



**New York State**  
Housing Trust Fund Corporation

**M E M O R A N D U M**

**To:** Members of the Board

**From:** Frank J. Markowski, Jr., Assistant Treasurer

**Date:** June 28, 2012

**Subject:** ANNUAL REPORT ON PROCUREMENT CONTRACTS

Pursuant to Section 2879 of the Public Authorities Law and Section 402 of the Corporation's Procurement Contracts Guidelines, the Corporation must prepare and approve an Annual Report on Procurement Contracts. After approval, the report will be submitted to the Governor's Office, the Division of the Budget, the Office of the State Comptroller, the Senate Finance Committee, the Assembly Ways and Means Committee and the Department of Economic Development through the PARIS reporting system maintained by the Authorities Budget Office.

In addition, the Corporation must review and approve the Corporation's Procurement Contracts Guidelines on an annual basis.

A copy of the Report, together with a resolution approving it and the Procurement Contracts Guidelines, is attached. No changes to this policy are proposed. Approval of the resolution is hereby recommended.

**Andrew M. Cuomo**  
**Governor**



**Darryl C. Towns**  
**Chairperson**

**New York State Housing Trust Fund Corporation**  
Hampton Plaza  
38-40 State Street  
Albany, NY 12207

**PROCUREMENTS REPORT**

**For the Fiscal Year Ending March 31, 2012**

HOUSING TRUST FUND CORPORATION  
PROCUREMENT SERVICES CONTRACTS GUIDELINES

**ARTICLE I**

**STATEMENT OF PURPOSE**

101. These Guidelines are adopted pursuant to the provisions of the Act and Section 2879 of the Public Authorities Law and shall be reviewed and approved by the Members at least annually.

**ARTICLE II**

**DEFINITIONS OF TERMS**

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

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

"Affiliated Agencies" shall mean all of the affiliated Agencies of the Housing Trust Fund Corporation, being 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, Tobacco Settlement Financing Corporation, and the Division of Housing and Community Renewal.

"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.

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

"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 their representatives, under circumstances where a reasonable person would infer that the communication was intended to influence any Corporation conduct or decision regarding a Corporation Governmental Procurement.

"Contractor" - shall mean a supplier of goods or services to the Corporation.

"Corporation" shall mean the Housing Trust Fund Corporation.

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

"Counsel" shall mean an attorney in the regular employ of the Corporation, or, an attorney designated by the Members.

"Designated MWBE Officer(s)" shall mean the senior staff member(s) the Corporation appoints to such position, who reports directly to the Chief Executive Officer to oversee the Corporation's MWBE Program, as set forth in Articles VI and IX of these Guidelines.

"Determinations of Responsibility" shall mean, in relation to 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 to whom the Procurement Contract is to be awarded in accordance with Public Authorities Law § 2879 (3) (b) (iii). For Determinations of Responsibility hereunder, the Lobbying Law requires that proposed Contractors disclose findings of non-responsibility against them within the previous four years by any other governmental agency.

"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.

"Goods" shall mean any merchandise or products offered for sale by any vendor, including a governmental entity, which is not hereinafter defined as Procurement Services.

"Governmental Procurement" shall mean the (a) public announcement, public notice, or public communication to any potential contractor 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 (other than amendments that are authorized and payable under the terms of the Procurement Contract as it was finally awarded or approved by the State's comptroller, as applicable), renewal or extension of the Procurement Contract, or any other material change in the Procurement Contract resulting in a financial benefit to the Offerer.

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

"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, as set forth in Article IX of these Guidelines.

"Lobbying Law" shall mean the provision 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.

"Members" shall mean the Members of the Corporation pursuant to Section 3 of the Act.

"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.

"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.

"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.

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

"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.

"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.

"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.

"Officer" shall mean any person so defined in the By-Laws of the Corporation.

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

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

"Procurement Contract" shall mean any written agreement for the acquisition of goods or services of any kind in the amount of \$5,000 or more. Procurement Services Contracts in excess of \$25,000 for goods and services and Procurement Services 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 Procurement Services Contracts, Procurement Services 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.

"Procurement Record" shall have the same meaning as defined in Article IX of these Guidelines, and refer to that compilation of information on a Procurement Contract maintained by the Corporation's Treasurer or Assistant Treasurer.

