKRF, Inc.	Furniture	Authority Contract - Competitive Bid	11/4/2014	11/3/2016	3,000,000	767,799	1,118,902	10	NYS	N
Alianza Services	Financial Programming Services	Non Contract Procurement/Purchase Order				427,122			NYS	Y
Alt Consulting Inc	License Renewal	Authority Contract - Competitive Bid	6/16/2014	6/15/2015	100,000	43,600	98,800	1	NYS	N
Appointment Plus	Construction Management Support Servic	Non Contract Procurement/Purchase Order				32,439			Foreign	N
Armand Corporation	Venue Rental for Team Building	Authority Contract - Competitive Bid	10/23/2014	9/29/2016	36,964,996	14,756,066	14,935,735	16	NYS	Y
Aviator Sports and Recreation	TV and AV Cables	Non Contract Procurement/Purchase Order				6,860			NYS	N
Best Buy Stores, L.P. dba Best Buy f	Relocation Services	Non Contract Procurement/Purchase Order				9,149			Foreign	N
Business Relocation Services (BRS)	Other Technology	Non Contract Procurement/Purchase Order				8,620			NYS	N
Cablevision	Other Technology	Non Contract Procurement/Purchase Order				37,627			NYS	N
Cablevision Lightpath	Buyouts Program Management	Non Contract Procurement/Purchase Order				159,184			NYS	N
Capital Access, Inc	Legal Services	Authority Contract - Competitive Bid	6/19/2014	6/18/2016	6,145,000	1,956,841	5,317,634	5	Foreign	N
Carter Ledyard & Milburn LLP	Policies, Procedures, Training, Call Center	Authority Contract - Competitive Bid	11/26/2013	9/15/2015	3,074,046	671,320	3,074,046	29	NYS	N
CGI Federal, Inc	Financial Services	Authority Contract - Non-Competitive Bid	4/1/2013	3/31/2016	4,280,000	206,000	4,229,238	1	NYS	N
Citibank	Draft and implement policies and procedu	Purchased Under State Contract				218,937			Foreign	N
CohnReznick, LLP	Financial Advisor Services	Authority Contract - Competitive Bid	1/27/2014	6/30/2016	31,710,434	15,294,360	24,744,394	7	NYS	N
CSG Advisors, Inc	Temporary Staffing Services	Authority Contract - Competitive Bid	4/15/2014	12/31/2015	160,000	19,518	58,628	10	Foreign	N
Datrose	Monitoring and Compliance	Authority Contract - Competitive Bid	2/9/2015	8/8/2016	111,717	111,717	111,717	15	NYS	Y
Deloitte Financial Advisory Services	Construction Management Support Servic	Authority Contract - Competitive Bid	9/22/2014	9/21/2016	1,000,000	554,931	554,931	13	NYS	N
Dewberry Engineers Inc	Advisory & Project Management Support	Authority Contract - Competitive Bid	10/23/2014	10/22/2016	5,000,000	119,561	131,007	16	NYS	N
Dewberry Engineers Inc	Planning, Technical and Professional Serv	Authority Contract - Competitive Bid	4/13/2015	1/30/2018	5,686,615	65,277	65,277	20	NYS	N
Ecology & Environment, Inc	Electronic Compliance Tracking Managem	Authority Contract - Competitive Bid	6/19/2013	6/18/2015	2,008,929	145,476	2,006,007	15	NYS	N
Elation Systems	Newspaper Ad Publication	Authority Contract - Competitive Bid	1/14/2015	1/13/2018	1,190,260	351,950	418,273	5	Foreign	Y
El Diario La Prensa	License Renewal	Non Contract Procurement/Purchase Order				11,487			NYS	N
ePlus Technology	Newspaper Ad Publication	Non Contract Procurement/Purchase Order				59,422			Foreign	N
Epoch Times Inc	Printer Toners and Parts	Non Contract Procurement/Purchase Order				11,305			NYS	N
ET Business Solutions	Legal Services	Non Contract Procurement/Purchase Order				17,622			NYS	Y
Golenbock Eiseman Assor Bell & Pes	Demolition - Batch 4	Authority Contract - Competitive Bid	4/1/2013	11/1/2016	4,917,668	210,916	4,917,668	29	NYS	N
Gramercy Group, Inc.	Printers and Computers	Authority Contract - Competitive Bid	9/15/2014	3/15/2015	304,700	304,700	304,700	10	NYS	N
Hewlett Packard	Construction Management Support Servic	Non Contract Procurement/Purchase Order				125,416			Foreign	N
Hill International Inc	Advisory & Project Management Support	Authority Contract - Competitive Bid	10/23/2014	10/22/2016	5,471,626	2,840,242	3,281,019	16	NYS	N
Hill International Inc	Legal Services	Authority Contract - Competitive Bid	4/13/2015	4/12/2016	1,000,000	290,600	290,600	20	NYS	N
Holland & Knight LLP	Advisory & Project Management Support	Authority Contract - Competitive Bid	1/7/2015	2/28/2017	404,591	404,591	404,591	29	NYS	N
Horne LLP	Planning, Technical and Professional Serv	Authority Contract - Competitive Bid	4/13/2015	4/15/2017	2,291,615	883,720	883,720	20	NYS	N
HR&A Advisors Inc	Construction Management Support Servic	Authority Contract - Competitive Bid	6/19/2013	6/19/2015	6,973,338	393,854	6,968,214	15	NYS	N
Hunt Guillot & Associates	Project Coordinator Services	Authority Contract - Competitive Bid	10/23/2014	12/31/2016	22,093,820	8,044,904	9,049,140	16	Foreign	N
Hunt Guillot & Associates	Pre Planning Advisory Services	Authority Contract - Competitive Bid	5/21/2014	5/20/2016	32,000,000	3,876,186	4,745,955	9	Foreign	N
IMG Rebel Advisory LLC	Program Management Services	Authority Contract - Non-Competitive Bid	11/18/2014	3/31/2016	803,693	788,004	788,004	1	Foreign	N
Innovative Emergency Management,	Construction Management Support Servic	Authority Contract - Competitive Bid	3/14/2014	4/1/2016	84,003,878	42,053,945	70,172,278	6	Foreign	Y
Institute for Building Technology and	Planning, Technical and Professional Serv	Authority Contract - Competitive Bid	10/23/2014	10/22/2015	5,000,000	1,177,557	1,177,557	16	Foreign	N
Jacob's Civil Consultants Inc.	Construction Management Support Servic	Authority Contract - Competitive Bid	6/19/2013	6/19/2015	3,461,792	201,919	3,393,334	15	NYS	N
Jacobs Project Management Co.	Legal Services	Authority Contract - Competitive Bid	10/23/2014	10/22/2016	5,000,000	527,814	637,815	16	NYS	N
Jaspan Schlesinger LLP	Janitorial Services	Authority Contract - Competitive Bid	5/11/2015	5/10/2016	1,500,000	683,668	694,884	29	NYS	N
JCM Commercial Business Solutions	Temporary Staffing Services	Authority Contract - Competitive Bid	2/11/2015	7/18/2016	77,106	54,751	54,751	4	NYS	Y
Jennifer Temps	Newspaper Ad Publication	Non Contract Procurement/Purchase Order				1,281			NYS	Y
Journal News	Translation Services	Non Contract Procurement/Purchase Order				22,520			NYS	N
JR Language Translation Services In	Monitoring and Compliance	Authority Contract - Competitive Bid	12/19/2014	12/18/2016	150,000	131,371	143,752	9	NYS	Y
KPMG LLP	Network Services for Intake Center	Authority Contract - Competitive Bid	10/3/2014	10/2/2016	1,000,000	368,118	459,744	13	NYS	N
Lightower Fiber Network	Environmental Review, Management and T	Non Contract Procurement/Purchase Order				14,400			Foreign	N

HOUSING TRUST FUND CORPORATION
GOVERNOR'S OFFICE OF STORM RECOVERY
ANNUAL PROCUREMENT REPORT
FOR THE FISCAL YEAR ENDING MARCH 31, 2016

* Vendor Name	* Procurement Description	* Award Process	Begin Date	End Date	Amount	* Amount Expended For Fiscal Year	Amount Expended For Life To Date	Number of Bids	NYS or Foreign	MWBE
LiRo Engineers, Inc.	Advisory & Project Management Support	Authority Contract - Competitive Bid	10/24/2014	2/28/2017	5,500,000	2,673,386	2,955,151	10	NYS	N
LiRo Engineers, Inc.	Website Development	Authority Contract - Competitive Bid	4/13/2015	2/28/2017	21,362,982	318,875	1,577,255	20	NYS	N
Makeable	Construction Management Support Servic	Authority Contract - Competitive Bid	10/6/2014	10/5/2015	194,025	184,300	193,775	3	NYS	N
McKissack and McKissack	Contruction Management	Authority Contract - Competitive Bid	10/23/2014	10/22/2016	18,250,985	13,493,607	13,493,607	16	NYS	Y
McKissack MBP Joint Venture	Security Supplies	Purchased Under State Contract				873,093			NYS	Y
Mel Geller Electronic Security System	Buyouts Program Management	Non Contract Procurement/Purchase Order				31,183			NYS	N
Moss Cape LLC	Monitoring and Compliance	Authority Contract - Competitive Bid	7/1/2014	6/30/2016	24,550,608	10,292,765	14,140,048	5	NYS	N
MPACT Strategic Consulting	Background Screening Services	Authority Contract - Competitive Bid	7/8/2014	10/1/2016	3,875,000	1,829,520	2,828,734	13	NYS	Y
MSA Investigations	Newspaper Subscription and Ad Publicatio	Authority Contract - Competitive Bid	12/16/2013	5/15/2016	450,000	52,844	355,328	5	NYS	N
Newsday Media Group	Temporary Staffing Services	Non Contract Procurement/Purchase Order				19,439			Foreign	N
Nexus Staffing, Inc.	Cisco Equipment	Authority Contract - Competitive Bid	2/9/2015	2/8/2017	1,169,872	753,398	1,169,872	15	NYS	Y
Nfrastructure Technologies	Construction Management Support Servic	Non Contract Procurement/Purchase Order				15,584			NYS	N
Northstar Contracting Group Inc	Shredding Services	Authority Contract - Competitive Bid	10/23/2014	5/31/2016	15,511,072	5,014,840	6,193,130	16	NYS	N
NYS Industries for the Disabled	Attorney Biennial Registration	Non Contract Procurement/Purchase Order				19,612			NYS	N
NYS Office of Court Administration	Uniform Relocation Act (URA) relocation se	Non Contract Procurement/Purchase Order				6,375			NYS	N
O.R. Colan & Associates of Florida LL	Emergency Notifications System	Authority Contract - Competitive Bid	8/1/2015	7/31/2016	1,200,000	151,262	151,262	4	NYS	Y
Omnilert	Planning, Technical and Professional Serv	Non Contract Procurement/Purchase Order				6,480			Foreign	N
Ove Arup & Partners PC	Auction & Real Estate Services	Authority Contract - Competitive Bid	6/19/2013	6/18/2015	2,112,085	4,993	2,109,276	15	NYS	N
Paramount Realty USA LLC	Temporary Staffing Services	Authority Contract - Competitive Bid	9/3/2014	9/2/2016	344,750	306,920	306,920	4	NYS	N
Penda Aiken Inc	Planning, Technical and Professional Serv	Authority Contract - Competitive Bid	2/9/2015	8/8/2016	2,166,484	2,101,913	2,166,484	15	NYS	Y
Perkins Eastman Architects PC	Ink Cartridges	Authority Contract - Competitive Bid	6/19/2013	6/18/2015	3,063,954	72,783	3,063,394	15	NYS	N
Pitney Bowes, Inc	Postage	Non Contract Procurement/Purchase Order				39,119			Foreign	N
Pitney Bowes/Purchase Power	Management Consulting Services	Non Contract Procurement/Purchase Order				38,894			NYS	N
Pricewaterhouse Coopers LLP	Monitoring & Compliance Services	Purchased Under State Contract				1,780,070			NYS	N
PricewaterhouseCoopers LLP	Office Supplies	Authority Contract - Competitive Bid	1/1/2015	1/1/2017	8,228,522	3,303,300	3,582,760	13	NYS	N
Proftech LLC	Event Coordinator and Transportation	Non Contract Procurement/Purchase Order				43,395			NYS	Y
Rcano Events	Management and Writing Services	Non Contract Procurement/Purchase Order				8,530			NYS	N
Related Construction Services (RCS)	Legal Notice Publication	Authority Contract - Competitive Bid	6/3/2014	5/31/2015	50,000	740	31,915	3	Foreign	N
Richner Communications Inc/Herald (	Pre Planning Advisory Services	Non Contract Procurement/Purchase Order				35,397			NYS	N
Scape / Landscape Architecture PLL(	30% Schematic Design of the Living Break	Authority Contract - Non-Competitive Bid	11/20/2014	5/19/2015	275,200	66,946	66,946	1	NYS	Y
Scape / Landscape Architecture PLL(	Security Guard Services	Authority Contract - Non-Competitive Bid	9/10/2015	9/9/2016	3,700,200	818,774	1,353,366	1	NYS	Y
Simaren Corporation d/b/a Wisdom P	Temporary Staffing Services	Non Contract Procurement/Purchase Order				59,402			NYS	Y
Software People, Inc	Legal Notice Publication	Authority Contract - Competitive Bid	2/9/2015	8/8/2016	395,930	395,930	395,930	15	NYS	Y
Staten Island Advance	Construction Management Support Servic	Non Contract Procurement/Purchase Order				22,397			NYS	N
STV Construction, Inc.	Security Guard Services	Authority Contract - Competitive Bid	10/23/2014	10/22/2015	7,053,588	6,707,767	6,707,767	16	NYS	N
Summit Security Services	Construction Management Support Servic	Non Contract Procurement/Purchase Order				409,032			NYS	N
Tectonic Engineering & Surveying Co	Environmental Review Services	Authority Contract - Competitive Bid	10/23/2014	9/29/2016	17,769,931	3,404,404	5,052,766	16	NYS	N
Tectonic Engineering & Surveying Co	Environmental Review Services	Authority Contract - Competitive Bid	2/26/2014	3/31/2014	535,000	109,783	374,378	11	NYS	N
Tectonic Engineering & Surveying Co	Advisory & Project Management Support	Authority Contract - Competitive Bid	7/1/2014	1/1/2015	570,333	50,770	553,378	11	NYS	N
Tectonic Engineering & Surveying Co	Asbestos Abatement Activities	Authority Contract - Competitive Bid	4/13/2015	4/12/2016	1,000,000	57,174	57,174	20	NYS	N
Tectonic Engineering & Surveying Co	Lead Abatement Activities	Authority Contract - Competitive Bid	6/22/2015	6/21/2016	150,000	45,370	45,370	2	NYS	N
Tectonic Engineering & Surveying Co	Environmental Review, Management and T	Authority Contract - Competitive Bid	6/22/2015	6/21/2016	150,000	4,900	4,900	2	NYS	N
Tectonic Engineering & Surveying Co	Advisory & Project Management Support	Authority Contract - Competitive Bid	10/15/2014	10/14/2016	4,200,000	1,780,527	1,868,529	10	NYS	N
TELACU Construction Management,	Environmental Review, Management and T	Authority Contract - Competitive Bid	4/13/2015	12/31/2017	26,878,025	6,880,323	6,880,323	20	NYS	N
Tetra Tech, Inc.	Monitoring and Compliance	Authority Contract - Competitive Bid	10/15/2014	10/14/2016	1,600,000	160,042	160,042	10	Foreign	N
Thacher Associates	Temporary Staffing Services	Authority Contract - Competitive Bid	9/3/2014	9/2/2016	4,000,000	1,100,621	1,383,520	13	NYS	N
The Forum Group	Insurance	Authority Contract - Competitive Bid	8/13/2014	8/13/2015	150,000	46,821	91,742	5	NYS	N
The Hartford	Environmental Review, Management and T	Non Contract Procurement/Purchase Order				18,630			NYS	N
The Louis Berger Group	Printer Maintenance	Authority Contract - Competitive Bid	10/22/2014	10/21/2016	2,000,000	157,947	402,826	10	Foreign	N
The Remi Group, LLC	Environmental Testing and Inspections	Non Contract Procurement/Purchase Order				42,803			Foreign	N
TRC Engineers Inc	Radon Mitigation System Installation	Purchased Under State Contract				2,906,785			NYS	N
TRC Engineers Inc	Demolition - Batch 2 & 3	Authority Contract - Competitive Bid	6/22/2015	6/21/2016	150,000	27,694	27,694	2	NYS	N
Unitech Servicing Group Inc	Demolition - Batch 1	Authority Contract - Competitive Bid	9/15/2014	3/15/2015	492,800	492,800	492,800	10	NYS	Y
United Industries and Construction C	Demolition - Mini Bid	Authority Contract - Competitive Bid	9/15/2014	3/15/2015	37,295	37,295	37,295	10	NYS	Y
United Industries and Construction C	Shipping	Authority Contract - Competitive Bid	9/26/2014	3/26/2015	65,033	65,033	65,033	4	NYS	Y
United Postal Service	Planning, Technical and Professional Serv	Non Contract Procurement/Purchase Order				10,008			Foreign	N
URS Corporation	Ipads and Projectors	Authority Contract - Competitive Bid	6/19/2013	6/18/2015	3,273,804	1,627,519	1,627,519	15	NYS	N
Y&S Technologies	Legal Services	Non Contract Procurement/Purchase Order				5,940			NYS	N
Venable LLP		Authority Contract - Competitive Bid	11/27/2013	11/27/2016	8,863,577	3,089,098	4,858,013	29	Foreign	N

TAB 3

HTFC's Procurement and Contract Guidelines
(Amended as of July 9, 2014)

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

PROCUREMENT AND CONTRACT GUIDELINES OF THE HOUSING TRUST FUND CORPORATION FOR CONTRACTS EXCLUDING THOSE FUNDED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY PROGRAM

ESTABLISHING STANDARDS FOR THE USE, AWARD, MONITORING AND REPORTING OF PROCUREMENT CONTRACTS

ARTICLE I

1. STATEMENT OF PURPOSE AND APPLICABILITY

a. Statement of Purpose. These Guidelines are adopted pursuant to the provisions of the Act and §2879 of the Public Authorities Law, as guidelines of the Housing Trust Fund Corporation, hereinafter referred to as the "Corporation," and such guidelines are independent of, but intended to be in alignment to the extent possible with, the guidelines of the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (collectively hereinafter referred to as "Agencies") and are to be reviewed and approved by the Corporation's Members at least annually.

b. Applicability. These Guidelines apply to the Procurement by the Corporation of goods or services in the actual or estimated amount of $5,000 or more, excluding the Procurement by the Corporation of goods or services funded, in whole or in part, with the U.S. Department of Housing and Urban Development's Community Development Block Grant-Disaster Recovery ("CDBG-DR") funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2). Procurement by the Corporation of goods or services funded, in whole or in part, with CDBG-DR funds shall be subject to the Procurement and Contract Guidelines for the Governor's Office of Storm Recovery of the Housing Trust Fund Corporation for Contracts Funded by the U.S. Department of Housing and Urban Development's CDBG-DR Program Establishing Standards for the Use, Award, Monitoring and Reporting of Procurement Contracts under the New York State CDBG-DR Program.

c. Title. Outside of this document, these Guidelines may be referred to as the "Procurement and Contract Guidelines" and herein may be referred to as

"Guidelines."

ARTICLE II

2. DEFINITION OF TERMS

a. Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

i. "Act" shall mean Section 45-a of the New York Private Housing Finance Law.

ii. "Affiliated Agencies" or "Affiliated Agency" shall mean, either individually or collectively, the affiliated agencies, each being the Housing Trust Fund Corporation, New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, and Tobacco Settlement Financing Corporation.

iii. "Affiliate Contract" shall mean any Procurement Contract entered into by an Affiliate Agency.

iv. "Agency Contract" shall mean any Procurement Contract entered into by a State Agency.

v. Authority Contract" shall mean any Procurement Contract entered into by a State Authority.

vi. "Annual Procurement Report" shall mean the annual report required by Article XII hereof.

vii. "Article 15-A of the Executive Law" or "Article 15-A" shall mean, the statute that governs the participation by Minority Group Members and women with respect to Corporation Contracts.

viii. "By-Laws" shall mean the By-Laws adopted by the Members of the Corporation.

ix. "Chief Executive Officer" or "CEO" shall mean the Officer having such title according to the Corporation's By-Laws.

x. "Contact" shall mean, for purposes of applying the Lobbying Law in

relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, any oral, written or electronic communication from a Contractor or Vendor, or their representatives, with the Corporation, under circumstances where a reasonable person would infer that the communication was intended to influence the Corporation's conduct or decision regarding a Corporation Governmental Procurement.

xi. "Contract" shall mean a written agreement whereby the Corporation undertakes Procurement, and shall include, but not be limited to, accepted Purchase Orders and Procurement Contracts. Contracts in excess of $25,000 for goods or services and Contracts in excess of $100,000 for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon are subject to the Corporation's MWBE Directives. Additionally, pursuant to Article 15-A, solely for the purpose of providing the opportunity for meaningful participation for certified MWBEs in the performance of Corporation Contracts, Corporation Contracts shall include leases of real property by the Corporation to a Lessee where: (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee; and (b) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of $100,000.

xii. "Contractor" shall mean a supplier of goods or services to the Corporation pursuant to a Contract.

xiii. "Corporation" shall mean the Housing Trust Fund Corporation.

xiv. "Corporation Staff" or "Staff" shall mean Employees and Officers of the Corporation or any governmental agency which has assigned employees to perform services to the Corporation.

xv. "Counsel" shall mean the chief legal officer as so defined in the By-Laws of the Corporation.

xvi. "Critical Contract" shall mean a Contract which must be awarded within a set time period because delay of the award would have a serious adverse effect on the Corporation that outweighs the benefits of advertisement in the "New York State Contract Reporter," as determined by the President of the Office responsible for the Procurement. All Emergency Selection Contracts shall be Critical Contracts. Emergency Foreign Business

Enterprise Contracts are not Critical Contracts unless the Corporation independently determines those Contracts to be Critical Contacts.

xvii. "Designated Contact" shall mean, for purposes of applying the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a Contact made between an Offerer and the Corporation's Designated Contact Officer(s), as set forth in Article VII of these Guidelines.

xviii. "Designated Contact Officer(s)" shall mean, for purposes of applying the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the person(s) the Corporation appoints to such position, in accordance with the provisions of the Lobbying Law, who may be the recipient of Designated Contacts, as set forth in Articles VII and XI of these Guidelines. The Designated Contact Officer shall be the person so designated in each solicitation.

xix. "Designated MWBE Officer(s)" shall mean the senior staff the Corporation appoints to such position to oversee the Corporation's MWBE Program, as set forth in Articles VI and XI of these Guidelines.

xx. "Determination of Responsibility" shall mean, in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a final determination required to be made by the Corporation of the proposed Contractor or Vendor to whom the Contract is to be awarded in accordance with Section 2879 of the Public Authorities Law. For Determinations of Responsibility hereunder, the Lobbying Law requires that proposed Contractors and Vendors disclose findings of non-responsibility against them within the previous four years by any other governmental agency.

xxi. "Discriminatory Jurisdiction" shall mean any other county, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the Procurement of goods or services by the same, or a non-governmental entity influenced by the same.

xxii. "Disparity Study of 2010" or "Disparity Study" shall refer to the disparity study commissioned by the Empire State Development Corporation ("ESDC"), pursuant to Article 15-A, and published on April 29, 2010.

xxiii. "Emergency Foreign Business Enterprise Contract" shall mean any Contract awarded on an emergency or critical basis or where the New York State Commissioner of Economic Development (hereinafter referred to as the "DED Commissioner") waives provisions otherwise applying to Contracts with Foreign Business Enterprises which are equal to or greater than $1,000,000, pursuant to Article VIII of these Guidelines.

xxiv. "Emergency Selection Contract" shall mean any Contract exempt from competitive selection due to the Corporation's determination of an emergency justifying such exemption.

xxv. "Employee" shall mean an employee of the Corporation, whether full or part time.

xxvi. "Ethics Officer" shall mean the person the Corporation appoints to such position for purposes of administering matters in connection with the State Ethics laws, or any other State law which requires the existence of such an officer to review, monitor and impose sanctions related to Procurement matters including, but not limited to, Lobbying Law Directives.

xxvii. "Foreign Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the Corporation and which are substantially produced outside the State, or services sought by the Corporation, and which are substantially performed outside the State.

xxviii. "Governmental Procurement" shall mean the (a) public announcement, public notice, or public communication to any potential Vendor of a determination of a need for a Procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, RFPs, or evaluation criteria for a Procurement Contract, (b) solicitation for a Procurement Contract, (c) evaluation of a Procurement Contract, (d) award, approval, denial or disapproval of a Procurement Contract, or (e) approval or denial of an assignment, amendment, renewal or extension of a Procurement Contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Offerer.

xxix. "Guidelines" shall mean these Guidelines, as they may be amended from time to time.

xxx. "Impermissible Contact" shall mean, for purposes of applying the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000,

any Contact that is not a Designated Contact.

xxxi. “Invitation for Bid” process or “IFB” shall mean the solicitation, by way of a statement of qualification, proposal and/or, as appropriate, price bid from at least three prospective Contractors or Vendors, one of which shall be from a MWBE, if possible, for Procurements not expected to exceed $50,000. Procurements anticipated to exceed $25,000 or more must include MWBE participation goals.

xxxii. “Lessee" shall have the same meaning defined in Article 15-A.

xxxiii. "Lobbying Law Directives" shall mean, in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the requirements of the provisions of the Lobbying Law, and as set forth in Article VII of these Guidelines.

xxxiv. "Lobbying Law" shall mean the provisions of the Legislative Law and the State Finance Law enacted on August 23, 2005, Chapter 1 of the laws of 2005 and amended on March 20, 2010, Chapter 4 of the laws of 2010.

xxxv. "Member(s)" shall mean the Members of the Housing Trust Fund Corporation as defined in the By-Laws of the Corporation, unless the context shall clearly indicate some other meaning, e.g. “Minority Group Members”.

xxxvi. "Minority Owned Business Enterprise" or "MBE" shall mean any business enterprise, including a sole proprietorship, partnership or corporation, that is:

1) at least 51% owned by one or more Minority Group Members, or in the case of a publicly-owned business, at least 51% of the common stock or other voting interests of which is owned by one or more Minority Group Members;

2) an enterprise in which the minority ownership is real, substantial and continuing;

3) an enterprise in which the minority ownership has, and exercises, the authority to control independently the day-to-day business decisions of the enterprise;

4) an enterprise authorized to do business in the State, independently owned and operated, and not dominant in its field;

5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a Personal Net Worth that does not exceed $3.5 million, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and

6) an enterprise that is a Small Business.

xxxvii. “Minority and/or Women-Owned Business Enterprise” or “MWBE” shall mean any business enterprise, including a sole proprietorship, partnership or corporation, that meets the qualifications for an MBE, a WBE, or both an MBE and a WBE.

xxxviii. "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:

1) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

4) Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian sub-continent or the Pacific Islands.

xxxix. "MWBE Director" shall mean the director of the division of minority and women’s business development in the Department of Economic Development.

xl. "MWBE Directives" shall mean the requirements of the Corporation’s MWBE Program in accordance with the provisions in §2879 of the Public Authorities Law and Article 15-A, and as set forth in Article VI of these Guidelines.

xli. "MWBE Program" shall mean the Corporation’s Procurement procedures and policies for providing opportunity for meaningful participation of

certified businesses in the performance of Corporation Contracts, as more fully described in Article VI of these Guidelines.

xlii. "New York State Business Enterprise" or "NYSBE" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the Corporation and which are substantially manufactured, produced or assembled in the State, or services which are sought by the Corporation and which are substantially performed within the State.

xliii. "Offerer" shall mean, for purposes of applying the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the Corporation about a Corporation Governmental Procurement during the Restricted Period of such Corporation Governmental Procurement, whether or not the caller has a financial interest in the outcome of the Governmental Procurement.

xliv. "Officer" shall mean those positions so defined in the By-Laws of the Corporation.

xlv. "Permissible Contact" shall mean, for purposes of applying the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a Designated Contact.

xlvi. "Permissible Subject Matter Communication" shall mean, for purposes of applying the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the communications set forth as such in Article VII of these Guidelines.

xlvii. "Personal Net Worth" shall have the same meaning as defined in Article 15-A.

xlviii. Personal Services" shall mean any services performed for fee, commission or other compensation by persons or organizations who are not providing such services as Officers, Employees or Staff of the Corporation, Affiliated Agency, any State Agency or State Authority.

xlix. "Preferred Source" shall mean the status afforded to certain contractors or vendors for purposes of Procurement under §162 of the State Finance

Law.

l. "President" shall mean an Officer having such title according to the Corporation's By-Laws.

li. "Procurement" shall mean the acquisition of goods, materials and services including, but not limited to, Personal Services, by the Corporation. The term goods shall include, but not be limited to, personal property, including furniture, fixtures, stationery and supplies. Services shall include, but not be limited to, the performance of legal, accounting, management, consulting, investment banking, planning, training, statistical, research, public relations, architectural, engineering, surveying or other Personal Services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such service as Officers, Employees or Staff of the Corporation, any Affiliated Agency, or any State Agency or State Authority.

lii. "Procurement and Contract Guidelines" shall mean the guidelines to Procurement of goods or services by the Corporation, originally adopted by the Corporation's Members, and revised from time to time, pursuant to the provisions of its Act and §2879 of the Public Authorities Law.

liii. "Procurement Contract(s)" shall mean, (a) *(following the definition in §2879 of the Public Authorities Law)* any written agreement for Procurement in the actual or estimated amount of $5,000 or more or (b) *(following the definition in the Lobbying Law for purposes of applying the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000)* any Contract, including an amendment, extension, renewal, or change order to an existing Contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the Contract as it was finally awarded), for a Governmental Procurement.

liv. "Procurement Contract Officer" shall mean the person appointed to such position, as set forth in Article XI of these Guidelines.

lv. "Procurement Record" shall mean documentation of the decisions made and the approach taken in the Procurement process together with other documentation with respect to Contracts and Contractors/Vendors, as set forth in these Guidelines.

lvi. "Purchase Order(s)" shall mean written authorization to a Vendor to deliver specified goods or services at a stipulated price.

lvii. "Request for Proposal" or "RFP" shall mean the solicitation, by way of a detailed description of services and/or related work required by the Corporation, of a comprehensive response from qualified potential Contractors or Vendors, indicating the manner in which each would perform the tasks involved and the compensation requested, which response would be the basis for a contractual agreement.

lviii. "Request for Qualification" or "RFQ" shall mean a request for a statement of qualifications, which shall contain detailed information, so as to enable potential contractors to determine the desirability of participating in the selection process and to develop a competitive statement. An RFQ may request other information in addition to qualifications

lix. "Restricted Period" shall mean, for purposes of applying the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the period of time commencing with the earliest determination of a Procurement need by the Corporation, including, but not limited to, any oral or written communication, notice, advertisement or solicitation of an RFP, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from contractors or vendors intending to result in a Procurement Contract with the Corporation and ending with the Corporation's approval of the final Contract award.

lx. "Single Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the Corporation, approved in writing by the President of the Office responsible for the Procurement, that one firm is uniquely qualified or has a unique advantage with respect to the provision of a particular service or good, such that competitive procedures are rendered futile. Such determination shall become part of the Procurement Record and be filed with the Corporation’s Counsel and Secretary.

lxi. "Small Business" shall have the same meaning defined in Article 15-A.

lxii. "Sole Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the Corporation, approved in writing by the President of the Office responsible for the Procurement, that there is only one source for a particular service or good, such that competitive procedures are rendered futile. Such determination

shall become part of the Procurement Record and be filed with the Corporation's Counsel and Secretary.

lxiii. "State" shall mean the State of New York.

lxiv. "State Agency" shall mean any state department, state university of New York, city university of New York, board, bureau, division, commission, committee, council, office or other governmental entity performing a governmental or proprietary function for the state, or any combination thereof as provided in subdivision two of section nine hundred fifty-one of the executive law, except any public authority or public benefit corporation, the judiciary or the state legislature.

lxv. "State Authority" shall mean a public authority or public benefit corporation created by or existing under the Public Authorities Law or any other law of the state of New York, with one or more of its members appointed by the governor or who serve as members by virtue of holding a civil office of the state, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority or public benefit corporation.

lxvi. "Vendor" shall mean a supplier of goods or services to the Corporation.

lxvii. "Women-Owned Business Enterprise ("WBE")" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

1) at least 51% owned by one or more United States citizens or permanent resident aliens who are women or, in the case of a publicly-owned business, at least 51% percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;

2) an enterprise in which the ownership interest of women is real, substantial and continuing;

3) an enterprise in which the women ownership has, and exercises, the authority to control independently the day-to-day business decisions of the enterprise;

4) an enterprise authorized to do business in the State, independently owned and operated, and not dominant in its field;

5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a Personal Net Worth that does not exceed $3.5 million, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and

6) an enterprise that is a Small Business.

b. Construction of Language. Any other capitalized terms used herein shall have the meaning given by the By-Laws. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa.

ARTICLE III

3. USE OF PROCUREMENT CONTRACTORS AND VENDORS

a. Threshold Criteria for Use of Procurement Contractors for Personal Services. The general responsibilities of the Corporation are performed by its Employees, Officers and Staff. Accordingly, it is the policy of the Corporation that before Personal Services are used, it first be considered whether it would be more appropriate for its Employees, Officers or Staff to provide such services. Personal Services Contractors may be used when it has been determined:

(l) that such service is necessary or convenient to the performance of the Corporation's responsibilities; and

(2) (x) that such service is not available from Employees, Officers or Staff; or
(y) that the performance of such service requires it be undertaken by someone independent of the Corporation; or
(z) that use of Employees, Officers or Staff of the Corporation for such service would not be efficient or cost effective.

Such determination shall be made by an Officer except that, in the case of Personal Services set forth below in this Article, such determination may be made by Officers as they may deem administratively appropriate. Non-Personal Services Contracts shall be entered into when the Corporation requires goods, materials and non-Personal Services to function effectively and efficiently.

b. Areas Requiring Use of Procurement Contracts for Personal Services. Personal

Services Contracts have typically been and are anticipated to be executed in the following areas, pursuant to a determination of appropriateness in accordance with the requirements of subparagraph a. of this Article:

Types of Services, Responsibilities and Description of Services to be Provided.

i. Appraisal. Provide appraisals, analyses and reports with respect to properties which are or may be the subject of Corporation loans or loans insured by the Corporation.

ii. Architectural and Engineering. Provide professional architectural and/or engineering services relative to the construction of properties which are or may be the subject of Corporation loans, or loans insured by the Corporation.

iii. Audit and Accounting. Provide audit services pertaining to the year-end preparation of financial statements for the Corporation in conformance with generally accepted accounting principles. Perform special audits as requested.

iv. Custody & Safekeeping Services. Provide custody and safekeeping services to secure Corporation investments and receive and evaluate underlying collateral for secured Corporation investments.

v. Equipment Maintenance. Provide maintenance for the routine service or repair of office and data processing equipment.

vi. Information Technology Consulting. Provide analyses and recommendations on the Corporation's data processing structure and operations.

vii. Information Technology Services. Provide report generating and printing services, computer systems hardware, programming and related services to the Corporation.

viii. Investment Banking. Provide: (a) financial advisory services and (b) recommendations and analyses with respect to Corporation investments.

ix. Legal. Provide legal services, opinions and analyses related to financings, real estate matters, corporate matters, litigation matters and labor matters.

x. Management Consulting. Provide analyses and recommendations concerning the Corporation's organizational structure and the management

of its operations.

xi. Minority and Women Business Enterprise Consultants. Provide technical assistance in the Corporation's effort to facilitate MWBE participation in Corporation programs.

xii. Printing. Provide: (a) financial printing services based upon specifications and details developed by the Corporation; (b) technical printing services relative to the reproduction of loan and insurance documents; (c) graphic, layout and printing services in connection with production of Corporation report(s); and (d) other printing and offset services.

xiii. Training. Provide supervisory and other skills training to Corporation Officers, Employees and Staff.

xiv. Trustee Banking Services. Provide banking services to monitor the timely receipt of payments, retirement of debt, collateral evaluations and other services as required by the various bond resolutions.

xv. Others. The examples of Personal Services listed above in clauses (i) through (xiv) reflect anticipated Personal Services and are not meant to be exhaustive; other services, in other areas, may be utilized subject to these Guidelines.

These Personal Services are not required to be provided as Personal Services Contracts, and may sometimes be performed by Corporation Officers, Employees and Staff.

