



**DORMITORY AUTHORITY  
STATE OF NEW YORK**

**PROCUREMENT CONTRACT GUIDELINES**

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## **Section 1. STATEMENT OF PURPOSE**

These Guidelines are adopted pursuant to the provisions of the Act (as defined below), Section 2879 of the Public Authorities Law, as amended, and the Procurement Policy of the Dormitory Authority of the State of New York (“DASNY”). These Guidelines are designed to ensure the wise and prudent use of the resources of DASNY, its Clients and taxpayers; to guard against favoritism, extravagance, fraud and corruption; and, to facilitate the efficient and timely acquisition of goods and services for DASNY and its Clients. To help ensure that the purposes of these Guidelines are met and that there is compliance with applicable law and procedures governing procurements by DASNY, each operating division within DASNY shall involve the Procurement Unit within the Division of Construction in all purchases of goods and services by DASNY.

## **Section 2. DEFINITION OF TERMS**

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

- (1) “Act” shall mean the Dormitory Authority Act.
- (2) “Alternative Project Delivery System” shall mean any project delivery system, including (but not limited to) Construction Manager Build, Construction Manager at Risk and Design/ Build, pursuant to which one or more contracts for the provision of design or construction services are awarded pursuant to an open, objective and competitive method of procurement. To the extent not prohibited by applicable law, such contracts may be awarded by DASNY prior to the completion of developed designs. To the extent not prohibited by applicable law, and in a manner consistent with these Procurement Contract Guidelines, such contracts may be awarded based upon qualifications-based selection criteria which may include but not be limited to: approach to and understanding of the scope of work; technical qualifications; ability to meet project schedule; designated staff, experience and availability; MWBE participation on project team; similar project experience and/or overall responsiveness to the procurement request. DASNY may require, in its sole discretion as a condition of award, that the proposer assume all or a portion of the risk on budget, schedule or other requirements, as provided in the applicable procurement.
- (3) “Authority” shall mean the Dormitory Authority of the State New York.
- (4) “Client” shall mean those entities for which DASNY is authorized to perform work under the Act or by other statute.
- (5) “Goods” shall mean tangible goods, materials, supplies, products or other standard articles of commerce other than technology and printing. For purposes of these Procurement Guidelines, the term “goods” shall also include “commodities” as defined elsewhere in applicable law and/or DASNY policies and procedures.

- (6) “Construction Manager At Risk” shall mean a method of procurement whereby: (i) a construction manager serves as part of a team in conjunction with the owner in the design phase of the project; (ii) during the construction phase, acts as general contractor for agreed upon compensation as set forth in the construction manager at risk agreement; and (iii) assumes the risk of construction costs exceeding an amount specified in the Construction Manager at Risk agreement.
- (6-a) Construction Manager Build (“CM-Build”) is a project delivery method whereby a construction manager: (i) serves as part of a team in conjunction with the owner in the design phase of the project; (ii) under the oversight of the owner acts as the single source of responsibility to bid, select and hold construction contracts on behalf of the owner during the construction phase; and (iii) manages the construction project on behalf of the owner.
- (7) “Counsel” shall mean an attorney in the regular employment of DASNY.
- (8) “Competitive Basis” shall mean any of the Source Selection Methods enumerated in Paragraph B of Section 3 of these Guidelines.
- (9) “Completion Contract” shall mean 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.
- (10) “Critical Contracts” shall mean Procurement Contracts which must be awarded within a specific time period because delay of award would have a serious adverse effect on DASNY that outweighs the benefits of advertising or reporting in the Contract Reporter as determined by the President or his or her designee.
- (11) “Design/Build” shall mean a Procurement Contract under which the contractor is to provide both design and construction services under a single contract but further requires that any professional services regulated by articles one hundred forty-five, one hundred forty-seven and one-hundred forty eight of the education law be performed by a professional licensed in accordance with such articles.
- (12) “Diversity Practices” shall mean the contractor’s practices and policies with respect to:
- a. utilizing certified Minority and Women-Owned Business Enterprises as subcontractors and suppliers on contracts awarded by DASNY to the contractor; and
  - b. entering into partnerships, joint ventures or other similar arrangements with certified Minority and Women-Owned Business Enterprises.
- (13) “Exempt Contracts” shall mean: (i) any written agreement for goods or services for

which a procurement process is impractical, including but not limited to, 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 (ii) Completion Contracts-.