"Procurement Services" shall mean any services performed for fee, commission or other compensation by persons or organizations who are not providing such services as Corporation Employees or officers or employees of any state agency or public benefit corporation. Procurement Services include, but are not limited to, legal, accounting, management consulting, investment banking, planning, statistical, research, public relations, architectural, engineering, surveying or any other services of a consulting, technical or professional nature. Procurement Services the Corporation requires are:

- (1) Legal - Litigation counsel as necessary or appropriate; legal advisors with respect to employee relations and other corporate matters.
- (2) Audit and Accounting - audit for individual programs and preparation of year-end financial statements, as required and appropriate.
- (3) Consulting Engineering - independent monitoring of rehabilitation, new construction or conversion of projects pursuant to Corporation contracts.
- (4) Management Consulting - analysis and recommendations concerning the Corporation's structure and operation, including but not limited to data processing and telecommunications services, statutory authority and training.
- (5) Typographical - design of Corporation's annual report and any special reports.
- (6) Financial Advice - independent advice with regard to investments.

- (7) Such other Procurement Services as the Chief Executive Officer or a President determines to be necessary hereunder.

"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 to any potential Contractor, 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 intending to result in a Procurement Contract with the Corporation and ending with the Corporation's approval of the final contract award.

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

"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.

### ARTICLE III

#### USE AND SELECTION OF PROCUREMENT SERVICES CONTRACTORS

301. Use of Procurement Services Contractors. It is the preference of the Members that Corporation responsibilities be performed by Corporation Staff and that, when Procurement Services Contractors are used, contractors be selected from as broad a spectrum of providers as is practical and that contracts be awarded consistent with the quality of goods or services 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. Procurement services contractors shall be used only when it has been determined by an Officer:

- (1) that such service is necessary or convenient to the performance of Corporation responsibilities;
- (2) that such service is not available from a Corporation Employee
- (3) that the performance of such service requires it be undertaken by someone independent of the Corporation, or
- (4) that the use of Corporation Employees for such service would not be cost effective.

302. Selection and Approval of Procurement Contractors.

- (1) Source Selection Methods. The Corporation shall select Procurement Service Contractors in accordance with the following selection methods:
  - a. Competitive bid. Solicitation of price bids

for specified goods or services, to be awarded to qualifying Contractors primarily on the basis of the lowest price. At least three (3) competitive bids or as many as practicable, including one from a qualified MWBE, if feasible, are to be solicited when the goods or services 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.

- b. Requests for proposals. Solicitation of specific proposals responsive to solicitation to indicate an understanding of the financial, organizational and logistical requirements and technical problems identified in the solicitation, which also detail elements of performance including techniques and procedures, together with 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. The Corporation shall include at least one qualified MWBE, if feasible, in all solicitations.
- c. Competitive negotiations. Solicitation of qualifying potential Contractors pursuant to a request for proposal method to further negotiate their proposals, including prices for contract award on the basis of a formal evaluation of the characteristics, quality and cost of such proposals. The Corporation shall include at least one qualified MWBE, if feasible, in all solicitations.
- d. Sole Source/Single Source. When the Chief Executive Officer or a President of the Corporation determines that there is only one source for the required goods or services, or if more than one source may be available, the Chief Executive Officer or a President of the Corporation determines for material and substantial reasons to select one officer over the other(s), the contract for the goods or

services may be awarded without competitive procedures. Such determination shall be made in writing, made a part of the Procurement Record, and filed with the Counsel and the Secretary of the Corporation.

- e. Emergency. In the case of a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting property of the Corporation or life, health or safety require immediate action which cannot avail competitive procedures, the Chief Executive Officer or a President of the Corporation or Officer designated by the Chief Executive Officer or a President of the Corporation may award a contract without competitive procedures. A Procurement Record setting forth the circumstances under which such contract was let shall be maintained for a period of at least ninety days following the date of approval of the next annual report of Procurement Services contracts.
- f. Architectural, Engineering or Legal Services. The Corporation may select contractors for architectural, engineering or legal services from a qualified slate of potential contractors, selected on the basis of qualification and performance data, which data shall be updated and/or re-certified periodically. Contract award is based upon a formal evaluation of qualifications and the subsequent negotiation of fair and reasonable compensation for the specific services then required.
- g. Short Form. The Corporation may purchase goods or services valued below \$15,000 without competitive procedures ("Discretionary Buying Threshold").
- h. Discretionary Buying Threshold. Purchases under the Discretionary Buying Threshold do not require a formal competitive procurement process. The Corporation's Discretionary Buying Threshold is \$15,000, except that for purchases from Small Businesses or from