ARTICLE IV

4. SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS.

a. Preferred Selection Criteria and Approach. It is the preference of the Corporation that Vendors and Contractors shall be selected from as broad a spectrum of providers as is practicable, and that Contracts be awarded and purchases be made consistent with the quality of services, or goods and materials required, at fair and reasonable prices. In addition, it is the preference of the Corporation to encourage the participation and utilization of MWBEs in accordance with the MWBE Directives, as set forth in Article VI of these Guidelines and to encourage the participation of New York State Business Enterprises. Contacts shall be regulated in accordance with MWBE Directives and Lobbying Law Directives, and as set forth in Articles VI and VII, respectively, of these Guidelines.

b. Selection on a Competitive Basis. It is the preference of the Corporation that Procurement, unless otherwise prescribed, be by competitive process, and that the process be as competitive as is possible. It is the policy of the Corporation that the selection of Procurement Contractors and Vendors be exempt from the competitive process only under certain exceptional circumstances as specified herein. As appropriate, the following competitive processes may be used in order to select Contractors and Vendors:

i. Competitive Lowest Price Bid for Goods or Materials. Solicitation of at least three price bids, one of which shall be from a MWBE, if feasible, for specified Procurement, other than Personal Services (goods and materials), to be awarded to qualifying Contractors or Vendors primarily on the basis of the lowest price. Competitive bids are to be solicited when the goods and materials required are of a standardized nature that may reasonably be made the subject of specifications to which bidders respond with required qualification data and price offers.

ii. Invitation for Bid ("IFB") process for Contracts Not Expected to Exceed $50,000. If the President of the Office responsible for the Procurement determines it is appropriate, the Corporation may commence a Procurement process by soliciting statements of qualifications, proposals and, as appropriate, price bids from at least three prospective Contractors or Vendors, one of which shall be from a MWBE, if feasible, for Procurements not expected to exceed $50,000. Procurements valued at $25,000 or more must include MWBE participation goals. Award of a Contract within this method is made on the basis of an evaluation of the characteristics, quality and cost of such statements of qualifications and proposals.

iii. RFP (without negotiation). Solicitation of specific proposals which indicate an understanding of identified financial, organizational, logistical and technical requirements and/or problems, and which detail elements of performance, including techniques and procedures as well as prices. Award of a Contract within this method is made on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.

iv. RFP with Competitive Negotiations. Solicitation of qualifying potential Contractors or Vendors who have submitted materials pursuant to: (a) an RFP to further negotiate their proposals; (b) an RFP which stated that the Corporation might further negotiate proposals; or (c) a determination by the Corporation, subsequent to issuing an RFP, that further negotiation is appropriate or that the RFP should be revised to permit further

negotiations. Further negotiation may include, but shall not be limited to, prices for Contract award on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.

v. Pre-qualified Panel. The Corporation may select Contractors for any Procurement activity from a qualified panel of potential Contractors, selected on the basis of an RFP or RFQ. Such panel must have been qualified by the Corporation, or by an Affiliate, State Agency or State Authority. The purpose of using a pre-qualified panel is to allow aspects of the competitive process to be addressed early in a phased selection process. This is so that Vendors and Contractors on the panel can be subsequently engaged on an accelerated or more efficient basis. In accordance therewith, panels shall be administered so that the Contract award is based upon a formal evaluation of qualifications and/or the subsequent negotiation of fair and reasonable compensation for specific services actually required. At such time as a panel is utilized, the Corporation shall document for the Procurement Record with respect to that panel, which aspects of the competitive process (a) are being addressed prior to the panel's utilization and (b) shall be fulfilled subsequent to the establishment of the panel. The award of assignments to respective Vendors on a panel need not be based purely on competitive selection processes, to the extent that assignments based on distribution of workload, distribution of risk, and/or a policy of rotation intended to benefit the Corporation are reasonable. Panels shall be identified to the Corporation's Procurement Contract Officer, reported in the Annual Procurement Contract Report, and reviewed and recertified annually to the Corporation's Procurement Contract Officer by the Corporation Officer in charge of administering the panel.

vi. State Contract. The Corporation can enter into Contracts with eligible Vendors, where the State has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract with those Vendors for such services upon comparable terms, provided the Procurement Contract Officer determines this is appropriate.

vii. GSA Contract (or contract of the U.S. General Services Administration or US GSA). The Corporation can enter into Contracts with eligible Vendors, where the US GSA has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract with those Vendors for such services upon comparable terms, provided an Officer determines this is appropriate.

viii. Affiliated Agency Contract or Affiliated Agency Competitive Selection

Process. Whenever an Affiliated Agency has completed a competitive process to create a list of Vendors eligible for the provision of goods or services, the Corporation can enter into a Contract with those Vendors for such services, if for the same services and upon comparable terms. Whenever an Affiliated Agency has engaged in a competitive process, and that process has not yet created a list of eligible Vendors, and the Corporation can complete that process to create eligible Vendors, the Corporation may do so in order to enter into a Contract with those Vendors for such services for which Vendors are ultimately determined eligible to provide, provided the Procurement Contract Officer determines this is appropriate.

c. Selection on a Non- Competitive Basis. The competitive processes established above in this Article shall not apply or are hereby waived in the following situations:

i. Preferred Source Providers. Every Corporation Procurement shall be conducted in accordance with §162 of the State Finance Law, which, in certain instances, affords Preferred Source status to certain Contractors and Vendors to advance special social and economic goals and precludes the use of competitive selection procedures.

ii. Existing Centralized State Contracts. The Corporation may carry out a Procurement using existing centralized State Contracts pursuant to which the Corporation is eligible to procure goods and/or services, according to the State negotiated terms.

iii. Existing GSA Contracts. The Corporation may carry out a Procurement using existing centralized GSA Contracts pursuant to which the Corporation is eligible to procure goods and/or services, according to the State negotiated terms.

iv. Emergency. When an emergency requires that selection of a Contractor or Vendor cannot be delayed long enough for the use of a competitive procedure because immediate action is required, the President of the Office responsible for the Procurement may award a Contract, as that President deems appropriate, without competitive procedures or following less than the full complement of competitive procedures which would otherwise be required. Circumstances requiring such immediate action must be significant, such as those affecting property of the Corporation, life, health or safety. Emergencies should only arise out unforeseen

occurrence. The circumstances under which such Contract was entered into shall be set forth and maintained in the Procurement Record. Such record should, among other things, address whether such circumstances should have been foreseen. Consideration should always be given to whether a Contract entered into on an emergency basis can be supplanted by a subsequent Contract entered into through a competitive process. If the Emergency Contract exceeds $100,000 in amount or one year in duration, the Contract must be presented at the next regularly scheduled Corporation Board Meeting for approval. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with the Corporation's Counsel and Secretary.

v. Sole Source Contract. Sole Source Contracts may be awarded without competitive procedures as a result of a determination by the Corporation, approved in writing by the President of the Office responsible for the Procurement. For purposes of determining whether a Contract is a Sole Source Contract, the Corporation shall identify if there is only one source for a particular service or good, such that competitive procedures are rendered futile. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with the Corporation's Counsel and Secretary.

vi. Single Source Contract. Single Source Contracts may be awarded without competitive procedures as a result of a determination by the Corporation, approved in writing by the President of the Office responsible for the Procurement. Competitive procedures may be considered futile for purposes of determining whether a Contract is a Single Source Contract, if, among other things, the submission of bids or proposals by other Contractors or Vendors would not afford them a meaningful likelihood of selection. Whenever the Corporation considers it appropriate, the Corporation may conclusively reach such a determination by relying upon the determination of the State or an Affiliated Agency that a Vendor is uniquely qualified, if the Corporation seeks to enter into a Contract or contract with those Vendors for such services upon comparable terms. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with the Corporation's Counsel and Secretary.

vii. Inconsistent Industry Selection Process with Competitive Price Assurance. Where practice in an industry does not normally involve competitive submission of proposals and where it is determined that it would be cost-effective to award such Contract or otherwise select from among possible Vendors in some other manner, provided steps are taken to assure that the

cost is comparable to that generally charged for similar goods or services, and that the Procurement Record contains written evidence of these steps, a Contract may be awarded without competitive process.

viii. Competitive Proposal Exception for Contracts Not Expected to Exceed $5,000. In the case of Contracts not expected to exceed $5,000, if it is determined that soliciting at least three Vendors is not appropriate, such Contract may be awarded without soliciting competitive proposals, if a clear scope of goods or services is utilized and due consideration is given to the market value of such goods or services.

ix. Option to Waive Competition for Certain Kinds of Contracts. Notwithstanding any other provision of law requiring competition, the competitive process may be waived to include Contracts for the purchase of goods or services from Small Businesses or certified MWBEs, or goods or technology that are recycled or remanufactured, in amounts at or below $200,000.

ARTICLE V

5. STANDARDS AND PRACTICES FOR COMPETITIVE SELECTION OF CONTRACTORS.

It is the policy of the Corporation to seek out the maximum practicable number of qualified Vendors interested in offering their goods or services to the Corporation and to establish certain minimum standards for their selection. The following standards shall apply:

a. Advertisement Requirements for Competitive Source Selection Methods. The solicitation of bids, proposals, offers or submissions of qualification data from Vendors with respect to Contracts shall be made by the Corporation in a manner determined by the Procurement Contract Officer in consultation with the President of the Office responsible for the Procurement, to be the most cost effective for providing reasonable competition for the Corporation's Contracts. This may include advertisement in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these Guidelines, including outreach efforts to MWBEs in accordance with the provisions of Article VI herein and the Corporation's MWBE Goal Plan ("MWBE Goal Plan"), and including providing information with respect thereto via the Corporation's website. In addition, in the case of Procurement Contracts in the actual or estimated amount of $50,000 or more, or such other amount as may be amended in Article 4-C of the State's Economic Development Law, and in the establishment of pre-qualified panels, the

Corporation shall advertise all such opportunities in the "New York State Contract Reporter" or "Reporter," the official weekly listing of bidding opportunities for the State published by the New York State Department of Economic Development, and any other publication as required by State law, unless the Contract is determined to be a Critical Contract. Already advertised Contract opportunities being re-bid or re-solicited within forty five (45) business days after proposals were originally due, pursuant to publication in the "Reporter," are not required to be published again. Contracts determined to be Single Source or Sole Contracts will not be advertised in the "Reporter," but are required to be published in the "Reporter" as a "notification"..

b. Minimum of Three Prospective Vendors for Competitively Bid Procurement Contracts. For all Procurement Contracts required to be selected on a competitive basis, the Corporation shall solicit statements of qualifications, proposals and, as appropriate, price bids from at least three prospective Vendors. In the case of Contracts not expected to exceed $5,000, the Corporation shall solicit prices, statements of qualifications and proposals from at least three prospective Vendors unless the Corporation affirmatively determines it is not appropriate. The Corporation shall include at least one MWBE, if feasible, in all Procurement processes.

c. Requirements for Corporation Bid Documents. Except for Procurement Contracts for which the Corporation would be expending funds received from another state, the Corporation shall include in all bid documents provided to potential bidders a statement that information concerning the availability of State subcontractors and suppliers is available from the State Department of Economic Development, which shall include the directory of certified MWBEs, and an affirmative statement that it is the policy of the Corporation to encourage the use of State subcontractors and suppliers, and to promote the participation of MWBEs, where possible, in the Procurement of goods and services. Additional requirements for Corporation Bid Documents relating to the Corporation policies to promote the participation of New York State Business Enterprises are more fully described in Article VIII.8.a. of these Guidelines.

The Corporation shall also require that solicitation documents set forth the expected degree of MWBE participation based, in part, on (1) the potential subcontract opportunities available in the prime Procurement Contract; and (2) the availability of MWBEs to respond competitively to the potential subcontract opportunities.

i. Required Bid Notices to Professional and other Organizations serving MWBEs. In an effort to award Procurement Contracts to MWBEs in compliance with the Corporation's MWBE Procurement goals, as set forth

in the Corporation's MWBE Goal Plan, the Corporation shall provide notice of Governmental Procurements, along with any other notice required by law, to professional and other organizations serving MWBEs that provide the types of services procured by the Corporation. Professional and other organizations can include, but is not limited to, social networking websites, magazines, and/or newspapers catering to a majority of MBE and/or WBE clientele. For the purposes of these Procurement efforts and for other Corporation Procurement efforts, the Corporation's Designated MWBE Officer shall establish procedures for maintaining list(s) of qualified MWBEs. In addition, the Corporation shall establish procedures for maintaining lists to include media outlets and other organizations serving MWBEs. The Corporation will provide such list(s) to Contractors in the Procurement process, requiring that potential Contractors shall consult and contact appropriate MWBEs to solicit their bids, in accordance with Article VI of these Guidelines.

ii. Lobbying Law Directives. All Corporation solicitations for proposals, bid documents and specifications for Procurement Contracts shall incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law, pursuant to the Lobbying Law Directives as described in Article VII of these Guidelines and in the Corporation's *Policy on Reporting and Maintaining Records on Lobbying Contacts* (herein after referred to as the Corporation's "Lobbying Policy").

iii. Promoted Contracts. All Corporation solicitations shall follow the directives for the participation of promoted Contracts, as is more fully described in Article VIII of these Guidelines.

d. Criteria for Selection. Procurement Contracts shall be entered into based on an evaluation of all proposals or bids received, considering all relevant factors, including, but not limited to terms, costs, goods or services offered, experience and capabilities, financial security, reputation in the field, staff availability, personnel expected to be involved and possible conflicts of interest. Where the Procurement Contract Officer determines that there is a suitably neutral and reliable publisher or publicly available industry ratings or evaluations of products or firm qualifications, such ratings or evaluations may be allowed to substitute, in whole or in part, as determined to be appropriate, for required submission of qualifications where it is determined that requiring independent submission of such from Vendors would be duplicative. The criterion for selection are not intended to supersede the fact that the Corporation has certain promoted Contracts and certain prohibited Contracts and Contracts subject to limitations, as set forth in Article VIII of these Guidelines.

e. Compliance with Additional Procedures for Requests for Proposals and Requests for Qualifications. The Corporation shall also comply with any additional procedures issued by it, from time to time, with respect to the conduct of Requests For Proposals and Requests For Qualifications.

ARTICLE VI

6. MWBE PROGRAM ESTABLISHING PROCEDURES FOR MWBE PARTICIPATION AND UTILIZATION IN CORPORATION PROCUREMENTS

The requirements of the Corporation's MWBE Program, in accordance with the provisions of §2879 of the Public Authorities Law, Article 15-A, and the directives of the Governor, and as set forth in this Article, shall be referred to as the Corporation's MWBE Directives. The Corporation shall work to increase MWBE participation and utilization through certain Procurement procedures, as described in the Corporation's Annual MWBE Goal Plan and these Guidelines, and incorporated in the Corporation's MWBE Program. These procedures shall include (i) the appointment of a Designated MWBE Officer(s) to oversee the Corporation's MWBE Program, as described more fully in Article XI of these Guidelines, (ii) the establishment of appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Corporation and (iii) the utilization of MWBEs as subcontractors and suppliers by Contractors having Procurement Contracts with the Corporation.

The Corporation has established numerical participation target goals identified in their MWBE Goal Plan based on the findings of the Disparity Study and directives from the Governor. For each new Contract, the Corporation shall gauge the appropriateness of the Procurement goals by considering the availability of Contractors to perform the Contract's anticipated scope of services, weighted by the extent those scope of services represent the total Contract price.

In the event the projected goals cannot be achieved, the Corporation will provide adequate documentation of a good faith effort to meet these goals in its submission of its Annual MWBE Goal Plan.

The Corporation's Designated MWBE Officer, for the purposes of reaching these goals, shall establish procedures for maintaining list(s) of qualified and certified MWBEs, that have expressed an interest in doing business with the Corporation, and ensuring that such lists are updated periodically, but no less than once annually, and include a firm profile that will, if possible, describe the firm's history, key personnel and core work areas. The Corporation shall also consult the list(s) of certified MWBEs maintained by the Department of Economic Development, pursuant to Article 15-A.

The Corporation shall update these MWBE participation goals annually in an effort to (1) obtain the maximum feasible participation of MWBEs in Corporation Contracts, (2) evaluate each Contract to determine the appropriateness of the goal, and (3) examine Corporation goals to determine if their implementation will duplicate or conflict with any federal law. The Corporation shall waive the applicability of these goals to the extent of such duplication or conflict. These MWBE goals are subject to change by industry and region pursuant to findings contained within the Disparity Study of 2010, future Disparity Studies by the ESDC and Corporation findings evidencing relevant industry and region-specific availability of certified MWBEs.

a. Requirements to Conduct Procurements to Ensure Maximum Participation and Utilization by MWBEs. To enable the Corporation to achieve the maximum feasible portion of the Corporation's goals established in its MWBE Goal Plan, that eliminates barriers to participation by MWBEs in Corporation Procurements, Corporation's MWBE Directives shall include:

i. Measures and Procedures. The Corporation's Designated MWBE Officer shall establish measures and procedures to: (a) ensure that certified MWBEs shall be given the opportunity for maximum feasible participation in the performance of Corporation Contracts; and (b) to assist in the Corporation's identification of those Corporation Contracts for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of Corporation Contracts so as to facilitate the Corporation's achievement of the maximum feasible portion of the goals for Corporation Contracts to such businesses. The Corporation's measures and procedures shall include the following MWBE Directives:

(1) For competitive Procurements requiring a minimum of three bids, quotes must be obtained from at least one MBE or WBE, if feasible. If not feasible, the reasons for not doing so shall be documented in writing and included in the Procurement record. Corporation staff issuing solicitations will comply with this requirement whenever MWBEs are available for goods or services being procured;

(2) Encouraging Contractors to consider partnering with MWBEs, if feasible and practicable; and

(3) For non-competitive Procurements, Corporation staff issuing the solicitation shall strongly consider using a certified MWBE, if feasible, and if the MWBE meets the needs of the Corporation.

ii. Designation of the Division of Minority and Women-Owned Business Development ("Division of MWBEs"). The Corporation shall designate the Division of MWBEs to certify and decertify MWBEs for the Corporation.

iii. Expected Degree of MWBE Participation. The Corporation shall require that each Contract solicitation set forth the expected degree of MWBE participation, as set forth in Article VI of these Guidelines.

iv. Current List of MWBEs. The Corporation shall provide a current list of certified MWBEs to each prospective Contractor, as set forth in Article VI of these Guidelines.

v. Joint Ventures and MWBE Participation Goals. The MBE portion or the WBE portion of joint ventures shall count toward meeting the Corporation's MWBE participation goals. A firm owned by a Minority Group Member who is also a woman may be certified as a MBE, a WBE, or both, but may only be counted towards either a MBE goal or a WBE goal, in regard to any Contract or any goal, set by the Corporation, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the MBE goal and the WBE goal.

vi. Waiver of Obligations of Contractor relating to MWBE Participation. The Corporation may waive obligations of the Contractor relating to MWBE participation after a showing of good faith effort to comply with the MWBE participation requirements, pursuant to Chapter 174 and Chapter 175 of the laws of 2010 that amend §2879 of the Public Authorities Law and Article 15-A, §313, subdivision six, respectively, both enacted on July 15, 2010.

vii. Verification of MWBE Participation. The Corporation shall verify that MWBEs listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted, including verification that the procured primary Contractors are truly providing for the participation of MWBEs as described in the Procurement Contract. Participation of MWBEs shall be verified by (i) electronically monitoring and tracking the utilization, prompt payment and unauthorized substitutions of MWBE subcontractors and (ii) the provision of the following data, by the Contractor to the Corporation, for each MWBE subcontract:

(1) name(s) of the MWBE subcontractor;

(2) total dollar amount of the MWBE's participation;

(3) scope of work of the MWBE subcontractor; and

(4) dates of participation.

viii. In the implementation of this section of this Article, the Corporation shall:

(1) consider, where practicable, the severability of construction projects and other bundled Contracts; however, unbundling must be conducted within the constraints of the Corporation's need to ensure efficiency and limit costs, and may not cause the bid price to increase;

(2) implement its MWBE Program to enable the Corporation to evaluate each Contract to determine the appropriateness of the goal, as set forth in this Article, which shall include:

(a) increasing MWBE outreach and communication efforts by use of the internet to facilitate access to information and build relationships between MWBEs and potential partners by:

(i) Requiring Corporation staff to include certified MWBEs in the solicitation lists for Procurements expected to exceed $25,000;

(b) consider the number and types of MWBEs located in the region in which the Corporation Contract is to be performed;

(c) consider the total dollar value of the Corporation Contract, the scope of work to be performed, and the project size and term;

(d) consider whether the Contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event,

(i) whether or not certified MWBEs that have been solicited by the Contractor exhibited interest in

submitting proposals for a particular project by attending a pre-bid conference; and

(ii) whether certified MWBEs which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to the Corporation's bid date;

(e) consider whether there has been written notification to appropriate certified MWBEs that appear in the directory of certified MWBEs, and

(f) consider whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified MWBEs.

3. consider compliance with the requirements of any federal law concerning opportunities for MWBEs which effectuates the purpose of this Article; and

4. consult the most recent disparity study, pursuant to Article 15-A.

ARTICLE VII

7. REQUIRED DESIGNATIONS AND DISCLOSURES UNDER LOBBYING LAW DIRECTIVES IN THE SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS.

Contacts shall be regulated in accordance with Lobbying Law Directives as follows:

For any Governmental Procurement or Contract subject to the Lobbing Law, the Corporation shall notify every potential Contractor or Vendor that the Corporation has a Designated Contact Officer(s) who is the only Corporation representative(s) permitted to receive Designated Contacts from the Contractors or Vendors, or their representatives, during the Restricted Period with respect to such Governmental Procurement. A Contractor or Vendor is restricted from making Contacts with the Corporation from the date of any public announcement, public notice, or public communication by the Corporation to any potential Vendor of a determination of a need for a Governmental Procurement through final award and approval of the Procurement Contract by the Corporation to anyone other than the Designated Contact Officer(s) with respect to the

Governmental Procurement unless such communication is any one of the following Permissible Subject Matter Communications:

(a) the submission of written proposals in response to a Request for Proposals, invitation for bids or any other method for soliciting a response from Offerers intending to result in a Procurement Contract;

(b) the submission of written questions by a method set forth in a solicitation for receiving inquiries from Offerers intending to result in a Procurement Contract, when all written questions and responses are to be disseminated to all Offerers who have expressed an interest in the solicitation;

(c) participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in a solicitation intending to result in a Procurement Contract;

(d) complaints by an Offerer regarding the failure of the person or persons designated by the Corporation, pursuant to this section, to respond in a timely manner to authorized Offerer Contacts, made in writing to the office of general counsel of the Corporation, provided that any such written complaints shall become a part of the Procurement Record;

(e) Offerers who have been tentatively awarded a Contract and are engaged in communications with the Corporation solely for the purpose of negotiating the terms of the Procurement Contract after being notified of tentative award;

(f) communications between designated staff of the Corporation and an Offerer to request the review of a Procurement Contract award;

(g) communications by Offerers in protests, appeals or other review proceedings (including the apparent successful bidder and his or her representatives) before the Corporation conducting the Governmental Procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(h) communications between Offerers and governmental entities that solely address the determination of responsibility entity of an Offerer.

Unless the communication is any one of the above Permissible Subject Matter Communications, the Designated Contact is the only representative(s) of the Corporation permitted to receive Contacts from bidders, potential Contractors or Vendors, or their representatives, during the Restricted Period with respect to a Corporation Governmental Procurement.

All Corporation solicitations for proposals, bid documents and specifications for Procurement Contracts shall incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law. All potential Contractors or Vendors must complete and return to the Corporation with their proposal or bid response to a Corporation solicitation, the *Affirmation of Understanding of and Agreement*, and *Potential Contractor or Vendor Disclosure of Prior Non-Responsibility Determinations,* Lobbying Law Forms 1 and 2, respectively. Form 1 is a written affirmation of a Contractor's or Vendor's understanding of the Governmental Procurement lobbying procedures of the Corporation and Form 2 requires the potential Contractor or Vendor to certify that all information provided to the Corporation with respect to the Lobbying Law is complete, true and accurate. Prior to awarding a Procurement Contract to which these provisions apply, the Corporation shall make a final Determination of Responsibility. All solicitations for proposals by the Corporation shall require that potential Contractors or Vendors disclose to the Corporation any findings of non-responsibility against them within the previous four years by any other governmental agency and must contain certifications that the same are complete, true and accurate.

For Contractors or Vendors who fail to comply with the Corporation's Lobbying Law Directives, refer to Article VIII of these Guidelines and the Corporation's Lobbying Policy.

ARTICLE VIII

8. PROMOTED AND PROHIBITED CONTRACTS & CONTRACTS SUBJECT TO OTHER LIMITATIONS

Notwithstanding the general practices of the Corporation with respect to selection of Contractors and Vendors and adherence to competitive practices, as set forth in in these Guidelines, the following shall apply or be given weight in order that certain Contracts, or the award thereof, may be promoted, prohibited or subject to certain limitations.

a. Promoted Contracts. It is the policy of the Corporation to promote certain contracts as follows:

i. Minority- and Women-Owned Business Enterprises. It is the policy of the Corporation to promote and encourage the use of MWBEs and New York State subcontractors and suppliers in competition for Procurement Contracts. Furthermore, for Procurements anticipated to be in the amount of $25,000 or less, if the performance of any Contract requires or permits the use of a subcontractor, it is the preference of the Corporation to encourage the participation of MWBEs, as set forth in these Guidelines. The Corporation encourages bidders to include demonstrations that their

selection promotes the use of MWBEs in bid responses, for example, through proposals for joint ventures with MWBEs. Procurements exceeding $25,000 must include MWBE participation goals in solicitation documents.

In order to promote and assist participation by, and facilitate the awarding of a fair share of Contracts to, MWBEs, the Corporation has identified the following services as those areas or types of Contracts for which MWBEs may best bid: Archival Off-Site Services; Audit/Accounting Services; Appraisal Services; Architectural/Engineering Services; Equipment Maintenance Services; Information Technology Consulting/Services; Investment Banking Services; Legal Services; Management Consulting Services; Printing Services; and Temporary Employee Services.

ii. New York State Business Enterprises and New York State Residents. It is the goal of the Corporation to promote the participation of New York State Business Enterprises and New York State residents in Procurement Contracts. Accordingly, the following procedure shall apply:

(1) The Corporation shall collect and consult the specifications of NYSBEs in developing specifications for any Procurement Contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding, except for Procurement Contracts for which the Corporation would be expending funds received from another state. The Corporation shall, where feasible, make use of the stock item specification forms prepared by the State Commissioner of General Services, and where necessary, consult with the State Commissioner of the Office of General Services, in developing such specifications and make such determinations;

(2) The Corporation shall, with the cooperation of the Department of Economic Development and through cooperative efforts with Contractors and Vendors, (i) notify NYSBEs of opportunities to participate as subcontractors and suppliers on Corporation Procurement Contracts in amounts estimated to be equal to or greater than $1,000,000 and (ii) promulgate procedures which will assure compliance by Contractors and Vendors with such notification. Once awarded the Contract, such Contractors shall document their efforts to encourage the participation of NYSBEs as suppliers and subcontractors on Procurement Contracts equal to or greater than $1,000,000, pursuant to §2879 of the Public Authorities Law;

(3) The Corporation shall, with the cooperation of the Community Services Division of the Department of Labor and through cooperative efforts with Contractors and Vendors, notify New York State residents of employment opportunities arising out of Procurement Contracts let by the Corporation in an amount estimated to be equal to or greater than $1,000,000. Contractors shall, as supplementary materials to their bids, document their efforts to provide such notification.

(4) The Corporation shall include in all bid documents, (i) a statement notifying potential bidders located in foreign countries that the Corporation may assign or otherwise transfer offset credits created by the Procurement Contract to third parties located in New York State and (ii) a provision for the assignment or other form of transfer of offset credits created by such Procurement Contracts, directly or indirectly, to third parties located in the State. Such assignment or other form of transfer shall be in accordance with the written directions of the Commissioner of Economic Development. The Corporation shall cooperate with the Department of Economic Development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York State created by the Corporation's Procurement Contracts.

iii. Businesses with Anti-discriminatory Employment Practices. It is the Corporation's policy to have procedures in place that will ensure, to the extent of the Corporation's ability, that Contractors and Vendors comply with the federal Equal Employment Opportunity Act of 1972, as amended.

For any Contractor or Vendor with fifteen (15) or more employees responding to an RFP, RFQ, IFB or other type of invitation for bids, included with such response must be a statement disclosing whether the Contractor or Vendor is currently operating under or negotiating, or has at some time in the last five years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); has been, at some time in the last five years, or is currently the subject of a civil action brought against it by the EEOC; has been, at some time in the last five years, or is currently the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; has operated, at some time in the last five years, or is currently operating under an order of a court to take affirmative action as a result of a civil action brought against it by EEOC.

The Corporation shall state in each Contract entered into with a Contractor or Vendor with fifteen (15) or more employees, that it is an unlawful employment practice for such Contractor or Vendor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title; and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

The Corporation shall state in each Contract entered into with a Contractor or Vendor with fifteen (15) or more employees, that such Contractor or Vendor shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods as the EEOC shall prescribe by regulation, and (3) make such reports therefrom as the EEOC shall prescribe by regulation or order.

The Corporation shall state in each Contract entered into with a Contractor or Vendor with fifteen (15) or more employees, that such Contractor or Vendor must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

The Corporation's goal is to award Contracts to those Contractors and Vendors who have evidenced compliance with the laws of the State prohibiting discrimination in employment. The Corporation recognizes that this goal may be achieved by awarding Procurement Contracts to those Contractors or Vendors who have demonstrated that they do not discriminate with respect to employment.

For all Personal Services Contracts over $25,000, and for all Contracts for goods and materials over $100,000, bidders shall submit to the Corporation data regarding the race and gender of their partners, members and employees by job category. Bidders whose data are not found acceptable to the Corporation shall be rejected.

b. Prohibited Contracts and Contracts Permitted Subject to Specified Exceptions or Limitations. It is the policy of the Corporation that certain Contracts be prohibited or permitted only subject to certain exceptions or limitations as follows:

i. Special Criteria Rule for Evaluation of Architects, Engineers and Surveyors. For purposes of this subparagraph, the term "Professional Firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering, or surveying. The Corporation shall not refuse to negotiate with a Professional Firm solely because the ratio of the "allowable indirect costs" to direct labor costs or the hourly rate in any labor category of the Professional Firm exceeds a limitation generally set by the Corporation in the determination of the reasonableness of the estimated cost of services to be rendered by the Professional Firm, but rather the Corporation should also consider the reasonableness of cost based on the total estimated cost of the service of the Professional Firm which should include, among other things, all the direct labor costs of the Professional Firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the Professional Firm. For purposes of this subparagraph, "allowable indirect costs" of a Professional Firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or Contract and are considered reasonable and allowable under specific Contract or allowability limits.

ii. Contracts with Businesses with Operations in Northern Ireland. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Corporation shall not enter into Procurement Contracts with Vendors who have operations in Northern Ireland unless the Corporation receives contractual assurance that the Contractor shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in §165 of the New York State Finance Law), and agrees to permit independent monitoring of its compliance with such principles.

iii. Contracts with Foreign Business Enterprise. The Corporation shall notify the New York State Commissioner of Economic Development ("Commissioner") of the award of a Procurement Contract for the purchase of goods from a Foreign Business Enterprise in an amount equal to or greater than $1,000,000, simultaneously with notifying the successful bidder therefor. The Corporation shall not thereafter enter into a Procurement Contract for said goods until at least fifteen (15) days have elapsed, except for Procurement Contracts awarded as Emergency Selection Contracts or where the Commissioner waives the provisions of this section. The notification to the Commissioner shall include the name, address and telephone and facsimile numbers of the Foreign Business Enterprise, a brief description of the goods or services to be obtained pursuant to the proposed Procurement Contract, the amount of the proposed Procurement Contract, the term of the proposed Procurement Contract, and the name of the individual at the Foreign Business Enterprise or acting on behalf of the same who is principally responsible for the proposed Procurement Contract. *(The purpose of such notification is solely (i) to allow the Commissioner to use the information to provide notification to NYSBEs of opportunities to participate as subcontractors and suppliers on such Procurement Contracts (ii) to promote and encourage the location and development of new business in the State, (iii) to assist NYSBEs in obtaining offset credits from foreign countries; and (iv) to otherwise investigate, study and undertake means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of NYSBEs, industry and commerce.)*

iv. Contracts with Discriminatory Jurisdiction Business Enterprises. The Corporation shall not, except as hereinafter provided, solicit bids from, or enter into a Procurement Contract with, a Foreign Business Enterprise which has its principal place of business in a jurisdiction that discriminates against New York businesses, as contained on the list prepared by the Commissioner pursuant to §165(6)(b) of the State Finance Law. The Corporation may waive this section only when the CEO or the President of the Office responsible for the Procurement determines in writing that it is in the best interest of the State to do so.

v. Vendors Failing to Comply with Lobbying Law Directives. The Corporation shall not enter into Contracts with Contractors or Vendors when:

(1) proposed Vendor or Contractor has failed to timely disclose accurate and complete information or otherwise cooperate with the

Corporation in administering the Lobbying Law Directives; or

(2) there has been a finding that an Offerer has knowingly and willfully violated the provisions set forth in Article VII. of these Guidelines and the Corporation's Lobbying Policy. This finding shall also result in a determination of non-responsibility against the Offerer. *(Violations of the Lobbying Law are expected to typically involve Contacts made to persons at the Corporation other than the Designated Contact Officer(s)).*

The Corporation shall not enter into Contracts in the case of either (1) or (2) of this subparagraph (v), section (b) of this Article, unless the Corporation determines that the award of the Procurement Contract:

(a) is necessary to protect public property or public health or safety, and

(b) that the Contractor or Vendor is the only source capable of supplying the required goods or services within the necessary time frame.

In order for the Corporation determinations in (1) and (2) (a) and (b) above to be effective as exceptions, the above required findings, including a statement describing the basis of such determination by the Corporation, must be made a part of the Procurement Record.

Any subsequent determination of non-responsibility due to violations of the requirements of the Lobbying Law, if such determination is separated by less than four years, shall result in the proposed Vendor or Contractor being rendered ineligible to submit a proposal on or be awarded any Procurement Contract for a period of four years from the date of the second final determination of non-responsibility.

vi. Contracts with Former Corporation Officers and Employees. The Corporation shall not enter into Contracts which contemplate, violate or affirmatively, by their terms, allow former Officers (the term "Officer" as used in this subsection b.vi. of Article XIII of these Guidelines, shall refer to "Officer" as defined in the Corporation's By-Laws) and Employees of the Corporation to violate §73 (8) (a) of the State Ethics Law. Specifically, and not by way of limitation, (except for employment contracts pursuant to which former Employees resume employee status to again work directly for the Corporation), the Corporation shall not enter into Contracts which provide for or permit a former Officer or Employee of the Corporation, either as an individual contracting directly with the

Corporation or as an officer or employee of a private business entity, to appear, practice, communicate or otherwise render services before the Corporation or receive compensation for any such services rendered by such former Officer or Employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction:

(1) with respect to which such Officer or Employee was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration or over which that Employee or Officer exercised decision-making power during the performance of his or her official duties at the Corporation, or

(2) in connection with any matter before the Corporation or its business for a period of two years after termination of such service or employment.

If the CEO or the President of the Office responsible for the Procurement deems it appropriate, the preceding prohibitions may be temporarily waived provided that, prior thereto, the State Ethics Commission grants an exception in accordance with the requirements of New York Public Officers Law Section 73[8][b]. Notwithstanding the foregoing, the preceding prohibitions shall not apply when a former Officer or Employee carries out official duties as an elected official or employee of a federal, state or local government, or any agency of such government. Thus, a former Employee may appear, practice, communicate or render compensated services before the Corporation if he or she is acting as an elected official or employee of a federal, state or local government or one of its agencies. This exception applies only to government officials and employees; it does not apply to paid consultants of government entities.

In addition, in determining whether or not to enter into Contracts with respect to which any former Officer or Employee of the Corporation plays a role, and with respect to the ethical administration thereof, the Corporation shall give due consideration to whether the execution or administration of the Contract raises an appearance of impropriety.

The Corporation shall, as it deems appropriate, include provisions in its Contracts to effect the purposes of this section.

ARTICLE IX

9. GENERAL CONTRACT PROVISIONS AND CONTINUING EVALUATION OF PROCUREMENT CONTRACTS IN EFFECT FOR LIMITED TERMS.

a. General Contract Provisions. The Corporation shall include general Contract provisions in its Procurement Contracts, as follows:

i. In Writing and Duly Executed. All Procurement Contracts shall be in writing and shall, at a minimum, be duly executed by an individual empowered to do so in accordance with the Corporation's By-Laws and, as the case may be, the provision for delegation of signing authority thereunder.

ii. Scope and Description. Procurement Contracts shall specifically provide for a scope of services indicating the nature of the work to be performed or goods to be provided, and for the time for performance, if time is a factor, the monitoring or reviewing of that performance by personnel of the Corporation, any conditions generally applicable to Contracts with the Corporation, any applicable provisions for insurance, and, where appropriate, any permitted use of supplies, facilities or personnel of the Corporation.

iii. Compensation and Payment Terms. Such Procurement Contracts shall also state the compensation for the goods or services, and the terms of payment including the conditions for receiving payment from the Corporation.

iv. Non-collusion. Formal Contracts shall, whenever appropriate, include Contractor Certifications that:

(1) The prices in the bid(s) or proposal(s) were arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in the bid(s) or proposal(s) were not knowingly disclosed by a Contractor prior to the opening of bid submissions, directly or indirectly, to any other Contractor or to any competitor; and

(3) No attempt was made or will be made by the Contractor to induce

any other person, partnership or corporation to submit or not submit bid(s) or proposal(s) for the purpose of restricting competition.

v. False or Inaccurate Lobbying Law Directives Certifications. Every Governmental Procurement with an estimated annual expenditure over $15,000 shall contain:

(1) certifications that the representations required by the Lobbying Law Directives, if applicable, are complete, true and accurate; and
(2) a provision authorizing the Corporation to immediately terminate such Contract in the event that any certification in accordance with the provisions of the Lobbying Law Directives is found to be intentionally false or intentionally inaccurate.

vi. Prohibitions and violations in Contracts. In accordance with § 316-a of Article 15-A, Contracts shall include a provision expressly providing that any Contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements, as set forth in such Contract shall be liable to the Corporation for liquidated or other appropriate damages and shall provide for the appropriate remedies on account of such breach. If the Corporation elects to proceed against a Contractor for breach of Contract, the Corporation shall be precluded from seeking enforcement pursuant to §316 of Article 15-A, provided however, that the Corporation shall include a summary of all enforcement actions undertaken in its Annual MWBE Goal Plan, in accordance with subdivision three of §315 of Article 15-A and Article XII of these Guidelines.

vii. Required language in contracts supported by federal funds. In all contracts supported by, or paid with, federal funds, all terms required by any applicable federal statute, regulation, federal register notice, or policy shall be specifically set forth or incorporated by reference to such statute, regulation, federal register notice or policy.

b. Continuing Evaluation of Procurement Contracts in Effect for Limited Terms.

i. Limitation of Contract Terms. In order that the Corporation may enter into new Procurement Contracts for the Procurement covered as soon as might be desirable, Procurement Contracts should not commit the Corporation to continue to use Contractors for longer than is desirable to achieve the Contract objectives, such as obtaining the Contractor's commitment to perform services at a reasonable price. Unless specifically

permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation, at its option, without cause, within a period that is less than a year into the future.

ii. Continuing Evaluation of Procurement Contracts and Panels. Every Procurement Contract under which services are currently being performed, or goods or materials provided, shall be continually evaluated by a designated Officer, Employee or Staff. Such Officer, Employee or Staff shall review and approve all bills to be paid and continually evaluate the Contractor's performance. Such Officer, Employee or Staff shall continually give consideration to whether the further use of the Contractor's services and continuation of the Procurement Contract is desirable. Such consideration shall extend to making a determination, at least annually, of when it would be most appropriate and effective to award the Procurement Contract again through a new competitive selection process such as a new Request for Proposals. A determination not to enter into a new competitive award process immediately can be supported, in part, by verification that services are still being provided at competitive rates, but such verification shall not be determinative of whether a new competitive process should commence. Part of the required annual review and recertification to the Corporation's Procurement Contract Officer of Corporation panels shall be a consideration of whether it would be appropriate and effective to renew the competitive selection process for Procurement Contracts with firms on the panels, including, but not limited to, doing so through the issuance of a new Request for Qualifications to reestablish the panel. Any determination not to enter into a new competitive award process, as a result of which a Contract would exceed a projected five years without a new competitive award process being conducted, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members, as required by Article X of these Guidelines. Such affirmative concurrence shall not be required in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts or existing GSA Contracts.

ARTICLE X

10. REQUIRED CORPORATION APPROVALS

a. Members' Approval. All Contracts where compensation is expected to be in an amount of $100,000 or more, as well as any Contracts involving services to be

provided in excess of one year, shall require initial approval of the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation, at its option, without cause, within a period that is less than a year into the future. An Officer may submit other Contracts as he or she deems appropriate to the Corporation's Members for their consideration and approval.

b. Members' Annual Review. The Corporation's Members shall, at least annually, review any Contract lasting more than a year, each June, as part of the approval of the Annual Report on Procurement Contracts. Contracts considered as lasting for more than a year for this purpose shall include Contracts where the Contract itself, by virtue of its stated terms, has a period of longer than a year, and in addition, shall include Contracts where, by virtue of renewal or execution of new or subsequent Contracts without an intervening Contractor or Vendor Selection Process, the Corporation's contractual relationship with the Vendor or Contractor continues for more than a year. Annual approval or review by the Corporation's Members shall be as follows:

i. Provided that timely annual review for each Contract is effected, firms on Corporation panels can be brought for annual review:

(1) collectively, or in such combinations as are deemed appropriate, on a single annual review anniversary, or

(2) individually, based on the dates that Procurement Contracts first required the Corporation's Members' approval.

ii. Any determination not to enter into a new competitive award process, pursuant to which a Contract would exceed a projected five years without a new competitive award process, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members. Such affirmative concurrence shall not be required in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts, or existing GSA Contracts. In any case, any Contract in excess of a $100,000 in amount or more than one year in duration must be initially approved by the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation, and annually reviewed by the Corporation's Members.

c. Execution of Procurement Contracts. All Procurement Contracts shall be executed

by an Officer, or as provided in the Corporation's By-Laws or an applicable resolution.

d. Approval of Procurement Contracts by Counsel. Prior to the execution of any Contract, Counsel shall approve, as to legal compliance, all Procurement Contracts. The consideration shall include the legal form and efficacy of the Procurement Contract. The Corporation's legal department may evidence such approval by Counsel by making such arrangements as are acceptable to the Counsel to assure that the form of Contract is legally acceptable and approved by the Corporation's Counsel.

f. Approval of Procurement Contracts for Fiscal Sufficiency. All Procurement Contracts shall be reviewed by the Treasurer or Assistant Treasurer of the Corporation for fiscal sufficiency prior to execution.

ARTICLE XI

11. ADMINISTRATION OF PROCUREMENT, RECORDS AND RESPONSIBILITIES OF CORPORATION OFFICERS AND EMPLOYEES

a. Procurement Record. A Procurement Record shall be maintained for each Procurement Contract and such other Procurement as the Procurement Contract Officer deems appropriate, or as State law requires, identifying, with supporting documentation, decisions made by the Corporation during the Procurement process. The Procurement Record shall include, but not be limited to, documentation of: (1) the determination of the method of Procurement from among the available methods permissible under these Guidelines; (2) the process to be used to determine best value, the manner in which the selection of evaluation criteria and the evaluation process shall be conducted, and the evaluation criteria, which, whenever possible, shall be quantifiable; and (3) the basis of award and circumstances leading to the selection of the Vendor, including the alternatives considered, the rationale for selecting the specific Vendor and the basis upon which cost was determined reasonable. To the extent practicable, the Corporation shall document all aspects of the solicitation process in advance of the initial receipt of offers. Each amendment to an existing Contract, and the justification for each, shall also be included in the Procurement Record. Determinations of emergency with respect to Emergency Selection Contracts and Emergency Foreign Business Enterprise Contracts shall be included in the Procurement Record, as well as the determination to enter into a Sole Source or Single Source Contract.

Annual certifications of panels should be made a part of the Procurement Record.

With respect to the Lobbying Law Directives, the Procurement Record shall include complete information related to: (i) written certifications by the Contractors or Vendors with respect to affirmations that the Contractor or Vendor understands the Lobbying Law Directives and that the Corporation has been informed in writing of the Vendor's prior determinations of non-responsibility over the previous four years, and that this information is complete, true and accurate; (ii) Determinations of Responsibility by the Corporation; (iii) findings of non-responsibility, whether by the Corporation or by other governmental entities; (iv) a record of all Contacts during the Restricted Period, including the

name of the person making the Contact, as well as that person's organization, address, telephone number, place of principal employment, occupation, and whether the person/organization making the Contact was the Offerer or was retained, employed or designated by or on behalf of the Offerer to appear before or communicate with the Corporation; (v) if applicable, a statement regarding the basis for any required finding that the Corporation may enter into a Contract with a Contractor or Vendor who has previously been the subject of any determinations of non-responsibility; and (vi) any determination to terminate a Contract pursuant to the Lobbying Law Directives .