- (14) “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 DASNY and which are substantially produced outside New York State, or services sought by DASNY and which are substantially performed outside New York State. For purposes of construction services, a Foreign Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
- (15) “Minority-Owned Business Enterprise” shall have the same meaning ascribed thereto by Article 15-A of the Executive Law and shall include any business enterprise, including a sole proprietorship, partnership or corporation that is:
- a. at least fifty-one percent owned by one or more of the following minority groups: Blacks, Hispanics, Asians, Pacific Islanders or Native Americans, or, in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by Blacks, Hispanics, Asians, Pacific Islanders or Native Americans;
  - b. an enterprise in which the minority ownership is real, substantial and continuing;
  - c. an enterprise in which the minority ownership has, and exercises, the authority to control independently the day-to-day business decisions;
  - d. an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field;
  - e. 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 three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
  - f. an enterprise that is a Small Business as defined in Article 15-A of the Executive Law.
- (16) “New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by DASNY and which are

substantially manufactured, produced or assembled in New York State, or services which are sought by DASNY and which are substantially performed within New York State. For purposes of construction services, a New York State Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation that has its principal place of business in New York State.

- (17) “New York Resident” shall mean a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return.
- (18) “Officer” shall mean any person so defined in the By-Laws of DASNY.
- (19) “Procurement Contract” shall mean any written agreement to which DASNY is a party for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more.
- (20) “Procurement Contractor” shall mean any contractor, consultant or vendor who enters into a Procurement Contract with DASNY.
- (21) “Procurement Contracts for Goods” shall mean any written agreement entered into by DASNY primarily for the acquisition of goods in the actual or estimated amount of five thousand dollars (\$5,000) or more unless the goods are procured as part of a Procurement Contract for Non-Professional Services.
- (22) “Procurement Contracts for Non-Professional Services” shall mean any written agreement entered into by DASNY for the acquisition of services (other than Professional Services) and related goods, including construction contracts and Alternative Project Delivery System contracts, in the actual or estimated amount of five thousand dollars (\$5,000) or more.
- (23) “Procurement Contract for Professional Services” shall mean any written agreement for services involving the exercise of discretion, knowledge or expertise that are performed for fee, commission or other compensation by persons or organizations not providing such services in their capacities as officers or employees of DASNY or of any state agency or public corporation in the actual or estimated amount of five thousand dollars (\$5,000) or more. Professional Services include, but are not limited to, management consulting, investment banking, financial services, insurance, planning, training, statistical, research, public relations, architectural, engineering, surveying or any other services of a consulting, technical or professional nature. Professional Services shall not include any contract for the retention of outside counsel or independent auditors, which are procured separately and shall remain subject to independent approval of the DASNY Board of Directors in accordance with the DASNY By-Laws. Professional Services that may be required by DASNY include without limitation:

- a. Intentionally deleted.
- b. Appraisal - independent appraisals of properties or art work.
- c. Art Work - provide selected art objects for display to enhance the aesthetic appearance of Authority projects.
- d. Construction and Design Consulting.
  - i. Architectural - professional architectural services related to the design and construction of Authority and Client-owned facilities.
  - ii. Construction Management - management services on certain designated Authority projects including on-site inspections and overall coordination of all prime construction contracts.
  - iii. Controlled Inspection - professional engineering services to assure conformance to certain requirements of New York State and City Building Code.
  - iv. Engineering - professional engineering services related to the design and construction of Authority and Client-owned facilities.
  - v. Scheduling - construction Critical Path Method (CPM) scheduling services or other scheduling services as may be required.
  - vi. Surveying - surveys of Authority and Client-owned, or to be acquired, properties to establish boundaries, utility locations, etc.
  - vii. Test Boring - test borings services for the purpose of analyzing sub-surface soil conditions on Authority construction sites.
  - viii. Testing - technical testing services on various construction projects to assure adherence to quality of materials and design intent.
- e. Credit Facility - municipal bond insurance, letters of credit, surety bonds or other contracts that secure the repayment of obligations issued by DASNY, constitute part of a debt service reserve fund or provide liquidity for obligations rendered for purchase or redemption.
- f. Custody and Safekeeping Services - custody and safekeeping services to secure Authority investments and receive and evaluate underlying collateral.
- g. Data Processing Services - including report generating and printing services for DASNY which are not programmed to be run on site, programming services as may be required and systems maintenance and support.