certified MWBE's, or for purchases of recycled or re-manufactured materials, the Corporation's Discretionary Buying Threshold is \$100,000. In determining whether a procurement is within the Discretionary Buying Threshold, the anticipated annual expenditures for a commodity or service must be considered, when practical and appropriate. When procuring under the Discretionary Buying Threshold, the Corporation has the responsibility to obtain the commodities or services at a reasonable cost. Further, the Corporation is required to select a reliable source and, for purchases valued at \$15,000 or less, to obtain a written quotation from a prospective vendor which would include the terms and conditions of the procurement. Purchases under this section valued at \$15,000 or less must be approved by the Treasurer or Assistant Treasurer of the Corporation before a purchase order or other written commitment for the purchase is issued to the vendor.

- i. Existing State Contracts. The Corporation may utilize existing contracts from any State Agency or any of the Corporation's affiliates to obtain goods and services without competitive procedures.
- j. Preferred Sources. The Corporation must utilize vendors required to be used under the State Procurement Council's Preferred Source Guidelines for all purchases of goods and services available therefrom, provided such goods and services are available in the form, function and utility required by the Corporation.

(2) Advertisement Requirements for Procurement Services Contracts. The solicitation of bids, proposals or submissions of qualification data or offers for procurement services contracts shall be made by the Corporation by publication in the New York State Contract Reporter in the manner required by law. Procurements awarded under the Sole/Single Source selection method shall also be published in the New York State Contract Reporter as required by law. The Corporation, at the discretion of the Chief Executive Officer or a President of the Corporation,

may also utilize advertisements 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 including providing information with respect thereto via the Corporation's website.

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

(4) All Procurement Services Contracts shall be limited to a maximum of one year unless the Members by resolution determine that a longer period for a particular Procurement Contract is in the best interest of the Corporation. Procurement Services Contracts for periods of longer than one year must be approved by resolution of the Members and reviewed annually by the Members.

(5) All Procurement Services Contracts, the cost of which exceeds \$100,000, must be approved by resolution of the Members.

(6) All Procurement Services Contracts shall be in writing and approved and executed by the Chief Executive Officer or a President of the Corporation or a designee of the Chief Executive Officer or a President of the Corporation, or as provided in the Corporation By-Laws or an applicable resolution.

(7) The form of all Procurement Services Contracts shall be approved by Counsel prior to execution.

(8) All Procurement Services Contracts shall be reviewed by the Treasurer or Assistant Treasurer of the Corporation for fiscal sufficiency prior to execution.

(9) The Corporation may not award a Procurement Contract to a vendor whose principal place of business is located in a discriminatory jurisdiction, as identified from time to time by the Department of Economic Development, and whose goods or services are substantially manufactured, produced or performed anywhere outside New York State. This requirement can

only be waived, in writing, by the Corporation's Chairperson if he or she determines that such waiver is in the best interests of the State. Such written waiver must also be submitted to the Commissioner of Economic Development.

303. Promotion of Minority and/or Women-Owned Business Enterprises. It is the goal of the Corporation to award a fair share of Procurement Services Contracts to Minority and/or Women-Owned Business Enterprises. It is also the Corporation's goal to award Contracts to those Procurement Contractors who have evidenced compliance with the laws of the State of New York prohibiting discrimination in employment. The Corporation recognizes that this goal may be achieved by awarding Procurement Services Contracts to those firms who have demonstrated that they do not discriminate in employment. Accordingly, the following procedures shall be followed:

- (1) For all Procurement Services Contracts, the cost of which is expected to exceed \$25,000, the following shall apply:
  - a. Bidders shall submit to the Corporation data regarding the race and sex of their partners, members and employees by job category.
  - b. All bidders with fifty or more employees shall submit to the Corporation a copy of their affirmative action plan. Such plan shall be reviewed by the Designated MWBE Officer or other designated officer or employee and bids of bidders whose plans are not found acceptable to the Corporation shall be rejected. Bidders with less than fifty employees shall submit a statement of commitment to equal employment opportunity and affirmative action executed by the bidder.
  - c. Bidders shall be encouraged to include with their bids proposals to demonstrate that their selection will achieve the goals of this paragraph, such as proposals for joint ventures with Minority and/or Women-Owned Business Enterprises.
- (2) The Designated MWBE Officer or a designated officer or employee of the Corporation shall prepare and maintain a list of Minority and/or