The Procurement Record is a place where the Corporation can clearly document, as considered appropriate, the need for the Contract; required specifications; and the ways in which a competitive field, fair and equal opportunity for Vendors, which shall include, but not be limited to, certified MWBEs, and a fair and balanced method of selection have been ensured.

The Procurement Record shall be maintained at least throughout the period the Contract and any extensions thereof are in effect and for a reasonable period of time thereafter pursuant to the Corporation's records retention policies.

b. Procurement Contract Officer. The Corporation hereby designates the Procurement Officer for New York State Homes and Community Renewal, or in the event this position is vacant, any officer, employee, staff or agent of the Corporation as designated by the President of the Office of Professional Services, as its Procurement Contract Officer.

The Procurement Contract Officer's responsibilities shall include keeping such portions of the Procurement Record as the Procurement Contract Officer deems appropriate, monitoring compliance with proper contracting procedures and adherence to these Guidelines.

Among the Procurement Contract Officer's responsibilities shall be the determination of when certain portions of these Guidelines shall apply to a Contract by virtue of Contract expenditures, in the aggregate, or sequential periods of time, reaching applicable thresholds stated herein. In addition, for Contracts of less than $500 per year, which are terminable at any time by the Corporation with less than ninety (90) days notice, the Procurement Contract Officer may determine that such Contracts shall be considered Contracts not exceeding one year for purposes of these Guidelines.

The Procurement Contract Officer may provide guidance and counsel about proper administration of the Procurement process and Contracts but shall not be a principal directly responsible for administering any Corporation Contract. The

Procurement Contract Officer should be available for counsel and guidance respecting the Procurement selection process but should not be directly involved as an actual selector of Vendors.

The Procurement Contract Officer shall encourage and promote good Procurement practices, including but not limited to, proper and coordinated management of Contracts, desirable Vendor selection practices, and informed and careful bill approval procedures. Among other things, it is generally desirable that there be a single individual designated to manage each Procurement Contract, including renewals and amendments thereto, reporting thereon, and bill approvals, *(and excluding receipt of Designated Contacts)*, and that individuals managing different Contracts in the same area or from the same Vendors coordinate their work.

The Procurement Contract Officer shall, from time to time, issue such reports on Procurement as shall be appropriate or required including the Annual Procurement Report required under these Guidelines.

The Procurement Contract Officer shall notify the Office of General Services of all Contractors who, with respect to the Lobbying Law, have been the subject of determinations of non-responsibility by the Corporation or who have been debarred.

The Procurement Contract Officer should periodically review and assess the adequacy of these Guidelines and, as appropriate, recommend changes for approval.

The Procurement Contract Officer may grant temporary technical exceptions to these Guidelines for Contracts, other than Formal Contracts, provided that such exceptions appear in the Procurement Contract Record, and that attorneys under the supervision of an Officer and the Counsel determine the exceptions legally appropriate.

c. Designated Contact Officer(s). The Corporation hereby designates the Treasurer, or in the event the position of Treasurer is vacant, the Assistant Treasurer of the Corporation, as the Designated Contact Officer for all Governmental Procurement for which such appointment is required. When necessary and appropriate, the Designated Contract Officer may designate one or more Officers, Employees, Staff or Agents of the Corporation to be an additional Designated Contact Officer. In accordance with the provisions of the Lobbying Law Directives, the Designated Contact Officer, for any given Governmental Procurement or Procurement Contract, is intended to be, by virtue of his or her designation as such, the recipient of any Designated Contacts with respect to the Governmental

Procurement for which he or she has been designated. The Designated Contact Officer shall have ready access to, and shall refer to, as appropriate, the Contractors' and Vendors' written affirmations of their understanding of the Corporation's Governmental Procurement lobbying procedures along with all disclosures Contractors or Vendors have provided of any findings of any determinations of non-responsibility against them under the Lobbying Law. Prior to the awarding of a Procurement Contract by the Corporation to which these provisions apply, it shall be the Designated Contact Officer's responsibility to consult with the Ethics Officer and to likewise consult at any appropriate time thereafter.

d. Designated MWBE Officer(s). The Corporation shall appoint a Designated MWBE Officer(s) to oversee the Corporation's MWBE Program established to promote and assist: (i) participation by certified MWBEs in Corporation Procurement opportunities and facilitation of the award of Procurement Contracts to such enterprises; (ii) the utilization of certified MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Corporation; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having Procurement Contracts with the Corporation. The Designated MWBE Officer(s) shall be familiar with the Procurement of the types of construction, financial, legal or professional services utilized by the Corporation, report directly to the President of the Office of Professional Services, either directly or through the designee(s) of such President, and participate in the Procurement process. The Procurement Contract Officer and the Designated Contact Officer shall consult with the Designated MBWE Officer on each Procurement subject to the Corporation's MWBE Program. The Designated MWBE Officer shall consult, as necessary, with the Corporation's Counsel or Deputy Counsel on each Procurement subject to the Corporation's MWBE Program.

e. Ethical Administration of Contracts, Compliance with the Lobbying Law Directives: Responsibility of Officers and Employees. It shall be the responsibility of the Procurement Contract Officer, the Ethics Officer, the Designated Contact Officer(s), the MWBE Officer(s), and all Officers, Employees and Staff to ensure that Contracts of the Corporation are administered ethically with due regard for all State ethics laws and Lobbying Law Directives. Determinations respecting ethical contract administration shall be made by the Ethics Officer, to whom any allegations of impropriety or unethical administration may be reported. The Ethics Officer shall also be responsible for reviewing, investigating, monitoring and imposing sanctions relating to any noncompliance with Lobbying Law Directives. The Procurement Contract Officer shall report to the Ethics Officer such allegations of impropriety or unethical administration of Procurement, or violations of the Lobbying Law

Directives, as may come to the Procurement Contract Officer's attention. Corporation Officers, Employees and Staff including, but not limited to, the Designated Contact Officer(s), shall report to the Ethics Officer any allegations of impropriety or unethical administration of Procurement or violations of the Lobbying Law Directives that come to their attention. If the Ethics Officer determines that sufficient cause exists to believe that an allegation concerning a violation of the Lobbying Law Directives is true, the Ethics Officer shall give the respective Contractor or Vendor reasonable notice (i) that an investigation is ongoing and (ii) an opportunity to be heard in response to the allegation.

Prior to the awarding of a Procurement Contract by the Corporation to which the provisions of the Lobbying Law Directives apply, and any time thereafter, it shall be the Ethics Officer's responsibility to consult with the Designated Contact Officer(s) and make other appropriate inquiries so as to make the findings as to whether there were any certifications in relation to the provisions of the Lobbying Law Directives that were intentionally false or intentionally inaccurate so that the Corporation would have the right to terminate such Contract. If the Corporation terminates a Procurement Contract under these termination provisions, it shall be the Designated Contact Officer's responsibility to provide the statement describing the basis for such action for inclusion in the Procurement Record.

In order to comply with the Lobbying Law Directives, all Staff must cooperate and participate in the recording of Contacts with respect to which the Lobbying Law Directives apply. The record of a Contact shall include the name, address, telephone number, place of principal employment, and occupation of the person or organization. Staff must also inquire about, and record, whether the person or organization making the Contact was the Offerer, or was retained by the Offerer to contact the Corporation about the Procurement. Staff must report all recorded Contacts to the Procurement Contract Officer for inclusion in the Procurement Record of the Procurement Contract.

If the Ethics Officer finds a knowing and willful violation of the Lobbying Law Directives by any Staff, the Ethics Officer shall report the violation to the President of the Office of Professional Services.

It is expected that the Ethics Officer will confer, as appropriate, with the Corporation’s Counsel with respect to allegations of unethical conduct or violations of the Lobbying Law Directives or other violations of law and nothing in any of the forgoing is to be taken to preclude individuals from also contacting the Corporation’s Counsel directly with respect to any such allegations.

ARTICLE XII

12. REPORTS ON PROCUREMENT

a. Annual Procurement Report ("Annual Report"). Within 90 days after the conclusion of the Corporation's fiscal year, the Members of the Corporation shall approve an Annual Report summarizing Procurement activity for the period of the Annual Report. Such Annual Report will include these Guidelines, an explanation of these Guidelines and any amendments thereto since the last Annual Report. The Annual Report describing Procurement activity shall include: (a) a listing of all Procurement Contracts entered into; (b) all Contracts entered into with NYSBEs and the subject matter and value thereof; (c) all Procurement Contracts entered into with certified MWBEs and the subject matter and value thereof, all referrals made and all penalties imposed, pursuant to §316 of Article 15-A; (c) all Contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; (d) the selection process used to select such Contractors; (e) all Procurement Contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, the basis for any such exemption; and (f) the status of existing Procurement Contracts.

Such Annual Report shall list for each Contract the following information:

i. a description of the duties performed by the Contractor;

ii. the date of the Contract and its duration;

iii. the total value of the Contract;

iv. the full name and address of the Contractor;

v. the status of the Contract, including the amount spent or other considerations given pursuant to the Contract during the reporting period and for the life of the Contract to date;

vi. whether the Contractor is a certified Minority or Women-Owned Business Enterprise; and

vii. the total number of bids or proposals received prior to the award of the Contract.

The Annual Procurement Report, after being approved by the Corporation's Members, shall be filed to the Division of the Budget and the Department of

Audit and Control using the Public Authorities Reporting Information System ("PARIS") on-line Reporting System, with copies of this report to the Department of Economic Development, the Senate Finance Committee and the Assembly Ways and Means Committee.

Copies of the Annual Procurement Report shall also be available to the public upon reasonable request at the Corporation's main office, and be available on the Corporation's website.

b. Annual MWBE Goal Plan ("MWBE Goal Plan"). The Corporation shall report, annually, to the Governor, Legislature and the MWBE Director, on various issues pertaining to Procurements relating to MWBE, in accordance with Article VI of these Guidelines and Article 15-A, including but not limited to:

i. the annual goals, identified in the Corporation's Annual MWBE Goal Plan, for Contracts with MWBEs;

ii. providing adequate documentation of a good faith effort to meet the Corporation goals described in the Corporation's Annual MWBE Goal Plan, in the event that the Corporation projected goals cannot be achieved;

iii. the number of actual Contracts issued to MWBEs;

iv. the activities undertaken to promote and encourage Procurement opportunities of Minority Group Members and women and promote and increase participation by certified businesses with respect to Corporation Contracts and subcontracts;

v. Corporation Contracts for leases of real property by the Corporation to a Lessee where (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee, and (ii) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon exceeds the sum of $100,000;

vi. a summary of all enforcement actions undertaken by the Corporation against a Contractor for breach of Contract pursuant to §316-a of Article 15-A and Article IX. of these Guidelines; and

vii. a summary of all waivers, defined in Article VI of these Guidelines, permitted by the Corporation during the period covered by the MWBE Report, including:

(1) a description of the basis of the waiver request; and

(2) the rationale for granting any such waiver.

ARTICLE XIII

13. MISCELLANEOUS PROVISIONS

a. Powers of Amendment. Any modification or amendment of these Guidelines may be made by a Supplemental Resolution adopted at any duly constituted Members' meeting; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Corporation Contracts, the terms of which were established pursuant to these Guidelines; and further provided that the Procurement Contract Officer, or his or her designee, may make non-material changes in these Guidelines. Any such changes shall be reported at the next regularly scheduled meeting of the Members of the Corporation.

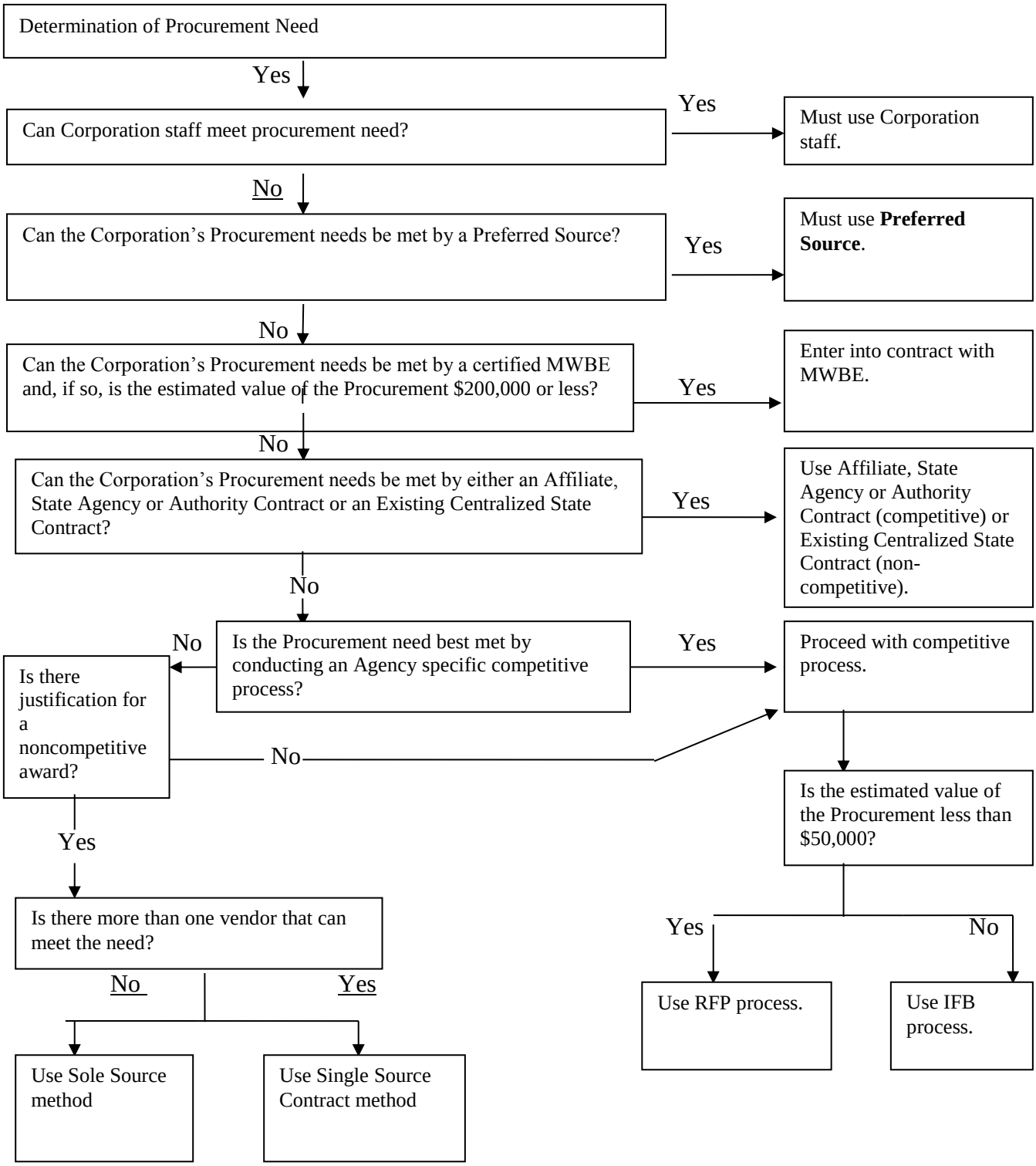
b. Supplementation with Procedural Handbooks, Practice Manuals and Other Directives. These Guidelines are only intended to provide the general framework for Corporation Procurement practices. These Guidelines are not intended to preclude supplementation of the Guidelines through the promulgation of more specific procedural handbooks, practice manuals, or other directives and guidance as may be issued from time to time, including as example, and not by way of limitation, more specific procedures for conduct of Requests For Proposals and Requests For Qualifications. It is also not intended that the existence of these Guidelines should prevent or supplant the issuance of additional Corporation guidelines or regulations to deal specifically with Lobbying Law Directives and/or MWBE Directives, if appropriate.

c. No Recourse under these Guidelines. No provision of these Guidelines shall be the basis for any claim based upon these Guidelines against any Member, Officer, Employee or Staff of the Corporation, or any agent of the Corporation when acting pursuant to these Guidelines or pursuant to an authorization to execute Contracts on behalf of the Corporation, or the Corporation itself.

d. Effect upon Existing Contracts of the Corporation. These Guidelines shall not abrogate the rights and duties of Corporation Contracts with third parties executed prior to the effective date of these Guidelines.

e. Provisions Required by Law. These Guidelines are hereby deemed to include any provision required by law to be included herein.

SELECTING A PROCUREMENT PROCESS.



Revised July 9, 2014

TAB 4

Explanation of the HTFC's Procurement and Contract Guidelines

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

TAB 4

Explanation of the Procurement and Contract Guidelines of the Housing Trust Fund Corporation, as revised and in effect, December 12, 2013 and amended as of June 26, 2014 and July 9, 2014, respectively.

The Procurement and Contract Guidelines (the "Guidelines") were revised on December 12, 2013 and subsequently amended on June 26, 2014 and July 9, 2014, respectively, pursuant to the provision of the Act of Housing Trust Fund Corporation ("Corporation"), and Section 2879 of the Public Authorities Law.

The Guidelines were revised on December 12, 2013 to mirror the consolidated Procurement and Contract Guidelines of the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (collectively, "Affiliated Agencies"), Affiliated Agencies of the Corporation. The Guidelines were subsequently amended on: (a) June 26, 2014 to designate HCR's Procurement Contract Officer as the Procurement Contract Officer of the Corporation; and (b) July 9, 2014 to exclude those contracts funded by the U.S. Department of Housing and Urban Development's Community Development Block Grant Disaster Recovery Program.

EXPLANATION OF CONSOLIDATED
PROCUREMENT AND CONTRACT GUIDELINES
OF THE AGENCIES
(as revised and in effect, December 12, 2013)

The Procurement and Contract Guidelines ("Guidelines"), pursuant to the provisions of the Act of the Housing Trust Fund Corporation ("Corporation") and Section 2879 of the Public Authorities Law, apply to the Corporation's procurement of goods and services. As defined in the Guidelines, "Procurement" means the acquisition of goods, materials and services including, but not limited to, personal services, by the Corporation. "Procurement Contract" is defined, (a) following the definition in Section 2879 of the Public Authorities Law, as any written agreement for Procurement in the actual or estimated amount of $5,000 or more, and (b) following the definition in the Lobbying Law in relation to any Corporation Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000 in amount, as any Contract, including an amendment, extension, renewal, or change order to an existing Contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the Contract as it was finally awarded), for a Governmental Procurement. (Unless otherwise defined herein, capitalized terms adhere to their respective definitions in the Guidelines.)

A. Selection of Procurement Contractors and/or Vendors (Article IV of the Guidelines)

In selecting Procurement Contractors and/or Vendors, it is the preference of the Corporation that Contractors and Vendors be selected from as broad a spectrum of providers as is practicable, and that any Contract (defined as a written agreement whereby the Corporation undertakes Procurement, including accepted Purchase Orders and Procurement Contracts) be awarded and purchases be made consistent with the quality of services or goods and materials required, at fair and reasonable prices. In addition, it is the preference of the Corporation to encourage the participation and utilization of minority owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs") (and collectively, "MWBEs") in accordance with the MWBE Directives in the Guidelines and to encourage the participation of New York State Business Enterprises ("NYSBEs").

B. Competitive Processes (Article IV of the Guidelines)

The following are the main competitive processes provided for in Article IV of the Guidelines: (i) a competitive lowest price bid for goods and materials; (ii) an invitation for bids process for Contracts not expected to exceed $50,000 in amount; (iii) a request for proposal ("RFP") without negotiation; (iv) an RFP with competitive negotiations; (v) use of a pre-qualified panel; (vi) use of a State Contract; (vi) U.S. General Services Administration Contracts ("GSA Contracts") and (vii) use of an Affiliated Agency Contract, and Affiliated Agency Contract shall include the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (and collectively, the "Agencies"), entered into as a result of a competitive process, or the use of an Affiliated Agency competitive selection process as the basis for entering into a Contract and such Affiliated Agency competitive process shall include processes conducting by the Agencies.

C. Selection of Contractors and Vendors through a Competitive Selection Process (Article IV of the Guidelines)

In selecting Contractors and Vendors through a competitive selection process, certain standards and practices are required to be considered, including: (i) advertisement requirements including outreach efforts to MWBEs and providing information with respect thereto via the Corporation's website; and (ii) criteria for selection, including but not limited to, terms, costs, goods or services offered, reputation and experience. For procurements not expected to exceed $50,000 in amount, the Corporation shall solicit prices, statements of qualifications and proposals from at least three prospective Vendors, including at least one MWBE, if feasible.

D. Selection of Contractors and Vendors on a Non-Competitive Basis (Article IV of the Guidelines)

In the selection or use of Contractors or Vendors, the following Contracts may be awarded without engaging in any one of the competitive processes set forth above: Preferred Source providers; existing centralized State Contracts; existing GSA Contracts; Emergency Selection Contracts where the selection of a Contractor or Vendor cannot be delayed; Sole Source Contracts;

Single Source Contracts; instances where practice in an industry does not normally involve competitive selection processes and a Corporation determination that entering into a Contract is deemed cost-effective for the Corporation; and the purchase of goods and services from Small Businesses and certified MWBEs, or goods or technology that are recycled or remanufactured, in amounts of $200,000 or less. Determinations to enter into Emergency Selection Contracts, Sole Source Contracts and Single Source Contracts must be made by the President of the Office responsible for the Procurement.

E. Requirements for Agency Bid Documents (Article V of the Guidelines)

For Procurements in the actual or estimated amount of $50,000 or more, the Corporation shall advertise all such opportunities in the "New York State Contract Reporter." The Corporation shall include in all bid documents to potential bidders a statement that information concerning the availability of subcontractors and suppliers is available from the State Department of Economic Development, which shall include the directory of certified MWBEs, and an affirmative statement that it is the policy of the Corporation to encourage the use of State subcontractors and suppliers, and to promote the participation of NYSBEs and MWBEs, where possible, in the Procurement of goods and services.

The Corporation also requires that solicitation documents set forth the expected degree of MWBE participation based, in part, on (i) the potential subcontract opportunities available in the prime Procurement Contract, and (ii) the availability of MWBEs to respond competitively to the potential subcontract opportunities. In addition, the Corporation shall:

1. provide notice of Governmental Procurements, along with any other notice required by law, to professional and other organizations serving MWBEs that provide the types of services procured by the Corporation. For the purposes of these Procurement efforts, and for other Corporation Procurement efforts, the Corporation shall maintain lists of qualified MWBEs and will provide such list(s) to Contractors in the Procurement process, requiring that potential Contractors consult and contact appropriate MWBEs to solicit their bids, in accordance with Article VI of the Guidelines;

2. incorporate a summary of the Agencies' policies and prohibitions regarding Contacts under the Lobbying Law, in accordance to the Lobbying Law Directives as described in Article VII of the Guidelines; and

3. follow the directives for the participation of promoted Contracts, as more fully described in Article VIII of the Guidelines;

F. MWBE Program (Article VI of the Guidelines)

The Corporation shall implement procedures for MWBE participation and utilization in Corporation Procurements, including:

(i) appointing a Designated MWBE Officer to oversee the Corporation's MWBE Program;

(ii) establishing appropriate numerical MWBE participation target goals (to be updated annually) for each new Procurement Contract awarded by the Corporation and for the utilization of MWBEs as subcontractors and suppliers by Contractors having Procurement Contracts with the Corporation. In addition, the MBE portion or the WBE portion of joint ventures shall count toward meeting the Corporation's MWBE participation goals. In the event that the projected goals cannot be achieved, the Corporation will provide adequate documentation of a good faith effort to meet these goals in their submission of their Annual MWBE Officer Report.

(iii) establishing procedures for maintaining lists of qualified and certified MWBEs, that have expressed an interest in doing business with the Corporation, and ensuring that such lists are updated at least annually;

(iv) establishing measures and procedures to ensure that certified MWBEs will be given the opportunity for maximum feasible participation in the performance of Corporation Contracts and to assist in the Corporation's identification of those Corporation Contracts for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of Corporation Contracts so as to facilitate the Corporation's achievement of the maximum feasible portion of the goals for Corporation Contracts to such businesses;

(v) designating the Division of Minority and Women-Owned Business Development to certify and decertify MWBEs for the Corporation;

(vi) requiring that each Contract solicitation set forth the expected degree of MWBE participation, as set forth in the Corporation's Annual MWBE Goal Plan;

(vi) submitting a waiver by the Corporation of obligations of Contractor relating to MWBE participation after a showing of good faith effort to comply with the MWBE participation requirements; and

(vii) verifying that MWBEs listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted.

In implementing the MWBE Directives, the Corporation shall:

(1) consider, where practicable, severability of construction projects and other bundled Contracts; however, unbundling must be conducted within the constraints of the Corporation's need to ensure efficiency and limit costs;

(2) implement its MWBE Program to enable the Corporation to evaluate each Contract to determine the appropriateness of the goal, as set forth in the Corporation's Annual MWBE Goal Plan;

(3) consider compliance with the requirements of any federal law concerning opportunities for MWBEs that effectuates the purpose of Article VI of the Guidelines; and

(4) consult the most recent disparity study, pursuant to Article 15-A of the Executive Law ("Article 15-A").

G. Lobbying Law Directives (Article VII of the Guidelines)

For any Contract made subject to the "Lobbying Reform Law," the Corporation is required to notify every potential Contractor or Vendor that the Corporation has a "Designated Contact Officer," who is "knowledgeable of the procurement" and is the only Corporation representative permitted to receive Contacts from Contractors or Vendors, or their representatives, during the "Restricted Period" with respect to such Governmental Procurement. In addition to observing the Lobbying Reform Law's proscriptions on Contacts, all potential Contractors or Vendors must complete and return to the Corporation with their proposal or bid response to a Corporation solicitation, a written affirmation of a Contractor's or Vendor's understanding of the Governmental Procurement lobbying procedures of the Corporation, as well as disclose prior determinations of non-responsibility as a result of Lobbying Law violations over the preceding four years. Any violation of the Lobbying Reform Law over the preceding four years is considered an adverse factor in the Contractor or Vendor selection process.

H. Promoted and Prohibited Contracts & Contracts Subject to Other Limitations (Article VIII of the Guidelines)

Notwithstanding the general practices of the Corporation with respect to selection of Contractors and Vendors and adherence to competitive practices, as set forth in the Guidelines, Article VIII of the Guidelines require that certain Contracts may be "promoted," "prohibited" or "subjected to certain limitations."

It is the goal of the Corporation to both promote and assist participation by MWBEs in competition for Procurement Contracts, and award a fair share of Procurement Contracts to MWBEs. The Corporation also seeks to promote the participation of New York State Business Enterprises.

In addition, as it is the goal of the Corporation to award Contracts to those Contractors or Vendors who have evidenced compliance with the laws of the State prohibiting discrimination in employment, the Corporation will seek to achieve this goal by awarding Procurement Contracts to those firms who have demonstrated that they do not discriminate with respect to employment. The Corporation has also promulgated procedures for ensuring Contractor or Vendor compliance with the Equal Opportunity Act of 1972.

Under the Guidelines, certain Contracts will be prohibited or permitted only subject to certain exceptions or limitations as follows: (i) with respect to evaluation of Architects, Engineers and Surveyors, the Corporation shall consider special criteria including the reasonableness of cost based on the total estimated cost of any legal entity permitted by law to practice such professions; (ii) in accordance with the MacBride Fair Employment Principles, the Corporation shall not enter into Procurement Contracts with Contractors or Vendors who have operations in Northern Ireland unless assurance is made that lawful steps in good faith have been made to comply with the MacBride Principles; (iii) with respect to Contracts with a Foreign Business Enterprise, the Corporation shall notify the State Commissioner of Economic Development of the award of a Procurement Contract for the purchase of goods from said Foreign Business Enterprise in an amount equal to or greater than $1,000,000. Thereafter, the Corporation shall not enter into a Procurement Contract for said goods until at least 15 days have elapsed, except where a Contract is awarded due to Emergency. The Corporation shall not solicit bids from or enter into a Procurement Contract with a Foreign Business Enterprise which has its principal place of business in a jurisdiction that discriminates against New York business, pursuant to Section 165 (6)(b) of the State Finance Law.

In addition to the consideration of Contractor or Vendor non-compliance with Lobbying Law Directives, with respect to Contracts with former Corporation Officers and Employees, the Corporation shall not enter into Contracts which contemplates, violates or affirmatively, by their terms, allows former Officers and Employees of the Corporation to violate Section 73(8)(a) of the State Ethics Law.

I. General Contract Provisions (Article IX of the Guidelines)

All Procurement Contracts shall be in writing and duly executed by an individual empowered to do so in accordance with Corporation By-Laws. Procurement Contracts shall specifically provide for a scope of services indicating the nature of the work to be performed or goods to be provided, and for the time for performance, and the monitoring or reviewing of performance. Additionally, Procurement Contracts shall also state compensation and payment terms and indicate that prices in bids were arrived at independently without collusion. In addition to a provision authorizing the Corporation to immediately terminate any Contract in the event that any Lobbying Law certification is found to be intentionally false or inaccurate, Contracts shall also include "a provision expressly providing that any Contractor who willfully and intentionally fails to comply with minority and women-owned participation requirements, as set forth in the Contract, shall be liable to the Corporation for liquidated or other appropriate damages and shall provide for the appropriate remedies on account of such breach".

In order that the Corporation may enter into new Procurement Contracts for the Procurement covered as soon as it may desire, Procurement Contracts should not commit the Corporation to continue to use Contractors for longer than is desirable to achieve the Contract objectives. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts should be for a term not exceeding one year, and should be terminable by the Agency, at its option, without cause, within a period that is less than a year into the future. A designated Officer or Employee shall perform a continuing evaluation of Procurement Contracts and Panels.

J. Agency Approvals (Article X of the Guidelines)

All Contracts where compensation is expected to be $100,000 or more, as well as any Contracts involving services to be provided over a period of more than one year, require initial approval and annual review of the Corporation's Members. All Procurement Contracts shall be executed by an Officer, or as provided in the Corporation's By-Laws or an applicable resolution. The Counsel, or his/her designee(s), shall approve as to legal compliance all Procurement Contracts. All Procurement Contracts shall be reviewed by the Treasurer or Assistant Treasurer of the Corporation for fiscal sufficiency prior to execution.

K. Procurement Record (Article XI of the Guidelines)

A "Procurement Record" shall be maintained for each Procurement requiring any Formal Contract and such other Procurement as the Procurement Contract Officer deems appropriate, or as State law might require, identifying, with supporting documentation, decisions made by the Corporation during the Procurement process. Additionally, the Procurement Contract Officer shall be charged with responsibilities that include the retention of such portions of the Procurement Contract Record as the Procurement Contract Officer deems appropriate, monitoring compliance with proper contracting procedures and adherence to the Guidelines.

L. Reports on Procurement (Article XII of the Guidelines)

1. Annual Procurement Report

Within ninety days after the conclusion of each fiscal year of the Corporation, the Members of the Corporation shall approve an Annual Procurement Report, summarizing procurement activity for the period of the report. Such report shall include for each Procurement Contract listed (including MWBEs): a description of the duties performed by the Contractor; the date of the Contract and its duration; the total value of the Contract; the full name and address of the Contractor; the status of the Contract including the amount spent or other considerations given pursuant to the Contract during the reporting period and for the life of the Contract to date; whether the Contractor is a Minority or Women-Owned Business Enterprise; and the total number of bids or proposals received prior to the award of the Contract.

The Annual Procurement Report, after being approved by the Members, shall be filed using the Pubic Authorities Reporting Information System ("PARIS") on-line reporting system.

2. Annual MWBE Officer Report

The Corporation annually files an MWBE Officer Report that includes: (i) Corporation annual MWBE goals; (ii) documentation of a good faith effort to meet Corporation goals, in the event that these goals cannot be achieved; (iii) the number

of actual Contracts issued to MWBEs; (iv) the activities undertaken to promote and encourage Procurement opportunities of MWBEs and increase participation by certified MWBEs; (v) Corporation Contracts for leases of real property by the Corporation to a Lessee (a) where the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee and (b) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon exceeds the sum of $100,000; (vi) a summary of all enforcement actions undertaken by the Corporation against a Contractor for breach of Contract; and (vii) a summary of all waivers, permitted by the Corporation during the period covered by the MWBE Officer Report.

TAB 5

HTFC's Governor's Office of Storm Recovery's Procurement and Contract Guidelines (As amended January 29, 2015)

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

PROCUREMENT

NYS Storm Recovery Policies

Andrew M. Cuomo, Governor of New York State
James Rubin, Executive Director
Governor's Office of Storm Recovery

JANUARY 29, 2015

Prepared by
New York State Homes and Community Renewal
Housing Trust Fund Corporation
Office of Community Renewal

The procedures stated in this manual are current as of January 29, 2015. This manual represents the current version of the Governor's Office of Storm Recovery (GOSR) policy, which shall provide general guidance for the operation of the GOSR Procurement Department. All policy and procedure manuals will be reviewed periodically and will be updated to reflect the current needs and operation of the GOSR program. GOSR will use its best efforts to keep all of its Policy and Procedure Manuals, as well as its Human Resources Policy Manual current. There may be times, however, when a policy or procedure will change before the manual can be revised. Therefore, you are strongly urged to contact the GOSR DIRECTOR OF OPERATIONS (COO) and our office of Human Resources to ensure that you have the latest version of GOSR's policies and

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PROCUREMENT
Governor's Office of Storm Recovery
POLICY MANUAL

Version Control

Version Number	Date Revised	Description of Revisions
1.0	July 9, 2014	Housing Trust Fund Corporation (HTFC) Board approved for release and publication
1.0	July 28, 2014	Released to GOSR staff and posted on website
2.0	July 31, 2014	Combined Policy & Procedures for release to GOSR staff and posting on GOSR website
3.0	October 6, 2014	No changes to Policy Manual
4.0	December 12, 2014	No changes to Policy Manual – Break out of Policy & Procedures to two stand-alone documents
5.0	January 15, 2015	Inserted Protest Guidelines into the Policy Manual for Board approval
5.0	January 29, 2015	HTFC Board approved for release and publication

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PROCUREMENT AND CONTRACT GUIDELINES FOR THE GOVERNOR'S OFFICE OF STORM RECOVERY OF THE HOUSING TRUST FUND CORPORATION FOR CONTRACTS FUNDED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S COMMUNITY DEVELOPMENT BLOCK GRANT-DISASTER RECOVERY ("CDBG-DR") PROGRAM

ESTABLISHING STANDARDS FOR THE USE, AWARD, MONITORING AND REPORTING OF PROCUREMENT CONTRACTS UNDER THE NEW YORK STATE CDBG-DR PROGRAM

ARTICLE I

1. STATEMENT OF PURPOSE AND APPLICABILITY

a. Statement of Purpose. These Guidelines are adopted pursuant to the provisions of the Act and § 2879 of the Public Authorities Law, as guidelines of **the Governor's Office of Storm Recovery of** the Housing Trust Fund Corporation, hereinafter referred to as "**GOSR**," and such guidelines are independent of, but intended to be in alignment to the extent possible with, the guidelines of the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (collectively hereinafter referred to as "Agencies") and are to be reviewed and approved by the **GOSR's Executive Directors** at least annually.

b. Applicability. These Guidelines apply **only** to the Procurement by the Corporation of goods or services **funded, in whole or in part, with the U.S. Department of Housing and Urban Development's ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2)..**

c. Title. Outside of this document, these Guidelines may be referred to as the "**CDBG-DR** Procurement and Contract Guidelines" and herein may be referred to as "Guidelines."