- h. Equipment Maintenance - maintenance for the routine service and repair of office, data processing or other equipment.
  - i. Financial Advice - independent advice with regard to Authority investments and the structure of Authority debt instruments.
  - j. Legal - bond and other outside counsel retained by DASNY.
  - k. Investment Banking - purchase of Authority bonds, including assistance in the preparation, marketing, distribution and sale of Authority debt issues.
  - l. Management Consulting - analysis and recommendations concerning DASNY's structure and operation, including but not limited to, data processing and telecommunications services and training.
  - m. Minority Business Enterprise Consultants - technical assistance services to Minority Owned Business Enterprises to facilitate their participation in DASNY's construction program
  - n. Mortgage Servicing - services involving the collection of monthly mortgage payments on insured mortgages, maintaining escrow accounts, transmittal of mortgage insurance premiums to the insurer, submission of advances for insurance, filing of notices, and in the event of default, processing claims for benefits to the insurer.
  - o. Trustee Banking Services - banking services to monitor the timely receipt of debt service payments, compliance with reserve requirements, retirement of debt, collateral evaluations, and other services as required by the various bond resolutions.
  - p. Training - supervisory and special skills training to Authority employees.
  - q. Typographical/Printing – financial printing services based upon specifications and detail developed by DASNY; technical printing services relative to the reproduction of construction documents for the purpose of securing completion; graphic, layout, and printing services in connection with production of DASNY's annual report and any special reports that may be required.
  - r. Such other Professional Services DASNY determines to be necessary pursuant to paragraph A of Section 5 hereunder.
- (24) "Procurement Policy" shall mean the Procurement Policy of DASNY that was developed by the Board of DASNY pursuant to which these Guidelines were adopted.

- (25) “Procurement Record” shall mean: (i) the documentation of the deliberative process by which a Procurement Contractor is selected and the approach taken in the procurement process; and (ii) the documentation pertaining to each contract amendment to any Procurement Contract.
- (26) “Re-bid Contracts” means contract opportunities being re-bid or re-solicited within forty-five business days after bids or proposals were originally due pursuant to publication in the Contract Reporter.
- (27) “Small Business” shall have the same meaning ascribed thereto by Article 15-A of the Executive Law and shall include a business which has a significant business presence in the State of New York, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the Director of the Division of Minority and Women’s Business Development, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, Federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto.
- (28) “Source Selection Method” shall mean any method of procurement set forth in Paragraphs B and C of Section 3 of these Guidelines.
- (29) “The 2010 Disparity Study” shall refer to the disparity study conducted by the Director of the Division of Minority and Women-Owned Business Development regarding the participation of Minority and Women-Owned Business Enterprises in the state contracting marketplace.
- (30) “Women-Owned Business Enterprise” shall have the same meaning ascribed thereto by Article 15-A of the Executive Law and shall include any business enterprise, including a sole proprietorship, partnership or corporation that is:
- a. at least fifty-one percent 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 fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
  - b. an enterprise in which the women ownership is real, substantial and continuing;
  - c. an enterprise in which the women ownership has, and exercises, the authority to control independently day-to-day business decisions;
  - d. an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field;

- e. 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 three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
- f. an enterprise that is a Small Business as defined in Article 15-A of the Executive Law.