Women-Owned Business Enterprises by area of expertise and each individual responsible for soliciting bids and proposals shall consult the list and contact appropriate Minority and/or Women-Owned Business Enterprises to solicit their bids. When the Designated MWBE Officer is unable to identify a Minority and/or Women-Owned Business Enterprise in the area of expertise, he shall advise the individual soliciting bids and proposals in writing.

- (3) In selecting a bidder where a Minority and/or Women-Owned Business Enterprise has been identified, due consideration shall be given to the goals of the Corporation in selecting the bidder.
- (4) Where no Minority and/or Women-Owned Business Enterprise has been identified, after determining that bidders are fully qualified and that the goods or services are being offered at fair and reasonable prices, the individual awarding the contract shall consider the materials submitted in (1) (a), (b) and (c) above and shall give preference to the bidder who best complies with the Corporation goals for minority participation and nondiscrimination.
- (5) In an effort to award Procurement Services Contracts to qualified MWBE's in compliance with the Corporation's MWBE Procurement Goals, as set forth in Article VI of these Guidelines, the Corporation shall provide notice of procurements, along with any other notice required by law, to professional and other organizations serving MWBE's that provide the types of services procured by the Corporation. Professional and other organizations can include, but are 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, the Corporation shall establish procedures for maintaining lists of qualified MWBE's. In addition, the Corporation shall establish procedures for maintaining lists to include media outlets and other organizations serving MWBE's. The Corporation

will provide such lists to Contractors in the procurement process, requiring that potential Contractors consult with and contact appropriate MWBE's to solicit their bids in accordance with Article VI of these Guidelines.

304. Procurement Contract Provisions. Procurement Services Contracts shall detail the goods to be provided or the scope of services to be performed and the time frame for provision or performance, the monitoring or reviewing of the performance by Corporation Staff and, where appropriate, any permitted use of Corporation supplies, facilities or personnel. Such contracts shall also state the cost of the goods or the compensation for the services, the timing of payment, the preconditions for receiving payment from the Corporation, procedures for termination of the contract and any other provisions Counsel deems necessary or appropriate for each particular contract. In addition, if performance of a particular Procurement Services Contract will require the use of subcontractors, the Contract shall require the Contractor to act affirmatively to secure such participation by Minority and/or Women-Owned Business Enterprises and to report such efforts to the Corporation.

305. Limitations on Procurement Services Contracts with Former Corporation Officers and Employees. A former officer or employee shall not be permitted, for a period of two years following termination of Corporation employment, to perform Procurement Services for the Corporation, either as an individual or as an officer or employee of a private business entity, on any matter over which he exercised decision-making power during the performance of his official duties; provided, however, that this limitation may be waived where the Chief Executive Officer of the Corporation determines that (1) such former officer or employee has no interest in the outcome of the particular Procurement Service and (2) such person's performance of the Procurement Service is a benefit to the Corporation.

## ARTICLE IV

### REPORTS

401. Reporting to Members. At each regularly scheduled meeting of the Members, the Corporation's Staff shall prepare and deliver a report on Procurement Services Contracts, if any Procurement Services Contracts have been entered into since the last such meeting. Such report shall include the name and address of the contracting party, the amount of compensation, and a description of the goods or services provided. For each new Procurement Contract, the report shall state the process by which the contracting party was selected and, if not selected by competition, the reason for the waiver of competition, and indicate the number of contracts awarded to Minority and/or Women-Owned Business Enterprises and whether those contracts involved joint ventures or similar arrangements with Minority and/or Women-Owned Business Enterprises.

402. Annual Report. Within ninety days after the close of each fiscal year, the Members of the Corporation shall approve an annual report on Procurement Services Contracts. Such annual report will include these Guidelines and any amendments hereof, an explanation of the Guidelines and any amendments hereof, a list of the year's Procurement Contracts and the total fees, commissions or other compensations, by payee, paid for those goods or services, and all Procurement Services 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;

The annual report on Procurement Services Contracts, after being approved by the Members shall be submitted to the Division of the Budget with copies to the Department of Audit and Control, the Senate Finance Committee, the Assembly Ways and Means Committee and the Department of Economic Development.