ARTICLE II

2. DEFINITION OF TERMS

a. Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

i. "Act" shall mean Section 45-a of the New York Private Housing Finance Law.

ii. "Affiliated Agencies" or "Affiliated Agency" shall mean, either individually or collectively, the affiliated agencies, each being the **Governor's Office of Storm Recovery,** Housing Trust Fund Corporation, New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, and Tobacco Settlement Financing Corporation.

iii. "Affiliate Contract" shall mean any Procurement Contract entered into by an Affiliate Agency.

iv. "Agency Contract" shall mean any Procurement Contract entered into by a State Agency.

v. "Authority Contract" shall mean any Procurement Contract entered into by a State Authority.

vi. "Annual Procurement Report" shall mean the annual report required by Article XII of these Guidelines.

vii. "Article 15-A of the Executive Law" or "Article 15-A" shall mean, the statute that governs the participation by Minority Group Members and women with respect to **GOSR** Contracts.

viii. "By-Laws" shall mean the By-Laws adopted by the Members of the Corporation.

ix. "Chief Executive Officer" or "CEO" shall mean the Officer having such title according to the Corporation's By-Laws.

x. "Contact" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, any oral, written or electronic communication from a Contractor or Vendor, or its representatives, with **GOSR (via the Corporation)**, under circumstances

where a reasonable person would infer that the communication was intended to influence **GOSR's** conduct or decision regarding a **GOSR** Governmental Procurement.

xi. "Contract" shall mean a written agreement whereby the Corporation **(on behalf of GOSR under these guidelines)** undertakes Procurement, and shall include, but not be limited to, accepted Purchase Orders and Procurement Contracts. Contracts in excess of $25,000 for goods or services and Contracts in excess of $100,000 for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon are subject to **GOSR's** MWBE Directives. Additionally, pursuant to Article 15-A, solely for the purpose of providing the opportunity for meaningful participation for certified MWBEs in the performance of **GOSR** Contracts, **GOSR** Contracts shall include leases of real property by **GOSR (on behalf of The Corporation under these guidelines)** to a Lessee where: (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee; and (b) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of $100,000.

xii. "Contractor" shall mean a supplier of goods or services to the Corporation pursuant to a Contract **(on behalf of GOSR under these guidelines)**.

xiii. "Corporation" shall mean the Housing Trust Fund Corporation.

xiv. "Counsel" shall mean the chief legal officer as so defined in the By-Laws of the Corporation.

xv. "Critical Contract" shall mean a Contract which must be awarded within a set time period because delay of the award would have a serious adverse effect on **GOSR** that outweighs the benefits of advertisement in the "New York State Contract Reporter," as determined by the **Executive Director of GOSR**. All Emergency Selection Contracts shall be Critical Contracts. Emergency Foreign Business Enterprise Contracts are not Critical Contracts unless **GOSR** independently determines those Contracts to be Critical Contacts.

xvi. "Designated Contact" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a Contact made between an Offerer and **GOSR's** Designated Contact Officer(s), as set forth in Article VII of these Guidelines.

xvii. "Designated Contact Officer(s)" shall mean, for purposes of applying the

Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the person(s) **GOSR** appoints to such position, in accordance with the provisions of the Lobbying Law, who may be the recipient of Designated Contacts, as set forth in Articles VII and XI of these Guidelines. The Designated Contact Officer shall be the person so designated in each solicitation.

xviii. "Designated MWBE Officer(s)" shall mean the senior staff **GOSR** appoints to such position to oversee **GOSR's** MWBE Program, as set forth in Articles VI and XI of these Guidelines.

xix. "Determination of Responsibility" shall mean, in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a final determination required to be made by **GOSR** of the proposed Contractor or Vendor to whom the Contract is to be awarded in accordance with Section 2879 of the Public Authorities Law. For Determinations of Responsibility hereunder, the Lobbying Law requires that proposed Contractors and Vendors disclose findings of non-responsibility against them within the previous four years by any other governmental agency.

xx. "Discriminatory Jurisdiction" shall mean any other county, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the Procurement of goods or services by the same, or a non-governmental entity influenced by the same.

xxi. "Disparity Study of 2010" or "Disparity Study" shall refer to the disparity study commissioned by the Empire State Development Corporation ("ESDC"), pursuant to Article 15-A, and published on April 29, 2010.

xxii. "Emergency Foreign Business Enterprise Contract" shall mean any Contract awarded on an emergency or critical basis or where the New York State Commissioner of Economic Development (hereinafter referred to as the "DED Commissioner") waives provisions otherwise applying to Contracts with Foreign Business Enterprises which are equal to or greater than $1,000,000, pursuant to Article VIII of these Guidelines.

xxiii. "Emergency Selection Contract" shall mean any Contract exempt from competitive selection due to **GOSR's** determination of an emergency justifying such exemption.

xxiv. "Employee" shall mean an employee of **GOSR**, whether full or part time.

xxv. "Ethics Officer" shall mean the person **GOSR** appoints to such position for purposes of administering matters in connection with the State Ethics laws, or any other State law which requires the existence of such an officer to review, monitor and impose sanctions related to Procurement matters including, but not limited to, Lobbying Law Directives.

xxvi. "Executive Director(s)" shall mean that GOSR individual(s) given such title.

xxvii. "Foreign Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by **GOSR** and which are substantially produced outside the State, or services sought **GOSR**, and which are substantially performed outside the State.

xxviii. "GOSR" shall mean the Governor's Office of Storm Recovery, a division of the Housing Trust Fund Corporation.

xxix. "GOSR Counsel" shall mean the chief legal officer for GOSR.

xxx. "Governmental Procurement" shall mean the (a) public announcement, public notice, or public communication to any potential Vendor of a determination of a need for a Procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, Request for Proposals ("RFP"), or evaluation criteria for a Procurement Contract, (b) solicitation for a Procurement Contract, (c) evaluation of a Procurement Contract, (d) award, approval, denial or disapproval of a Procurement Contract, or (e) approval or denial of an assignment, amendment, renewal or extension of a Procurement Contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Offerer.

xxxi. "**GOSR** Staff" or "Staff" shall mean Employees and Officers of GOSR or any governmental agency which has assigned employees to perform services to GOSR.

xxxii. "Guidelines" shall mean these Guidelines, as they may be amended from time to time.

xxxiii. "Impermissible Contact" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, any Contact that is not a Designated Contact.

xxxiv. "Invitation for Bid" process or "IFB" shall mean the solicitation, by way of a statement of qualification, proposal and/or, as appropriate, price bid

from at least three prospective Contractors or Vendors, one of which shall be from a MWBE, if possible, for Procurements not expected to exceed $50,000. Procurements anticipated to exceed $25,000 or more must include MWBE participation goals.

xxxv. “Lessee" shall have the same meaning defined in Article 15-A.

xxxvi. "Lobbying Law Directives" shall mean, in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the requirements of the provisions of the Lobbying Law, and as set forth in Article VII of these Guidelines.

xxxvii. "Lobbying Law" shall mean the provisions of the Legislative Law and the State Finance Law enacted on August 23, 2005, Chapter 1 of the laws of 2005 and amended on March 20, 2010, Chapter 4 of the laws of 2010.

xxxviii. "Member(s)" shall mean the Members of the Housing Trust Fund Corporation as defined in the By-Laws of the Corporation, unless the context shall clearly indicate some other meaning, e.g. “Minority Group Members.”

xxxix. "Minority Owned Business Enterprise" or "MBE" shall mean any business enterprise, including a sole proprietorship, partnership or corporation, that is:

1) at least 51% owned by one or more Minority Group Members, or in the case of a publicly-owned business, at least 51% of the common stock or other voting interests of which is owned by one or more Minority Group Members;

2) an enterprise in which the minority ownership is real, substantial and continuing;

3) an enterprise in which the minority ownership has, and exercises, the authority to control independently the day-to-day business decisions of the enterprise;

4) an enterprise authorized to do business in the State, independently owned and operated, and not dominant in its field;

5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a Personal Net Worth that does not exceed $3.5 million, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and

6) an enterprise that is a Small Business.

xl. “Minority and/or Women-Owned Business Enterprise” or “MWBE” shall mean any business enterprise, including a sole proprietorship, partnership or corporation, that meets the qualifications for an MBE, a WBE, or both an MBE and a WBE.

xli. "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:

1) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

4) Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian sub-continent or the Pacific Islands.

xlii. "MWBE Director" shall mean the director of the division of minority and women’s business development in the Department of Economic Development.

xliii. "MWBE Directives" shall mean the requirements of **GOSR’s** MWBE Program in accordance with the provisions in § 2879 of the Public Authorities Law and Article 15-A, and as set forth in Article VI of these Guidelines.

xliv. "MWBE Program" shall mean **GOSR’s** Procurement procedures and policies for providing opportunity for meaningful participation of certified businesses in the performance of **GOSR** Contracts, as more fully described in Article VI of these Guidelines.

xlv. "New York State Business Enterprise" or "NYSBE" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by **GOSR** and which are substantially manufactured, produced or assembled in the State, or services which are sought by **GOSR** and which are substantially performed within the State.

xlvi. "Offerer" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts **GOSR** about a **GOSR** Governmental Procurement during the Restricted Period of such **GOSR** Governmental Procurement, whether or not the caller has a financial interest in the outcome of the Governmental Procurement.

xlvii. "Officer" shall mean those positions so defined in the By-Laws of the Corporation.

xlviii. "Permissible Contact" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a Designated Contact.

xlix. "Permissible Subject Matter Communication" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the communications set forth as such in Article VII of these Guidelines.

l. "Personal Net Worth" shall have the same meaning as defined in Article 15-A.

li. “Personal Services" shall mean any services performed for fee, commission or other compensation by persons or organizations who are not providing such services as Officers, Employees or Staff of **GOSR,** the Corporation, Affiliated Agency, any State Agency or State Authority.

lii. "Preferred Source" shall mean the status afforded to certain contractors or vendors for purposes of Procurement under § 162 of the State Finance Law.

liii. "President" shall mean an Officer having such title according to the Corporation’s By-Laws.

liv. "Procurement" shall mean the acquisition of goods, materials and services including, but not limited to, Personal Services, by the Corporation **(on behalf of GOSR under these guidelines)**. The term goods shall include, but not be limited to, personal property, including furniture, fixtures, stationery and supplies. Services shall include, but not be limited to, the performance of legal, accounting, management, consulting, investment banking, planning, training, statistical, research, public relations, architectural, engineering, surveying or other Personal Services of a

consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such service as Officers, Employees or Staff of **GOSR,** the Corporation, any Affiliated Agency, any State Agency or State Authority.

lv. "Procurement and Contract Guidelines" shall mean the guidelines to Procurement of goods or services by **GOSR (via the Corporation)**, originally adopted by the Corporation's Members, and revised from time to time, pursuant to the provisions of its Act and § 2879 of the Public Authorities Law.

lvi. "Procurement Contract(s)" shall mean, (a) *(following the definition in § 2879 of the Public Authorities Law)* any written agreement for Procurement in the actual or estimated amount of $5,000 or more or (b) *(following the definition in the Lobbying Law for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000)* any Contract, including an amendment, extension, renewal, or change order to an existing Contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the Contract as it was finally awarded), for a Governmental Procurement.

lvii. "Procurement Contract Officer" shall mean the person appointed to such position, as set forth in Article XI of these Guidelines.

lviii. "Procurement Record" shall mean documentation of the decisions made and the approach taken in the Procurement process together with other documentation with respect to Contracts and Contractors/Vendors, as set forth in these Guidelines.

lix. "Purchase Order(s)" shall mean written authorization to a Vendor to deliver specified goods or services at a stipulated price.

lx. "Request for Proposal" or "RFP" shall mean the solicitation, by way of a detailed description of services and/or related work required by **GOSR (via the Corporation)**, of a comprehensive response from qualified potential Contractors or Vendors, indicating the manner in which each would perform the tasks involved and the compensation requested, which response would be the basis for a contractual agreement.

lxi. "Request for Qualification" or "RFQ" shall mean a request for a statement of qualifications, which shall contain detailed information, so as to enable potential contractors to determine the desirability of participating in the selection process and to develop a competitive statement. An RFQ may request other information in addition to qualifications.

lxii. "Restricted Period" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the period of time commencing with the earliest determination of a Procurement need by **GOSR**, including, but not limited to, any oral or written communication, notice, advertisement or solicitation of an RFP, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from contractors or vendors intending to result in a Procurement Contract with **GOSR** and ending with **GOSR's** approval of the final Contract award.

lxiii. "Single Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the Corporation **(on behalf of GOSR under these guidelines)**, approved in writing by the **Executive Director of GOSR**, that one firm is uniquely qualified or has a unique advantage with respect to the provision of a particular service or good, such that competitive procedures are rendered futile. Such determination shall become part of the Procurement Record and be filed with the **GOSR's** Counsel and the Procurement Department.

lxiv. "Small Business" shall have the same meaning defined in Article 15-A.

lxv. "Sole Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the Corporation **(on behalf of GOSR under these guidelines)**, approved in writing by the **Executive Director of GOSR**, that there is only one source for a particular service or good, such that competitive procedures are rendered futile. Such determination shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary.

lxvi. "State" shall mean the State of New York.

lxvii. "State Agency" shall mean any state department, state university of New York, city university of New York, board, bureau, division, commission, committee, council, office or other governmental entity performing a governmental or proprietary function for the state, or any combination thereof as provided in subdivision two of section nine hundred fifty-one of the executive law, except any public authority or public benefit corporation, the judiciary or the state legislature.

lxviii. "State Authority" shall mean a public authority or public benefit corporation created by or existing under the Public Authorities Law or any other law of the state of New York, with one or more of its members appointed by the governor or who serve as members by virtue of holding a civil office of the state, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority

or public benefit corporation.

lxix. "Vendor" shall mean a supplier of goods or services to the Corporation **(on behalf of GOSR under these guidelines)**.

lxx. "Women-Owned Business Enterprise ("WBE") shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

1) at least 51% owned by one or more United States citizens or permanent resident aliens who are women or, in the case of a publicly-owned business, at least 51% percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;

2) an enterprise in which the ownership interest of women is real, substantial and continuing;

3) an enterprise in which the women ownership has, and exercises, the authority to control independently the day-to-day business decisions of the enterprise;

4) an enterprise authorized to do business in the State, independently owned and operated, and not dominant in its field;

5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a Personal Net Worth that does not exceed $3.5 million, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and

6) an enterprise that is a Small Business.

b. Construction of Language. Any other capitalized terms used herein shall have the meaning given by the By-Laws. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa.

ARTICLE III

3. USE OF PROCUREMENT CONTRACTORS AND VENDORS

a. Threshold Criteria for Use of Procurement Contractors for Personal Services. The general responsibilities of **GOSR** are performed by its Employees, Officers and Staff. Accordingly, it is the policy of **GOSR** that before Personal Services are used, it first be considered whether it would be more appropriate for its Employees, Officers or Staff to provide such services. Personal Services Contractors may be used when it has been determined:

(l) that such service is necessary or convenient to the performance of **GOSR's** responsibilities; and

(2) that such service is not available from Employees, Officers or Staff; or

(3) that the performance of such service requires it be undertaken by someone independent of **GOSR**; or

(4) that use of Employees, Officers or Staff of **GOSR** for such service would not be efficient or cost effective.

Such determination shall be made by an Officer except that, in the case of Personal Services set forth below in this Article, such determination may be made by Officers as they may deem administratively appropriate. Non-Personal Services Contracts shall be entered into when **GOSR** requires goods, materials and non-Personal Services to function effectively and efficiently.

a.. Areas Requiring Use of Procurement Contracts for Personal Services. Personal Services Contracts have typically been and are anticipated to be executed in the following areas, pursuant to a determination of appropriateness in accordance with the requirements of subparagraph a. of this Article:

Types of Services, Responsibilities and Description of Services to be Provided.

i. Appraisal. Provide appraisals, analyses and reports with respect to properties which are or may be the subject of **GOSR** loans or loans insured by the Corporation **(on behalf of GOSR under these guidelines)**.

ii. Architectural and Engineering. Provide professional architectural and/or engineering services relative to the construction of properties which are or may be the subject of **GOSR** loans, or loans insured by **GOSR**.

iii. Audit and Accounting. Provide audit services pertaining to the year-end preparation of financial statements for **GOSR** in conformance with generally accepted accounting principles. Perform special audits as requested.

iv. Custody & Safekeeping Services. Provide custody and safekeeping services to secure **GOSR** investments and receive and evaluate underlying collateral for secured **GOSR** investments.

v. Equipment Maintenance. Provide maintenance for the routine service or repair of office and data processing equipment.

vi. Information Technology Consulting. Provide analyses and recommendations on **GOSR's** data processing structure and operations.

vii. Information Technology Services. Provide report generating and printing services, computer systems hardware, programming and related services to **GOSR**.

viii. Investment Banking. Provide: (a) financial advisory services and (b) recommendations and analyses with respect to **GOSR** investments.

ix. Legal. Provide legal services, opinions and analyses related to financings, real estate matters, corporate matters, litigation matters and labor matters.

x. Management Consulting. Provide analyses and recommendations concerning **GOSR's** organizational structure and the management of its operations.

xi. Minority and Women Business Enterprise Consulting. Provide technical assistance in **GOSR's** effort to facilitate MWBE participation in **GOSR** programs.

xii. Printing. Provide: (a) financial printing services based upon specifications and details developed by **GOSR**; (b) technical printing services relative to the reproduction of loan and insurance documents; (c) graphic, layout and printing services in connection with production of **GOSR** report(s); and (d) other printing and offset services.

xiii. Training. Provide supervisory and other skills training to **GOSR** Officers, Employees and Staff.

xiv. Trustee Banking Services. Provide banking services to monitor the timely receipt of payments, retirement of debt, collateral evaluations and other services as required by the various bond resolutions.

xv. Others. The examples of Personal Services listed above in clauses (i) through (xiv) reflect anticipated Personal Services and are not meant to be exhaustive; other services, in other areas, may be utilized subject to these Guidelines.

These Personal Services are not required to be provided as Personal Services Contracts, and may sometimes be performed by **GOSR** Officers, Employees and Staff.

a. **<u>Avoiding Purchase of Unnecessary or Duplicative Items</u>. Proposed Procurements shall be reviewed to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out Procurements to obtain a more economical purchase. [24 CFR § 85.36(b)(4)]**

b. <u>Purchasing versus Leasing.</u> Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. [24 CFR § 85.36(b)(4)]

c. <u>Federal Excess and Surplus Property</u>. GOSR encourages the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. [24 CFR § 85.36(b)(6)]

ARTICLE IV

4. SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS

a. Preferred Selection Criteria and Approach. It is the preference of **GOSR** that Vendors and Contractors shall be selected from as broad a spectrum of providers as is practicable, and that Contracts be awarded and purchases be made consistent with the quality of services, or goods and materials required, at fair and reasonable prices. In addition, it is the preference of **GOSR** to encourage the participation and utilization of MWBEs in accordance with the MWBE Directives, as set forth in Article VI of these Guidelines. Contacts shall be regulated in accordance with MWBE Directives and Lobbying Law Directives, and as set forth in Articles VI and VII, respectively, of these Guidelines.

b. Selection on a Competitive Basis. It is the preference of **GOSR** that Procurement, unless otherwise prescribed, be by competitive process, and that the process be as competitive as is possible. It is the policy of **GOSR** that the selection of Procurement Contractors and Vendors be exempt from the competitive process only under certain exceptional circumstances as specified herein. As appropriate, the following competitive processes may be used in order to select Contractors and Vendors:

i. Small Purchase Procedures. Small purchase procedures may be used for Procurements of $150,000 or less in the aggregate. Small purchases are made through the use of purchase orders. Competition is sought through written price quotations. GOSR shall document its receipt of an adequate number of price or rate quotations from qualified sources. A Procurement of more than $150,000 may not be inappropriately broken up into smaller components solely to qualify for small purchase procedures. [24 CFR § 85.36(d)(1)]

ii. Competitive Lowest Price Bid for Goods or Materials. Solicitation of at least three price bids, one of which shall be from a MWBE, if feasible, for specified Procurement, other than Personal Services (goods and materials), to be awarded to qualifying Contractors or Vendors primarily on the basis of the lowest price. Competitive bids are to be solicited when the goods and materials required are of a standardized nature that may reasonably be made the subject of specifications to which bidders respond with required qualification data and price offers. **[24 CFR § 85.36(d)(2)]**

iii. Invitation for Bid ("IFB") process for Contracts Not Expected to Exceed $50,000. If the **Executive Director of GOSR** determines it is appropriate, **GOSR** may commence a Procurement process by soliciting statements of qualifications, proposals and, as appropriate, price bids from at least three prospective Contractors or Vendors, one of which shall be from a MWBE, if feasible, for Procurements not expected to exceed $50,000.

Procurements valued at $25,000 or more must include MWBE participation goals. Award of a Contract within this method is made on **a most advantageous** basis **considering in the course** of an evaluation the characteristics, quality and **price** of such statements of qualifications and proposals. **[24 CFR § 85.36(d)(1)]**

iv. RFP (without negotiation). Solicitation of specific proposals which indicate an understanding of identified financial, organizational, logistical and technical requirements and/or problems, and which detail elements of performance, including techniques and procedures as well as prices. Award of a Contract within this method is made on **a most advantageous** basis **considering in the course** of a formal evaluation the characteristics, quality and **price** of such **statement of qualifications and** proposals. **[24 CFR § 85.36(d)(3)]**

v. RFP with Competitive Negotiations. Solicitation of qualifying potential Contractors or Vendors who have submitted materials pursuant to: (a) an RFP to further negotiate their proposals; (b) an RFP which stated that **GOSR** might further negotiate proposals; or (c) a determination by **GOSR**, subsequent to issuing an RFP, that further negotiation is appropriate or that the RFP should be revised to permit further negotiations. Further negotiation may include, but shall not be limited to, prices for Contract award **made on a most advantageous** basis **considering in the course** of a formal evaluation the characteristics, quality and **price** of such **statement of qualifications and** proposals. **[24 CFR § 85.36(d)(3)]**

vi. Pre-qualified Panel. **GOSR** may select Contractors for any Procurement activity from a qualified panel of potential Contractors, selected on the basis of an RFP or RFQ. Such panel must have been qualified by **GOSR**, or by an Affiliate, State Agency or State Authority. The purpose of using a pre-qualified panel is to allow aspects of the competitive process to be addressed early in a phased selection process. This is so that Vendors and Contractors on the panel can be subsequently engaged on an accelerated or more efficient basis. In accordance therewith, panels shall be administered so that the Contract award is based upon a formal evaluation of qualifications and/or the subsequent negotiation of fair and reasonable compensation for specific services actually required. At such time as a panel is utilized, **GOSR** shall document for the Procurement Record with respect to that panel, which aspects of the competitive process (a) are being addressed prior to the panel's utilization and (b) shall be fulfilled subsequent to the establishment of the panel. Panels shall be identified to **GOSR's** Procurement Contract Officer, reported in the Annual Procurement Contract Report, and reviewed and recertified annually to **GOSR's** Procurement Contract Officer by the **GOSR** Officer in charge of administering the panel. **GOSR shall ensure that all panels used include enough qualified sources to ensure maximum open and free**

competition. GOSR also will not preclude potential bidders from qualifying during the solicitation period. [24 CFR § 85.36(c)(4)]

vii. State Contract. The Corporation can enter into Contracts **(on behalf of GOSR under these guidelines)** with eligible Vendors, where the State has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services upon comparable terms, provided the Procurement Contract Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

viii Existing Centralized State Contracts. **GOSR** may carry out a Procurement **(via the Corporation)** using existing centralized State Contracts pursuant to which **GOSR (via the Corporation)** is eligible to procure goods and/or services, according to the State negotiated terms**, so long as such contracts have been procured competitively in a manner that is commensurate with 24 CFR § 85.36**.

ix. GSA Contract (or contract of the U.S. General Services Administration or US GSA). The Corporation can enter into Contracts **(on behalf of GOSR under these guidelines)** with eligible Vendors, where the US GSA has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services upon comparable terms, provided an Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

x. Affiliated Agency Contract or Affiliated Agency Competitive Selection Process. Whenever an Affiliated Agency has completed a competitive process to create a list of Vendors eligible for the provision of goods or services, the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services, if for the same services and upon comparable terms. Whenever an Affiliated Agency has engaged in a competitive process, and that process has not yet created a list of eligible Vendors, and **GOSR** can complete that process to create eligible Vendors; **GOSR** may do so in order to enter into a Contract with those Vendors **(via the Corporation)** for such services for which Vendors are ultimately determined eligible to provide, provided the Procurement Contract Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

c. Selection on a Non-Competitive Basis. The competitive processes established above in this Article shall not apply or are hereby waived **only** in the following situations:

i. Emergency. When an emergency requires that selection of a Contractor or Vendor cannot be delayed long enough for the use of a competitive procedure because immediate action is required, the **Executive Director of GOSR** may award a Contract **(via the Corporation)**, as that **Executive Director** deems appropriate, without competitive procedures or following less than the full complement of competitive procedures which would otherwise be required. Circumstances requiring such immediate action must be significant, such as those affecting property of **GOSR**, life, health or safety. Emergencies should only arise out unforeseen occurrence. The circumstances under which such Contract was entered into shall be set forth and maintained in the Procurement Record. Such record should, among other things, address whether such circumstances should have been foreseen. Consideration should always be given to whether a Contract entered into on an emergency basis can be supplanted by a subsequent Contract entered into through a competitive process. If the Emergency Contract exceeds $100,000 in amount or one year in duration, the Contract must be presented **to GOSR Staff authorized by the Corporation Board** for approval. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary. **[24 CFR § 85.36(d)(4)(i)(B)]**

ii. Sole Source Contract. Sole Source Contracts may be awarded without competitive procedures as a result of a determination by **GOSR**, approved in writing by the **Executive Director of GOSR**. For purposes of determining whether a Contract is a Sole Source Contract, **GOSR** shall identify if there is only one source for a particular service or good, such that competitive procedures are rendered futile. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary. **[24 CFR § 85.36(d)(4)(i)(A)]**

iii. Single Source Contract. Whenever **GOSR** considers it appropriate, **after solicitation of a number of sources, GOSR** may conclusively determin**e that competition is inadequate and that** by relying upon the determination of the State or an Affiliated Agency that a Vendor is uniquely qualified, if the Corporation **(on behalf of GOSR under these guidelines)** seeks to enter into a Contract or contract with those Vendors for such services upon comparable terms. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary. **[24 CFR § 85.36(d)(4)(i)(D)]**

iv. <u>Authorization by HUD</u>. HUD authorizes noncompetitive proposals. [24 CFR § 85.36(d)(4)(i)(C)]

For all Procurements that proceed on a non-competitive basis, cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required. [24 CFR § 85.36(d)(4)(ii)]

a. <u>Responsible Contractors</u>. GOSR will make awards (via Corporation) only to responsible Contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as Contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. [24 CFR § 85.36(b)(8)]

b. <u>HUD Review</u>. Upon request of HUD, GOSR shall make available for HUD review all Procurement documents, such as requests for proposals or invitations for bids, technical specifications, independent cost estimates, etc. [24 CFR § 85.36(g)(1), (2)]

ARTICLE V

5. STANDARDS AND PRACTICES FOR COMPETITIVE SELECTION OF CONTRACTORS

It is the policy of **GOSR** to seek out the maximum practicable number of qualified Vendors interested in offering their goods or services to **GOSR** and to establish certain minimum standards for their selection. The following standards shall apply:

a. Advertisement Requirements for Competitive Source Selection Methods. The solicitation of bids, proposals, offers or submissions of qualification data from Vendors with respect to Contracts shall be made by **GOSR** in a manner determined by the Procurement Contract Officer in consultation with the **Executive Director of GOSR**, to be the most cost effective for providing reasonable competition for **GOSR's** Contracts **(via the Corporation)**. This may include advertisement in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these Guidelines, including outreach efforts to MWBEs in accordance with the provisions of Article VI herein and the Corporation's MWBE Goal Plan ("MWBE Goal Plan"), and including providing information with respect thereto via the Corporation's website. In addition, in the case of Procurement Contracts in the actual or estimated amount of $50,000 or more, or such other amount as may be amended in Article 4-C of the State's Economic Development Law, and in the establishment of pre-qualified panels, **GOSR** shall advertise all such opportunities in the "New York State Contract Reporter" or "Reporter," the official weekly listing of bidding opportunities for the State published by the New York State Department of Economic Development, and any other publication as required by State law, unless the Contract is determined to be a Critical Contract. Already advertised Contract opportunities being re-bid or re-solicited within forty five (45) business days after proposals were originally due, pursuant to publication in the "Reporter," are not required to be published again. Contracts determined to be Single Source or Sole Contracts will not be advertised in the "Reporter," but are required to be published in the "Reporter" as a "notification."

b. **Full and Open Competition. All Procurements will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR § 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:**

i. Placing unreasonable requirements on firms in order for them to qualify to do business;

ii. Requiring unnecessary experience and excessive bonding;

iii. Noncompetitive pricing practices between firms or between affiliated

companies;

iv. Noncompetitive awards to consultants that are on retainer contracts;

v. Organizational conflicts of interest;

vi. Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the Procurement; and

vii. Any arbitrary action in the Procurement process. [24 CFR § 85.36(c)(1)]

c. Minimum of Three Prospective Vendors for Competitively Bid Procurement Contracts. For all Procurement Contracts required to be selected on a competitive basis, **GOSR** shall solicit statements of qualifications, proposals and, as appropriate, price bids from at least three prospective Vendors. In the case of Contracts not expected to exceed $5,000, **GOSR** shall solicit prices, statements of qualifications and proposals from at least three prospective Vendors unless **GOSR** affirmatively determines it is not appropriate. **GOSR** shall include at least one MWBE, if feasible, in all Procurement processes.

d. Requirements for **GOSR** Bid Documents. **GOSR** shall include in all bid documents provided to potential bidders an affirmative statement that it is the policy of **GOSR** to promote the participation of MWBEs, where possible, in the Procurement of goods and services.

GOSR shall also require that solicitation documents set forth the expected degree of MWBE participation based, in part, on (1) the potential subcontract opportunities available in the prime Procurement Contract; and (2) the availability of MWBEs to respond competitively to the potential subcontract opportunities.

i. Required Bid Notices to Professional and other Organizations serving MWBEs. In an effort to award Procurement Contracts to MWBEs in compliance with the Corporation's MWBE Procurement goals, as set forth in the Corporation's MWBE Goal Plan, **GOSR** shall provide notice of Governmental Procurements, along with any other notice required by law, to professional and other organizations serving MWBEs that provide the types of services procured by **GOSR**. Professional and other organizations can include, but is not limited to, social networking websites, magazines, and/or newspapers catering to a majority of MBE and/or WBE clientele. For the purposes of these Procurement efforts and for other **GOSR** Procurement efforts, **GOSR's** Designated MWBE Officer shall establish procedures for maintaining list(s) of qualified MWBEs. In addition, **GOSR** shall establish procedures for maintaining lists to include media outlets and other organizations serving MWBEs.

GOSR will provide such list(s) to Contractors in the Procurement process, requiring that potential Contractors shall consult and contact appropriate MWBEs to solicit their bids, in accordance with Article VI of these Guidelines.

ii. Lobbying Law Directives. All **GOSR** solicitations for proposals, bid documents and specifications for Procurement Contracts shall incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law, pursuant to the Lobbying Law Directives as described in Article VII of these Guidelines and in the Corporation's *Policy on Reporting and Maintaining Records on Lobbying Contacts* (herein after referred to as the Corporation's "Lobbying Policy").

iii. Promoted Contracts. All **GOSR** solicitations shall follow the directives for the participation of promoted Contracts, as is more fully described in Article VIII of these Guidelines.

iv. **Description of Technical Requirements. All Corporation solicitations (on behalf of GOSR under these guidelines) shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive Procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a *brand name or equal* description may be used as a means to define the performance or other salient requirements of a Procurement. The specific features of the named brand which must be met by Offerers shall be clearly stated. [24 CFR § 85.36(c)(3)]**

v. **Identification of Requirements. All Corporation solicitations (on behalf of GOSR under these guidelines) shall identify all requirements which the Offerers must fulfill and all other factors to be used in evaluating bids or proposals. [24 CFR § 85.36(c)(3)]**

e. Criteria for Selection. Procurement Contracts shall be entered into based on an evaluation of all proposals or bids received, considering all relevant factors, including, but not limited to terms, costs, goods or services offered, experience and capabilities, financial security, reputation in the field, staff availability, personnel expected to be involved and possible conflicts of interest. Where the Procurement Contract Officer determines that there is a suitably neutral and reliable publisher or publicly available industry ratings or evaluations of products

or firm qualifications, such ratings or evaluations may be allowed to substitute, in whole or in part, as determined to be appropriate, for required submission of qualifications where it is determined that requiring independent submission of such from Vendors would be duplicative. The criterion for selection are not intended to supersede the fact that the Corporation has certain promoted Contracts and certain prohibited Contracts and Contracts subject to limitations, as set forth in Article VIII of these Guidelines.

f. **Cost or Price Analysis. GOSR will perform a cost or price analysis in connection with every Procurement action, including Contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular Procurement situation, but as a starting point, GOSR will make independent estimates before receiving bids or proposals. A cost analysis must be performed when the Offerer is required to submit the elements of its estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for Sole Source Procurements, including Contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed Contract price. [24 CFR § 85.36(f)(1)]**

g. **Profit Negotiated Separately. GOSR will negotiate profit as a separate element of the price for each Contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. [24 CFR § 85.36(f)(2)]**

h. Compliance with Additional Procedures for Requests for Proposals and Requests for Qualifications. **GOSR** shall also comply with any additional procedures issued by it, from time to time, with respect to the conduct of Requests For Proposals and Requests For Qualifications.

ARTICLE VI

6.1. MWBE PROGRAM ESTABLISHING PROCEDURES FOR MWBE PARTICIPATION AND UTILIZATION IN CORPORATION PROCUREMENTS **[24 CFR § 85.36(e)]**

The requirements of the Corporation's MWBE Program, in accordance with the provisions of § 2879 of the Public Authorities Law, Article 15-A, and the directives of the Governor, and as set forth in this Article, shall be referred to as the Corporation's MWBE Directives. **GOSR** shall work to increase MWBE participation and utilization through certain Procurement procedures, as described in the Corporation's Annual MWBE Goal Plan and these Guidelines, and incorporated in **GOSR's** MWBE Program. These procedures shall include (i) the appointment of a Designated MWBE Officer(s) to oversee **GOSR's** MWBE Program, as described more fully in Article XI of these Guidelines, (ii) the establishment of appropriate goals for participation by MWBEs in Procurement Contracts awarded by **the Corporation (on behalf of GOSR under these guidelines)** and (iii) the utilization of MWBEs as subcontractors and suppliers by Contractors having Procurement Contracts with the Corporation **(on behalf of GOSR under these guidelines)**.

The Corporation has established numerical participation target goals identified in its MWBE Goal Plan based on the findings of the Disparity Study and directives from the Governor. For each new Contract, **GOSR** shall gauge the appropriateness of the Procurement goals by considering the availability of Contractors to perform the Contract's anticipated scope of services, weighted by the extent those scope of services represent the total Contract price.

In the event the projected goals cannot be achieved, **GOSR** will provide adequate documentation of a good faith effort to meet these goals **to be included** in **the Corporation's** submission of its Annual MWBE Goal Plan.

GOSR's Designated MWBE Officer, for the purposes of reaching these goals, shall establish procedures for maintaining list(s) of qualified and certified MWBEs, that have expressed an interest in doing business with **GOSR**, and ensuring that such lists are updated periodically, but no less than once annually, and include a firm profile that will, if possible, describe the firm's history, key personnel and core work areas. **GOSR** shall also consult the list(s) of certified MWBEs maintained by the Department of Economic Development, pursuant to Article 15-A.

The Corporation shall update these MWBE participation goals annually in an effort to (1) obtain the maximum feasible participation of MWBEs in Corporation Contracts, (2) evaluate each Contract to determine the appropriateness of the goal, and (3) examine Corporation goals to determine if their implementation will duplicate or conflict with any federal law. The Corporation shall waive the applicability of these goals to the extent of such duplication or conflict. These MWBE goals are subject to change by industry and region pursuant to findings contained within the Disparity Study of 2010, future Disparity

Studies by the ESDC and Corporation findings evidencing relevant industry and region-specific availability of certified MWBEs.

a. Requirements to Conduct Procurements to Ensure Maximum Participation and Utilization by MWBEs. To enable the Corporation to achieve the maximum feasible portion of the Corporation's goals established in its MWBE Goal Plan, that eliminates barriers to participation by MWBEs in Corporation Procurements, **GOSR's** MWBE Directives shall include:

i. Measures and Procedures. **GOSR's** Designated MWBE Officer shall establish measures and procedures to: (a) ensure that certified MWBEs shall be given the opportunity for maximum feasible participation in the performance of **GOSR's** Contracts **(via the Corporation)**; and (b) to assist in **GOSR's** identification of those **GOSR's** Contracts **(via the Corporation)** for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of **GOSR's** Contracts **(via the Corporation)** so as to facilitate the Corporation's achievement of the maximum feasible portion of the goals for Corporation Contracts **(inclusive of those procured on behalf of GOSR under these guidelines)** to such businesses. **GOSR's** measures and procedures shall include the following MWBE Directives:

(1) For competitive Procurements requiring a minimum of three bids, quotes must be obtained from at least one MBE or WBE, if feasible. If not feasible, the reasons for not doing so shall be documented in writing and included in the Procurement record. **GOSR** staff issuing solicitations will comply with this requirement whenever MWBEs are available for goods or services being procured;

(2) Encouraging Contractors to consider partnering with MWBEs, if feasible and practicable; and

(3) For non-competitive Procurements, **GOSR** staff issuing the solicitation shall strongly consider using a certified MWBE, if feasible, and if the MWBE meets the needs of the Corporation.

ii. Designation of the Division of Minority and Women-Owned Business Development ("Division of MWBEs"). **GOSR** shall designate the Division of MWBEs to certify and decertify MWBEs for **GOSR**.

iii. Expected Degree of MWBE Participation. **GOSR** shall require that each Contract solicitation set forth the expected degree of MWBE participation, as set forth in Article VI of these Guidelines.

iv. Current List of MWBEs. **GOSR** shall provide a current list of certified MWBEs to each prospective Contractor, as set forth in Article VI of these Guidelines.

v. Joint Ventures and MWBE Participation Goals. The MBE portion or the WBE portion of joint ventures shall count toward meeting the Corporation's MWBE participation goals. A firm owned by a Minority Group Member who is also a woman may be certified as a MBE, a WBE, or both, but may only be counted towards either a MBE goal or a WBE goal, in regard to any Contract or any goal, set by the Corporation, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the MBE goal and the WBE goal.

vi. Waiver of Obligations of Contractor relating to MWBE Participation. **GOSR** may waive obligations of the Contractor relating to MWBE participation after a showing of good faith effort to comply with the MWBE participation requirements, pursuant to Chapter 174 and Chapter 175 of the laws of 2010 that amend § 2879 of the Public Authorities Law and Article 15-A, § 313, subdivision six, respectively, both enacted on July 15, 2010.

vii. Verification of MWBE Participation. **GOSR** shall verify that MWBEs listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted, including verification that the procured primary Contractors are truly providing for the participation of MWBEs as described in the Procurement Contract. Participation of MWBEs shall be verified by (i) electronically monitoring and tracking the utilization, prompt payment and unauthorized substitutions of MWBE subcontractors and (ii) the provision of the following data, by the Contractor to **GOSR**, for each MWBE subcontract:

(1) name(s) of the MWBE subcontractor;

(2) total dollar amount of the MWBE's participation;

(3) scope of work of the MWBE subcontractor; and

(4) dates of participation.

viii. In the implementation of this section of this Article, **GOSR** shall:

(1) consider, where practicable, the severability of construction projects and other bundled Contracts; however, unbundling must be conducted within the constraints of **GOSR's** need to ensure efficiency and limit costs, and may not cause the bid price to

increase;

(2) **consider, where practicable, establishing delivery schedules that encourage participation by MWBEs;**

(3) implement its MWBE Program to enable **GOSR** to evaluate each Contract to determine the appropriateness of the goal, as set forth in this Article, which shall include:

(a) increasing MWBE outreach and communication efforts by use of the internet to facilitate access to information and build relationships between MWBEs and potential partners by:

(i) Requiring GOSR staff to include certified MWBEs in the solicitation lists for Procurements expected to exceed $25,000;

(b) consider the number and types of MWBEs located in the region in which the Corporation Contract **(on behalf of GOSR under these guidelines)** is to be performed;

(c) consider the total dollar value of the Corporation Contract **(on behalf of GOSR under these guidelines)**, the scope of work to be performed, and the project size and term;

(d) consider whether the Contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event,

(i) whether or not certified MWBEs that have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

(ii) whether certified MWBEs which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to **GOSR's** bid date;

(e) consider whether there has been written notification to appropriate certified MWBEs that appear in the directory of certified MWBEs;

(f) consider whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified MWBEs.

(4) consider compliance with the requirements of any federal law concerning opportunities for MWBEs which effectuates the purpose of this Article; and

(5) consult the most recent disparity study, pursuant to Article 15-A.

6.2 SMALL BUSINESS UTILIZATION [24 CFR § 85.36(e)]

GOSR and the State's subrecipients will take all necessary affirmative steps to assure that Small Businesses are used when possible.

Affirmative steps shall include:

a. Placing qualified Small Businesses on solicitation lists;

b. Assuring that Small Businesses are solicited whenever they are potential sources;

c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Small Businesses;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by Small Businesses;

e. Using the services and assistance of the Small Business Administration; and

f. Requiring the prime Contractor, if subcontracts are to be let, to take the affirmative steps listed above.

ARTICLE VII

7. REQUIRED DESIGNATIONS AND DISCLOSURES UNDER LOBBYING LAW DIRECTIVES IN THE SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS

Contacts shall be regulated in accordance with Lobbying Law Directives as follows:

For any Governmental Procurement or Contract subject to the Lobbing Law, **GOSR** shall notify every potential Contractor or Vendor that **GOSR** has a Designated Contact Officer(s) who is the only **GOSR** representative(s) permitted to receive Designated Contacts from the Contractors or Vendors, or their representatives, during the Restricted Period with respect to such Governmental Procurement. A Contractor or Vendor is restricted from making Contacts with **GOSR (via the Corporation)** from the date of any public announcement, public notice, or public communication by **GOSR** to any potential Vendor of a determination of a need for a Governmental Procurement through final award and approval of the Procurement Contract by **GOSR (via the Corporation)** to anyone other than the Designated Contact Officer(s) with respect to the Governmental Procurement unless such communication is any one of the following Permissible Subject Matter Communications:

(a) the submission of written proposals in response to a Request for Proposals, invitation for bids or any other method for soliciting a response from Offerers intending to result in a Procurement Contract;

(b) the submission of written questions by a method set forth in a solicitation for receiving inquiries from Offerers intending to result in a Procurement Contract, when all written questions and responses are to be disseminated to all Offerers who have expressed an interest in the solicitation;

(c) participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in a solicitation intending to result in a Procurement Contract;

(d) complaints by an Offerer regarding the failure of the person or persons designated by **GOSR**, pursuant to this section, to respond in a timely manner to authorized Offerer Contacts, made in writing to the **GOSR's Counsel**, provided that any such written complaints shall become a part of the Procurement Record;

(e) Offerers who have been tentatively awarded a Contract and are engaged in communications with **GOSR** solely for the purpose of negotiating the terms of the Procurement Contract after being notified of tentative award;

(f) communications between designated staff of **GOSR** and an Offerer to request the review of a Procurement Contract award;

(g) communications by Offerers in protests, appeals or other review proceedings (including the apparent successful bidder and his or her representatives) before **GOSR** conducting the Governmental Procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(h) communications between Offerers and governmental entities that solely address the determination of responsibility entity of an Offerer.

Unless the communication is any one of the above Permissible Subject Matter Communications, the Designated Contact is the only representative(s) of **GOSR** permitted to receive Contacts from bidders, potential Contractors or Vendors, or their representatives, during the Restricted Period with respect to a Corporation Governmental Procurement **(on behalf of GOSR under these guidelines)**.

All Corporation solicitations **(on behalf of GOSR under these guidelines)** for proposals, bid documents and specifications for Procurement Contracts shall incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law. All potential Contractors or Vendors must complete and return to **GOSR** with their proposal or bid response to a Corporation solicitation **(on behalf of GOSR under these guidelines)**, the *Affirmation of Understanding of and Agreement*, and *Potential Contractor or Vendor Disclosure of Prior Non-Responsibility Determinations*, Lobbying Law Forms 1 and 2, respectively. Form 1 is a written affirmation of a Contractor's or Vendor's understanding of the Governmental Procurement lobbying procedures of the Corporation and Form 2 requires the potential Contractor or Vendor to certify that all information provided to **GOSR** with respect to the Lobbying Law is complete, true and accurate. Prior to awarding a Procurement Contract to which these provisions apply, **GOSR** shall make a final Determination of Responsibility. All solicitations for proposals by **GOSR** shall require that potential Contractors or Vendors disclose to **GOSR** any findings of non-responsibility against them within the previous four years by any other governmental agency and must contain certifications that the same are complete, true and accurate.

For Contractors or Vendors who fail to comply with the Corporation's Lobbying Law Directives, refer to Article VIII of these Guidelines and the Corporation's Lobbying Policy.