**Section 3. SOURCE SELECTION METHODS**

- A.
  - 1. All Procurement Contracts shall be awarded using a Competitive Basis unless these Guidelines, the Procurement Policy and any applicable provisions of law permit the use of another Source Selection Method. Such contracts shall be awarded: (i) in accordance with the Act, other applicable provisions of law, the Procurement Policy, these Guidelines and other applicable DASNY procedures, including without limitation any procedure relating to the solicitation of quotes from qualified vendors; (ii) on terms most favorable to DASNY and its Clients; and (iii) be supported by a written Procurement Record.
  - 2. Prior to using any other Source Selection Method, DASNY must, in accordance with the requirements of section 162 of the State Finance Law insofar as it applies to public authorities, first ascertain whether the goods or services are required to be obtained from a Preferred Source as provided in Section 3.C.6 of these Guidelines.

**B. SOURCE SELECTION METHODS (COMPETITIVE BASIS):** Subject to the requirements of these Guidelines, Procurement Contractors may be selected using one of the following competitive Source Selection Methods:

- 1. Centralized Contracts. Services, goods or materials may be obtained through contracts or other arrangements of the State of New York (e.g., New York State Office of General Services) or the United States General Services Administration or contracts or other arrangements of any health care, educational institution or local governmental Clients provided that the procurement complies with applicable procurement laws, regulations and guidelines for the use of such contracts.
- 2. Comparative Pricing. Solicitation of qualified potential contractors and analysis of the cost of each good, material or service required.

3. Competitive Bid. Solicitation of price bids by advertising for specified services (other than Professional Services), goods, materials, to be awarded to the lowest responsible bidder after the submission of a responsive bid.
4. Competitive Negotiations. Solicitation of qualified potential contractors who have submitted materials for a Procurement Contract not subject to Competitive Bid, which permits further negotiation of their proposals, including prices for contract award, on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.
5. Mental Hygiene and SUNY Dormitory Projects Under \$80,000. DASNY may award Procurement Contracts valued at eighty thousand dollars (\$80,000) or less (or such other monetary limit as shall be specified in applicable law) utilizing Comparative Pricing for authorized Mental Hygiene and SUNY Dormitory projects.
6. Job Order Contracts. DASNY may award Procurement Contracts or work orders to Procurement Contractors who have been selected, pursuant to a Competitive Basis, to participate in the Job Order Contract program. A Job Order Contract consultant shall be selected to develop contract documents necessary to procure Job Order Contractors, and to implement execution procedures and training.
7. Requests for Proposals. Solicitation of specific proposals to determine the proposer's understanding of identified financial, organizational, logistical and technical requirements and/or problems and detailing elements of performance including techniques and procedures as well as prices. Award of a Procurement Contract using this method is made on the basis of a formal evaluation of the qualifications of the proposers and the characteristics, quality and cost of such proposals.
8. Requests for Qualifications. A solicitation used in connection with any Procurement Contract to be awarded on a Competitive Basis for which DASNY is authorized by law to establish a pre-qualified list of Procurement Contractors in order to retain a qualified pool of Procurement Contractors.
9. Term Contracts. Procurement Contracts entered into by DASNY on a Competitive Basis for a specific period of time for either (i) Professional Services or (ii) other than Professional Services.
10. Other State Authority Procurement Contracts – Procurement Contracts of other state authorities as defined in section 2 of the Public Authorities Law shall be deemed a Procurement Contract of DASNY subject to:

- (i) written approval from the President, in his or her sole discretion, which approval shall include a statement that the use of the applicable state authority Procurement Contract is necessary to address a DASNY and/or DASNY client need; and
- (ii) a written determination by DASNY's General Counsel that:
  - (a) the subject matter of the other state authority Procurement Contract is not covered by another valid and existing DASNY procurement (in lieu of which, the DASNY procurement shall apply); and
  - (b) the selected vendor has been procured by the other state authority on a competitive basis in a manner which is substantially consistent with DASNY's Guidelines and consistent with all other applicable law.