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

403. Annual MWBE Officer Report ("MWBE Report"). 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:

- (1) the annual goals, defined in Article VI of these Guidelines, for Contracts with MWBEs;
- (2) providing adequate documentation of a good faith effort to meet the Corporation's goals described in Article VI of these Guidelines, in the event that the Corporation's projected goals cannot be achieved;
- (3) the number of actual Procurement Services Contracts issued to MWBEs;
- (4) 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 Procurement Services Contracts and subcontracts;
- (5) Corporation Procurement Services Contracts for leases of real property by the Corporation to a Lessee 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 the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon exceeds the sum of \$100,000;
- (6) a summary of all enforcement actions undertaken by the Corporation against a Contractor for breach of Contract pursuant to §316-a of Article 15; and
- (7) 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 V**  
**MISCELLANEOUS PROVISIONS**

501. Powers of Amendment. Any modification or amendment of these Guidelines may be made by a Supplemental Resolution adopted at any duly constituted meeting of the Members; 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 or to previously existing Guidelines for Procurement Services contracts; and further provided that the Chairman or the Chief Executive Officer may make non-material changes in these Guidelines.

502. No Recourse under these Guidelines. No provision of these Guidelines shall be the basis for any claim based on these Guidelines against any Member, officer or employee of the Corporation itself.

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

#### **ARTICLE VI**

#### **MWBE PROGRAM ESTABLISHING PROCEDURES FOR MWBE PARTICIPATION AND UTILIZATION IN CORPORATION PROCUREMENTS**

601. The requirements of the Corporation's MWBE Program, in accordance with the provisions of §2879 of the Public Authorities Law and Article 15-A, and as set forth in this Article, shall be referred to as the Corporation's MWBE Directives.

602. The Corporation shall work to increase MWBE participation and utilization through certain Procurement procedures, as described in these Guidelines and incorporated in the Corporation's MWBE Program. These procedures shall include the appointment of a Designated MWBE Officer(s) by the President to oversee the Corporation's MWBE Program, as described more fully in this Article VI of these Guidelines, and the establishment of appropriate goals for participation by MWBEs in Procurement Services Contracts awarded by the Corporation and for the utilization of MWBEs as subcontractors and suppliers by Contractors having Procurement Services Contracts with the Corporation.

603. The Corporation has established numerical

participation target goals based on the findings of the Disparity Study. For each new Procurement Contract, the Corporation shall gauge the appropriateness of the Procurement goals by considering the availability of Contractors to perform the Procurement Contract's anticipated scope of services, weighted by the extent those scope of services represent the total Procurement Contract price.

- (1) MWBE Procurement Goals. The Corporation shall attempt to achieve the following results with regard to total annual statewide procurement made directly or indirectly to MWBEs:
  - a. construction industry for certified MBEs: 14.34%
  - b. construction industry for certified WBEs: 8.41%
  - c. construction related professional services industry for certified MBEs: 13.21%
  - d. construction related professional services industry for certified WBEs: 11.32%
  - e. non-construction related service industry for certified MBEs: 19.6%
  - f. non-construction related service industry for certified WBEs: 17.44%
  - g. commodities industry for certified MBEs: 16.11%
  - h. commodities industry for certified WBEs: 10.93%
  - i. overall Corporation total dollar value of procurement for certified MBEs: 16.53%
  - j. overall Corporation total dollar value of procurement for certified WBEs: 12.39%
  - k. overall Corporation total dollar value of procurement for certified Minority, WBEs: 28.92%
- (2) In the event that the above 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 Report to the Governor, Legislature and MWBE Director.
- (3) The Corporation, 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.

- (4) The Corporation shall update these MWBE participation goals annually in an effort to (a) obtain the maximum feasible participation of MWBEs in Corporation Procurement Services Contracts, (b) evaluate each Procurement Contract to determine the appropriateness of the goal, and (c) 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.