ARTICLE VIII

8. PROMOTED AND PROHIBITED CONTRACTS & CONTRACTS SUBJECT TO OTHER LIMITATIONS

Notwithstanding the general practices of **GOSR** with respect to selection of Contractors and Vendors and adherence to competitive practices, as set forth in in these Guidelines, the following shall apply or be given weight in order that certain Contracts, or the award thereof, may be promoted, prohibited or subject to certain limitations.

a. Promoted Contracts. It is the policy of **GOSR** to promote certain contracts as follows:

i. Minority- and Women-Owned Business Enterprises. It is the policy of **GOSR** to promote and encourage the use of MWBEs in competition for Procurement Contracts. Furthermore, for Procurements anticipated to be in the amount of $25,000 or less, if the performance of any Contract requires or permits the use of a subcontractor, it is the preference of **GOSR** to encourage the participation of MWBEs, as set forth in these Guidelines. **GOSR** encourages bidders to include demonstrations that their selection promotes the use of MWBEs in bid responses, for example, through proposals for joint ventures with MWBEs. Procurements exceeding $25,000 must include MWBE participation goals in solicitation documents.

In order to promote and assist participation by, and facilitate the awarding of a fair share of Contracts to, MWBEs, **GOSR** has identified the following services as those areas or types of Contracts for which MWBEs may best bid: Archival Off-Site Services; Audit/Accounting Services; Appraisal Services; Architectural/Engineering Services; Equipment Maintenance Services; Information Technology Consulting/Services; Investment Banking Services; Legal Services; Management Consulting Services; Printing Services; and Temporary Employee Services.

ii. **No In-State or Local Geographical Preferences. GOSR will conduct Procurements (via the Corporation) in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. [24 CFR § 85.36(c)(2)]**

iii. Businesses with Anti-discriminatory Employment Practices. It is **GOSR's** policy to have procedures in place that will ensure, to the extent of **GOSR's** ability, that Contractors and Vendors comply with the federal Equal Employment Opportunity Act of 1972, as amended.

For any Contractor or Vendor with fifteen (15) or more employees responding to an RFP, RFQ, IFB or other type of invitation for bids, included with such response must be a statement disclosing whether the Contractor or Vendor is currently operating under or negotiating, or has at some time in the last five years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); has been, at some time in the last five years, or is currently the subject of a civil action brought against it by the EEOC; has been, at some time in the last five years, or is currently the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; has operated, at some time in the last five years, or is currently operating under an order of a court to take affirmative action as a result of a civil action brought against it by EEOC.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, that it is an unlawful employment practice for such Contractor or Vendor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title; and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, that such Contractor or Vendor shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods as the EEOC shall prescribe by regulation, and (3) make such reports therefrom as the EEOC shall prescribe by

regulation or order.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, that such Contractor or Vendor must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

GOSR's goal is to award Contracts to those Contractors and Vendors who have evidenced compliance with the laws of the State prohibiting discrimination in employment. **GOSR** recognizes that this goal may be achieved by awarding Procurement Contracts to those Contractors or Vendors who have demonstrated that they do not discriminate with respect to employment.

For all Personal Services Contracts over $25,000, and for all Contracts for goods and materials over $100,000, bidders shall submit to **GOSR** data regarding the race and gender of their partners, members and employees by job category. Bidders whose data are not found acceptable to **GOSR** shall be rejected.

b. Prohibited Contracts and Contracts Permitted Subject to Specified Exceptions or Limitations. It is the policy of **GOSR** that certain Contracts **(via the Corporation)** be prohibited or permitted only subject to certain exceptions or limitations as follows:

i. Special Criteria Rule for Evaluation of Architects, Engineers and Surveyors. For purposes of this subparagraph, the term "Professional Firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering, or surveying. **GOSR** shall not refuse to negotiate with a Professional Firm solely because the ratio of the "allowable indirect costs" to direct labor costs or the hourly rate in any labor category of the Professional Firm exceeds a limitation generally set by **GOSR** in the determination of the reasonableness of the estimated cost of services to be rendered by the Professional Firm, but rather **GOSR** should also consider the reasonableness of cost based on the total estimated cost of the service of the Professional Firm which should include, among other things, all the direct labor costs of the Professional Firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the Professional Firm. For purposes of this subparagraph, "allowable indirect costs" of a Professional Firm are defined as those costs generally

associated with overhead which cannot be specifically identified with a single project or Contract and are considered reasonable and allowable under specific Contract or allowability limits.

ii. Contracts with Businesses with Operations in Northern Ireland. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Corporation **(on behalf of GOSR under these guidelines)** shall not enter into Procurement Contracts with Vendors who have operations in Northern Ireland unless the Corporation **(on behalf of GOSR under these guidelines)** receives contractual assurance that the Contractor shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in §165 of the New York State Finance Law), and agrees to permit independent monitoring of its compliance with such principles.

iii. Contracts with Foreign Business Enterprise. **GOSR** shall notify the New York State Commissioner of Economic Development ("Commissioner") of the award of a Procurement Contract for the purchase of goods from a Foreign Business Enterprise in an amount equal to or greater than $1,000,000, simultaneously with notifying the successful bidder therefor. The Corporation shall not thereafter enter into a Procurement Contract **(on behalf of GOSR under these guidelines)** for said goods until at least fifteen (15) days have elapsed, except for Procurement Contracts awarded as Emergency Selection Contracts or where the Commissioner waives the provisions of this section. The notification to the Commissioner shall include the name, address and telephone and facsimile numbers of the Foreign Business Enterprise, a brief description of the goods or services to be obtained pursuant to the proposed Procurement Contract, the amount of the proposed Procurement Contract, the term of the proposed Procurement Contract, and the name of the individual at the Foreign Business Enterprise or acting on behalf of the same who is principally responsible for the proposed Procurement Contract. *(The purpose of such notification is solely (i) to allow the Commissioner to use the information to provide notification to NYSBEs of opportunities to participate as subcontractors and suppliers on such Procurement Contracts (ii) to promote and encourage the location and development of new business in the State, (iii) to assist NYSBEs in obtaining offset credits from foreign countries; and (iv) to otherwise investigate, study and undertake means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of NYSBEs, industry and commerce.)*

iv. Vendors Failing to Comply with Lobbying Law Directives. The Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** with Contractors or Vendors when:

(1) proposed Vendor or Contractor has failed to timely disclose accurate and complete information or otherwise cooperate with the Corporation in administering the Lobbying Law Directives; or

(2) there has been a finding that an Offerer has knowingly and willfully violated the provisions set forth in Article VII of these Guidelines and the Corporation's Lobbying Policy. This finding shall also result in a determination of non-responsibility against the Offerer. *(Violations of the Lobbying Law are expected to typically involve Contacts made to persons at **GOSR** other than the Designated Contact Officer(s)).*

The Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** in the case of either (1) or (2) of this subparagraph (v), section (b) of this Article, unless **GOSR** determines that the award of the Procurement Contract:

(a) is necessary to protect public property or public health or safety; and

(b) that the Contractor or Vendor is the only source capable of supplying the required goods or services within the necessary time frame.

In order for **GOSR** determinations in (1) and (2) (a) and (b) above to be effective as exceptions, the above required findings, including a statement describing the basis of such determination by **GOSR**, must be made a part of the Procurement Record.

Any subsequent determination of non-responsibility due to violations of the requirements of the Lobbying Law, if such determination is separated by less than four years, shall result in the proposed Vendor or Contractor being rendered ineligible to submit a proposal on or be awarded any Procurement Contract for a period of four years from the date of the second final determination of non-responsibility.

<u>Contracts with Former **GOSR** Officers and Employees</u>. The Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** which contemplate, violate or affirmatively, by their terms, allow former Officers (the term "Officer" as used in this subsection b.vi. of Article XIII of these Guidelines, shall refer to "Officer" as defined in the Corporation's By-Laws) and Employees of **GOSR** to violate §73 (8) (a) of the State Ethics Law. Specifically, and not by way of limitation, (except for employment contracts pursuant to which former Employees resume employee status to again work directly for **GOSR**), the Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** which provide for or permit a former Officer or

Employee of **GOSR**, either as an individual contracting directly with the Corporation **(on behalf of GOSR under these guidelines)** or as an officer or employee of a private business entity, to appear, practice, communicate or otherwise render services before the Corporation **(on behalf of GOSR under these guidelines)** or receive compensation for any such services rendered by such former Officer or Employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction:

(1) with respect to which such Officer or Employee was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration or over which that Employee or Officer exercised decision-making power during the performance of his or her official duties at **GOSR**; or

(2) in connection with any matter before **GOSR** or its business for a period of two years after termination of such service or employment.

If the **Executive Director of GOSR** deems it appropriate, the preceding prohibitions may be temporarily waived provided that, prior thereto, the State Ethics Commission grants an exception in accordance with the requirements of New York Public Officers Law Section 73[8][b]. Notwithstanding the foregoing, the preceding prohibitions shall not apply when a former Officer or Employee carries out official duties as an elected official or employee of a federal, state or local government, or any agency of such government. Thus, a former Employee may appear, practice, communicate or render compensated services before **GOSR** if he or she is acting as an elected official or employee of a federal, state or local government or one of its agencies. This exception applies only to government officials and employees; it does not apply to paid consultants of government entities.

In addition, in determining whether or not to enter into Contracts with respect to which any former Officer or Employee of **GOSR** plays a role, and with respect to the ethical administration thereof, **GOSR** shall give due consideration to whether the execution or administration of the Contract raises an appearance of impropriety.

The Corporation **(on behalf of GOSR under these guidelines)** shall, as it deems appropriate, include provisions in its Contracts to effect the purposes of this section.

vi. <u>Time and Materials Contracts</u>. The Corporation (on behalf of GOSR under these guidelines) will use time and material type Contracts only

(1) After a determination that no other Contract is suitable; and

(2) If the Contract includes a ceiling price that the Contractor exceeds at its own risk. [24 CFR § 85.36(b)(10)]

vii. <u>Cost Plus Percentage of Cost Contracts Prohibited</u>. The Corporation (on behalf of GOSR under these guidelines) shall not use the cost plus a percentage of cost and percentage of construction cost methods of contracting. [24 CFR § 85.36(f)(4)]

ARTICLE IX

9. GENERAL CONTRACT PROVISIONS AND CONTINUING EVALUATION OF PROCUREMENT CONTRACTS IN EFFECT FOR LIMITED TERMS.

a. General Contract Provisions. The Corporation **(on behalf of GOSR under these guidelines)** shall include general Contract provisions in its Procurement Contracts, as follows:

i. In Writing and Duly Executed. All Procurement Contracts shall be in writing and shall, at a minimum, be duly executed by an individual empowered to do so in accordance with the Corporation's By-Laws and, as the case may be, the provision for delegation of signing authority thereunder.

ii. Scope and Description. Procurement Contracts shall specifically provide for a scope of services indicating the nature of the work to be performed or goods to be provided, and for the time for performance, if time is a factor, the monitoring or reviewing of that performance by personnel of **GOSR**, any conditions generally applicable to Contracts with the Corporation **(on behalf of GOSR under these guidelines)**, any applicable provisions for insurance, and, where appropriate, any permitted use of supplies, facilities or personnel of **GOSR**.

iii. Compensation and Payment Terms. Such Procurement Contracts shall also state the compensation for the goods or services, and the terms of payment including the conditions for receiving payment from the **GOSR (via the Corporation)**.

iv. Non-collusion. Formal Contracts shall, whenever appropriate, include Contractor Certifications that:

(1) The prices in the bid(s) or proposal(s) were arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in the bid(s) or proposal(s) were not knowingly disclosed by a Contractor prior to the opening of bid submissions, directly or indirectly, to any other Contractor or to any competitor; and

(3) No attempt was made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not submit bid(s) or proposal(s) for the purpose of restricting

competition.

v. False or Inaccurate Lobbying Law Directives Certifications. Every Governmental Procurement with an estimated annual expenditure over $15,000 shall contain:

(1) certifications that the representations required by the Lobbying Law Directives, if applicable, are complete, true and accurate; and

(2) a provision authorizing the Corporation **(on behalf of GOSR under these guidelines)** to immediately terminate such Contract in the event that any certification in accordance with the provisions of the Lobbying Law Directives is found to be intentionally false or intentionally inaccurate.

vi. Prohibitions and Violations in Contracts. In accordance with § 316-a of Article 15-A, Contracts shall include a provision expressly providing that any Contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements, as set forth in such Contract shall be liable to **GOSR** for liquidated or other appropriate damages and shall provide for the appropriate remedies on account of such breach. If the Corporation **(on behalf of GOSR under these guidelines)** elects to proceed against a Contractor for breach of Contract, the Corporation **(on behalf of GOSR under these guidelines)** shall be precluded from seeking enforcement pursuant to §316 of Article 15-A, provided however, that the Corporation **(on behalf of GOSR under these guidelines)** shall include a summary of all enforcement actions undertaken in its Annual MWBE Goal Plan, in accordance with subdivision three of §315 of Article 15-A and Article XII of these Guidelines.

vii. Required language in contracts supported by federal funds.

(1) **Generally.** In all Contracts supported by, or paid with, federal funds, all terms required by any applicable federal statute, regulation, Federal Register notice, or policy shall be specifically set forth or incorporated by reference to such statute, regulation, Federal Register notice or policy.

(2) **CDBG-DR Funded Contracts.** **The following terms, at a minimum, must be included in any CDBG-DR funded Contracts:**

(a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts greater than the simplified

acquisition threshold of $150,000) [24 CFR § 85.36(i)(1)]

(b) Termination for cause and for convenience by the Corporation (on behalf of GOSR under these guidelines) including the manner by which it will be effected and the basis for settlement. (All Contracts in excess of $10,000) [24 CFR § 85.36(i)(2)]

(c) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction Contracts awarded in excess of $10,000 by the Corporation (on behalf of GOSR under these guidelines) and its Contractors or subrecipients) [24 CFR § 85.36(i)(3)]

(d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All Contracts and subgrants for construction or repair) [24 CFR § 85.36(i)(4)]

(e) Compliance with the Davis-Bacon Act (40 U.S.C. § 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction Contracts in excess of $2,000 awarded by the Corporation (on behalf of GOSR under these guidelines) and its subrecipients when required by Federal grant program legislation) [24 CFR § 85.36(i)(5)]

(f) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction Contracts awarded by the Corporation (on behalf of GOSR under these guidelines) and its subrecipients in excess of $2,000, and in excess of $2,500 for other Contracts which involve the employment of mechanics or laborers) [24 CFR § 85.36(i)(6)]

(g) Notice of HUD requirements and regulations pertaining to reporting. [24 CFR § 85.36(i)(7)]

(h) Notice of HUD requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such Contract. [24 CFR § 85.36(i)(8)]

(i) HUD requirements and regulations pertaining to copyrights and rights in data. [24 CFR § 85.36(i)(9)]

(j) Access by the Corporation, GOSR, its subrecipient(s), HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific Contract for the purpose of making audit, examination, excerpts, and transcriptions. [24 CFR § 85.36(i)(10)]

(k) Retention of all required records for at least three years after the Corporation (on behalf of GOSR under these guidelines) or its subrecipients make final payments and all other pending matters are closed. [24 CFR § 85.36(i)(11)]

(l) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000) [24 CFR § 85.36(i)(12)]

(m) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871). [24 CFR § 85.36(i)(13)]

viii. <u>Value engineering</u>. The Corporation (on behalf of GOSR under these guidelines) encourages the use of value engineering clauses in Contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [24 CFR § 85.36(b)(7)]

ix. <u>Bonding requirements</u>. If HUD has not made a determination that the Corporation's (on behalf of GOSR under these guidelines) bonding policy and requirements adequately protect HUD's interest, GOSR's construction or facility improvement Contracts or subcontracts exceeding the simplified acquisition threshold of $150,000 shall contain the following minimum requirements:

(1) ***A bid guarantee from each bidder equivalent to five percent of the bid price.*** **The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within the time specified. [24 CFR § 85.36(h)(1)]**

(2) ***A performance bond on the part of the Contractor for 100 percent of the Contract price.*** **A "performance bond" is one executed in connection with a Contract to secure fulfillment of all the Contractor's obligations under such Contract. [24 CFR § 85.36(h)(2)]**

(3) ***A payment bond on the part of the Contractor for 100 percent of the Contract price.*** **A "payment bond" is one executed in connection with a Contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the Contract. [24 CFR § 85.36(h)(3)]**

b. Cost Principles. GOSR (via the Corporation) shall pay only those costs that are allowable and consistent with the Federal cost principles found in OMB Circular A-87 or successor guidance. [24 CFR 85.36(f)(3)]

c. Continuing Evaluation of Procurement Contracts in Effect for Limited Terms.

i. Limitation of Contract Terms. In order that the Corporation **(on behalf of GOSR under these guidelines)** may enter into new Procurement Contracts for the Procurement covered as soon as might be desirable, Procurement Contracts should not commit the Corporation to continue to use Contractors for longer than is desirable to achieve the Contract objectives, such as obtaining the Contractor's commitment to perform services at a reasonable price. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation **(on behalf of GOSR under these guidelines)**, at its option, without cause, within a period that is less than a year into the future.

ii. Continuing Evaluation of Procurement Contracts and Panels. Every Procurement Contract under which services are currently being performed, or goods or materials provided, shall be continually evaluated by a designated **GOSR** Officer, Employee or Staff. Such Officer, Employee or Staff shall review and approve all bills to be paid and continually evaluate the Contractor's performance. Such Officer, Employee or Staff shall continually give consideration to whether the further use of the

Contractor's services and continuation of the Procurement Contract is desirable. Such consideration shall extend to making a determination, at least annually, of when it would be most appropriate and effective to award the Procurement Contract again through a new competitive selection process such as a new Request for Proposals. A determination not to enter into a new competitive award process immediately can be supported, in part, by verification that services are still being provided at competitive rates, but such verification shall not be determinative of whether a new competitive process should commence. Part of the required annual review and recertification to **GOSR's** Procurement Contract Officer of **GOSR** panels shall be a consideration of whether it would be appropriate and effective to renew the competitive selection process for Procurement Contracts with firms on the panels, including, but not limited to, doing so through the issuance of a new Request for Qualifications to reestablish the panel. Any determination not to enter into a new competitive award process, as a result of which a Contract would exceed a projected five years without a new competitive award process being conducted, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members, as required by Article X of these Guidelines. Such affirmative concurrence shall not be required in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts or existing GSA Contracts.

ARTICLE X

10. REQUIRED CORPORATION APPROVALS

a. Members' Approval. All Contracts where compensation is expected to be in an amount of $100,000 or more, as well as any Contracts involving services to be provided in excess of one year, shall require initial approval of the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation, at its option, without cause, within a period that is less than a year into the future. An Officer may submit other Contracts as he or she deems appropriate to the Corporation's Members for their consideration and approval.

b. Members' Annual Review. The Corporation's Members shall, at least annually, review any Contract lasting more than a year, each June, as part of the approval of the Annual Report on Procurement Contracts. Contracts considered as lasting for more than a year for this purpose shall include Contracts where the Contract itself, by virtue of its stated terms, has a period of longer than a year, and in addition, shall include Contracts where, by virtue of renewal or execution of new or subsequent Contracts without an intervening Contractor or Vendor Selection Process, the Corporation's contractual relationship with the Vendor or Contractor continues for more than a year. Annual approval or review by the Corporation's Members shall be as follows:

i. Provided that timely annual review for each Contract is effected, firms on Corporation panels can be brought for annual review:

(1) collectively, or in such combinations as are deemed appropriate, on a single annual review anniversary, or

(2) individually, based on the dates that Procurement Contracts first required the Corporation's Members' approval.

ii. Any determination not to enter into a new competitive award process, pursuant to which a Contract would exceed a projected five years without a new competitive award process, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members. Such affirmative concurrence shall not be required in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts, or existing GSA Contracts. In any case, any Contract in excess of a $100,000 in amount or more than one year in duration must be initially approved by the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation, and annually

reviewed by the Corporation's Members.

c. Execution of Procurement Contracts. All Procurement Contracts shall be executed by an **Executive Director of GOSR**.

d. Approval of Procurement Contracts by **GOSR** Counsel. Prior to the execution of any Contract, **GOSR** Counsel shall approve, as to legal compliance, all Procurement Contracts. The consideration shall include the legal form and efficacy of the Procurement Contract. **GOSR's** legal department may evidence such approval by **GOSR** Counsel by making such arrangements as are acceptable to **GOSR** Counsel to assure that the form of Contract is legally acceptable and approved by **GOSR's** Counsel.

e. Approval of Procurement Contracts for Fiscal Sufficiency. All Procurement Contracts shall be reviewed by the Treasurer or Assistant Treasurer of the Corporation for fiscal sufficiency prior to execution.

ARTICLE XI

11. ADMINISTRATION OF PROCUREMENT, RECORDS AND RESPONSIBILITIES OF **GOSR** OFFICERS AND EMPLOYEES

a. Procurement Record. A Procurement Record shall be maintained for each Procurement Contract and such other Procurement as the Procurement Contract Officer deems appropriate, or as State law requires, identifying, with supporting documentation, decisions made by **GOSR** during the Procurement process. The Procurement Record shall include, but not be limited to, documentation of: (1) the determination of the method of Procurement from among the available methods permissible under these Guidelines; (2) the process to be used to determine best value, the manner in which the selection of evaluation criteria and the evaluation process shall be conducted, and the evaluation criteria, which, whenever possible, shall be quantifiable; and (3) the basis of award and circumstances leading to the selection of the Vendor, including the alternatives considered, the rationale for selecting the specific Vendor and the basis upon which cost was determined reasonable. To the extent practicable, **GOSR** shall document all aspects of the solicitation process in advance of the initial receipt of offers. Each amendment to an existing Contract, and the justification for each, shall also be included in the Procurement Record. Determinations of emergency with respect to Emergency Selection Contracts and Emergency Foreign Business Enterprise Contracts shall be included in the Procurement Record, as well as the determination to enter into a Sole Source or Single Source Contract.

Annual certifications of panels should be made a part of the Procurement Record.

With respect to the Lobbying Law Directives, the Procurement Record shall include complete information related to: (i) written certifications by the Contractors or Vendors with respect to affirmations that the Contractor or Vendor understands the Lobbying Law Directives and that the Corporation has been informed in writing of the Vendor's prior determinations of non-responsibility over the previous four years, and that this information is complete, true and accurate; (ii) Determinations of Responsibility by the Corporation; (iii) findings of non-responsibility, whether by the Corporation or by other governmental entities; (iv) a record of all Contacts during the Restricted Period, including the name of the person making the Contact, as well as that person's organization, address, telephone number, place of principal employment, occupation, and whether the person/organization making the Contact was the Offerer or was retained, employed or designated by or on behalf of the Offerer to appear before or communicate with **GOSR**; (v) if applicable, a statement regarding the basis for any required finding that the Corporation may enter into a Contract with a Contractor or Vendor who has previously been the subject of any determinations of non-responsibility; and (vi) any determination to terminate a Contract pursuant to the Lobbying Law Directives.

The Procurement Record is a place where **GOSR** can clearly document, as considered appropriate, the need for the Contract; required specifications; and the ways in which a competitive field, fair and equal opportunity for Vendors, which shall include, but not be limited to, certified MWBEs, and a fair and balanced method of selection have been ensured.

The Procurement Record shall be maintained at least throughout the period the Contract and any extensions thereof are in effect and for **at least four years after the State submits its final expenditure report to HUD, or until the completion of any litigation, claim, negotiation, audit, or other action involving the Procurement Record and the resolution of all issues arising from it, whichever is later. [24 CFR § 85.36(b)(9)]**

Procurement Contract Officer (s). **GOSR** hereby designates the **GOSR Chief Operating Officer, Chief Financial Officer, and Senior Procurement Officer** as its Procurement Contract Officer.

The Procurement Contract Officer's responsibilities shall include keeping such portions of the Procurement Record as the Procurement Contract Officer deems appropriate, monitoring compliance with proper contracting procedures and adherence to these Guidelines.

Among the Procurement Contract Officer's responsibilities shall be the determination of when certain portions of these Guidelines shall apply to a Contract by virtue of Contract expenditures, in the aggregate, or sequential periods of time, reaching applicable thresholds stated herein. In addition, for Contracts of less than $500 per year, which are terminable at any time by the Corporation **(on behalf of GOSR under these guidelines)** with less than ninety (90) days' notice, the Procurement Contract Officer may determine that such Contracts shall be considered Contracts not exceeding one year for purposes of these Guidelines.

The Procurement Contract Officer may provide guidance and counsel about proper administration of the Procurement process and Contracts but shall not be a principal directly responsible for administering any Corporation Contract **(on behalf of GOSR under these guidelines)**. The Procurement Contract Officer should be available for counsel and guidance respecting the Procurement selection process but should not be directly involved as an actual selector of Vendors.

The Procurement Contract Officer shall encourage and promote good Procurement practices, including but not limited to, proper and coordinated management of Contracts, desirable Vendor selection practices, and informed and careful bill approval procedures. Among other things, it is generally desirable that there be a single individual designated to manage each Procurement Contract, including renewals and amendments thereto, reporting thereon, and bill approvals, *(and excluding receipt of Designated Contacts)*, and that individuals managing different Contracts in the same area or from the same Vendors coordinate their

work.

The Procurement Contract Officer shall, from time to time, issue such reports on Procurement as shall be appropriate or required including the Annual Procurement Report required under these Guidelines.

The Procurement Contract Officer shall notify the Office of General Services of all Contractors who, with respect to the Lobbying Law, have been the subject of determinations of non-responsibility by the Corporation or who have been debarred.

The Procurement Contract Officer should periodically review and assess the adequacy of these Guidelines and, as appropriate, recommend changes for approval.

The Procurement Contract Officer may grant temporary technical exceptions to these Guidelines for Contracts, other than Formal Contracts, provided that such exceptions appear in the Procurement Contract Record, and that attorneys under the supervision of an **Executive Director** and **GOSR** Counsel determine the exceptions legally appropriate.

c. Designated Contact Officer(s). **GOSR** hereby designates the Treasurer, or in the event the position of Treasurer is vacant, the Assistant Treasurer of **GOSR**, as the Designated Contact Officer for all Governmental Procurement for which such appointment is required. When necessary and appropriate, the Designated Contract Officer may designate one or more Officers, Employees, Staff or Agents of **GOSR** to be an additional Designated Contact Officer. In accordance with the provisions of the Lobbying Law Directives, the Designated Contact Officer, for any given Governmental Procurement or Procurement Contract, is intended to be, by virtue of his or her designation as such, the recipient of any Designated Contacts with respect to the Governmental Procurement for which he or she has been designated. The Designated Contact Officer shall have ready access to, and shall refer to, as appropriate, the Contractors' and Vendors' written affirmations of their understanding of the Corporation's Governmental Procurement lobbying procedures along with all disclosures Contractors or Vendors have provided of any findings of any determinations of non-responsibility against them under the Lobbying Law. Prior to the awarding of a Procurement Contract by **GOSR** to which these provisions apply, it shall be the Designated Contact Officer's responsibility to consult with the Ethics Officer and to likewise consult at any appropriate time thereafter.

d. Designated MWBE Officer(s). **GOSR** shall appoint a Designated MWBE Officer(s) to oversee **GOSR's** MWBE Program established to promote and assist: (i) participation by certified MWBEs in **GOSR** Procurement opportunities and facilitation of the award of Procurement Contracts to such enterprises; (ii) the utilization of certified MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Corporation **(on behalf of GOSR under these**

guidelines); and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having Procurement Contracts with the Corporation **(on behalf of GOSR under these guidelines)**. The Designated MWBE Officer(s) shall be familiar with the Procurement of the types of construction, financial, legal or professional services utilized by the Corporation **(on behalf of GOSR under these guidelines)**, report directly to the President of the Office of Professional Services, either directly or through the designee(s) of such President, and participate in the Procurement process. The Procurement Contract Officer and the Designated Contact Officer shall consult with the Designated MBWE Officer on each Procurement subject to the Corporation's MWBE Program. The Designated MWBE Officer shall consult, as necessary, with **GOSR's** Counsel or Deputy Counsel on each Procurement subject to the Corporation's MWBE Program.

e. Ethical Administration of Contracts, Compliance with the Lobbying Law Directives: Responsibility of Officers and Employees. It shall be the responsibility of the Procurement Contract Officer, the Ethics Officer, the Designated Contact Officer(s), the MWBE Officer(s), and all **GOSR** Officers, Employees and Staff to ensure that Contracts of the Corporation **(on behalf of GOSR under these guidelines)** are administered ethically with due regard for all State ethics laws and Lobbying Law Directives. Determinations respecting ethical contract administration shall be made by the Ethics Officer, to whom any allegations of impropriety or unethical administration may be reported. The Ethics Officer shall also be responsible for reviewing, investigating, monitoring and imposing sanctions relating to any noncompliance with Lobbying Law Directives. The Procurement Contract Officer shall report to the Ethics Officer such allegations of impropriety or unethical administration of Procurement, or violations of the Lobbying Law Directives, as may come to the Procurement Contract Officer's attention. **GOSR** Officers, Employees and Staff including, but not limited to, the Designated Contact Officer(s), shall report to the Ethics Officer any allegations of impropriety or unethical administration of Procurement or violations of the Lobbying Law Directives that come to their attention. If the Ethics Officer determines that sufficient cause exists to believe that an allegation concerning a violation of the Lobbying Law Directives is true, the Ethics Officer shall give the respective Contractor or Vendor reasonable notice (i) that an investigation is ongoing and (ii) an opportunity to be heard in response to the allegation.

Prior to the awarding of a Procurement Contract by **GOSR** to which the provisions of the Lobbying Law Directives apply, and any time thereafter, it shall be the Ethics Officer's responsibility to consult with the Designated Contact Officer(s) and make other appropriate inquiries so as to make the findings as to whether there were any certifications in relation to the provisions of the Lobbying Law Directives that were intentionally false or intentionally inaccurate so that the Corporation would have the right to terminate such Contract. If the Corporation terminates a Procurement Contract **(on behalf of GOSR under these guidelines)**

under these termination provisions, it shall be the Designated Contact Officer's responsibility to provide the statement describing the basis for such action for inclusion in the Procurement Record.

In order to comply with the Lobbying Law Directives, all Staff must cooperate and participate in the recording of Contacts with respect to which the Lobbying Law Directives apply. The record of a Contact shall include the name, address, telephone number, place of principal employment, and occupation of the person or organization. Staff must also inquire about, and record, whether the person or organization making the Contact was the Offerer, or was retained by the Offerer to contact **GOSR** about the Procurement. Staff must report all recorded Contacts to the Procurement Contract Officer for inclusion in the Procurement Record of the Procurement Contract.

If the Ethics Officer finds a knowing and willful violation of the Lobbying Law Directives by any Staff, the Ethics Officer shall report the violation to the President of the Office of Professional Services.

It is expected that the Ethics Officer will confer, as appropriate, with **GOSR's** Counsel with respect to allegations of unethical conduct or violations of the Lobbying Law Directives or other violations of law and nothing in any of the forgoing is to be taken to preclude individuals from also contacting **GOSR's** Counsel directly with respect to any such allegations. **[24 CFR § 85.36(b)(3)]**

<u>Conflicts of Interest</u>. No employee, officer, or agent of GOSR or the State's subrecipients shall participate in selection, or in the award or administration of a Contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

i. The employee, officer or agent,

ii. Any member of his immediate family,

iii. His or her partner, or

iv. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

GOSR's or the State's subrecipients' officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to subagreements. [24 CFR § 85.36(b)(3)]

g. <u>Settlement of Contractual and Administrative Issues</u>. Procurements and Contracts are subject to the Corporation's procedures for the settlement of all contractual and administrative issues arising out of Procurements,

including but not limited to the source evaluation, bid protest, dispute, and claim procedures. [24 CFR § 85.36(b)(11), (12)] In all instances, GOSR shall disclose information regarding a protest to HUD. [24 CFR § 85.36(b)(12)]

ARTICLE XII

12. PROTEST GUIDELINES

a. Applicability. The intent and purpose of these guidelines is to set forth the procedure to be utilized when an Interested Party Protests the awarding of a contract by the Housing Trust Fund Corporation ("HTFC") for which any portion of the Contract Award is funded by United States Housing and Urban Development ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") grant funds, or is associated with HTFC's CDBG-DR funded programs and activities. These guidelines shall apply to all such contracts in excess of $150,000. There shall be no challenges to contracts of $150,000 or less.

Any Protest must be in writing and may be filed only after HTFC has made a Contract Award.

b. Definitions.

i. "Appeal" refers to a review by GOSR's Chief Operations Officer of the written determination of the Protest.

ii. "Contract Award" is a written determination from HTFC to an offeror indicating that HTFC has accepted its bid or offer with respect to the procurement at issue in the Protest, and that such Contract Award is being funded in whole or in part with HUD CDBG-DR funds.

iii. "GOSR" means the Governor's Office of Storm Recovery, a division of HTFC and through which HTFC administers HUD CDBG-DR funds.

iv. "Interested Party" means a participant in the procurement process and those whose participation in the procurement process has been foreclosed by the actions of HTFC.

v. "Protest" means a written challenge by an Interested Party to a Contract Award.

vi. "Protester" means an Interested Party that files a Protest with HTFC.

vii. "Successful Bidder" means the bidder or offeror whose bid or offer HTFC proposes to accept.

c. No Protest of Solicitation Terms. Any concerns regarding the terms of a solicitation must be raised during the solicitation's question-and-answer period. Protests regarding the terms of a solicitation shall not be permitted.

d. Protests Filed with HTFC for Contract Awards.

i. An Interested Party may file a Protest with HTFC under these procedures so long as the contract at issue in the Protest is in excess of $150,000, and that such Contract Award is being funded in whole or in part with HUD CDBG-DR funds, or is associated with HTFC's CDBG-DR funded programs and activities.

ii. The Protest to HTFC must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the Interested Party challenges the Contract Award by HTFC. The Protest must be timely filed with GOSR's Director of Procurement, via electronic mail ("email"), at gosrprocurement@stormrecovery.ny.gov.

iii. The Protest must be filed with HTFC within five (5) business days (observing all New York State holidays) of being notified of the Contract Award. Any filing deadlines may be waived by HTFC as provided in Section 4(j) of these guidelines.

iv. The Protest shall be concise and logically presented to facilitate review by HTFC.

v. The Protest shall contain the following information:

(1) Name, address, telephone number(s) and email address(es) of the Protester.

(2) Solicitation and contract number.

(3) Detailed statement of the legal and factual grounds for the Protest, to include a description of resulting prejudice to the Protester.

(4) Copies of relevant documents.

(5) Request for a ruling by HTFC.

(6) Statement as to the form of relief requested.

(7) All information establishing that the Protester is an Interested Party.

(8) All information establishing the timeliness of the Protest.

vi. HTFC shall make its best efforts to resolve the Protest within thirty (30) business days after the Protest is filed.

vii. On behalf of HTFC, the Director of Procurement shall review the Protest and, in consultation with legal counsel, issue a written determination addressing all issues raised by the Protest, as well as any relevant issues raised by its review of the contract. The determination shall make findings of fact and conclusions of law on any issues in dispute. HTFC shall provide a copy of its written determination to the Protester via email. The determination shall be made part of the procurement record.

viii. HTFC may summarily deny a Protest that fails to contain specific factual or legal allegations, or where the protest raises only issues of law that have already been decided by the courts or by HTFC.

ix. HTFC shall determine whether it deems necessary to conduct a fact-finding hearing, and the level of formality for any hearing conducted.

x. HTFC may, in its sole discretion, waive any deadline or requirements set forth in these guidelines or consider any materials, submitted in writing, beyond the time periods set forth in these guidelines.

xi. Nothing herein shall preclude HTFC from obtaining information relevant to the procurement from any outside source, as it deems appropriate.

xii. Upon receipt of a Protest, HTFC shall promptly suspend commencement and/or performance on such Contract Award until resolution of the Protest, unless commencement and/or performance is justified, in writing, for urgent and compelling reasons or is in the best interest of HTFC, as determined in the sole discretion of HTFC. Any determination to commence or continue performance shall not be reviewable or the subject of appeal.

e. Appeal of Written Determination.

i. A Protester may request an Appeal of HTFC's written determination on the Protest by GOSR's Chief Operations Officer.

ii. The Appeal must be in writing and Protester must contain specific factual and/or legal allegations that HTFC's prior written determination contains clear errors of either fact or law, or must present information not previously considered that warrants reversal or modification of HTFC's prior written determination. GOSR's Chief Operations Officer will not consider a request for review based on repetition of arguments previously raised or new information that could have been raised at the time of the filing of the Protest. The Appeal must be timely filed with GOSR's Chief Operations Officer, via electronic mail ("email") at, gosrprocurement@stormrecovery.ny.gov.:

iii. The Appeal must be filed within five (5) business days (observing all New York State holidays) after receipt of HTFC's email containing the written determination from GOSR's Director of Procurement.

iv. The Appeal shall contain the following information:

(1) Name, address, telephone number(s) and email address(es) of the Protester.

(2) Solicitation and contract number.

(3) Detailed statement of the legal and factual grounds for Appeal.

(4) If new information is being raised, information and evidence that such information was not available or could not have been reasonably known or uncovered at the time the Protest was filed.

(5) Copies of relevant documents, including a copy of HTFC's decision on the initial Protest.

(6) Request for a ruling by GOSR's Chief Operations Officer.

(7) Statement as to the form of relief requested.

(8) All information establishing the timeliness of the Appeal.

v. GOSR's Chief Operations Officer will summarily dismiss any Appeal that fails to state a valid basis for review or is untimely.

vi. GOSR's Chief Operations Officer shall make his/her best efforts to resolve the Appeal within thirty (30) business days after the Appeal is filed.

vii. GOSR's Chief Operations Officer shall review the Appeal and, in consultation with legal counsel, issue a written decision addressing all issues raised by the Appeal. GOSR's Chief Operations Officer shall provide a copy of his/her written decision to the Protester. The decision shall be made part of the procurement record.

f. Miscellaneous.

i. Notice and Filing – Any "notice" or "filing" required under these guidelines shall be in writing and shall be effective when actually received by the party for which it was intended.

ii. Protest and/or Appeal Costs – Irrespective of the outcome of a Protest or Appeal, the Protester shall not be entitled to any associated costs.

ARTICLE XIII

13. REPORTS ON PROCUREMENT

a. Annual Procurement Report ("Annual Report"). Within 90 days after the conclusion of the Corporation's fiscal year, the Members of the Corporation shall approve an Annual Report summarizing Procurement activity for the period of the Annual Report. Such Annual Report will include these Guidelines, an explanation of these Guidelines and any amendments thereto since the last Annual Report. The Annual Report describing Procurement activity shall include: (a) a listing of all Procurement Contracts entered into; (b) all Contracts entered into with NYSBEs and the subject matter and value thereof; (c) all Procurement Contracts entered into with certified MWBEs and the subject matter and value thereof, all referrals made and all penalties imposed, pursuant to §316 of Article 15-A; (c) all Contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; (d) the selection process used to select such Contractors; (e) all Procurement Contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, the basis for any such exemption; and (f) the status of existing Procurement Contracts.

Such Annual Report shall list for each Contract the following information:

i. a description of the duties performed by the Contractor;

ii. the date of the Contract and its duration;

iii. the total value of the Contract;

iv. the full name and address of the Contractor;

v. the status of the Contract, including the amount spent or other considerations given pursuant to the Contract during the reporting period and for the life of the Contract to date;

vi. whether the Contractor is a certified Minority or Women-Owned Business Enterprise; and

vii. the total number of bids or proposals received prior to the award of the Contract.

The Annual Procurement Report, after being approved by the Corporation's Members, shall be filed to the Division of the Budget and the Department of Audit and Control using the Public Authorities Reporting Information System ("PARIS") on-line Reporting System, with copies of this report to the Department of Economic Development, the Senate Finance Committee and the Assembly Ways

and Means Committee.

Copies of the Annual Procurement Report shall also be available to the public upon reasonable request at the Corporation's main office, and be available on the Corporation's website.

b. Annual MWBE Goal Plan ("MWBE Goal Plan"). The Corporation shall report, annually, to the Governor, Legislature and the MWBE Director, on various issues pertaining to Procurements relating to MWBE, in accordance with Article VI of these Guidelines and Article 15-A, including but not limited to:

i. the annual goals, identified in the Corporation's Annual MWBE Goal Plan, for Contracts with MWBEs;

ii. providing adequate documentation of a good faith effort to meet the Corporation goals described in the Corporation's Annual MWBE Goal Plan, in the event that the Corporation projected goals cannot be achieved;

iii. the number of actual Contracts issued to MWBEs;

iv. the activities undertaken to promote and encourage Procurement opportunities of Minority Group Members and women and promote and increase participation by certified businesses with respect to Corporation Contracts and subcontracts;

v. Corporation Contracts for leases of real property by the Corporation to a Lessee where (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee, and (ii) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon exceeds the sum of $100,000;

vi. a summary of all enforcement actions undertaken by the Corporation against a Contractor for breach of Contract pursuant to §316-a of Article 15-A and Article IX of these Guidelines; and

vii. a summary of all waivers, defined in Article VI of these Guidelines, permitted by the Corporation during the period covered by the MWBE Report, including:

(1) a description of the basis of the waiver request; and

(2) the rationale for granting any such waiver.