**C. SOURCE SELECTION METHODS (NON-COMPETITIVE BASIS):**

Subject to the requirements of these Guidelines, Procurement Contractors may be selected using one of the following non-competitive Source Selection Methods:

1. Assignment. DASNY may acquire contracts through assignment from Clients or their legal subsidiaries. The assignor shall certify that such contracts were awarded pursuant to applicable procurement laws, regulations and guidelines and, if required, that a competitive process was employed.
2. Completion Contract. DASNY may enter into 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. Except as otherwise required by any law or regulation, DASNY shall seek competition to the extent required by procedures adopted by DASNY.
3. Designation. DASNY may enter into Procurement Contracts with Procurement Contractors that are designated by Clients or their legal subsidiaries, provided that such designation is not inconsistent with any legal requirement applicable to DASNY. The designator, in the case of public clients, shall certify that such Procurement Contractors were selected pursuant to applicable procurement laws, regulations and guidelines and, if required, that a competitive process was employed.
4. 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 an Officer

designee may award a Procurement Contract without the use of a Competitive Basis. A record setting forth the circumstances under which such contract was let shall be maintained with the contract.

5. Certain Discretionary Purchases: Public Authorities Law §2879[3][b][i] authorizes the Board of Directors to define the circumstances under which DASNY may facilitate (a) the purchase of goods or services from Small Businesses or certified Minority or Women-Owned Business Enterprises, and (b) goods or technology that are recycled or remanufactured, in an amount not exceeding two hundred thousand dollars without a formal competitive process. In accordance with this authority, DASNY shall establish a Discretionary Purchase Procedure setting forth the parameters under which procurements for such goods or services may be made. Such procedure shall at a minimum contain provisions relating to: the development and maintenance of a list of qualified Small Business and certified Minority of Women-Owned Business Enterprises; the provision of notice and compliance with State publication requirements; and the duty to maintain a written Procurement Record in accordance with these Guidelines. Such Discretionary Purchases shall not exceed two hundred thousand dollars and shall comply with applicable law (including section 162 of the State Finance Law insofar as it applies to public authorities). Notwithstanding the definition of “small business” contained in Section 2(27) hereof, for purposes of certain discretionary purchases, “small business” shall mean a business that is resident in this State, independently owned and operated, not dominant in its field, and employs not more than one hundred people.
  
6. Preferred Sources. Goods or services may be available from any provider who has been afforded Preferred Source status in accordance with section 162 of the State Finance Law, including the Department of Correctional Services Industries Program and qualified charitable agencies for the blind. If a Preferred Source has goods or services available in the form, function and utility consistent with the needs of DASNY, such goods or services shall be procured in accordance with the requirements of State Finance Law section 162. If a good or service is not available in form, function and utility consistent with the needs of DASNY from a Preferred Source, DASNY may then exercise its authority to utilize any of the Source Selection Methods set forth in these Guidelines.

7. Single Source. When DASNY determines, and the President approves in writing, that a Procurement Contract may be awarded on other than a Competitive Basis because, even though two or more firms can supply the required goods or services, one particular firm has unique knowledge or expertise with respect to the required goods or services rendering the use of a Competitive Basis method of selection impractical or other material or substantial reasons exist for awarding the Procurement Contract on other than a Competitive Basis.
8. Sole Source. When DASNY determines, and the President approves in writing, that there is only one source for required goods or services, a Procurement Contract for that good or service may be awarded on other than a Competitive Basis. In addition, Exempt Contracts, other than Completion Contracts, may also be procured on a Sole Source basis without the approval of the President.

#### **Section 4. PUBLICATION REQUIREMENTS FOR SOURCE SELECTION METHODS**

The following publication requirements shall apply to Procurement Contracts:

- A. Methods of obtaining Bids and Proposals. The solicitation of bids, proposals or submissions of qualification data or offers for Procurement Contracts shall be made by DASNY in a manner determined by DASNY to be the most cost effective method of providing reasonable competition. For Procurement Contracts that must be awarded on a Competitive Basis, the requirements may include advertisement in appropriate newspapers or trade journals and may also include direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these Guidelines, including the Minority and Women-Owned Business Enterprise provisions herein.
- B. Procurement Opportunities Newsletter – Contracts Under \$50,000. In the case of Procurement Contracts having a value greater than five thousand dollars (\$5,000) but less than fifty thousand dollars (\$50,000), DASNY will provide a quarterly listing of such Procurement Contracts for publication in the Procurement Opportunities Newsletter (“Contract Reporter”) published by the New York State Department of Economic Development to the extent permitted or required by law.
- C. Procurement Opportunities Newsletter – Contracts \$50,000 or More. In the case of Procurement Contracts in the actual or estimated amount of fifty thousand dollars (\$50,000) or more, the Authority will place a notice of all such opportunities in the Contract Reporter.
- D. Publication on Authority’s Website - All competitive Procurement Contracts should be made available on DASNY’s website concurrent with or after

publication in the NYS Contract Reporter.

