

PROCUREMENT POLICY OF THE DORMITORY AUTHORITY
OF THE STATE OF NEW YORK

1. Purpose

It is the policy of the Dormitory Authority of the State of New York (“DASNY”) to procure goods and services in a manner which ensures: (i) compliance with all provisions of law governing procurements by DASNY; (ii) the acquisition of quality goods and services at the lowest possible cost in a timely and efficient manner; (iii) the wise and prudent use of the resources of DASNY, its clients and the taxpayers of the State of New York; (iv) the use of Procurement Contractors and subcontractors that are qualified, responsive and responsible; (v) the promotion of the use of certified Minority and Women-Owned Enterprises in Procurement Contracts in accordance with law; (vi) the promotion of the use of certified Service-Disabled Veteran-Owned (“SDVO”) Business Enterprises in Procurement Contracts in accordance with law; (vii) that Procurement Contractors and their subcontractors remain responsible throughout the term of the applicable Procurement Contract; and (viii) guards against favoritism, extravagance, fraud and corruption.

2. Competitive Procurement Methods

(a) All procurements of goods and services shall be made by DASNY on a competitive basis except as otherwise provided in this Policy. The competitive methods used to make procurements shall include: (i) sealed competitive bids; (ii) requests for proposals; (iii) written quotations; (iv) verbal quotations; (v) purchases made pursuant to centralized contracts let by other public and private entities pursuant to a competitive process; or (vi) any other competitive method of procurement that is consistent with the purposes of this Policy.

(b) For every contract awarded pursuant to sealed competitive bids, DASNY shall maintain procedures designed to ensure that the contract is awarded to the lowest responsible and responsive bidder submitting a bid that meets the specifications. In determining responsibility, staff shall consider factors such as financial responsibility, reliability, skill, past performance by the

contractor on DASNY projects, judgment and integrity. The written procedures shall further require, among other things, that: (i) to the extent required by law, there be separate specifications for major categories for work; (ii) all advertisements for sealed bids be published in the manner required by law and in such other publications as are appropriate to ensure reasonable competition; and (iii) the rationale for awarding the contract to other than the apparent low bidder be documented and retained in the procurement file.

(c) For every contract awarded pursuant to a request for proposal process, DASNY shall maintain procedures governing the solicitation, evaluation and selection of consultants and contractors designed to ensure that the contract is awarded to a responsible and responsive contractor evidencing proven experience with projects of the scope, magnitude and complexity of the type that are the subject of the contract and that the contractor has the ability to perform all work required in a professional and timely manner. The written procedures shall require, among other things, that: (i) there be a written request for proposals setting forth the criteria and standards upon which the award is to be based; (ii) the notice for request for proposals be published in the manner required by law and in such other publications as are appropriate to ensure reasonable competition; (iii) the rationale for awarding the contract be documented and retained in the procurement file; and (iv) any competitive negotiations with a proposer be in the best interests of the procurement and documented in the procurement file.

(d) DASNY shall not let a construction contract under which the contractor is to provide both design and construction services ("design/build contract") unless: (i) this method of procurement is permitted under applicable law; and (ii) DASNY and its client concur in writing prior to the commencement of the procurement process that the use of a design/build contract is in the best interests of the project and in support of that determination, identify the specific benefits, such as schedule, financial, or project feasibility, expected to be gained from a design/build method of procurement. All design/build contracts shall be awarded pursuant to a documented request for proposal process.

(e) To further promote the awareness and utilization of certified Small Businesses and Minority and Women-Owned Business Enterprises, and increase the capacity and capabilities of such firms to bid on State Procurement Contracts, it is the policy of DASNY to establish, subject to the legislative authorization at Chapter 97 of the Laws of 2019, a pilot program for the award of Procurement Contracts for goods and services from, or for the construction, reconstruction, rehabilitation or improvement of facilities by, Small Businesses as defined in § 131 of the Economic Development Law, and Minority-Owned and Women-Owned Business Enterprises as defined in § 310 of the Executive Law. The required terms of this pilot program are set forth in the DASNY Procurement Contract Guidelines, and DASNY shall maintain written procedures for the solicitation of bids or other proposals for Procurement Contract and selection of Procurement Contractors pursuant to this authorization.

(f) DASNY shall, in addition to the procedures required above, maintain written procedures for any other method of competitive procurement to be used by DASNY. These procedures shall, among other things: (i) identify the category of procurement to which the procedure relates; (ii) ensure reasonable competition given the cost and type of procurement; and (iii) require written documentation of the rationale for awarding the procurement.

(g) DASNY shall implement and maintain a process for reviewing inquiries from unsuccessful bidders and proposers. Such process shall ensure that unsuccessful bidders and proposers are treated in a fair and equitable manner.

3. Non-Competitive Procurement Methods

(a) DASNY, subject to the provisions of paragraph b of this Section, shall not be required to use a competitive method of procurement in the following instances:

(i) Selection By Client. DASNY may enter into contracts with contractors selected by clients of DASNY in appropriate instances where the client has provided adequate written rationale justifying the selection.

(ii) Emergency Contract. In the case of an emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting property or other interests of DASNY or life, health or safety require immediate action, the President or his or her designee may authorize the award of a contract on other than a competitive basis. For each such procurement, there shall be a written record setting forth the basis for concluding that there was an emergency and the methods used to identify the selected contractor.

(iii) Discretionary Purchases. DASNY may purchase commodities or services from small business concerns or Minority or Women-Owned Business Enterprises, or commodities or technology that are recycled or remanufactured, in an amount not exceeding five hundred thousand dollars without a formal competitive process.

(iv) Preferred Sources. Goods or materials may be obtained from any provider, such as the Department of Correctional Services Industries Program and qualified charitable agencies for the blind, which, by law, are exempt from competitive bidding or similar requirements.

(v) Single Source. The President or his or her designee may authorize the award of a contract on other than a competitive basis, even though two or more firms can supply the required service, good, or material, provided that DASNY determines that either: (a) one particular firm has unique knowledge or expertise with respect to the required service, good or material rendering the use of competitive procedures impractical; or (b) other material or substantial reasons exist for awarding the contract on other than a competitive basis. For each such procurement, there shall be a written record setting forth the basis for concluding that a single source procurement was in the best interests of the project and the methods used to identify the selected contractor.

(vi) Sole Source. When there is only one source for a required service, good or material, the President or his or her designee may the

authorize the award of a contract for that service, good or material on other than a competitive basis.

(vii) Miscellaneous Exempt Contracts. Other types of goods or services for which a competitive procurement process is impractical may be awarded on other than a competitive basis. Such exempt contacts may include: tuition and other expenses incurred for employee training; services provided by monopolies, utilities and hotels; transportation services; contracts for computer or telephone hardware, software or services where current Authority license or use restrictions render competition impractical; and contracts for the completion of existing contracts that have been the subject of contractor default, termination or the exercise of owner's right to do work. Miscellaneous Exempt Contracts may be awarded without the approval of the President.

(b) All procurements made pursuant to this Section 3 shall be done in accordance with law and in furtherance of the purposes enumerated in Section 1 of this Policy. In addition, even if procurements need not be made on a competitive basis under this Policy, it is still the policy of DASNY to seek competition to the maximum extent practicable under the circumstances.

4. Procurement Guidelines.

In furtherance of this Policy and section 2879 of the Public Authorities Law, the Board of DASNY hereby adopts the attached Procurement Guidelines. The Members of DASNY shall annually review this Policy and the attached Guidelines, together with the procurement report required by section 2879.

Dated: December 11, 2019