ARTICLE XIV

14. MISCELLANEOUS PROVISIONS

a. Powers of Amendment. Any modification or amendment of these Guidelines may be made by a Supplemental Resolution adopted at any duly constituted Members' meeting; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Corporation Contracts, the terms of which were established pursuant to these Guidelines; and further provided that the Procurement Contract Officer, or his or her designee, may make non-material changes in these Guidelines. Any such changes shall be reported at the next regularly scheduled meeting of the Members of the Corporation.

b. Supplementation with Procedural Handbooks, Practice Manuals and Other Directives. These Guidelines are only intended to provide the general framework for Corporation Procurement practices **with respect to the Procurement of goods or services funded, in whole or in part, with the U.S. Department of Housing and Urban Development's ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2).** These Guidelines are not intended to preclude supplementation of the Guidelines through the promulgation of more specific procedural handbooks, practice manuals, or other directives and guidance as may be issued from time to time, including as example, and not by way of limitation, more specific procedures for conduct of Requests For Proposals and Requests For Qualifications. It is also not intended that the existence of these Guidelines should prevent or supplant the issuance of additional Corporation guidelines or regulations to deal specifically with Lobbying Law Directives and/or MWBE Directives, if appropriate.

c. No Recourse under these Guidelines. No provision of these Guidelines shall be the basis for any claim based upon these Guidelines against any Member, Officer, Employee or Staff of the Corporation **or GOSR**, or any agent of the Corporation **or GOSR** when acting pursuant to these Guidelines or pursuant to an authorization to execute Contracts on behalf of the Corporation **or GOSR**, or the Corporation **or GOSR** itself.

d. Effect upon Existing Contracts of the Corporation. These Guidelines shall not abrogate the rights and duties of Corporation Contracts with third parties executed prior to the effective date of these Guidelines.

e. Provisions Required by Law. These Guidelines are hereby deemed to include any provision required by law to be included herein.

TAB 5a

HTFC's Governor's Office of Storm Recovery's Procurement and Contract Guidelines

(As amended May 14, 2015)

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

PROCUREMENT

NYS Storm Recovery Policies

Andrew M. Cuomo, Governor of New York State
James Rubin, Executive Director
Governor's Office of Storm Recovery

May 14, 2015

Prepared by
New York State Homes and Community Renewal
Housing Trust Fund Corporation
Office of Community Renewal

The procedures stated in this manual are current as of May 14, 2015. This manual represents the current version of the Governor's Office of Storm Recovery (GOSR) policy, which shall provide general guidance for the operation of the GOSR Procurement Department. All policy and procedure manuals will be reviewed periodically and will be updated to reflect the current needs and operation of the GOSR program. GOSR will use its best efforts to keep all of its Policy and Procedure Manuals, as well as its Human Resources Policy Manual current. There may be times, however, when a policy or procedure will change before the manual can be revised. Therefore, you are strongly urged to contact the GOSR DIRECTOR OF OPERATIONS (COO) and our office of Human Resources to ensure that you have the latest version of GOSR's policies and

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PROCUREMENT
Governor's Office of Storm Recovery
POLICY MANUAL

Version Control

Version Number	Date Revised	Description of Revisions
1.0	July 9, 2014	Housing Trust Fund Corporation (HTFC) Board approved for release and publication
1.0	July 28, 2014	Released to GOSR staff and posted on website
2.0	July 31, 2014	Combined Policy & Procedures for release to GOSR staff and posting on GOSR website
3.0	October 6, 2014	No changes to Policy Manual
4.0	December 12, 2014	No changes to Policy Manual – Break out of Policy & Procedures to two stand-alone documents
5.0	January 15, 2015	Inserted Protest Guidelines into the Policy Manual for Board approval
5.0	January 29, 2015	HTFC Board approved for release and publication
5.0	March 19, 2015	Corrected incorrect citation references on pages 6 and 39
6.0	April 28, 2015	Revised language to more closely align GOSR's policies with federal requirements and improve GOSR's procurement practices and its ability to efficiently perform its duties. Changes address use of intergovernmental agreements, referrals of violations to authorities, waivers concerning "Invitation for Bid" procedures, relief from documenting justification for non-material contract amendments, and provisions related to vendor responsibility and performance evaluation.
6.0	May 14, 2015	HTFC Board approved for release and publication

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PROCUREMENT AND CONTRACT GUIDELINES FOR THE GOVERNOR'S OFFICE OF STORM RECOVERY OF THE HOUSING TRUST FUND CORPORATION FOR CONTRACTS FUNDED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S COMMUNITY DEVELOPMENT BLOCK GRANT-DISASTER RECOVERY ("CDBG-DR") PROGRAM

ESTABLISHING STANDARDS FOR THE USE, AWARD, MONITORING AND REPORTING OF PROCUREMENT CONTRACTS UNDER THE NEW YORK STATE CDBG-DR PROGRAM

ARTICLE I

1. STATEMENT OF PURPOSE AND APPLICABILITY

a. Statement of Purpose. These Guidelines are adopted pursuant to the provisions of the Act and § 2879 of the Public Authorities Law, as guidelines of **the Governor's Office of Storm Recovery of** the Housing Trust Fund Corporation, hereinafter referred to as "**GOSR**," and such guidelines are independent of, but intended to be in alignment to the extent possible with, the guidelines of the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (collectively hereinafter referred to as "Agencies") and are to be reviewed and approved by the **GOSR's Executive Directors** at least annually.

b. Applicability. These Guidelines apply **only** to the Procurement by the Corporation of goods or services **funded, in whole or in part, with the U.S. Department of Housing and Urban Development's ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2)..**

c. Title. Outside of this document, these Guidelines may be referred to as the "**CDBG-DR** Procurement and Contract Guidelines" and herein may be referred to as "Guidelines."

ARTICLE II

2. DEFINITION OF TERMS

a. Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

i. "Act" shall mean Section 45-a of the New York Private Housing Finance Law.

ii. "Affiliated Agencies" or "Affiliated Agency" shall mean, either individually or collectively, the affiliated agencies, each being the **Governor's Office of Storm Recovery,** Housing Trust Fund Corporation, New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, and Tobacco Settlement Financing Corporation.

iii. "Affiliate Contract" shall mean any Procurement Contract entered into by an Affiliate Agency.

iv. "Agency Contract" shall mean any Procurement Contract entered into by a State Agency.

v. "Authority Contract" shall mean any Procurement Contract entered into by a State Authority.

vi. "Annual Procurement Report" shall mean the annual report required by Article XIII of these Guidelines.

vii. "Article 15-A of the Executive Law" or "Article 15-A" shall mean, the statute that governs the participation by Minority Group Members and women with respect to **GOSR** Contracts.

viii. "By-Laws" shall mean the By-Laws adopted by the Members of the Corporation.

ix. "Chief Executive Officer" or "CEO" shall mean the Officer having such title according to the Corporation's By-Laws.

x. "Contact" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, any oral, written or electronic communication from a Contractor or Vendor, or its representatives, with **GOSR (via the Corporation)**, under circumstances

where a reasonable person would infer that the communication was intended to influence **GOSR's** conduct or decision regarding a **GOSR** Governmental Procurement.

xi. "Contract" shall mean a written agreement whereby the Corporation **(on behalf of GOSR under these guidelines)** undertakes Procurement, and shall include, but not be limited to, accepted Purchase Orders and Procurement Contracts. Contracts in excess of $25,000 for goods or services and Contracts in excess of $100,000 for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon are subject to **GOSR's** MWBE Directives. Additionally, pursuant to Article 15-A, solely for the purpose of providing the opportunity for meaningful participation for certified MWBEs in the performance of **GOSR** Contracts, **GOSR** Contracts shall include leases of real property by **GOSR (on behalf of The Corporation under these guidelines)** to a Lessee where: (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee; and (b) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of $100,000.

xii. "Contractor" shall mean a supplier of goods or services to the Corporation pursuant to a Contract **(on behalf of GOSR under these guidelines)**.

xiii. "Corporation" shall mean the Housing Trust Fund Corporation.

xiv. "Counsel" shall mean the chief legal officer as so defined in the By-Laws of the Corporation.

xv. "Critical Contract" shall mean a Contract which must be awarded within a set time period because delay of the award would have a serious adverse effect on **GOSR** that outweighs the benefits of advertisement in the "New York State Contract Reporter," as determined by the **Executive Director of GOSR**. All Emergency Selection Contracts shall be Critical Contracts. Emergency Foreign Business Enterprise Contracts are not Critical Contracts unless **GOSR** independently determines those Contracts to be Critical Contacts.

xvi. "Designated Contact" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a Contact made between an Offerer and **GOSR's** Designated Contact Officer(s), as set forth in Article VII of these Guidelines.

xvii. "Designated Contact Officer(s)" shall mean, for purposes of applying the

Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the person(s) **GOSR** appoints to such position, in accordance with the provisions of the Lobbying Law, who may be the recipient of Designated Contacts, as set forth in Articles VII and XI of these Guidelines. The Designated Contact Officer shall be the person so designated in each solicitation.

xviii. "Designated MWBE Officer(s)" shall mean the senior staff **GOSR** appoints to such position to oversee **GOSR's** MWBE Program, as set forth in Articles VI and XI of these Guidelines.

xix. "Determination of Responsibility" shall mean, in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a final determination required to be made by **GOSR** of the proposed Contractor or Vendor to whom the Contract is to be awarded in accordance with Section 2879 of the Public Authorities Law. For Determinations of Responsibility hereunder, the Lobbying Law requires that proposed Contractors and Vendors disclose findings of non-responsibility against them within the previous four years by any other governmental agency.

xx. "Discriminatory Jurisdiction" shall mean any other county, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the Procurement of goods or services by the same, or a non-governmental entity influenced by the same.

xxi. "Disparity Study of 2010" or "Disparity Study" shall refer to the disparity study commissioned by the Empire State Development Corporation ("ESDC"), pursuant to Article 15-A, and published on April 29, 2010.

xxii. "Emergency Foreign Business Enterprise Contract" shall mean any Contract awarded on an emergency or critical basis or where the New York State Commissioner of Economic Development (hereinafter referred to as the "DED Commissioner") waives provisions otherwise applying to Contracts with Foreign Business Enterprises which are equal to or greater than $1,000,000, pursuant to Article VIII of these Guidelines.

xxiii. "Emergency Selection Contract" shall mean any Contract exempt from competitive selection due to **GOSR's** determination of an emergency justifying such exemption.

xxiv. "Employee" shall mean an employee of **GOSR**, whether full or part time.

xxv. "Ethics Officer" shall mean the person **GOSR** appoints to such position for purposes of administering matters in connection with the State Ethics laws, or any other State law which requires the existence of such an officer to review, monitor and impose sanctions related to Procurement matters including, but not limited to, Lobbying Law Directives.

xxvi. "Executive Director(s)" shall mean that GOSR individual(s) given such title.

xxvii. "Foreign Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by **GOSR** and which are substantially produced outside the State, or services sought **GOSR**, and which are substantially performed outside the State.

xxviii. "GOSR" shall mean the Governor's Office of Storm Recovery, a division of the Housing Trust Fund Corporation.

xxix. "GOSR Counsel" shall mean the chief legal officer for GOSR.

xxx. "Governmental Procurement" shall mean the (a) public announcement, public notice, or public communication to any potential Vendor of a determination of a need for a Procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, Request for Proposals ("RFP"), or evaluation criteria for a Procurement Contract, (b) solicitation for a Procurement Contract, (c) evaluation of a Procurement Contract, (d) award, approval, denial or disapproval of a Procurement Contract, or (e) approval or denial of an assignment, amendment, renewal or extension of a Procurement Contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Offerer.

xxxi. "**GOSR** Staff" or "Staff" shall mean Employees and Officers of GOSR or any governmental agency which has assigned employees to perform services to GOSR.

xxxii. "Guidelines" shall mean these Guidelines, as they may be amended from time to time.

xxxiii. "Impermissible Contact" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, any Contact that is not a Designated Contact.

xxxiv. "Invitation for Bid" process or "IFB" shall mean the solicitation, by way of a statement of qualification, proposal and/or, as appropriate, price bid

from at least three prospective Contractors or Vendors, one of which shall be from a MWBE, if possible, for Procurements not expected to exceed $50,000. Procurements anticipated to exceed $25,000 or more must include MWBE participation goals.

xxxv. “Lessee" shall have the same meaning defined in Article 15-A.

xxxvi. "Lobbying Law Directives" shall mean, in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the requirements of the provisions of the Lobbying Law, and as set forth in Article VII of these Guidelines.

xxxvii. "Lobbying Law" shall mean the provisions of the Legislative Law and the State Finance Law enacted on August 23, 2005, Chapter 1 of the laws of 2005 and amended on March 20, 2010, Chapter 4 of the laws of 2010.

xxxviii. "Member(s)" shall mean the Members of the Housing Trust Fund Corporation as defined in the By-Laws of the Corporation, unless the context shall clearly indicate some other meaning, e.g. “Minority Group Members.”

xxxix. "Minority Owned Business Enterprise" or "MBE" shall mean any business enterprise, including a sole proprietorship, partnership or corporation, that is:

1) at least 51% owned by one or more Minority Group Members, or in the case of a publicly-owned business, at least 51% of the common stock or other voting interests of which is owned by one or more Minority Group Members;

2) an enterprise in which the minority ownership is real, substantial and continuing;

3) an enterprise in which the minority ownership has, and exercises, the authority to control independently the day-to-day business decisions of the enterprise;

4) an enterprise authorized to do business in the State, independently owned and operated, and not dominant in its field;

5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a Personal Net Worth that does not exceed $3.5 million, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and

6) an enterprise that is a Small Business.

xl. “Minority and/or Women-Owned Business Enterprise” or “MWBE” shall mean any business enterprise, including a sole proprietorship, partnership or corporation, that meets the qualifications for an MBE, a WBE, or both an MBE and a WBE.

xli. "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:

1) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

4) Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian sub-continent or the Pacific Islands.

xlii. "MWBE Director" shall mean the director of the division of minority and women’s business development in the Department of Economic Development.

xliii. "MWBE Directives" shall mean the requirements of **GOSR’s** MWBE Program in accordance with the provisions in § 2879 of the Public Authorities Law and Article 15-A, and as set forth in Article VI of these Guidelines.

xliv. "MWBE Program" shall mean **GOSR’s** Procurement procedures and policies for providing opportunity for meaningful participation of certified businesses in the performance of **GOSR** Contracts, as more fully described in Article VI of these Guidelines.

xlv. "New York State Business Enterprise" or "NYSBE" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by **GOSR** and which are substantially manufactured, produced or assembled in the State, or services which are sought by **GOSR** and which are substantially performed within the State.

xlvi. "Offerer" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts **GOSR** about a **GOSR** Governmental Procurement during the Restricted Period of such **GOSR** Governmental Procurement, whether or not the caller has a financial interest in the outcome of the Governmental Procurement.

xlvii. "Officer" shall mean those positions so defined in the By-Laws of the Corporation.

xlviii. "Permissible Contact" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, a Designated Contact.

xlix. "Permissible Subject Matter Communication" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the communications set forth as such in Article VII of these Guidelines.

l. "Personal Net Worth" shall have the same meaning as defined in Article 15-A.

li. “Personal Services" shall mean any services performed for fee, commission or other compensation by persons or organizations who are not providing such services as Officers, Employees or Staff of **GOSR,** the Corporation, Affiliated Agency, any State Agency or State Authority.

lii. "Preferred Source" shall mean the status afforded to certain contractors or vendors for purposes of Procurement under § 162 of the State Finance Law.

liii. "President" shall mean an Officer having such title according to the Corporation’s By-Laws.

liv. "Procurement" shall mean the acquisition of goods, materials and services including, but not limited to, Personal Services, by the Corporation **(on behalf of GOSR under these guidelines)**. The term goods shall include, but not be limited to, personal property, including furniture, fixtures, stationery and supplies. Services shall include, but not be limited to, the performance of legal, accounting, management, consulting, investment banking, planning, training, statistical, research, public relations, architectural, engineering, surveying or other Personal Services of a

consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such service as Officers, Employees or Staff of **GOSR,** the Corporation, any Affiliated Agency, any State Agency or State Authority.

lv. "Procurement and Contract Guidelines" shall mean the guidelines to Procurement of goods or services by **GOSR (via the Corporation)**, originally adopted by the Corporation's Members, and revised from time to time, pursuant to the provisions of its Act and § 2879 of the Public Authorities Law.

lvi. "Procurement Contract(s)" shall mean, (a) *(following the definition in § 2879 of the Public Authorities Law)* any written agreement for Procurement in the actual or estimated amount of $5,000 or more or (b) *(following the definition in the Lobbying Law for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000)* any Contract, including an amendment, extension, renewal, or change order to an existing Contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the Contract as it was finally awarded), for a Governmental Procurement.

lvii. "Procurement Contract Officer" shall mean the person appointed to such position, as set forth in Article XI of these Guidelines.

lviii. "Procurement Record" shall mean documentation of the decisions made and the approach taken in the Procurement process together with other documentation with respect to Contracts and Contractors/Vendors, as set forth in these Guidelines.

lix. "Purchase Order(s)" shall mean written authorization to a Vendor to deliver specified goods or services at a stipulated price.

lx. "Request for Proposal" or "RFP" shall mean the solicitation, by way of a detailed description of services and/or related work required by **GOSR (via the Corporation)**, of a comprehensive response from qualified potential Contractors or Vendors, indicating the manner in which each would perform the tasks involved and the compensation requested, which response would be the basis for a contractual agreement.

lxi. "Request for Qualification" or "RFQ" shall mean a request for a statement of qualifications, which shall contain detailed information, so as to enable potential contractors to determine the desirability of participating in the selection process and to develop a competitive statement. An RFQ may request other information in addition to qualifications.

lxii. "Restricted Period" shall mean, for purposes of applying the Lobbying Law in relation to any **GOSR** Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000, the period of time commencing with the earliest determination of a Procurement need by **GOSR**, including, but not limited to, any oral or written communication, notice, advertisement or solicitation of an RFP, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from contractors or vendors intending to result in a Procurement Contract with **GOSR** and ending with **GOSR's** approval of the final Contract award.

lxiii. "Single Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the Corporation **(on behalf of GOSR under these guidelines)**, approved in writing by the **Executive Director of GOSR**, that one firm is uniquely qualified or has a unique advantage with respect to the provision of a particular service or good, such that competitive procedures are rendered futile. Such determination shall become part of the Procurement Record and be filed with the **GOSR's** Counsel and the Procurement Department.

lxiv. "Small Business" shall have the same meaning defined in Article 15-A.

lxv. "Sole Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the Corporation **(on behalf of GOSR under these guidelines)**, approved in writing by the **Executive Director of GOSR**, that there is only one source for a particular service or good, such that competitive procedures are rendered futile. Such determination shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary.

lxvi. "State" shall mean the State of New York.

lxvii. "State Agency" shall mean any state department, state university of New York, city university of New York, board, bureau, division, commission, committee, council, office or other governmental entity performing a governmental or proprietary function for the state, or any combination thereof as provided in subdivision two of section nine hundred fifty-one of the executive law, except any public authority or public benefit corporation, the judiciary or the state legislature.

lxviii. "State Authority" shall mean a public authority or public benefit corporation created by or existing under the Public Authorities Law or any other law of the state of New York, with one or more of its members appointed by the governor or who serve as members by virtue of holding a civil office of the state, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority

or public benefit corporation.

lxix. "Vendor" shall mean a supplier of goods or services to the Corporation **(on behalf of GOSR under these guidelines)**.

lxx. "Women-Owned Business Enterprise ("WBE") shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

1) at least 51% owned by one or more United States citizens or permanent resident aliens who are women or, in the case of a publicly-owned business, at least 51% percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;

2) an enterprise in which the ownership interest of women is real, substantial and continuing;

3) an enterprise in which the women ownership has, and exercises, the authority to control independently the day-to-day business decisions of the enterprise;

4) an enterprise authorized to do business in the State, independently owned and operated, and not dominant in its field;

5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a Personal Net Worth that does not exceed $3.5 million, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and

6) an enterprise that is a Small Business.

b. Construction of Language. Any other capitalized terms used herein shall have the meaning given by the By-Laws. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa.

ARTICLE III

3. USE OF PROCUREMENT CONTRACTORS AND VENDORS

a. Threshold Criteria for Use of Procurement Contractors for Personal Services. The general responsibilities of **GOSR** are performed by its Employees, Officers and Staff. Accordingly, it is the policy of **GOSR** that before Personal Services are used, it first be considered whether it would be more appropriate for its Employees, Officers or Staff to provide such services. Personal Services Contractors may be used when it has been determined:

(l) that such service is necessary or convenient to the performance of **GOSR's** responsibilities; and

(2) that such service is not available from Employees, Officers or Staff; or

(3) that the performance of such service requires it be undertaken by someone independent of **GOSR**; or

(4) that use of Employees, Officers or Staff of **GOSR** for such service would not be efficient or cost effective.

Such determination shall be made by an Officer except that, in the case of Personal Services set forth below in this Article, such determination may be made by Officers as they may deem administratively appropriate. Non-Personal Services Contracts shall be entered into when **GOSR** requires goods, materials and non-Personal Services to function effectively and efficiently.

a. Areas Requiring Use of Procurement Contracts for Personal Services. Personal Services Contracts have typically been and are anticipated to be executed in the following areas, pursuant to a determination of appropriateness in accordance with the requirements of subparagraph a. of this Article:

Types of Services, Responsibilities and Description of Services to be Provided.

i. Appraisal. Provide appraisals, analyses and reports with respect to properties which are or may be the subject of **GOSR** loans or loans insured by the Corporation **(on behalf of GOSR under these guidelines)**.

ii. Architectural and Engineering. Provide professional architectural and/or engineering services relative to the construction of properties which are or may be the subject of **GOSR** loans, or loans insured by **GOSR**.

iii. Audit and Accounting. Provide audit services pertaining to the year-end preparation of financial statements for **GOSR** in conformance with generally accepted accounting principles. Perform special audits as requested.

iv. Custody & Safekeeping Services. Provide custody and safekeeping services to secure **GOSR** investments and receive and evaluate underlying collateral for secured **GOSR** investments.

v. Equipment Maintenance. Provide maintenance for the routine service or repair of office and data processing equipment.

vi. Information Technology Consulting. Provide analyses and recommendations on **GOSR's** data processing structure and operations.

vii. Information Technology Services. Provide report generating and printing services, computer systems hardware, programming and related services to **GOSR**.

viii. Investment Banking. Provide: (a) financial advisory services and (b) recommendations and analyses with respect to **GOSR** investments.

ix. Legal. Provide legal services, opinions and analyses related to financings, real estate matters, corporate matters, litigation matters and labor matters.

x. Management Consulting. Provide analyses and recommendations concerning **GOSR's** organizational structure and the management of its operations.

xi. Minority and Women Business Enterprise Consulting. Provide technical assistance in **GOSR's** effort to facilitate MWBE participation in **GOSR** programs.

xii. Printing. Provide: (a) financial printing services based upon specifications and details developed by **GOSR**; (b) technical printing services relative to the reproduction of loan and insurance documents; (c) graphic, layout and printing services in connection with production of **GOSR** report(s); and (d) other printing and offset services.

xiii. Training. Provide supervisory and other skills training to **GOSR** Officers, Employees and Staff.

xiv. Trustee Banking Services. Provide banking services to monitor the timely receipt of payments, retirement of debt, collateral evaluations and other services as required by the various bond resolutions.

xv. Others. The examples of Personal Services listed above in clauses (i) through (xiv) reflect anticipated Personal Services and are not meant to be exhaustive; other services, in other areas, may be utilized subject to these Guidelines.

These Personal Services are not required to be provided as Personal Services Contracts, and may sometimes be performed by **GOSR** Officers, Employees and Staff.

a. **<u>Avoiding Purchase of Unnecessary or Duplicative Items</u>. Proposed Procurements shall be reviewed to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out Procurements to obtain a more economical purchase. [24 CFR § 85.36(b)(4)]**

b. <u>Purchasing versus Leasing.</u> Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. [24 CFR § 85.36(b)(4)]

c. <u>Federal Excess and Surplus Property</u>. GOSR encourages the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. [24 CFR § 85.36(b)(6)]

ARTICLE IV

4. SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS

a. Preferred Selection Criteria and Approach. It is the preference of **GOSR** that Vendors and Contractors shall be selected from as broad a spectrum of providers as is practicable, and that Contracts be awarded and purchases be made consistent with the quality of services, or goods and materials required, at fair and reasonable prices. In addition, it is the preference of **GOSR** to encourage the participation and utilization of MWBEs in accordance with the MWBE Directives, as set forth in Article VI of these Guidelines. Contacts shall be regulated in accordance with MWBE Directives and Lobbying Law Directives, and as set forth in Articles VI and VII, respectively, of these Guidelines.

b. Selection on a Competitive Basis. It is the preference of **GOSR** that Procurement, unless otherwise prescribed, be by competitive process, and that the process be as competitive as is possible. It is the policy of **GOSR** that the selection of Procurement Contractors and Vendors be exempt from the competitive process only under certain exceptional circumstances as specified herein. As appropriate, the following competitive processes may be used in order to select Contractors and Vendors:

i. Small Purchase Procedures. Small purchase procedures may be used for Procurements of $150,000 or less in the aggregate. Small purchases are made through the use of purchase orders. Competition is sought through written price quotations. GOSR shall document its receipt of an adequate number of price or rate quotations from qualified sources. A Procurement of more than $150,000 may not be inappropriately broken up into smaller components solely to qualify for small purchase procedures. [24 CFR § 85.36(d)(1)]

ii. Competitive Lowest Price Bid for Goods or Materials. Solicitation of at least three price bids, one of which shall be from a MWBE, if feasible, for specified Procurement, other than Personal Services (goods and materials), to be awarded to qualifying Contractors or Vendors primarily on the basis of the lowest price. Competitive bids are to be solicited when the goods and materials required are of a standardized nature that may reasonably be made the subject of specifications to which bidders respond with required qualification data and price offers. **[24 CFR § 85.36(d)(2)]**

iii. Invitation for Bid ("IFB") process for Contracts Not Expected to Exceed $50,000. If the **Executive Director of GOSR** determines it is appropriate, **GOSR** may commence a Procurement process by soliciting statements of qualifications, proposals and, as appropriate, price bids from at least three prospective Contractors or Vendors, one of which shall be from a MWBE, if feasible, for Procurements not expected to exceed $50,000. **Under**

appropriate circumstances, the Executive Director of GOSR may authorize IFB's in excess of $50,000. The procurement file shall include the reasoning behind such determination. Procurements valued at $25,000 or more must include MWBE participation goals. Award of a Contract within this method is made on **a most advantageous** basis **considering in the course** of an evaluation the characteristics, quality and **price** of such statements of qualifications and proposals. **[24 CFR § 85.36(d)(1)]**

iv. RFP (without negotiation). Solicitation of specific proposals which indicate an understanding of identified financial, organizational, logistical and technical requirements and/or problems, and which detail elements of performance, including techniques and procedures as well as prices. Award of a Contract within this method is made on **a most advantageous** basis **considering in the course** of a formal evaluation the characteristics, quality and **price** of such **statement of qualifications and** proposals. **[24 CFR § 85.36(d)(3)]**

v. RFP with Competitive Negotiations. Solicitation of qualifying potential Contractors or Vendors who have submitted materials pursuant to: (a) an RFP to further negotiate their proposals; (b) an RFP which stated that **GOSR** might further negotiate proposals; or (c) a determination by **GOSR**, subsequent to issuing an RFP, that further negotiation is appropriate or that the RFP should be revised to permit further negotiations. Further negotiation may include, but shall not be limited to, prices for Contract award **made on a most advantageous** basis **considering in the course** of a formal evaluation the characteristics, quality and **price** of such **statement of qualifications and** proposals. **[24 CFR § 85.36(d)(3)]**

vi. Pre-qualified Panel. **GOSR** may select Contractors for any Procurement activity from a qualified panel of potential Contractors, selected on the basis of an RFP or RFQ. Such panel must have been qualified by **GOSR**, or by an Affiliate, State Agency or State Authority. The purpose of using a pre-qualified panel is to allow aspects of the competitive process to be addressed early in a phased selection process. This is so that Vendors and Contractors on the panel can be subsequently engaged on an accelerated or more efficient basis. In accordance therewith, panels shall be administered so that the Contract award is based upon a formal evaluation of qualifications and/or the subsequent negotiation of fair and reasonable compensation for specific services actually required. At such time as a panel is utilized, **GOSR** shall document for the Procurement Record with respect to that panel, which aspects of the competitive process (a) are being addressed prior to the panel's utilization and (b) shall be fulfilled subsequent to the establishment of the panel. Panels shall be identified to **GOSR's** Procurement Contract Officer, reported in the Annual Procurement Contract Report, and reviewed and recertified annually to

GOSR's Procurement Contract Officer by the **GOSR** Officer in charge of administering the panel. **GOSR shall ensure that all panels used include enough qualified sources to ensure maximum open and free competition. GOSR also will not preclude potential bidders from qualifying during the solicitation period. [24 CFR § 85.36(c)(4)]**

vii. State Contract. The Corporation can enter into Contracts **(on behalf of GOSR under these guidelines)** with eligible Vendors, where the State has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services upon comparable terms, provided the Procurement Contract Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

viii Existing Centralized State Contracts. **GOSR** may carry out a Procurement **(via the Corporation)** using existing centralized State Contracts pursuant to which **GOSR (via the Corporation)** is eligible to procure goods and/or services, according to the State negotiated terms**, so long as such contracts have been procured competitively in a manner that is commensurate with 24 CFR § 85.36**.

ix. GSA Contract (or contract of the U.S. General Services Administration or US GSA). The Corporation can enter into Contracts **(on behalf of GOSR under these guidelines)** with eligible Vendors, where the US GSA has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services upon comparable terms, provided an Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

x. Affiliated Agency Contract or Affiliated Agency Competitive Selection Process. Whenever an Affiliated Agency has completed a competitive process to create a list of Vendors eligible for the provision of goods or services, the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services, if for the same services and upon comparable terms. Whenever an Affiliated Agency has engaged in a competitive process, and that process has not yet created a list of eligible Vendors, and **GOSR** can complete that process to create eligible Vendors; **GOSR** may do so in order to enter into a Contract with those Vendors **(via the Corporation)** for such services for which Vendors are ultimately determined eligible to provide, provided the Procurement Contract Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

xi. **Intergovernmental Agreements. GOSR is encouraged to enter into State and local intergovernmental agreements for procurement or use**

of common goods and services. **[24 CFR § 85.36(b)(5)]**

c. Selection on a Non-Competitive Basis. The competitive processes established above in this Article shall not apply or are hereby waived **only** in the following situations:

i. Emergency. When an emergency requires that selection of a Contractor or Vendor cannot be delayed long enough for the use of a competitive procedure because immediate action is required, the **Executive Director of GOSR** may award a Contract **(via the Corporation)**, as that **Executive Director** deems appropriate, without competitive procedures or following less than the full complement of competitive procedures which would otherwise be required. Circumstances requiring such immediate action must be significant, such as those affecting property of **GOSR**, life, health or safety. Emergencies should only arise out unforeseen occurrence. The circumstances under which such Contract was entered into shall be set forth and maintained in the Procurement Record. Such record should, among other things, address whether such circumstances should have been foreseen. Consideration should always be given to whether a Contract entered into on an emergency basis can be supplanted by a subsequent Contract entered into through a competitive process. If the Emergency Contract exceeds $100,000 in amount or one year in duration, the Contract must be presented **to GOSR Staff authorized by the Corporation Board** for approval. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary. **[24 CFR § 85.36(d)(4)(i)(B)]**

ii. Sole Source Contract. Sole Source Contracts may be awarded without competitive procedures as a result of a determination by **GOSR**, approved in writing by the **Executive Director of GOSR**. For purposes of determining whether a Contract is a Sole Source Contract, **GOSR** shall identify if there is only one source for a particular service or good, such that competitive procedures are rendered futile. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary. **[24 CFR § 85.36(d)(4)(i)(A)]**

iii. Single Source Contract. Whenever **GOSR** considers it appropriate, **after solicitation of a number of sources, GOSR** may conclusively determin**e that competition is inadequate and that** by relying upon the determination of the State or an Affiliated Agency that a Vendor is uniquely qualified, if the Corporation **(on behalf of GOSR under these guidelines)** seeks to enter into a Contract or contract with those Vendors for such services upon comparable terms. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary. **[24 CFR §**

85.36(d)(4)(i)(D)]

iv. <u>Authorization by HUD</u>. HUD authorizes noncompetitive proposals. [24 CFR § 85.36(d)(4)(i)(C)]

For all Procurements that proceed on a non-competitive basis, cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required. [24 CFR § 85.36(d)(4)(ii)]

a. <u>Responsible Contractors</u>. GOSR will make awards (via Corporation) only to responsible Contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as Contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. [24 CFR § 85.36(b)(8)]

b. <u>HUD Review</u>. Upon request of HUD, GOSR shall make available for HUD review all Procurement documents, such as requests for proposals or invitations for bids, technical specifications, independent cost estimates, etc. [24 CFR § 85.36(g)(1), (2)]

d. <u>Vendor Responsibility</u>. GOSR Procurement Department reviews and assesses responsibility of prospective Contractors and Vendors and ensures that contracts are awarded to responsible Contractors and Vendors only. The Contractors and Vendors must affirmatively demonstrate their responsibility, including the responsibility of their proposed subcontractors.

i. <u>Vendor Responsibility Criteria</u>. Criteria include but are not limited to: financial and organizational capacity; legal authority; integrity; compliance with public policy; and record of past performance. GOSR reserves the right to consider other relevant criteria. GOSR may also emphasize the evaluation of certain criteria it deems critical depending upon the nature and scope of the proposed contract.

ii. <u>Obtaining Information</u>. If a Contractor or Vendor discloses adverse information or if a due diligence report reveals such information, the Contractor or Vendor is given a specified time to provide additional information or clarification. Failure to provide satisfactory supplemental information may be grounds for a determination of non-responsibility. GOSR reserves the right to contract with third-party integrity evaluators to perform research and provide due diligence reports on Contractors or Vendors. GOSR will require any third-party evaluator certify that it has no actual or potential conflicts of interest with the Contractors or Vendors being evaluated.

iii. <u>Final Determination of Responsibility</u>. Once the responsibility review is complete and members of the Executive Team make a final

determination, the Contractor or Vendor is either awarded the contract or informed of non-responsibility. In some cases, GOSR may require the Contractor or Vendor to sign a certification acknowledging facts of concern and allowing GOSR to take reasonable measures – such as more closely monitoring the entity – to ensure the integrity of a project.

ARTICLE V

5. STANDARDS AND PRACTICES FOR COMPETITIVE SELECTION OF CONTRACTORS

It is the policy of **GOSR** to seek out the maximum practicable number of qualified Vendors interested in offering their goods or services to **GOSR** and to establish certain minimum standards for their selection. The following standards shall apply:

a. Advertisement Requirements for Competitive Source Selection Methods. The solicitation of bids, proposals, offers or submissions of qualification data from Vendors with respect to Contracts shall be made by **GOSR** in a manner determined by the Procurement Contract Officer in consultation with the **Executive Director of GOSR**, to be the most cost effective for providing reasonable competition for **GOSR's** Contracts **(via the Corporation)**. This may include advertisement in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these Guidelines, including outreach efforts to MWBEs in accordance with the provisions of Article VI herein and the Corporation's MWBE Goal Plan ("MWBE Goal Plan"), and including providing information with respect thereto via the Corporation's website. In addition, in the case of Procurement Contracts in the actual or estimated amount of $50,000 or more, or such other amount as may be amended in Article 4-C of the State's Economic Development Law, and in the establishment of pre-qualified panels, **GOSR** shall advertise all such opportunities in the "New York State Contract Reporter" or "Reporter," the official weekly listing of bidding opportunities for the State published by the New York State Department of Economic Development, and any other publication as required by State law, unless the Contract is determined to be a Critical Contract. Already advertised Contract opportunities being re-bid or re-solicited within forty five (45) business days after proposals were originally due, pursuant to publication in the "Reporter," are not required to be published again. Contracts determined to be Single Source or Sole Contracts will not be advertised in the "Reporter," but are required to be published in the "Reporter" as a "notification."

b. **Full and Open Competition. All Procurements will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR § 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:**

i. Placing unreasonable requirements on firms in order for them to qualify to do business;

ii. Requiring unnecessary experience and excessive bonding;

iii. Noncompetitive pricing practices between firms or between affiliated

companies;

iv. Noncompetitive awards to consultants that are on retainer contracts;

v. Organizational conflicts of interest;

vi. Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the Procurement; and

vii. Any arbitrary action in the Procurement process. [24 CFR § 85.36(c)(1)]

c. Minimum of Three Prospective Vendors for Competitively Bid Procurement Contracts. For all Procurement Contracts required to be selected on a competitive basis, **GOSR** shall solicit statements of qualifications, proposals and, as appropriate, price bids from at least three prospective Vendors. In the case of Contracts not expected to exceed $5,000, **GOSR** shall solicit prices, statements of qualifications and proposals from at least three prospective Vendors unless **GOSR** affirmatively determines it is not appropriate. **GOSR** shall include at least one MWBE, if feasible, in all Procurement processes.

d. Requirements for **GOSR** Bid Documents. **GOSR** shall include in all bid documents provided to potential bidders an affirmative statement that it is the policy of **GOSR** to promote the participation of MWBEs, where possible, in the Procurement of goods and services.

GOSR shall also require that solicitation documents set forth the expected degree of MWBE participation based, in part, on (1) the potential subcontract opportunities available in the prime Procurement Contract; and (2) the availability of MWBEs to respond competitively to the potential subcontract opportunities.

i. Required Bid Notices to Professional and other Organizations serving MWBEs. In an effort to award Procurement Contracts to MWBEs in compliance with the Corporation's MWBE Procurement goals, as set forth in the Corporation's MWBE Goal Plan, **GOSR** shall provide notice of Governmental Procurements, along with any other notice required by law, to professional and other organizations serving MWBEs that provide the types of services procured by **GOSR**. Professional and other organizations can include, but is not limited to, social networking websites, magazines, and/or newspapers catering to a majority of MBE and/or WBE clientele. For the purposes of these Procurement efforts and for other **GOSR** Procurement efforts, **GOSR's** Designated MWBE Officer shall establish procedures for maintaining list(s) of qualified MWBEs. In addition, **GOSR** shall establish procedures for maintaining lists to include media outlets and other organizations serving MWBEs.

GOSR will provide such list(s) to Contractors in the Procurement process, requiring that potential Contractors shall consult and contact appropriate MWBEs to solicit their bids, in accordance with Article VI of these Guidelines.

ii. Lobbying Law Directives. All **GOSR** solicitations for proposals, bid documents and specifications for Procurement Contracts shall incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law, pursuant to the Lobbying Law Directives as described in Article VII of these Guidelines and in the Corporation's *Policy on Reporting and Maintaining Records on Lobbying Contacts* (herein after referred to as the Corporation's "Lobbying Policy").

iii. Promoted Contracts. All **GOSR** solicitations shall follow the directives for the participation of promoted Contracts, as is more fully described in Article VIII of these Guidelines.

iv. **Description of Technical Requirements. All Corporation solicitations (on behalf of GOSR under these guidelines) shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive Procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a *brand name or equal* description may be used as a means to define the performance or other salient requirements of a Procurement. The specific features of the named brand which must be met by Offerers shall be clearly stated. [24 CFR § 85.36(c)(3)]**

v. **Identification of Requirements. All Corporation solicitations (on behalf of GOSR under these guidelines) shall identify all requirements which the Offerers must fulfill and all other factors to be used in evaluating bids or proposals. [24 CFR § 85.36(c)(3)]**

e. Criteria for Selection. Procurement Contracts shall be entered into based on an evaluation of all proposals or bids received, considering all relevant factors, including, but not limited to terms, costs, goods or services offered, experience and capabilities, financial security, reputation in the field, staff availability, personnel expected to be involved and possible conflicts of interest. Where the Procurement Contract Officer determines that there is a suitably neutral and reliable publisher or publicly available industry ratings or evaluations of products

or firm qualifications, such ratings or evaluations may be allowed to substitute, in whole or in part, as determined to be appropriate, for required submission of qualifications where it is determined that requiring independent submission of such from Vendors would be duplicative. The criterion for selection are not intended to supersede the fact that the Corporation has certain promoted Contracts and certain prohibited Contracts and Contracts subject to limitations, as set forth in Article VIII of these Guidelines.

f. **Cost or Price Analysis. GOSR will perform a cost or price analysis in connection with every Procurement action, including Contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular Procurement situation, but as a starting point, GOSR will make independent estimates before receiving bids or proposals. A cost analysis must be performed when the Offerer is required to submit the elements of its estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for Sole Source Procurements, including Contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed Contract price. [24 CFR § 85.36(f)(1)]**

g. **Profit Negotiated Separately. GOSR will negotiate profit as a separate element of the price for each Contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. [24 CFR § 85.36(f)(2)]**

h. Compliance with Additional Procedures for Requests for Proposals and Requests for Qualifications. **GOSR** shall also comply with any additional procedures issued by it, from time to time, with respect to the conduct of Requests For Proposals and Requests For Qualifications.