- E. Exemptions from Publication Requirement - The requirements in Paragraphs B, C and D above relative to publications in the Contract Reporter and on DASNY's website shall not apply to Procurement Contracts awarded pursuant to the following method
1. Assignment;
  2. Centralized Contracts;
  3. Critical Contracts;
  4. Designation;
  5. Emergency Contracts;
  6. Exempt Contracts;
  7. Preferred Sources;
  8. Re-bid Contracts;
  9. Single Source; or,
  10. Sole Source.
- F. Post-Award Publication Requirements- Whenever a Procurement Contract is let or awarded as a Critical Contract, Emergency Contract, Single Source or Sole Source and a notice has not been published in the Contract Reporter prior to the award or letting of the contract as permitted by Paragraph E above, DASNY shall, after the award or letting of the Procurement Contract, publish a notice of such award or letting stating the basis for not publishing advance notice of the procurement.

**Section 5. REQUIREMENTS REGARDING THE SELECTION OF CERTAIN PROCUREMENT CONTRACTORS**

- A. Procurement Contracts for Professional Services. DASNY shall award Procurement Contracts for Professional Services on a Competitive Basis unless the Procurement Contract is an Exempt Contract or is awarded using any of the non-competitive Source Selection Methods. Before entering into a Procurement Contract for Professional Services, DASNY should consider whether the contemplated services are best provided by Authority staff or external consultants. Capacity, expertise and cost shall be considered in making the determination. In addition, DASNY shall assure that the award of such contract is made to a Procurement Contractor evidencing proven experience with projects of the scope, magnitude and complexity that are the subject of the contract and that such contractor has the ability to perform all work required in a professional and timely manner. DASNY shall also consider factors such as financial responsibility, reliability, skill, past performance on Authority projects, judgment and integrity. As part of the competitive process, DASNY shall:
1. solicit proposals from several firms known to be qualified in the area of the service to be provided;

2. evaluate those proposals received on the basis of the proposers' qualifications and other appropriate factors recited in the Request for Proposals. Contract price and fee may be the subject of Competitive Negotiation;
3. establish a Procurement Record;
4. in the procurement of architectural, engineering, construction management and surveying services with respect to Authority projects, DASNY may request such professional firms to submit statements of their qualifications (RFQ's) and performance data and rank each professional firm submitting such statements and performance data on the basis of its demonstrated competence and qualifications for the type of professional services rendered. DASNY may utilize Competitive Negotiations for architectural, engineering construction management and surveying services with the highest qualified professional firm at a fee determined by DASNY to be fair and reasonable;
5. DASNY shall not refuse to negotiate with an architecture, engineering or surveying firm solely because the ratio of the "allowable indirect costs" to direct labor costs of such professional firm or the hourly labor rate in any labor category of such professional firm exceeds a limitation generally set by DASNY in the determination of the reasonableness of the estimated cost of services to be rendered by such professional firm, but rather DASNY should also consider the reasonableness of cost based on the total estimated cost of the service of such professional firm which should include, among other things, all the direct labor costs of such professional firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of such professional firm. "Allowable indirect costs" of such 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 State contract or allowable limits;
6. maintain written procedures to be used in connection with Requests for Proposals and Competitive Negotiations that are consistent with these Guidelines and that contain provisions relating to the solicitation, evaluation and selection of service contractors to which Procurement Contracts for Professional Services are to be awarded. These procedures shall also provide for, among other things, the promotion of Minority and Women-Owned Business Enterprises, New York State Business Enterprises, New York State Residents and Small Businesses and an assessment of the Diversity Practices of Procurement Contractors in accordance with the provisions of Article 15-A of the Executive Law and any regulations promulgated thereunder; and

7. request contractors to submit completed New York State Vendor Responsibility Questionnaires which shall be processed according to the procedures adopted by the Council of Contracting Agencies pursuant to Executive Order No. 125 in accordance with the procedures adopted by DASNY pursuant to these Guidelines. In addition, DASNY may request additional information from contractors deemed necessary to assist in making determinations to award Procurement Contracts.