604. Requirements to Conduct Procurements to Ensure Maximum Participation and Utilization by MWBEs. To enable the Corporation to achieve the maximum feasible goals established in subparagraph (a) of this Article VI, that eliminates barriers to participation by MWBEs in the Corporation's Procurements, Corporation MWBE Directives shall include:

- (1) Measures and Procedures. The Corporation 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 Procurement Services Contracts; and (b) to assist in the Corporation's identification of those Corporation Procurement Services Contracts for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of Corporation Procurement Services Contracts so as to facilitate the Corporation's achievement of the maximum goals for Corporation Procurement Services Contracts to such businesses. The Corporation's measures and procedures shall include the following MWBE Directives:
  - a. For competitive procurements, quotes must be obtained from at least one MBE or WBE. 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;

- b. Encouraging Contractors to consider partnering with MWBEs, if feasible; and practicable; and
  - c. For non-competitive procurements, Corporation staff issuing the solicitation shall strongly consider using a certified MWBE, if available, and if the MWBE meets the needs of the Corporation.
- (2) 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 it.
  - (3) Expected Degree of MWBE Participation. The Corporation shall require that each Procurement Contract solicitation set forth the expected degree of MWBE participation, as set forth in Article VI of these Guidelines.
  - (4) 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.
  - (5) 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, and may be counted towards either a MBE goal or a WBE goal, in regard to any Procurement 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 Procurement Contract may not be divided between the MBE goal and the WBE goal.
  - (6) 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 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.

- (7) 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:
  - a. name(s) of the MWBE subcontractor;
  - b. total dollar amount of the MWBE's participation;
  - c. scope of work of the MWBE subcontractor; and
  - d. dates of participation.
- (8) In the implementation of this section of Article VI, the Corporation shall:
  - a. 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;
  - b. implement its MWBE Program to enable the Corporation to evaluate each Contract to determine the appropriateness of the goal, as set forth in Article VI, which shall include:
    - (i) 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:
      - A. Posting a list on the Corporation's website of Corporation contracting staff; and
      - B. Requiring Corporation staff to include certified MWBEs in the

- solicitation lists for Procurements not expected to exceed \$15,000;
- (ii) consider the number and types of MWBEs located in the region in which the Corporation Procurement Contract is to be performed;
  - (iii) consider the total dollar value of the Corporation Procurement Contract, the scope of work to be performed, and the project size and term;
  - (iv) consider whether the Contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event,
    - A. 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
    - B. 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;
  - (v) consider whether there has been written notification to appropriate certified MWBEs that appear in the directory of certified MWBEs, and
  - (vi) 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.
- c. consider compliance with the requirements of any federal law concerning opportunities for MWBEs which effectuates the purpose of this Article; and
  - d. consult the most recent disparity study, pursuant to Article 15-A.

**ARTICLE VII**

**PROMOTED AND PROHIBITED CONTRACTS & CONTRACTS SUBJECT TO OTHER  
LIMITATIONS**

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

- (1) 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 Services Contracts. Furthermore, if the performance of any Procurement 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 demonstrate that their selection promotes the use of MWBEs in bid responses, for example, through proposals for joint ventures with MWBEs.

702. In order to promote and assist participation by, and facilitate the awarding of a fair share of Procurement Services Contracts to MWBEs, the Corporation has identified the following as those areas or types of Contracts for which MWBEs may best bid: Audit/Accounting Services, Appraisal Services, Architectural/Engineering Services, Equipment Maintenance Services, Information Technology Consulting/Services, Investment Banking Services, Management Consulting Services, Minority Business Enterprise Consulting Services, Printing Services and Training Services.

**ARTICLE VIII**

**GENERAL CONTRACT PROVISIONS AND CONTINUING EVALUATION OF  
PROCUREMENT SERVICES CONTRACTS IN EFFECT FOR LIMITED TERMS**

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

Prohibitions and violations in Contracts. In accordance with § 316-a of Article 15-A, Procurement Services Contracts shall include a provision expressly providing that any Contractor who willfully and intentionally fails to comply

with the minority and women-owned business enterprise participation requirements, as set forth in such Procurement 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 Report, in accordance with subdivision three of §315 of Article 15-A and Article VI of these Guidelines.

#### **ARTICLE IX**

#### **ADMINISTRATION OF PROCUREMENT, RECORDS AND RESPONSIBILITIES OF CORPORATION OFFICERS AND STAFF**

901. Procurement Record. A Procurement Record shall be maintained for each Procurement the Corporation 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 (particularly, if there is a determination of an emergency selection contract or sole/single source contract); (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 Procurement Contract, and the justification for each, shall also be included in the Procurement Record. Determinations of emergency with respect to emergency selection contracts shall be included in the Procurement Record.