ARTICLE VI

6.1. MWBE PROGRAM ESTABLISHING PROCEDURES FOR MWBE PARTICIPATION AND UTILIZATION IN CORPORATION PROCUREMENTS **[24 CFR § 85.36(e)]**

The requirements of the Corporation's MWBE Program, in accordance with the provisions of § 2879 of the Public Authorities Law, Article 15-A, and the directives of the Governor, and as set forth in this Article, shall be referred to as the Corporation's MWBE Directives. **GOSR** shall work to increase MWBE participation and utilization through certain Procurement procedures, as described in the Corporation's Annual MWBE Goal Plan and these Guidelines, and incorporated in **GOSR's** MWBE Program. These procedures shall include (i) the appointment of a Designated MWBE Officer(s) to oversee **GOSR's** MWBE Program, as described more fully in Article XI of these Guidelines, (ii) the establishment of appropriate goals for participation by MWBEs in Procurement Contracts awarded by **the Corporation (on behalf of GOSR under these guidelines)** and (iii) the utilization of MWBEs as subcontractors and suppliers by Contractors having Procurement Contracts with the Corporation **(on behalf of GOSR under these guidelines)**.

The Corporation has established numerical participation target goals identified in its MWBE Goal Plan based on the findings of the Disparity Study and directives from the Governor. For each new Contract, **GOSR** shall gauge the appropriateness of the Procurement goals by considering the availability of Contractors to perform the Contract's anticipated scope of services, weighted by the extent those scope of services represent the total Contract price.

In the event the projected goals cannot be achieved, **GOSR** will provide adequate documentation of a good faith effort to meet these goals **to be included** in **the Corporation's** submission of its Annual MWBE Goal Plan.

GOSR's Designated MWBE Officer, for the purposes of reaching these goals, shall establish procedures for maintaining list(s) of qualified and certified MWBEs, that have expressed an interest in doing business with **GOSR**, and ensuring that such lists are updated periodically, but no less than once annually, and include a firm profile that will, if possible, describe the firm's history, key personnel and core work areas. **GOSR** shall also consult the list(s) of certified MWBEs maintained by the Department of Economic Development, pursuant to Article 15-A.

The Corporation shall update these MWBE participation goals annually in an effort to (1) obtain the maximum feasible participation of MWBEs in Corporation Contracts, (2) evaluate each Contract to determine the appropriateness of the goal, and (3) examine Corporation goals to determine if their implementation will duplicate or conflict with any federal law. The Corporation shall waive the applicability of these goals to the extent of such duplication or conflict. These MWBE goals are subject to change by industry and region pursuant to findings contained within the Disparity Study of 2010, future Disparity

Studies by the ESDC and Corporation findings evidencing relevant industry and region-specific availability of certified MWBEs.

a. Requirements to Conduct Procurements to Ensure Maximum Participation and Utilization by MWBEs. To enable the Corporation to achieve the maximum feasible portion of the Corporation's goals established in its MWBE Goal Plan, that eliminates barriers to participation by MWBEs in Corporation Procurements, **GOSR's** MWBE Directives shall include:

i. Measures and Procedures. **GOSR's** Designated MWBE Officer shall establish measures and procedures to: (a) ensure that certified MWBEs shall be given the opportunity for maximum feasible participation in the performance of **GOSR's** Contracts **(via the Corporation)**; and (b) to assist in **GOSR's** identification of those **GOSR's** Contracts **(via the Corporation)** for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of **GOSR's** Contracts **(via the Corporation)** so as to facilitate the Corporation's achievement of the maximum feasible portion of the goals for Corporation Contracts **(inclusive of those procured on behalf of GOSR under these guidelines)** to such businesses. **GOSR's** measures and procedures shall include the following MWBE Directives:

(1) For competitive Procurements requiring a minimum of three bids, quotes must be obtained from at least one MBE or WBE, if feasible. If not feasible, the reasons for not doing so shall be documented in writing and included in the Procurement record. **GOSR** staff issuing solicitations will comply with this requirement whenever MWBEs are available for goods or services being procured;

(2) Encouraging Contractors to consider partnering with MWBEs, if feasible and practicable; and

(3) For non-competitive Procurements, **GOSR** staff issuing the solicitation shall strongly consider using a certified MWBE, if feasible, and if the MWBE meets the needs of the Corporation.

ii. Designation of the Division of Minority and Women-Owned Business Development ("Division of MWBEs"). **GOSR** shall designate the Division of MWBEs to certify and decertify MWBEs for **GOSR**.

iii. Expected Degree of MWBE Participation. **GOSR** shall require that each Contract solicitation set forth the expected degree of MWBE participation, as set forth in Article VI of these Guidelines.

iv. Current List of MWBEs. **GOSR** shall provide a current list of certified MWBEs to each prospective Contractor, as set forth in Article VI of these Guidelines.

v. Joint Ventures and MWBE Participation Goals. The MBE portion or the WBE portion of joint ventures shall count toward meeting the Corporation's MWBE participation goals. A firm owned by a Minority Group Member who is also a woman may be certified as a MBE, a WBE, or both, but may only be counted towards either a MBE goal or a WBE goal, in regard to any Contract or any goal, set by the Corporation, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the MBE goal and the WBE goal.

vi. Waiver of Obligations of Contractor relating to MWBE Participation. **GOSR** may waive obligations of the Contractor relating to MWBE participation after a showing of good faith effort to comply with the MWBE participation requirements, pursuant to Chapter 174 and Chapter 175 of the laws of 2010 that amend § 2879 of the Public Authorities Law and Article 15-A, § 313, subdivision six, respectively, both enacted on July 15, 2010.

vii. Verification of MWBE Participation. **GOSR** shall verify that MWBEs listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted, including verification that the procured primary Contractors are truly providing for the participation of MWBEs as described in the Procurement Contract. Participation of MWBEs shall be verified by (i) electronically monitoring and tracking the utilization, prompt payment and unauthorized substitutions of MWBE subcontractors and (ii) the provision of the following data, by the Contractor to **GOSR**, for each MWBE subcontract:

(1) name(s) of the MWBE subcontractor;

(2) total dollar amount of the MWBE's participation;

(3) scope of work of the MWBE subcontractor; and

(4) dates of participation.

viii. In the implementation of this section of this Article, **GOSR** shall:

(1) consider, where practicable, the severability of construction projects and other bundled Contracts; however, unbundling must be conducted within the constraints of **GOSR's** need to ensure efficiency and limit costs, and may not cause the bid price to

increase;

(2) **consider, where practicable, establishing delivery schedules that encourage participation by MWBEs;**

(3) implement its MWBE Program to enable **GOSR** to evaluate each Contract to determine the appropriateness of the goal, as set forth in this Article, which shall include:

(a) increasing MWBE outreach and communication efforts by use of the internet to facilitate access to information and build relationships between MWBEs and potential partners by:

(i) Requiring GOSR staff to include certified MWBEs in the solicitation lists for Procurements expected to exceed $25,000;

(b) consider the number and types of MWBEs located in the region in which the Corporation Contract **(on behalf of GOSR under these guidelines)** is to be performed;

(c) consider the total dollar value of the Corporation Contract **(on behalf of GOSR under these guidelines)**, the scope of work to be performed, and the project size and term;

(d) consider whether the Contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event,

(i) whether or not certified MWBEs that have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

(ii) whether certified MWBEs which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to **GOSR's** bid date;

(e) consider whether there has been written notification to appropriate certified MWBEs that appear in the directory of certified MWBEs;

(f) consider whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified MWBEs.

(4) consider compliance with the requirements of any federal law concerning opportunities for MWBEs which effectuates the purpose of this Article; and

(5) consult the most recent disparity study, pursuant to Article 15-A.

6.2 SMALL BUSINESS UTILIZATION [24 CFR § 85.36(e)]

GOSR and the State's subrecipients will take all necessary affirmative steps to assure that Small Businesses are used when possible.

Affirmative steps shall include:

a. Placing qualified Small Businesses on solicitation lists;

b. Assuring that Small Businesses are solicited whenever they are potential sources;

c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Small Businesses;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by Small Businesses;

e. Using the services and assistance of the Small Business Administration; and

f. Requiring the prime Contractor, if subcontracts are to be let, to take the affirmative steps listed above.

ARTICLE VII

7. REQUIRED DESIGNATIONS AND DISCLOSURES UNDER LOBBYING LAW DIRECTIVES IN THE SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS

Contacts shall be regulated in accordance with Lobbying Law Directives as follows:

For any Governmental Procurement or Contract subject to the Lobbing Law, **GOSR** shall notify every potential Contractor or Vendor that **GOSR** has a Designated Contact Officer(s) who is the only **GOSR** representative(s) permitted to receive Designated Contacts from the Contractors or Vendors, or their representatives, during the Restricted Period with respect to such Governmental Procurement. A Contractor or Vendor is restricted from making Contacts with **GOSR (via the Corporation)** from the date of any public announcement, public notice, or public communication by **GOSR** to any potential Vendor of a determination of a need for a Governmental Procurement through final award and approval of the Procurement Contract by **GOSR (via the Corporation)** to anyone other than the Designated Contact Officer(s) with respect to the Governmental Procurement unless such communication is any one of the following Permissible Subject Matter Communications:

(a) the submission of written proposals in response to a Request for Proposals, invitation for bids or any other method for soliciting a response from Offerers intending to result in a Procurement Contract;

(b) the submission of written questions by a method set forth in a solicitation for receiving inquiries from Offerers intending to result in a Procurement Contract, when all written questions and responses are to be disseminated to all Offerers who have expressed an interest in the solicitation;

(c) participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in a solicitation intending to result in a Procurement Contract;

(d) complaints by an Offerer regarding the failure of the person or persons designated by **GOSR**, pursuant to this section, to respond in a timely manner to authorized Offerer Contacts, made in writing to the **GOSR's Counsel**, provided that any such written complaints shall become a part of the Procurement Record;

(e) Offerers who have been tentatively awarded a Contract and are engaged in communications with **GOSR** solely for the purpose of negotiating the terms of the Procurement Contract after being notified of tentative award;

(f) communications between designated staff of **GOSR** and an Offerer to request the review of a Procurement Contract award;

(g) communications by Offerers in protests, appeals or other review proceedings (including the apparent successful bidder and his or her representatives) before **GOSR** conducting the Governmental Procurement seeking a final administrative determination, or in a subsequent judicial proceeding; or

(h) communications between Offerers and governmental entities that solely address the determination of responsibility entity of an Offerer.

Unless the communication is any one of the above Permissible Subject Matter Communications, the Designated Contact is the only representative(s) of **GOSR** permitted to receive Contacts from bidders, potential Contractors or Vendors, or their representatives, during the Restricted Period with respect to a Corporation Governmental Procurement **(on behalf of GOSR under these guidelines)**.

All Corporation solicitations **(on behalf of GOSR under these guidelines)** for proposals, bid documents and specifications for Procurement Contracts shall incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law. All potential Contractors or Vendors must complete and return to **GOSR** with their proposal or bid response to a Corporation solicitation **(on behalf of GOSR under these guidelines)**, the *Affirmation of Understanding of and Agreement*, and *Potential Contractor or Vendor Disclosure of Prior Non-Responsibility Determinations*, Lobbying Law Forms 1 and 2, respectively. Form 1 is a written affirmation of a Contractor's or Vendor's understanding of the Governmental Procurement lobbying procedures of the Corporation and Form 2 requires the potential Contractor or Vendor to certify that all information provided to **GOSR** with respect to the Lobbying Law is complete, true and accurate. Prior to awarding a Procurement Contract to which these provisions apply, **GOSR** shall make a final Determination of Responsibility. All solicitations for proposals by **GOSR** shall require that potential Contractors or Vendors disclose to **GOSR** any findings of non-responsibility against them within the previous four years by any other governmental agency and must contain certifications that the same are complete, true and accurate.

For Contractors or Vendors who fail to comply with the Corporation's Lobbying Law Directives, refer to Article VIII of these Guidelines and the Corporation's Lobbying Policy.

ARTICLE VIII

8. PROMOTED AND PROHIBITED CONTRACTS & CONTRACTS SUBJECT TO OTHER LIMITATIONS

Notwithstanding the general practices of **GOSR** with respect to selection of Contractors and Vendors and adherence to competitive practices, as set forth in in these Guidelines, the following shall apply or be given weight in order that certain Contracts, or the award thereof, may be promoted, prohibited or subject to certain limitations.

a. Promoted Contracts. It is the policy of **GOSR** to promote certain contracts as follows:

i. Minority- and Women-Owned Business Enterprises. It is the policy of **GOSR** to promote and encourage the use of MWBEs in competition for Procurement Contracts. Furthermore, for Procurements anticipated to be in the amount of $25,000 or less, if the performance of any Contract requires or permits the use of a subcontractor, it is the preference of **GOSR** to encourage the participation of MWBEs, as set forth in these Guidelines. **GOSR** encourages bidders to include demonstrations that their selection promotes the use of MWBEs in bid responses, for example, through proposals for joint ventures with MWBEs. Procurements exceeding $25,000 must include MWBE participation goals in solicitation documents.

In order to promote and assist participation by, and facilitate the awarding of a fair share of Contracts to, MWBEs, **GOSR** has identified the following services as those areas or types of Contracts for which MWBEs may best bid: Archival Off-Site Services; Audit/Accounting Services; Appraisal Services; Architectural/Engineering Services; Equipment Maintenance Services; Information Technology Consulting/Services; Investment Banking Services; Legal Services; Management Consulting Services; Printing Services; and Temporary Employee Services.

ii. **No In-State or Local Geographical Preferences. GOSR will conduct Procurements (via the Corporation) in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. [24 CFR § 85.36(c)(2)]**

iii. Businesses with Anti-discriminatory Employment Practices. It is **GOSR's** policy to have procedures in place that will ensure, to the extent of **GOSR's** ability, that Contractors and Vendors comply with the federal Equal Employment Opportunity Act of 1972, as amended.

For any Contractor or Vendor with fifteen (15) or more employees responding to an RFP, RFQ, IFB or other type of invitation for bids, included with such response must be a statement disclosing whether the Contractor or Vendor is currently operating under or negotiating, or has at some time in the last five years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); has been, at some time in the last five years, or is currently the subject of a civil action brought against it by the EEOC; has been, at some time in the last five years, or is currently the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; has operated, at some time in the last five years, or is currently operating under an order of a court to take affirmative action as a result of a civil action brought against it by EEOC.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, that it is an unlawful employment practice for such Contractor or Vendor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title; and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, that such Contractor or Vendor shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods as the EEOC shall prescribe by regulation, and (3) make such reports therefrom as the EEOC shall prescribe by

regulation or order.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, that such Contractor or Vendor must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

GOSR's goal is to award Contracts to those Contractors and Vendors who have evidenced compliance with the laws of the State prohibiting discrimination in employment. **GOSR** recognizes that this goal may be achieved by awarding Procurement Contracts to those Contractors or Vendors who have demonstrated that they do not discriminate with respect to employment.

For all Personal Services Contracts over $25,000, and for all Contracts for goods and materials over $100,000, bidders shall submit to **GOSR** data regarding the race and gender of their partners, members and employees by job category. Bidders whose data are not found acceptable to **GOSR** shall be rejected.

b. Prohibited Contracts and Contracts Permitted Subject to Specified Exceptions or Limitations. It is the policy of **GOSR** that certain Contracts **(via the Corporation)** be prohibited or permitted only subject to certain exceptions or limitations as follows:

i. Special Criteria Rule for Evaluation of Architects, Engineers and Surveyors. For purposes of this subparagraph, the term "Professional Firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering, or surveying. **GOSR** shall not refuse to negotiate with a Professional Firm solely because the ratio of the "allowable indirect costs" to direct labor costs or the hourly rate in any labor category of the Professional Firm exceeds a limitation generally set by **GOSR** in the determination of the reasonableness of the estimated cost of services to be rendered by the Professional Firm, but rather **GOSR** should also consider the reasonableness of cost based on the total estimated cost of the service of the Professional Firm which should include, among other things, all the direct labor costs of the Professional Firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the Professional Firm. For purposes of this subparagraph, "allowable indirect costs" of a Professional Firm are defined as those costs generally

associated with overhead which cannot be specifically identified with a single project or Contract and are considered reasonable and allowable under specific Contract or allowability limits.

ii. Contracts with Businesses with Operations in Northern Ireland. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Corporation **(on behalf of GOSR under these guidelines)** shall not enter into Procurement Contracts with Vendors who have operations in Northern Ireland unless the Corporation **(on behalf of GOSR under these guidelines)** receives contractual assurance that the Contractor shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in §165 of the New York State Finance Law), and agrees to permit independent monitoring of its compliance with such principles.

iii. Contracts with Foreign Business Enterprise. **GOSR** shall notify the New York State Commissioner of Economic Development ("Commissioner") of the award of a Procurement Contract for the purchase of goods from a Foreign Business Enterprise in an amount equal to or greater than $1,000,000, simultaneously with notifying the successful bidder therefor. The Corporation shall not thereafter enter into a Procurement Contract **(on behalf of GOSR under these guidelines)** for said goods until at least fifteen (15) days have elapsed, except for Procurement Contracts awarded as Emergency Selection Contracts or where the Commissioner waives the provisions of this section. The notification to the Commissioner shall include the name, address and telephone and facsimile numbers of the Foreign Business Enterprise, a brief description of the goods or services to be obtained pursuant to the proposed Procurement Contract, the amount of the proposed Procurement Contract, the term of the proposed Procurement Contract, and the name of the individual at the Foreign Business Enterprise or acting on behalf of the same who is principally responsible for the proposed Procurement Contract. *(The purpose of such notification is solely (i) to allow the Commissioner to use the information to provide notification to NYSBEs of opportunities to participate as subcontractors and suppliers on such Procurement Contracts (ii) to promote and encourage the location and development of new business in the State, (iii) to assist NYSBEs in obtaining offset credits from foreign countries; and (iv) to otherwise investigate, study and undertake means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of NYSBEs, industry and commerce.)*

iv. Vendors Failing to Comply with Lobbying Law Directives. The Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** with Contractors or Vendors when:

(1) proposed Vendor or Contractor has failed to timely disclose accurate and complete information or otherwise cooperate with the Corporation in administering the Lobbying Law Directives; or

(2) there has been a finding that an Offerer has knowingly and willfully violated the provisions set forth in Article VII of these Guidelines and the Corporation's Lobbying Policy. This finding shall also result in a determination of non-responsibility against the Offerer. *(Violations of the Lobbying Law are expected to typically involve Contacts made to persons at **GOSR** other than the Designated Contact Officer(s)).*

The Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** in the case of either (1) or (2) of this subparagraph (v), section (b) of this Article, unless **GOSR** determines that the award of the Procurement Contract:

(a) is necessary to protect public property or public health or safety; and

(b) that the Contractor or Vendor is the only source capable of supplying the required goods or services within the necessary time frame.

In order for **GOSR** determinations in (1) and (2) (a) and (b) above to be effective as exceptions, the above required findings, including a statement describing the basis of such determination by **GOSR**, must be made a part of the Procurement Record.

Any subsequent determination of non-responsibility due to violations of the requirements of the Lobbying Law, if such determination is separated by less than four years, shall result in the proposed Vendor or Contractor being rendered ineligible to submit a proposal on or be awarded any Procurement Contract for a period of four years from the date of the second final determination of non-responsibility.

<u>Contracts with Former **GOSR** Officers and Employees</u>. The Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** which contemplate, violate or affirmatively, by their terms, allow former Officers (the term "Officer" as used in this subsection b. iv. of Article VIII of these Guidelines, shall refer to "Officer" as defined in the Corporation's By-Laws) and Employees of **GOSR** to violate §73 (8) (a) of the State Ethics Law. Specifically, and not by way of limitation, (except for employment contracts pursuant to which former Employees resume employee status to again work directly for **GOSR**), the Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** which provide for or permit a former Officer or

Employee of **GOSR**, either as an individual contracting directly with the Corporation **(on behalf of GOSR under these guidelines)** or as an officer or employee of a private business entity, to appear, practice, communicate or otherwise render services before the Corporation **(on behalf of GOSR under these guidelines)** or receive compensation for any such services rendered by such former Officer or Employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction:

(1) with respect to which such Officer or Employee was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration or over which that Employee or Officer exercised decision-making power during the performance of his or her official duties at **GOSR**; or

(2) in connection with any matter before **GOSR** or its business for a period of two years after termination of such service or employment.

If the **Executive Director of GOSR** deems it appropriate, the preceding prohibitions may be temporarily waived provided that, prior thereto, the State Ethics Commission grants an exception in accordance with the requirements of New York Public Officers Law Section 73[8][b]. Notwithstanding the foregoing, the preceding prohibitions shall not apply when a former Officer or Employee carries out official duties as an elected official or employee of a federal, state or local government, or any agency of such government. Thus, a former Employee may appear, practice, communicate or render compensated services before **GOSR** if he or she is acting as an elected official or employee of a federal, state or local government or one of its agencies. This exception applies only to government officials and employees; it does not apply to paid consultants of government entities.

In addition, in determining whether or not to enter into Contracts with respect to which any former Officer or Employee of **GOSR** plays a role, and with respect to the ethical administration thereof, **GOSR** shall give due consideration to whether the execution or administration of the Contract raises an appearance of impropriety.

The Corporation **(on behalf of GOSR under these guidelines)** shall, as it deems appropriate, include provisions in its Contracts to effect the purposes of this section.

vi. <u>Time and Materials Contracts</u>. The Corporation (on behalf of GOSR under these guidelines) will use time and material type Contracts only

(1) After a determination that no other Contract is suitable; and

(2) If the Contract includes a ceiling price that the Contractor exceeds at its own risk. [24 CFR § 85.36(b)(10)]

vii. <u>Cost Plus Percentage of Cost Contracts Prohibited</u>. The Corporation (on behalf of GOSR under these guidelines) shall not use the cost plus a percentage of cost and percentage of construction cost methods of contracting. [24 CFR § 85.36(f)(4)]

ARTICLE IX

9. GENERAL CONTRACT PROVISIONS AND CONTINUING EVALUATION OF PROCUREMENT CONTRACTS IN EFFECT FOR LIMITED TERMS.

a. General Contract Provisions. The Corporation **(on behalf of GOSR under these guidelines)** shall include general Contract provisions in its Procurement Contracts, as follows:

i. In Writing and Duly Executed. All Procurement Contracts shall be in writing and shall, at a minimum, be duly executed by an individual empowered to do so in accordance with the Corporation's By-Laws and, as the case may be, the provision for delegation of signing authority thereunder.

ii. Scope and Description. Procurement Contracts shall specifically provide for a scope of services indicating the nature of the work to be performed or goods to be provided, and for the time for performance, if time is a factor, the monitoring or reviewing of that performance by personnel of **GOSR**, any conditions generally applicable to Contracts with the Corporation **(on behalf of GOSR under these guidelines)**, any applicable provisions for insurance, and, where appropriate, any permitted use of supplies, facilities or personnel of **GOSR**.

iii. Compensation and Payment Terms. Such Procurement Contracts shall also state the compensation for the goods or services, and the terms of payment including the conditions for receiving payment from the **GOSR (via the Corporation)**.

iv. Non-collusion. Formal Contracts shall, whenever appropriate, include Contractor Certifications that:

(1) The prices in the bid(s) or proposal(s) were arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in the bid(s) or proposal(s) were not knowingly disclosed by a Contractor prior to the opening of bid submissions, directly or indirectly, to any other Contractor or to any competitor; and

(3) No attempt was made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not submit bid(s) or proposal(s) for the purpose of restricting

competition.

v. False or Inaccurate Lobbying Law Directives Certifications. Every Governmental Procurement with an estimated annual expenditure over $15,000 shall contain:

(1) certifications that the representations required by the Lobbying Law Directives, if applicable, are complete, true and accurate; and

(2) a provision authorizing the Corporation **(on behalf of GOSR under these guidelines)** to immediately terminate such Contract in the event that any certification in accordance with the provisions of the Lobbying Law Directives is found to be intentionally false or intentionally inaccurate.

vi. Prohibitions and Violations in Contracts. In accordance with § 316-a of Article 15-A, Contracts shall include a provision expressly providing that any Contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements, as set forth in such Contract shall be liable to **GOSR** for liquidated or other appropriate damages and shall provide for the appropriate remedies on account of such breach. If the Corporation **(on behalf of GOSR under these guidelines)** elects to proceed against a Contractor for breach of Contract, the Corporation **(on behalf of GOSR under these guidelines)** shall be precluded from seeking enforcement pursuant to §316 of Article 15-A, provided however, that the Corporation **(on behalf of GOSR under these guidelines)** shall include a summary of all enforcement actions undertaken in its Annual MWBE Goal Plan, in accordance with subdivision three of §315 of Article 15-A and Article XIII of these Guidelines.

vii. Required language in contracts supported by federal funds.

(1) **Generally.** In all Contracts supported by, or paid with, federal funds, all terms required by any applicable federal statute, regulation, Federal Register notice, or policy shall be specifically set forth or incorporated by reference to such statute, regulation, Federal Register notice or policy.

(2) **CDBG-DR Funded Contracts.** **The following terms, at a minimum, must be included in any CDBG-DR funded Contracts:**

(a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts greater than the simplified

acquisition threshold of $150,000) [24 CFR § 85.36(i)(1)]

(b) Termination for cause and for convenience by the Corporation (on behalf of GOSR under these guidelines) including the manner by which it will be effected and the basis for settlement. (All Contracts in excess of $10,000) [24 CFR § 85.36(i)(2)]

(c) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction Contracts awarded in excess of $10,000 by the Corporation (on behalf of GOSR under these guidelines) and its Contractors or subrecipients) [24 CFR § 85.36(i)(3)]

(d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All Contracts and subgrants for construction or repair) [24 CFR § 85.36(i)(4)]

(e) Compliance with the Davis-Bacon Act (40 U.S.C. § 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction Contracts in excess of $2,000 awarded by the Corporation (on behalf of GOSR under these guidelines) and its subrecipients when required by Federal grant program legislation) [24 CFR § 85.36(i)(5)]

(f) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction Contracts awarded by the Corporation (on behalf of GOSR under these guidelines) and its subrecipients in excess of $2,000, and in excess of $2,500 for other Contracts which involve the employment of mechanics or laborers) [24 CFR § 85.36(i)(6)]

(g) Notice of HUD requirements and regulations pertaining to reporting. [24 CFR § 85.36(i)(7)]

(h) Notice of HUD requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such Contract. [24 CFR § 85.36(i)(8)]

(i) HUD requirements and regulations pertaining to copyrights and rights in data. [24 CFR § 85.36(i)(9)]

(j) Access by the Corporation, GOSR, its subrecipient(s), HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific Contract for the purpose of making audit, examination, excerpts, and transcriptions. [24 CFR § 85.36(i)(10)]

(k) Retention of all required records for at least three years after the Corporation (on behalf of GOSR under these guidelines) or its subrecipients make final payments and all other pending matters are closed. [24 CFR § 85.36(i)(11)]

(l) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000) [24 CFR § 85.36(i)(12)]

(m) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871). [24 CFR § 85.36(i)(13)]

viii. <u>Value engineering</u>. The Corporation (on behalf of GOSR under these guidelines) encourages the use of value engineering clauses in Contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [24 CFR § 85.36(b)(7)]

ix. <u>Bonding requirements</u>. If HUD has not made a determination that the Corporation's (on behalf of GOSR under these guidelines) bonding policy and requirements adequately protect HUD's interest, GOSR's construction or facility improvement Contracts or subcontracts exceeding the simplified acquisition threshold of $150,000 shall contain the following minimum requirements:

(1) ***A bid guarantee from each bidder equivalent to five percent of the bid price.*** **The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within the time specified. [24 CFR § 85.36(h)(1)]**

(2) ***A performance bond on the part of the Contractor for 100 percent of the Contract price.*** **A "performance bond" is one executed in connection with a Contract to secure fulfillment of all the Contractor's obligations under such Contract. [24 CFR § 85.36(h)(2)]**

(3) ***A payment bond on the part of the Contractor for 100 percent of the Contract price.*** **A "payment bond" is one executed in connection with a Contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the Contract. [24 CFR § 85.36(h)(3)]**

b. Cost Principles. GOSR (via the Corporation) shall pay only those costs that are allowable and consistent with the Federal cost principles found in OMB Circular A-87 or successor guidance. [24 CFR 85.36(f)(3)]

c. Continuing Evaluation of Procurement Contracts in Effect for Limited Terms.

i. Limitation of Contract Terms. In order that the Corporation **(on behalf of GOSR under these guidelines)** may enter into new Procurement Contracts for the Procurement covered as soon as might be desirable, Procurement Contracts should not commit the Corporation to continue to use Contractors for longer than is desirable to achieve the Contract objectives, such as obtaining the Contractor's commitment to perform services at a reasonable price. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation **(on behalf of GOSR under these guidelines)**, at its option, without cause, within a period that is less than a year into the future.

ii. Continuing Evaluation of Procurement Contracts and Panels. Every Procurement Contract under which services are currently being performed, or goods or materials provided, shall be continually evaluated by a designated **GOSR** Officer, Employee or Staff. Such Officer, Employee or Staff shall review and approve all bills to be paid and continually evaluate the Contractor's performance. Such Officer, Employee or Staff shall continually give consideration to whether the further use of the

Contractor's services and continuation of the Procurement Contract is desirable. Such consideration shall extend to making a determination, at least annually, of when it would be most appropriate and effective to award the Procurement Contract again through a new competitive selection process such as a new Request for Proposals. A determination not to enter into a new competitive award process immediately can be supported, in part, by verification that services are still being provided at competitive rates, but such verification shall not be determinative of whether a new competitive process should commence. Part of the required annual review and recertification to **GOSR's** Procurement Contract Officer of **GOSR** panels shall be a consideration of whether it would be appropriate and effective to renew the competitive selection process for Procurement Contracts with firms on the panels, including, but not limited to, doing so through the issuance of a new Request for Qualifications to reestablish the panel. Any determination not to enter into a new competitive award process, as a result of which a Contract would exceed a projected five years without a new competitive award process being conducted, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members, as required by Article X of these Guidelines. Such affirmative concurrence shall not be required in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts or existing GSA Contracts.

ARTICLE X

10. REQUIRED CORPORATION APPROVALS

a. Members' Approval. All Contracts where compensation is expected to be in an amount of $100,000 or more, as well as any Contracts involving services to be provided in excess of one year, shall require initial approval of the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation, at its option, without cause, within a period that is less than a year into the future. An Officer may submit other Contracts as he or she deems appropriate to the Corporation's Members for their consideration and approval.

b. Members' Annual Review. The Corporation's Members shall, at least annually, review any Contract lasting more than a year, each June, as part of the approval of the Annual Report on Procurement Contracts. Contracts considered as lasting for more than a year for this purpose shall include Contracts where the Contract itself, by virtue of its stated terms, has a period of longer than a year, and in addition, shall include Contracts where, by virtue of renewal or execution of new or subsequent Contracts without an intervening Contractor or Vendor Selection Process, the Corporation's contractual relationship with the Vendor or Contractor continues for more than a year. Annual approval or review by the Corporation's Members shall be as follows:

i. Provided that timely annual review for each Contract is effected, firms on Corporation panels can be brought for annual review:

(1) collectively, or in such combinations as are deemed appropriate, on a single annual review anniversary, or

(2) individually, based on the dates that Procurement Contracts first required the Corporation's Members' approval.

ii. Any determination not to enter into a new competitive award process, pursuant to which a Contract would exceed a projected five years without a new competitive award process, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members. Such affirmative concurrence shall not be required in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts, or existing GSA Contracts. In any case, any Contract in excess of a $100,000 in amount or more than one year in duration must be initially approved by the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation, and annually

reviewed by the Corporation's Members.

c. Execution of Procurement Contracts. All Procurement Contracts shall be executed by an **Executive Director of GOSR**.

d. Approval of Procurement Contracts by **GOSR** Counsel. Prior to the execution of any Contract, **GOSR** Counsel shall approve, as to legal compliance, all Procurement Contracts. The consideration shall include the legal form and efficacy of the Procurement Contract. **GOSR's** legal department may evidence such approval by **GOSR** Counsel by making such arrangements as are acceptable to **GOSR** Counsel to assure that the form of Contract is legally acceptable and approved by **GOSR's** Counsel.

e. Approval of Procurement Contracts for Fiscal Sufficiency. All Procurement Contracts shall be reviewed by the Treasurer or Assistant Treasurer of the Corporation for fiscal sufficiency prior to execution.

ARTICLE XI

11. ADMINISTRATION OF PROCUREMENT, RECORDS AND RESPONSIBILITIES OF **GOSR** OFFICERS AND EMPLOYEES

a. Procurement Record. A Procurement Record shall be maintained for each Procurement Contract and such other Procurement as the Procurement Contract Officer deems appropriate, or as State law requires, identifying, with supporting documentation, decisions made by **GOSR** during the Procurement process. The Procurement Record shall include, but not be limited to, documentation of: (1) the determination of the method of Procurement from among the available methods permissible under these Guidelines; (2) the process to be used to determine best value, the manner in which the selection of evaluation criteria and the evaluation process shall be conducted, and the evaluation criteria, which, whenever possible, shall be quantifiable; and (3) the basis of award and circumstances leading to the selection of the Vendor, including the alternatives considered, the rationale for selecting the specific Vendor and the basis upon which cost was determined reasonable. To the extent practicable, **GOSR** shall document all aspects of the solicitation process in advance of the initial receipt of offers. Each amendment to an existing Contract, and **for those amendments reflecting material changes the contract (*e.g.*, changes in scope, performance period, price, price ceiling, etc.) a written** justification for each shall **be created and** included in the Procurement Record. Determinations of emergency with respect to Emergency Selection Contracts and Emergency Foreign Business Enterprise Contracts shall be included in the Procurement Record, as well as the determination to enter into a Sole Source or Single Source Contract.

Annual certifications of panels should be made a part of the Procurement Record.

For all contracts, appropriate personnel for GOSR shall complete a Vendor Performance Evaluation Questionnaire. The completed questionnaire is to be submitted to Procurement Department after the close of the fiscal year. In the event there are negative comments regarding the performance of a vendor, the Vendor Performance Evaluation Questionnaire will be circulated with the vendor in order to obtain one-time written reaction and response to such comments, including any relevant information or circumstances that may have contributed to the activity that resulted in the negative comment(s). The vendor is to respond within a specified time from the receipt of the questionnaire.

With respect to the Lobbying Law Directives, the Procurement Record shall include complete information related to: (i) written certifications by the Contractors or Vendors with respect to affirmations that the Contractor or Vendor understands the Lobbying Law Directives and that the Corporation has been informed in writing of the Vendor's prior determinations of non-responsibility over the previous four years, and that this information is complete, true and accurate; (ii)

Determinations of Responsibility by the Corporation; (iii) findings of non-responsibility, whether by the Corporation or by other governmental entities; (iv) a record of all Contacts during the Restricted Period, including the name of the person making the Contact, as well as that person's organization, address, telephone number, place of principal employment, occupation, and whether the person/organization making the Contact was the Offerer or was retained, employed or designated by or on behalf of the Offerer to appear before or communicate with **GOSR**; (v) if applicable, a statement regarding the basis for any required finding that the Corporation may enter into a Contract with a Contractor or Vendor who has previously been the subject of any determinations of non-responsibility; and (vi) any determination to terminate a Contract pursuant to the Lobbying Law Directives.

The Procurement Record is a place where **GOSR** can clearly document, as considered appropriate, the need for the Contract; required specifications; and the ways in which a competitive field, fair and equal opportunity for Vendors, which shall include, but not be limited to, certified MWBEs, and a fair and balanced method of selection have been ensured.

The Procurement Record shall be maintained at least throughout the period the Contract and any extensions thereof are in effect and for **at least four years after the State submits its final expenditure report to HUD, or until the completion of any litigation, claim, negotiation, audit, or other action involving the Procurement Record and the resolution of all issues arising from it, whichever is later. [24 CFR § 85.36(b)(9)]**

Procurement Contract Officer (s). **GOSR** hereby designates the **GOSR Chief Operating Officer, Chief Financial Officer, and Senior Procurement Officer** as its Procurement Contract Officer.

The Procurement Contract Officer's responsibilities shall include keeping such portions of the Procurement Record as the Procurement Contract Officer deems appropriate, monitoring compliance with proper contracting procedures and adherence to these Guidelines.

Among the Procurement Contract Officer's responsibilities shall be the determination of when certain portions of these Guidelines shall apply to a Contract by virtue of Contract expenditures, in the aggregate, or sequential periods of time, reaching applicable thresholds stated herein. In addition, for Contracts of less than $500 per year, which are terminable at any time by the Corporation **(on behalf of GOSR under these guidelines)** with less than ninety (90) days' notice, the Procurement Contract Officer may determine that such Contracts shall be considered Contracts not exceeding one year for purposes of these Guidelines.

The Procurement Contract Officer may provide guidance and counsel about proper administration of the Procurement process and Contracts but shall not be a

principal directly responsible for administering any Corporation Contract **(on behalf of GOSR under these guidelines)**. The Procurement Contract Officer should be available for counsel and guidance respecting the Procurement selection process but should not be directly involved as an actual selector of Vendors.

The Procurement Contract Officer shall encourage and promote good Procurement practices, including but not limited to, proper and coordinated management of Contracts, desirable Vendor selection practices, and informed and careful bill approval procedures. Among other things, it is generally desirable that there be a single individual designated to manage each Procurement Contract, including renewals and amendments thereto, reporting thereon, and bill approvals, *(and excluding receipt of Designated Contacts)*, and that individuals managing different Contracts in the same area or from the same Vendors coordinate their work.

The Procurement Contract Officer shall, from time to time, issue such reports on Procurement as shall be appropriate or required including the Annual Procurement Report required under these Guidelines.

The Procurement Contract Officer shall notify the Office of General Services of all Contractors who, with respect to the Lobbying Law, have been the subject of determinations of non-responsibility by the Corporation or who have been debarred.

The Procurement Contract Officer should periodically review and assess the adequacy of these Guidelines and, as appropriate, recommend changes for approval.

The Procurement Contract Officer may grant temporary technical exceptions to these Guidelines for Contracts, other than Formal Contracts, provided that such exceptions appear in the Procurement Contract Record, and that attorneys under the supervision of an **Executive Director** and **GOSR** Counsel determine the exceptions legally appropriate.

c. Designated Contact Officer(s). **GOSR** hereby designates the Treasurer, or in the event the position of Treasurer is vacant, the Assistant Treasurer of **GOSR**, as the Designated Contact Officer for all Governmental Procurement for which such appointment is required. When necessary and appropriate, the Designated Contract Officer may designate one or more Officers, Employees, Staff or Agents of **GOSR** to be an additional Designated Contact Officer. In accordance with the provisions of the Lobbying Law Directives, the Designated Contact Officer, for any given Governmental Procurement or Procurement Contract, is intended to be, by virtue of his or her designation as such, the recipient of any Designated Contacts with respect to the Governmental Procurement for which he or she has been designated. The Designated Contact Officer shall have ready access to, and shall refer to, as appropriate, the Contractors' and Vendors' written affirmations of their understanding of the Corporation's Governmental Procurement lobbying

procedures along with all disclosures Contractors or Vendors have provided of any findings of any determinations of non-responsibility against them under the Lobbying Law. Prior to the awarding of a Procurement Contract by **GOSR** to which these provisions apply, it shall be the Designated Contact Officer's responsibility to consult with the Ethics Officer and to likewise consult at any appropriate time thereafter.

d. Designated MWBE Officer(s). **GOSR** shall appoint a Designated MWBE Officer(s) to oversee **GOSR's** MWBE Program established to promote and assist: (i) participation by certified MWBEs in **GOSR** Procurement opportunities and facilitation of the award of Procurement Contracts to such enterprises; (ii) the utilization of certified MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Corporation **(on behalf of GOSR under these guidelines)**; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having Procurement Contracts with the Corporation **(on behalf of GOSR under these guidelines)**. The Designated MWBE Officer(s) shall be familiar with the Procurement of the types of construction, financial, legal or professional services utilized by the Corporation **(on behalf of GOSR under these guidelines)**, report directly to the President of the Office of Professional Services, either directly or through the designee(s) of such President, and participate in the Procurement process. The Procurement Contract Officer and the Designated Contact Officer shall consult with the Designated MBWE Officer on each Procurement subject to the Corporation's MWBE Program. The Designated MWBE Officer shall consult, as necessary, with **GOSR's** Counsel or Deputy Counsel on each Procurement subject to the Corporation's MWBE Program.

e. Ethical Administration of Contracts, Compliance with the Lobbying Law Directives: Responsibility of Officers and Employees. It shall be the responsibility of the Procurement Contract Officer, the Ethics Officer, the Designated Contact Officer(s), the MWBE Officer(s), and all **GOSR** Officers, Employees and Staff to ensure that Contracts of the Corporation **(on behalf of GOSR under these guidelines)** are administered ethically with due regard for all State ethics laws and Lobbying Law Directives. Determinations respecting ethical contract administration shall be made by the Ethics Officer, to whom any allegations of impropriety or unethical administration may be reported. The Ethics Officer shall also be responsible for reviewing, investigating, monitoring and imposing sanctions relating to any noncompliance with Lobbying Law Directives. The Procurement Contract Officer shall report to the Ethics Officer such allegations of impropriety or unethical administration of Procurement, or violations of the Lobbying Law Directives, as may come to the Procurement Contract Officer's attention. **GOSR** Officers, Employees and Staff including, but not limited to, the Designated Contact Officer(s), shall report to the Ethics Officer any allegations of impropriety or unethical administration of Procurement or violations of the Lobbying Law Directives that come to their attention. If the Ethics Officer determines that sufficient cause exists to believe that an allegation

concerning a violation of the Lobbying Law Directives is true, the Ethics Officer shall give the respective Contractor or Vendor reasonable notice (i) that an investigation is ongoing and (ii) an opportunity to be heard in response to the allegation.

Prior to the awarding of a Procurement Contract by **GOSR** to which the provisions of the Lobbying Law Directives apply, and any time thereafter, it shall be the Ethics Officer's responsibility to consult with the Designated Contact Officer(s) and make other appropriate inquiries so as to make the findings as to whether there were any certifications in relation to the provisions of the Lobbying Law Directives that were intentionally false or intentionally inaccurate so that the Corporation would have the right to terminate such Contract. If the Corporation terminates a Procurement Contract **(on behalf of GOSR under these guidelines)** under these termination provisions, it shall be the Designated Contact Officer's responsibility to provide the statement describing the basis for such action for inclusion in the Procurement Record.

In order to comply with the Lobbying Law Directives, all Staff must cooperate and participate in the recording of Contacts with respect to which the Lobbying Law Directives apply. The record of a Contact shall include the name, address, telephone number, place of principal employment, and occupation of the person or organization. Staff must also inquire about, and record, whether the person or organization making the Contact was the Offerer, or was retained by the Offerer to contact **GOSR** about the Procurement. Staff must report all recorded Contacts to the Procurement Contract Officer for inclusion in the Procurement Record of the Procurement Contract.

If the Ethics Officer finds a knowing and willful violation of the Lobbying Law Directives by any Staff, the Ethics Officer shall report the violation to the President of the Office of Professional Services.

It is expected that the Ethics Officer will confer, as appropriate, with **GOSR's** Counsel with respect to allegations of unethical conduct or violations of the Lobbying Law Directives or other violations of law and nothing in any of the forgoing is to be taken to preclude individuals from also contacting **GOSR's** Counsel directly with respect to any such allegations. **[24 CFR § 85.36(b)(3)]**

<u>Conflicts of Interest</u>. No employee, officer, or agent of GOSR or the State's subrecipients shall participate in selection, or in the award or administration of a Contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

i. The employee, officer or agent,

ii. Any member of his immediate family,

iii. His or her partner, or

iv. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

GOSR's or the State's subrecipients' officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to subagreements. [24 CFR § 85.36(b)(3)]

g. <u>Settlement of Contractual and Administrative Issues</u>. Procurements and Contracts are subject to the Corporation's procedures for the settlement of all contractual and administrative issues arising out of Procurements, including but not limited to the source evaluation, bid protest, dispute, and claim procedures. GOSR will refer violations of law to the local, State, or Federal authority having proper jurisdiction. [24 CFR § 85.36(b)(11), (12)] In all instances, GOSR shall disclose information regarding a protest to HUD. [24 CFR § 85.36(b)(12)]

ARTICLE XII

12. PROTEST GUIDELINES

a. Applicability. The intent and purpose of these guidelines is to set forth the procedure to be utilized when an Interested Party Protests the awarding of a contract by the Housing Trust Fund Corporation ("HTFC") for which any portion of the Contract Award is funded by United States Housing and Urban Development ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") grant funds, or is associated with HTFC's CDBG-DR funded programs and activities. These guidelines shall apply to all such contracts in excess of $150,000. There shall be no challenges to contracts of $150,000 or less.

Any Protest must be in writing and may be filed only after HTFC has made a Contract Award.

b. Definitions.

i. "Appeal" refers to a review by GOSR's Chief Operations Officer of the written determination of the Protest.

ii. "Contract Award" is a written determination from HTFC to an offeror indicating that HTFC has accepted its bid or offer with respect to the procurement at issue in the Protest, and that such Contract Award is being funded in whole or in part with HUD CDBG-DR funds.

iii. "GOSR" means the Governor's Office of Storm Recovery, a division of HTFC and through which HTFC administers HUD CDBG-DR funds.

iv. "Interested Party" means a participant in the procurement process and those whose participation in the procurement process has been foreclosed by the actions of HTFC.

v. "Protest" means a written challenge by an Interested Party to a Contract Award.

vi. "Protester" means an Interested Party that files a Protest with HTFC.

vii. "Successful Bidder" means the bidder or offeror whose bid or offer HTFC proposes to accept.

c. No Protest of Solicitation Terms. Any concerns regarding the terms of a solicitation must be raised during the solicitation's question-and-answer period. Protests regarding the terms of a solicitation shall not be permitted.

d. Protests Filed with HTFC for Contract Awards.

i. An Interested Party may file a Protest with HTFC under these procedures so long as the contract at issue in the Protest is in excess of $150,000, and that such Contract Award is being funded in whole or in part with HUD CDBG-DR funds, or is associated with HTFC's CDBG-DR funded programs and activities.

ii. The Protest to HTFC must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the Interested Party challenges the Contract Award by HTFC. The Protest must be timely filed with GOSR's Director of Procurement, via electronic mail ("email"), at gosrprocurement@stormrecovery.ny.gov.

iii. The Protest must be filed with HTFC within five (5) business days (observing all New York State holidays) of being notified of the Contract Award. Any filing deadlines may be waived by HTFC as provided in Section 4(j) of these guidelines.

iv. The Protest shall be concise and logically presented to facilitate review by HTFC.

v. The Protest shall contain the following information:

(1) Name, address, telephone number(s) and email address(es) of the Protester.

(2) Solicitation and contract number.

(3) Detailed statement of the legal and factual grounds for the Protest, to include a description of resulting prejudice to the Protester.

(4) Copies of relevant documents.

(5) Request for a ruling by HTFC.

(6) Statement as to the form of relief requested.

(7) All information establishing that the Protester is an Interested Party.

(8) All information establishing the timeliness of the Protest.

vi. HTFC shall make its best efforts to resolve the Protest within thirty (30) business days after the Protest is filed.

vii. On behalf of HTFC, the Director of Procurement shall review the Protest and, in consultation with legal counsel, issue a written determination addressing all issues raised by the Protest, as well as any relevant issues raised by its review of the contract. The determination shall make findings of fact and conclusions of law on any issues in dispute. HTFC shall provide a copy of its written determination to the Protester via email. The determination shall be made part of the procurement record.

viii. HTFC may summarily deny a Protest that fails to contain specific factual or legal allegations, or where the protest raises only issues of law that have already been decided by the courts or by HTFC.

ix. HTFC shall determine whether it deems necessary to conduct a fact-finding hearing, and the level of formality for any hearing conducted.

x. HTFC may, in its sole discretion, waive any deadline or requirements set forth in these guidelines or consider any materials, submitted in writing, beyond the time periods set forth in these guidelines.

xi. Nothing herein shall preclude HTFC from obtaining information relevant to the procurement from any outside source, as it deems appropriate.

xii. Upon receipt of a Protest, HTFC shall promptly suspend commencement and/or performance on such Contract Award until resolution of the Protest, unless commencement and/or performance is justified, in writing, for urgent and compelling reasons or is in the best interest of HTFC, as determined in the sole discretion of HTFC. Any determination to commence or continue performance shall not be reviewable or the subject of appeal.

e. Appeal of Written Determination.

i. A Protester may request an Appeal of HTFC's written determination on the Protest by GOSR's Chief Operations Officer.

ii. The Appeal must be in writing and Protester must contain specific factual and/or legal allegations that HTFC's prior written determination contains clear errors of either fact or law, or must present information not previously considered that warrants reversal or modification of HTFC's prior written determination. GOSR's Chief Operations Officer will not consider a request for review based on repetition of arguments previously raised or new information that could have been raised at the time of the filing of the Protest. The Appeal must be timely filed with GOSR's Chief Operations Officer, via electronic mail ("email") at, gosrprocurement@stormrecovery.ny.gov.:

iii. The Appeal must be filed within five (5) business days (observing all New York State holidays) after receipt of HTFC's email containing the written determination from GOSR's Director of Procurement.

iv. The Appeal shall contain the following information:

(1) Name, address, telephone number(s) and email address(es) of the Protester.

(2) Solicitation and contract number.

(3) Detailed statement of the legal and factual grounds for Appeal.

(4) If new information is being raised, information and evidence that such information was not available or could not have been reasonably known or uncovered at the time the Protest was filed.

(5) Copies of relevant documents, including a copy of HTFC's decision on the initial Protest.

(6) Request for a ruling by GOSR's Chief Operations Officer.

(7) Statement as to the form of relief requested.

(8) All information establishing the timeliness of the Appeal.

v. GOSR's Chief Operations Officer will summarily dismiss any Appeal that fails to state a valid basis for review or is untimely.

vi. GOSR's Chief Operations Officer shall make his/her best efforts to resolve the Appeal within thirty (30) business days after the Appeal is filed.

vii. GOSR's Chief Operations Officer shall review the Appeal and, in consultation with legal counsel, issue a written decision addressing all issues raised by the Appeal. GOSR's Chief Operations Officer shall provide a copy of his/her written decision to the Protester. The decision shall be made part of the procurement record.

f. Miscellaneous.

i. Notice and Filing – Any "notice" or "filing" required under these guidelines shall be in writing and shall be effective when actually received by the party for which it was intended.

ii. Protest and/or Appeal Costs – Irrespective of the outcome of a Protest or Appeal, the Protester shall not be entitled to any associated costs.

ARTICLE XIII

13. REPORTS ON PROCUREMENT

a. Annual Procurement Report ("Annual Report"). Within 90 days after the conclusion of the Corporation's fiscal year, the Members of the Corporation shall approve an Annual Report summarizing Procurement activity for the period of the Annual Report. Such Annual Report will include these Guidelines, an explanation of these Guidelines and any amendments thereto since the last Annual Report. The Annual Report describing Procurement activity shall include: (a) a listing of all Procurement Contracts entered into; (b) all Contracts entered into with NYSBEs and the subject matter and value thereof; (c) all Procurement Contracts entered into with certified MWBEs and the subject matter and value thereof, all referrals made and all penalties imposed, pursuant to §316 of Article 15-A; (c) all Contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; (d) the selection process used to select such Contractors; (e) all Procurement Contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, the basis for any such exemption; and (f) the status of existing Procurement Contracts.

Such Annual Report shall list for each Contract the following information:

i. a description of the duties performed by the Contractor;

ii. the date of the Contract and its duration;

iii. the total value of the Contract;

iv. the full name and address of the Contractor;

v. the status of the Contract, including the amount spent or other considerations given pursuant to the Contract during the reporting period and for the life of the Contract to date;

vi. whether the Contractor is a certified Minority or Women-Owned Business Enterprise; and

vii. the total number of bids or proposals received prior to the award of the Contract.

The Annual Procurement Report, after being approved by the Corporation's Members, shall be filed to the Division of the Budget and the Department of Audit and Control using the Public Authorities Reporting Information System ("PARIS") on-line Reporting System, with copies of this report to the Department of Economic Development, the Senate Finance Committee and the Assembly Ways

and Means Committee.

Copies of the Annual Procurement Report shall also be available to the public upon reasonable request at the Corporation's main office, and be available on the Corporation's website.

b. Annual MWBE Goal Plan ("MWBE Goal Plan"). The Corporation shall report, annually, to the Governor, Legislature and the MWBE Director, on various issues pertaining to Procurements relating to MWBE, in accordance with Article VI of these Guidelines and Article 15-A, including but not limited to:

i. the annual goals, identified in the Corporation's Annual MWBE Goal Plan, for Contracts with MWBEs;

ii. providing adequate documentation of a good faith effort to meet the Corporation goals described in the Corporation's Annual MWBE Goal Plan, in the event that the Corporation projected goals cannot be achieved;

iii. the number of actual Contracts issued to MWBEs;

iv. the activities undertaken to promote and encourage Procurement opportunities of Minority Group Members and women and promote and increase participation by certified businesses with respect to Corporation Contracts and subcontracts;

v. Corporation Contracts for leases of real property by the Corporation to a Lessee where (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee, and (ii) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon exceeds the sum of $100,000;

vi. a summary of all enforcement actions undertaken by the Corporation against a Contractor for breach of Contract pursuant to §316-a of Article 15-A and Article IX of these Guidelines; and

vii. a summary of all waivers, defined in Article VI of these Guidelines, permitted by the Corporation during the period covered by the MWBE Report, including:

(1) a description of the basis of the waiver request; and

(2) the rationale for granting any such waiver.

ARTICLE XIV

14. MISCELLANEOUS PROVISIONS

a. Powers of Amendment. Any modification or amendment of these Guidelines may be made by a Supplemental Resolution adopted at any duly constituted Members' meeting; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Corporation Contracts, the terms of which were established pursuant to these Guidelines; and further provided that the Procurement Contract Officer, or his or her designee, may make non-material changes in these Guidelines. Any such changes shall be reported at the next regularly scheduled meeting of the Members of the Corporation.

b. Supplementation with Procedural Handbooks, Practice Manuals and Other Directives. These Guidelines are only intended to provide the general framework for Corporation Procurement practices **with respect to the Procurement of goods or services funded, in whole or in part, with the U.S. Department of Housing and Urban Development's ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2).** These Guidelines are not intended to preclude supplementation of the Guidelines through the promulgation of more specific procedural handbooks, practice manuals, or other directives and guidance as may be issued from time to time, including as example, and not by way of limitation, more specific procedures for conduct of Requests For Proposals and Requests For Qualifications. It is also not intended that the existence of these Guidelines should prevent or supplant the issuance of additional Corporation guidelines or regulations to deal specifically with Lobbying Law Directives and/or MWBE Directives, if appropriate.

c. No Recourse under these Guidelines. No provision of these Guidelines shall be the basis for any claim based upon these Guidelines against any Member, Officer, Employee or Staff of the Corporation **or GOSR**, or any agent of the Corporation **or GOSR** when acting pursuant to these Guidelines or pursuant to an authorization to execute Contracts on behalf of the Corporation **or GOSR**, or the Corporation **or GOSR** itself.

d. Effect upon Existing Contracts of the Corporation. These Guidelines shall not abrogate the rights and duties of Corporation Contracts with third parties executed prior to the effective date of these Guidelines.

e. Provisions Required by Law. These Guidelines are hereby deemed to include any provision required by law to be included herein.

TAB 6

Explanation of the HTFC's Governor's Office of Storm Recovery's Procurement and Contract Guidelines

NEW YORK STATE OF OPPORTUNITY. | Homes and Community Renewal

TAB 6

Explanation of Procurement and Contract Guidelines for the Governor's Office of Storm Recovery of the Housing Trust Fund Corporation for Contracts funded by the U.S. Department of Housing and Urban Development's ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") Program, as revised and in effect, May 14, 2015

The Procurement and Contract Guidelines (the "Guidelines") were (i) first adopted on July 9, 2014, (ii) first revised on January 29, 2015, and (iii) most recently revised on May 14, 2015 pursuant to the provisions of the Act and § 2879 of the Public Authorities Law, as guidelines of the Governor's Office of Storm Recovery of the Housing Trust Fund Corporation ("HTFC"), hereinafter referred to as "GOSR," and such guidelines are independent of, but intended to be in alignment to the extent possible with, the guidelines of the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (collectively hereinafter referred to as "Agencies") and are to be reviewed and approved by the GOSR's Executive Director at least annually.

The Guidelines were revised on May 14, 2015 to more closely align language with federal requirements, as well as modify additional policies aimed at improving GOSR's procurement practices and to more efficiently perform its duties. The revisions are summarized below:

- Revisions designed to more closely align GOSR's policies with federal requirements include:
    - The addition of a provision that encourages the use of "intergovernmental agreements" for the procurement or use of common goods and services;
    - A requirement that requires GOSR to refer violations of law to appropriate local, state or federal authorities;
- Revisions aimed at improving GOSR's procurement practices and to more efficiently perform its duties include:
    - With respect to the invitation for bid ("IFB") procurement methodology, which is currently limited to procurements not expected to exceed $50,000, GOSR has made explicit the ability to waive the ceiling threshold of $50,000 for the use of IFBs. This waiver requires the authorization of GOSR's Executive Director;
    - More explicit language on final determination of responsibility for vendors and contractors;
    - Language that relieves GOSR of memorializing in a memorandum the rationale for non-material contract amendments; and
    - A provision that requires GOSR to complete a "Vendor Performance Evaluation Questionnaire," which will allow GOSR to track and record the performance of vendors for future use.

EXPLANATION OF
PROCUREMENT AND CONTRACT GUIDELINES
FOR GOVERNOR'S OFFICE OF STORM RECOVERY
(as revised and in effect, May 14, 2015)

The Procurement and Contract Guidelines ("Guidelines"), pursuant to the provisions of the Act § 2879 of the Public Authorities Law, are guidelines of the Governor's Office of Storm Recovery of the Housing Trust Fund Corporation ("HTFC"), hereinafter referred to as "GOSR," and such guidelines are independent of, but intended to be in alignment to the extent possible with, the guidelines of the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (collectively hereinafter referred to as "Agencies"). These Guidelines apply only to the Procurement by the Corporation of goods or services funded, in whole or in part, with HUD's CDBG-DR funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2). As defined in the Guidelines, "Procurement" means the acquisition of goods, materials and services including, but not limited to, personal services, by the Corporation (on behalf of GOSR under these guidelines). "Procurement Contract" is defined, (a) following the definition in Section 2879 of the Public Authorities Law, as any written agreement for Procurement in the actual or estimated amount of $5,000 or more, and (b) following the definition in the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of $15,000 in amount, as any Contract, including an amendment, extension, renewal, or change order to an existing Contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the Contract as it was finally awarded), for a Governmental Procurement. *(Unless otherwise defined herein, capitalized terms adhere to their respective definitions in the Guidelines.)*

The GOSR-specific Guidelines materially differ from the standard HTFC guidelines by:

- Reducing the acceptable methods for non-competitive procurements;
- Requiring a cost or price analysis for certain procurements;
- Requiring the negotiation of profit when there is no price competition or the contract is based on cost;
- Including a small business utilization requirement;
- Prohibiting in-state contractor preferences;
- Limiting the use of time-and-materials contracts;
- Prohibiting the use of cost-plus-percentage-of-cost contracts;
- Requiring the inclusion of certain contract terms and conditions, such as the Davis-Bacon Act, Section 503 Compliance, and other federal standards and requirements;
- Prohibiting conflicts of interest in the procurement process;
- Adding a provision that encourages the use of "intergovernmental agreements;"
- Adding a requirement to refer violations of law to appropriate local, state or federal authorities;
- Waiving the ceiling threshold of $50,000 for the use of IFB;
- Adding a more explicit language on final determination of responsibility for vendors and contractors;

- Adding language that relieves GOSR from memorializing in a memorandum the rationale for non-material contract amendments; and
- Adding a provision that requires GOSR to complete a "Vendor Performance Evaluation Questionnaire."

A. Use of Procurement Contractors and Vendors (Article III of the Guidelines)

The general responsibilities of GOSR are performed by its Employees, Officers and Staff. Accordingly, it is the policy of GOSR that before Personal Services are used, it first be considered whether it would be more appropriate for its Employees, Officers or Staff to provide such services. Procurement Contracts for Personal Services include but are not limited to: appraisal, architectural and engineering; audit and accounting; equipment and maintenance; information technology consulting; legal; printing; and training. These Personal Services are not required to be provided as Personal Services Contracts and may sometimes be performed by GOSR Officers, Employees and Staff.

Proposed Procurements shall be reviewed to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. GOSR encourages the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

B. Selection of Procurement Vendors and Contractors (Article IV of the Guidelines)

In selecting Procurement Contractors and/or Vendors, it is the preference of GOSR that Contractors and Vendors be selected from as broad a spectrum of providers as is practicable, and that any Contract (defined as a written agreement whereby the Corporation [on behalf of GOSR under these guidelines] undertakes Procurement, including but not limited to accepted Purchase Orders and Procurement Contracts) be awarded and purchases be made consistent with the quality of services or goods and materials required, at fair and reasonable prices. In addition, it is the preference of GOSR to encourage the participation and utilization of minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs") (and collectively, "MWBEs") in accordance with the MWBE Directives in the Guidelines. Contacts shall be regulated in accordance with MWBE Directives and Lobbying Law Directives, and as set forth in the Guidelines.

It is the preference of GOSR that Procurement, unless otherwise prescribed, be by competitive process, and that the process be as competitive as is possible. It is the policy of GOSR that the selection of Procurement Contractors and Vendors be exempt from the competitive process only under certain exceptional circumstances as specified in the Guidelines. As appropriate, the following competitive processes may be used in order to select Contractors and Vendors: (i) small purchase procedures; (ii) a competitive lowest price bid for goods and materials; (iii) an invitation for bid process for Contracts not expected to exceed $50,000 in amount and where appropriate in excess if $50,000; (iv) a request for proposal ("RFP") without negotiation; (v) an RFP with competitive negotiations; (vi) use of a pre-qualified panel; (vii) use of a State Contract; (viii) use of existing centralized State Contracts; (ix) U.S. General Services Administration Contracts ("GSA

Contracts"); (x) use of an Affiliated Agency Contract or Affiliated Agency Competitive Selection Process; and (xi) use of intergovernmental agreements.

The competitive processes established above shall not apply or are hereby waived only in the following situations: Emergency Selection Contracts where the selection of a Contractor or Vendor cannot be delayed; Sole Source Contracts; Single Source Contracts; and where authorized by HUD. For all Procurements that proceed on a non-competitive basis, cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

GOSR reviews and assesses responsibility of prospective Procurement Contractors and Vendors and ensures that contracts are awarded to responsible Contractors and Vendors only. The Contractors and Vendors must affirmatively demonstrate their responsibility, including the responsibility of their proposed subcontractors. Responsibility criteria include but are not limited to: financial and organization capacity, legal authority, integrity, compliance with public policy and record of past performance. If a Contractor or Vendor discloses adverse information or if a due diligence report reveals such information, the Contractor or Vendor is given a specified time to provide additional information. Failure to provide satisfactory supplemental information may be grounds for a determination of non-responsibility. Once the responsibility review is complete and a final determination is made, the Contractor or Vendor is either awarded the contract or informed of non-responsibility.

C. Standards and Practices for Competitive Selection of Contractors (Article V of the Guidelines)

It is the policy of GOSR to seek out the maximum practicable number of qualified Vendors interested in offering their goods or services to GOSR and to establish certain minimum standards for their selection. The following standards shall apply: (i) advertisement requirements for competitive source selection methods including outreach efforts to MWBEs and providing information with respect thereto via the Corporation's website; (ii) full and open competition; (iii) minimum of three prospective vendors for competitively bid Procurement Contracts; (iv) requirements for GOSR bid documents as outlined in the Guidelines; (v) criteria for selection; (vi) cost or price analysis; (vii) profit negotiated separately for each Contract in which there is no price competition and in all cases where cost analysis is performed; (viii) compliance with additional procedures for RFPs and Request for Qualifications ("RFQ").

For Procurements in the actual or estimated amount of $50,000 or more, or such other amount as may be amended in Article 4-C of the State's Economic Development Law, and in the establishment of pre-qualified panels, GOSR shall advertise all such opportunities in the "New York State Contract Reporter" and any other publication as required by State law, unless the Contract is determined to be a Critical Contract.

GOSR shall also require that solicitation documents set forth the expected degree of MWBE participation based, in part, on (i) the potential subcontract opportunities available in the prime Procurement Contract, and (ii) the availability of MWBEs to respond competitively to the potential subcontract opportunities. In addition, GOSR shall:

1. provide notice of Governmental Procurements, along with any other notice required by law, to professional and other organizations serving MWBEs that provide the types of services procured GOSR. For the purposes of these Procurement efforts, and for other GOSR Procurement efforts, GOSR's Designated MWBE Officer shall establish procedures for maintaining list(s) of qualified MWBES and GOSR will provide such list(s) to Contractors in the Procurement process, requiring that potential Contractors consult and contact appropriate MWBEs to solicit their bids, in accordance with Article VI of the Guidelines;

2. incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law, in accordance to the Lobbying Law Directives as described in Article VII of the Guidelines and in the Corporation's Policy on Reporting and Maintaining Records on Lobbying Contacts ("Lobbying Policy");

3. follow the directives for the participation of promoted Contracts, as is more fully described in Article VIII of the Guidelines;

4. incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive Procurements, contain features which unduly restrict competition. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a *brand name or equal* description may be used as a means to define the performance or other salient requirements of a Procurement. The specific features of the named brand which must be met by Offerers shall be clearly stated; and

5. identify all requirements which the Offerers must fulfill and all other factors to be used in evaluating bids or proposals.

D. <u>MWBE Program Establishing Procedures for MWBE Participation and Utilization in Corporation Procurements (Article VI of the Guidelines)</u>

GOSR shall implement procedures for MWBE participation and utilization in GOSR Procurements, including:

(i) appointing a Designated MWBE Officer(s) to oversee GOSR's MWBE Program;

(ii) establishing appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Corporation (on behalf of GOSR under these guidelines);

(iii) utilizing MWBEs as subcontractors and suppliers by Contractors having Procurement Contracts with the Corporation (on behalf of GOSR under these guidelines). In addition, the MBE portion or the WBE portion of joint ventures shall count toward meeting the Corporation's MWBE participation goals. In the event that the projected goals cannot be achieved, GOSR will provide adequate documentation of a good faith effort to meet these goals

to be included in the Corporation's submission of its Annual MWBE Goal Plan;

(iv) establishing procedures for maintaining lists of qualified and certified MWBEs, that have expressed an interest in doing business with GOSR, and ensuring that such lists are updated periodically but no less than once annually;

(v) establishing measures and procedures to ensure that certified MWBEs will be given the opportunity for maximum feasible participation in the performance of GOSR's Contracts (via the Corporation) and to assist in GOSR's identification of those GOSR Contracts (via the Corporation) for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of GOSR's Contracts (via the Corporation) so as to facilitate the Corporation's achievement of the maximum feasible portion of the goals for Corporation Contracts (inclusive of t hose procured on behalf of GOSR under these guidelines) to such businesses;

(vi) designating the Division of Minority and Women-Owned Business Development to certify and decertify MWBEs for GOSR;

(vii) requiring that each Contract solicitation set forth the expected degree of MWBE participation, as set forth in Article VI of these Guidelines;

(viii) submitting a waiver of obligations of Contractor relating to MWBE participation after a showing of good faith effort to comply with the MWBE participation requirements; and

(ix) verifying that MWBEs listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted.

In implementing the MWBE Directives, GOSR shall:

(1) consider, where practicable, severability of construction projects and other bundled Contracts; however, unbundling must be conducted within the constraints of GOSR's need to ensure efficiency and limit costs;

(2) consider, where practicable, establishing delivery schedules that encourage participation by MWBEs;

(3) implement its MWBE Program to enable GOSR to evaluate each Contract to determine the appropriateness of the goal;

(4) consider compliance with the requirements of any federal law concerning opportunities for MWBEs that effectuates the purpose of Article VI of the Guidelines; and

(5) consult the most recent disparity study, pursuant to Article 15-A of the Executive Law ("Article 15-A").

GOSR and the State's subrecipients will take all necessary affirmative steps to assure that Small Businesses are used when possible.

E. Required Designations and Disclosures under Lobbying Law Directives in the Selection of Procurement Vendors and Contractors (Article VII of the Guidelines)

For any Governmental Procurement or Contract subject to the Lobbying Law, GOSR shall notify every potential Contractor or Vendor that GOSR has a Designated Contact Officer(s) who is the only GOSR representative(s) permitted to receive Designated Contacts from the Contractors or Vendors, or their representatives, during the Restricted Period with respect to such Governmental Procurement. A Contractor or Vendor is restricted from making Contacts with GOSR (via the Corporation) from the date of any public announcement, public notice, or public communication by GOSR to any potential Vendor of a determination of a need for a Governmental Procurement through final award and approval of the Procurement Contract by GOSR (via the Corporation) to anyone other than the Designated Contact Officer(s) with respect to the Governmental Procurement unless such communication is Permissible Subject Matter Communications. All potential Contractors or Vendors must complete and return to GOSR with their proposal or bid response to a Corporation solicitation, a written affirmation of a Contractor's or Vendor's understanding of the Governmental Procurement lobbying procedures of the Corporation, and requires the potential Contractor or Vendor to certify that all information provided to GOSR with respect to the Lobbying Law is complete, true and accurate. GOSR shall require that potential Contractors or Vendors disclose to GOSR any findings of non-responsibility against them within the previous four years by any other governmental agency.

F. Promoted and Prohibited Contracts & Contracts Subject to Other Limitations (Article VIII of the Guidelines)

Notwithstanding the general practices of GOSR with respect to selection of Contractors and Vendors and adherence to competitive practices, as set forth in the Guidelines, Article VIII of the Guidelines require that certain Contracts, or the award thereof, may be "promoted," "prohibited" or "subjected to certain limitations."

GOSR will conduct Procurements (via the Corporation) in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

It is the policy of GOSR to promote and encourage the use of MWBEs in competition for Procurement Contracts. Furthermore, for Procurements anticipated to be in the amount of $25,000 or less, if the performance of any Contract requires or permits the use of a subcontractor, it is the preference of GOSR to encourage the participation of MWBEs, as set forth in these Guidelines.

GOSR's goal is to award Contracts to those Contractors and Vendors who have evidenced compliance with the laws of the State prohibiting discrimination in employment. GOSR recognizes that this goal may be achieved by awarding Procurement Contracts to those Contractors or Vendors who have demonstrated that they do not discriminate with respect to employment.

It is the policy of GOSR that certain Contracts (via the Corporation) be prohibited or permitted only subject to certain exceptions or limitations as follows: (i) with respect to evaluation of Architects, Engineers and Surveyors, GOSR shall consider the reasonableness of cost based on the total estimated cost of the service of the Professional Firm which should include, among other things, all the direct labor costs of the Professional Firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the Professional Firm; (ii) in accordance with the MacBride Fair Employment Principles, the Corporation (on behalf of GOSR under these guidelines) shall not enter into Procurement Contracts with Contractors or Vendors who have operations in Northern Ireland unless the Corporation (on behalf of SGOR under these guidelines) receives contractual assurance that the Contractor shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles and agrees to permit independent monitoring of its compliance with such principles; (iii) with respect to Contracts with a Foreign Business Enterprise, GOSR shall notify the New York State Commissioner of Economic Development of the award of a Procurement Contract for the purchase of goods from said Foreign Business Enterprise in an amount equal to or greater than $1,000,000. The Corporation shall not thereafter enter into a Procurement Contract for said goods until at least 15 days have elapsed, except where a Contract is awarded as Emergency Selection Contracts or where the Commissioner waives the provisions of this section.

In addition to the consideration of Contractor or Vendor non-compliance with Lobbying Law Directives, with respect to Contracts with former GOSR Officers and Employees, the Corporation (on behalf of GOSR under these guidelines) shall not enter into Contracts which contemplate, violate or affirmatively, by their terms, allow former Officers and Employees of GOSR to violate Section 73(8) (a) of the State Ethics Law.

The Corporation (on behalf of GOSR under these guidelines) will use time and material type Contracts only: (i) after a determination that no other Contract is suitable; and (ii) if the Contract includes a ceiling price that the Contractor exceeds at its own risk. In addition, the Corporation (on behalf of GOSR under these guidelines) shall not use the cost plus a percentage of cost and percentage of construction cost methods of contracting.

G. General Contract Provisions and Continuing Evaluation of Procurement Contracts in Effect for Limited Terms (Article IX of the Guidelines)

All Procurement Contracts shall be in writing and duly executed by an individual empowered to do so in accordance with the Corporation's By-Laws and as the case may be, the provision for delegation of signing authority thereunder. Procurement Contracts shall specifically provide for a scope of services indicating the nature of the work to be performed or goods to be provided, and for the time for performance, the monitoring or reviewing of performance by personnel of GOSR. Additionally, Procurement Contracts shall also state the compensation for the goods or services and payment terms including the conditions for receiving payment from GOSR (via the Corporation). Formal Contracts shall whenever appropriate, include Contractor Certifications that the prices in the bids were arrived at independently without collusion. In

addition to a provision authorizing the Corporation (on behalf of GOSR under these guidelines) to immediately terminate any Contract in the event that any Lobbying Law certification is found to be intentionally false or inaccurate, Contracts shall also include "a provision expressly providing that any Contractor who willfully and intentionally fails to comply with minority and women-owned participation requirements, as set forth in such Contract, shall be liable to GOSR for liquidated or other appropriate damages and shall provide for the appropriate remedies on account of such breach."

Required language in contracts supported by federal funds includes but is not limited to:

(i) all terms required by any applicable federal statue, regulation, Federal Register notice, or policy specifically set forth or incorporated by reference;

(ii) CDBG-DR funded contracts at a minimum, must include (depending on type and value of contracts):

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate
b. Termination for cause and for convenience by the Corporation
c. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations
d. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations
e. Compliance with the Davis-Bacon Act
f. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act
g. Notice of HUD requirements and regulations pertaining to reporting
h. Notice of HUD requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such Contract
i. HUD requirements and regulations pertaining to copyrights and rights in data
j. Access by the Corporation, GOSR, its subrecipient(s), HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific Contract for the purpose of making audit, examination, excerpts, and transcriptions
k. Retention of all required records for at least three years after the Corporation (on behalf of GOSR under these guidelines) or its subrecipients make final payments and all other pending matters are closed
l. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations

m. Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act

The Corporation (on behalf of GOSR under these guidelines) encourages the use of value engineering clauses in Contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. In addition, if HUD has not made a determination that the Corporation's (on behalf of GOSR under these guidelines) bonding policy and requirements adequately protect HUD's interest, GOSR's construction or facility improvement Contracts or subcontracts exceeding the simplified acquisition threshold of $150,000 shall contain certain minimum requirements as delineated in the Guidelines.

GOSR (via the Corporation) shall pay only those costs that are allowable and consistent with the Federal cost principles found in OMB Circular A-87 or successor guidance.

In order that the Corporation (on behalf of GOSR under these guidelines) may enter into new Procurement Contracts for the Procurement covered as soon as might be desirable, Procurement Contracts should not commit the Corporation to continue to use Contractors for longer than is desirable to achieve the Contract objectives. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation (on behalf of GOSR under these guidelines), at its option, without cause, within a period that is less than a year into the future. A designated GOSR Officer, Employee or Staff shall perform a continuing evaluation of Procurement Contracts and Panels.

H. Required Corporation Approvals (Article X of the Guidelines)

All Contracts where compensation is expected to be $100,000 or more, as well as any Contracts involving services to be provided over a period of more than one year, require initial approval of the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation.

The Corporation's Members shall, at least annually, review any Contract lasting more than a year, each June, as part of the approval of the Annual Report on Procurement Contracts. All Procurement Contracts shall be executed by the Executive Director of GOSR. Prior to the execution of any Contract, GOSR Counsel shall approve, as to legal compliance, all Procurement Contracts. All Procurement Contracts shall be reviewed by the Treasurer or Assistant Treasurer of the Corporation for fiscal sufficiency prior to execution.

I. Administration of Procurement, Records and Responsibilities of GOSR Officers and Employees (Article XI of the Guidelines)

A Procurement Record shall be maintained for each Procurement Contract and such other Procurement as the Procurement Contract Officer deems appropriate, or as State law requires, identifying, with supporting documentation, decisions made by GOSR during the Procurement process. The Procurement Record shall include, but not limited to, documentation of: determination of the Procurement method; process used to determine best value; basis of award including cost reasonableness; aspects of the solicitation process in advance of the initial receipt

of offers; amendment to an existing Contract; justification for amendments reflecting material changes; and determinations of Emergency procurements and Sole Source or Single Source Contract. For all Contracts, appropriate personnel for GOSR shall complete a Vendor Performance Evaluation Questionnaire.

The Procurement Record shall be maintained at least throughout the period the Contract and any extensions thereof are in effect and for at least four years after the State submits its final expenditure report to HUD, or until the completion of any litigation, claim, negotiation, audit, or other action involving the Procurement Record and the resolution of all issues arising from it, whichever is later.

The Procurement Contract Officer(s) shall be charged with responsibilities that include the retention of such portions of the Procurement Contract Record as the Procurement Contract Officer deems appropriate, monitoring compliance with proper contracting procedures and adherence to the Guidelines. GOSR shall designate the Treasurer, or in the event the position of Treasurer is vacant, the Assistant Treasurer of GOSR, as the Designated Contact Officer for all Governmental Procurement. GOSR shall appoint a Designated MWBE Officer(s) to oversee GOSR's MWBE Program. It shall be the responsibility of the Procurement Contract Officer, the Ethics Officer, the Designated Contact Officer(s), the MWBE Officer(s), and all GOSR Officers, Employees and Staff to ensure that Contracts of the Corporation (on behalf of GOSR under these guidelines) are administered ethically with due regard for all State ethics laws and Lobbying Law Directives.

No employee, officer, or agent of GOSR or the State's subrecipients shall participate in selection, or in the award or administration of a Contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. In addition, GOSR's or the State's subrecipients' officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to subagreements.

Procurements and Contracts are subject to the Corporation's procedures for the settlement of all contractual and administrative issues arising out of Procurements, including but not limited to the source evaluation, bid protest, dispute, and claim procedures. GOSR will refer violations of law to the local, State, or Federal authority having proper jurisdiction.

J. Protest Guidelines (Article XII of the Guidelines)

These protest guidelines set forth the procedure to be utilized when an Interested Party Protests the awarding of a contract by HTFC for which any portion of the Contract Award is funded by HUD's CDBG-DR grant funds, or is associated with HTFC's CDBG-DR funded programs and activities. These guidelines apply to all such contracts in excess of $150,000 and there shall be no challenges to contracts of $150,000 or less. Any Protest must be in writing and may be filed only after HTFC has made a Contract Award.

K. Reports on Procurement (Article XIII of the Guidelines)

1. Annual Procurement Report

Within ninety days after the conclusion of the Corporation's fiscal year, the Members of the Corporation approve an Annual Report summarizing Procurement

activity for the period of the Annual Report. Such Annual Report will include these Guidelines, an explanation of these Guidelines and any amendments thereto since the last Annual Report. The Annual Report describing Procurement activity shall include: (a) a listing of all Procurement Contracts entered into; (b) all Contracts entered into with NYSBEs and the subject matter and value thereof; (c) all Procurement Contracts entered into with certified MWBEs and the subject matter and value thereof, all referrals made and all penalties imposed, pursuant to §316 of Article 15-A; (c) all Contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; (d) the selection process used to select such Contractors; (e) all Procurement Contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, the basis for any such exemption; and (f) the status of existing Procurement Contracts.

The Annual Report after being approved by the Corporation's Members, shall be filed to the Division of the Budget and the Department of Audit and Control using the Public Authorities Reporting Information System ("PARIS") on-line Reporting System.

2. Annual MWBE Goal Plan

The Corporation shall report, annually, to the Governor, Legislature and the MWBE Director, on various issues pertaining to Procurements relating to MWBE, in accordance with Article VI of these Guidelines and Article 15-A.

L. Miscellaneous Provisions (Article XIV of the Guidelines)

Miscellaneous provisions in this section address: powers of amendment; supplementation with procedural handbooks, practice manuals and other directives; no recourse under these Guidelines; effect upon existing contracts or the Corporation; and provisions required by law.