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 with respect to affirmations that the Contractor understands the Lobbying Law Directives and that the Corporation has been informed in writing of the Contractor'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 Agency may enter into a Contract with the Contractor 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 Procurement Contract; required specifications; and the ways in which a competitive field, fair and equal opportunity for bidders, 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 Procurement Contract and any extensions thereof are in effect and for a reasonable period of time thereafter. Any lobbying contracts, however, must be kept in accordance to the Corporation Policy on Reporting and Maintaining Lobbying Contracts.

902. Designated MWBE Officer(s). The Corporation's Chairman 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 the Corporation's procurement opportunities and facilitation of the

award of Procurement Services Contracts to such enterprises; (ii) the utilization of certified MWBEs as subcontractors and suppliers by entities having Procurement Services Contracts with the Corporation; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having Procurement Services 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 Corporation's CEO and, either directly or through their designees, participate in the Procurement process.

903. Ethical Administration of Contracts, Compliance with the Lobbying Law Directives: Responsibility of Officers and Employees. It shall be the responsibility of the Corporation to ensure that Procurement Services Contracts of the Corporation are administered ethically with due regard for all State ethics laws and Lobbying Law Directives.

HOUSING TRUST FUND CORPORATION  
ANNUAL REPORT ON PROCUREMENT CONTRACTS (1)  
FOR THE FISCAL YEAR ENDED MARCH 31, 2012

Name	Term of Contract		Amount Spent			Description	Method of Awarding Contract	Foreign ** Vendor ?
	Beginning Date	Ending Date	Contract Amount	Current Year	Life			
Agate Software	04/01/2011	03/31/2012	\$199,293.20	\$199,293.20	\$199,293.20	Technology-Software	Sole Source	No
Bollam, Sheedy, Torani & Co. CPAs (4e)	04/01/2011	03/31/2012	\$25,000.00	\$25,000.00	\$25,000.00	Audit Services	Competitive Bidding	No
Bollam, Sheedy, Torani & Co. CPAs (4e)	04/01/2011	03/31/2012	\$11,289.00	\$11,289.00	\$11,289.00	Audit Services	Competitive Bidding	No
CGI-AMS, Inc. (4c)	04/01/2010	03/31/2011	\$13,814,647.41	\$2,519,895.41	\$13,814,647.41	Federal Program Consultant	Competitive Bidding	No
CGI-AMS, Inc. (4c)	04/01/2011	03/31/2012	\$12,328,120.01	\$12,328,120.01	\$12,328,120.01	Federal Program Consultant	Competitive Bidding	No
Citibank	04/01/2011	03/31/2012	\$22,364.89	\$22,364.89	\$22,364.89	Financial Services	State Contract	No
EMJ Construction Consultants (2) (4a)	04/01/2011	03/31/2012	\$7,050.00	\$7,050.00	\$7,050.00	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
Empire Justice Center (4f)	04/01/2010	03/31/2011	\$422,171.76	\$422,171.76	\$422,171.76	Foreclosure Prevention Training Services	Competitive contract	No
Environmental Education Associates (3) (4b)	04/01/2010	03/31/2011	\$113,758.52	\$26,602.46	\$113,758.52	Development Training Services	Competitive Bidding	No
Environmental Education Associates (3) (4b)	04/01/2011	03/31/2012	\$12,186.74	\$12,186.74	\$12,186.74	Development Training Services	Competitive Bidding	No
Franke Consulting Group(3) (4b)	04/01/2011	03/31/2012	\$24,296.64	\$24,296.64	\$24,296.64	Development Training Services	Competitive Bidding	No
Fusco Personnel, Inc.*	04/01/2011	03/31/2012	\$96,510.52	\$96,510.52	\$96,510.52	Temporary Clerical Services	State Contract	No
HAKS Engineering (2) (4a)*	04/01/2010	03/31/2011	\$82,969.98	\$7,377.45	\$82,969.98	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
HAKS Engineering (2) (4a)*	04/01/2011	03/31/2012	\$76,169.46	\$76,169.46	\$76,169.46	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
Harper Danesh	04/01/2011	03/31/2012	\$13,500.00	\$13,500.00	\$13,500.00	Audit Services	Non-competitive contract	No
Housing Development Software (4d)	04/01/2011	03/31/2012	\$14,420.82	\$14,420.82	\$14,420.82	Database software provider	Competitive Bidding	No
Hugh E. Hallenbeck (2) (4a)	04/01/2011	03/31/2012	\$13,044.05	\$13,044.05	\$13,044.05	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
James Jordan Associates (2) (4a)	04/01/2011	03/31/2012	\$11,692.72	\$11,692.72	\$11,692.72	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
LJ Gonzer Associates (2) (4a)	04/01/2010	03/31/2011	\$106,201.45	\$9,250.79	\$106,201.45	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
LJ Gonzer Associates (2) (4a)	04/01/2011	03/31/2012	\$79,560.85	\$79,560.85	\$79,560.85	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
Munoz Engineering (2) (4a)*	04/01/2010	03/31/2011	\$61,684.50	\$15,067.00	\$61,684.50	Foreclosure, Inspection & Architectural Svcs	Competitive Bidding	No
Munoz Engineering (2) (4a)*	04/01/2011	03/31/2012	\$17,152.00	\$17,152.00	\$17,152.00	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
Natural Heritage Trust	04/01/2010	03/31/2011	\$88,889.00	\$88,889.00	\$88,889.00	SEQRA Research Services	Statutory	No
Neighborworks Home Resources (4f)	04/01/2011	03/31/2012	\$893,225.45	\$893,225.45	\$893,225.45	Foreclosure Prevention Training Services	Competitive contract	No
NYS Industries for the Disabled	04/01/2011	03/31/2012	\$73,859.56	\$73,859.56	\$73,859.56	Imaging Services	Preferred Vendor	No
NYS OGS	04/01/2011	03/31/2012	\$16,026.63	\$16,026.63	\$16,026.63	Printing (Stationery), phones, parking,	Preferred Vendor	No
Squire, Sanders & Dempsey, LLP (4g)	04/01/2011	03/31/2012	\$16,883.27	\$16,883.27	\$16,883.27	Legal Services	Competitive Bidding	No
Staples	04/01/2011	03/31/2012	\$11,431.44	\$11,431.44	\$11,431.44	Office Supplies	State Contract	No
Steelcase	04/01/2011	03/31/2012	\$7,192.90	\$7,192.90	\$7,192.90	Office furniture/equipment	State Contract	No
Stored IQ	04/01/2011	03/31/2012	\$48,314.41	\$48,314.41	\$48,314.41	document review services	Single Source	No
Tectonic Engineering & Surveying (2) (4a)	04/01/2011	03/31/2012	\$28,303.03	\$28,303.03	\$28,303.03	Construction, Inspection & Architectural Svcs	Competitive Bidding	No
Verizon Wireless	04/01/2011	03/31/2012	\$8,882.92	\$8,882.92	\$8,882.92	Telecommunications Services	State Contract	No
Total			<u>\$28,746,093.13</u>	<u>\$17,145,024.38</u>	<u>\$28,746,093.13</u>			
MBE/WBE Total			<u>\$334,486.46</u>	<u>\$212,276.43</u>	<u>\$334,486.46</u>			
MBE/WBE as a Percentage of Total			<u>1.16%</u>	<u>1.24%</u>	<u>1.16%</u>			

\*\* Goods produced or services provided substantially outside New York State

\*Minority Business Enterprise/Women-owned Business Enterprise (MBE/WBE)

Notes:

- (1) Contracts/Disbursements in excess of \$5,000.
- (2) No individual maximum or minimum per contract. Maximum contract amount was \$535,000 for these contracts ending 3/31/11 and 3/31/12.
- (3) No Individual maximum or minimum per contract. Maximum contract amount was \$205,000 for these contracts ending 3/31/11 and 3/31/12.
- (4) Bids:
  - (4a) 43 Bids were received prior to the issuance of these contracts.
  - (4b) 27 Bids were received prior to the issuance of these contracts.
  - (4c) 2 Bids were received prior to the issuance of this contract.
  - (4d) 2 Bids were received prior to the issuance of this contract.
  - (4e) 2 Bids were received prior to the issuance of this contract.
  - (4f) 2 Bids were received prior to the issuance of this contract.
  - (4g) Selected from HFA's list of approved vendors for legal services.