The requirements of this subsection shall also apply to the award of contracts for the retention of outside counsel and independent auditors.

- B. Procurement Contracts for Non- Professional Services- Construction. The award of construction contracts by DASNY is authorized by legislation that may or may not require contracts to be awarded pursuant to Competitive Bids and the drawing of separate specifications for the major categories of work, i.e., plumbing, electrical and heating, ventilating, and air conditioning work. In those program areas where Competitive Bids are not required by statute, DASNY shall select its construction contractors using a Competitive Basis (including Competitive Bids) unless the Procurement Contract is an Exempt Contract or is made using any of the following Source Selection Methods: Assignment, Designation, Emergency Contract, Single Source or Sole Source. In addition, all Authority-held construction contracts must require compliance by contractors and subcontractors with the provisions of the Labor Law requiring the payment of prevailing wage rates.

Any method of procurement employed for any construction contract shall assure that the work is done by qualified and experienced contractors at the lowest price to DASNY. If a contract is awarded on a Competitive Basis, DASNY shall assure that the award of such contract is made to a contractor evidencing proven experience with projects of the scope, magnitude and complexity of the facilities that are the subject of the contract and that such contractor has the ability to perform all work required in a professional and timely manner. In addition, DASNY shall consider factors such as financial and other responsibility, reliability, skill, past performance on Authority projects, judgment and integrity. Determinations of the responsibility of bidders shall be made consistent with the guidelines established by Executive Order No. 170.1.

For construction contracts of ten thousand dollars (\$10,000) or more, Procurement Contractors shall submit completed New York State Vendor Responsibility Questionnaires which shall be processed according to the procedures adopted by the Council of Contracting Agencies pursuant to Executive Order No. 125. In addition, DASNY may request additional information from Procurement Contractors deemed necessary to assist in making determinations to award Procurement Contracts.

DASNY shall maintain written procedures consistent with these Guidelines concerning the solicitation, evaluation and selection of Procurement Contractors to which Procurement Contracts for construction services are to be awarded. These procedures shall also provide for, among other things, the promotion of Minority and Women-Owned Business Enterprise, New York State Business Enterprises, New York State Residents and Small Businesses and an assessment of the Diversity Practices of Procurement Contractors in accordance with the provisions of Article 15-A of the Executive Law and any regulations promulgated thereunder.

All Alternative Project Delivery System contracts shall be awarded pursuant to a Request for Proposals Source Selection Method. Alternative Project Delivery System contracts shall not be utilized 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 an Alternative Project Delivery System 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 an Alternative Project Delivery System method of procurement.

C. Procurement Contracts for Goods and Other Non-Professional Services. DASNY shall award Procurement Contracts for goods (including but not limited to, materials, fixtures, furnishings and equipment) and services (other than Professional Services and construction services) in the following manner:

1. Consult with the Client to establish a realistic furnishings and equipment budget based upon that Client's program.
2. Prepare, when required, Competitive Bid documents and comply with advertisement requirements or, if Competitive Bidding is not required by statute, utilize a Competitive Basis (including Competitive Bids) unless the Procurement Contract is an Exempt Contract or is made using one of the following Source Selection Methods: Assignment, Centralized Contracts, Designation, Emergency Contract, Preferred Source, Discretionary Purchases, Single Source or Sole Source.
3. Evaluate Competitive Bids received or analyze Comparative Pricing costs and make recommendations to the client.
4. Prepare contracts and/or purchase orders.
5. Monitor vendors for quality control and timely deliveries.
6. Assist the Client in the receipt and placing of furnishings and equipment.

7. Verify the quantities received and the quality of the products in light of the specifications, and monitor the vendor invoices for timely payments.
  8. DASNY shall maintain written procedures that are consistent with these Guidelines concerning the solicitation, evaluation and selection of vendors and suppliers to which Procurement Contracts for goods and materials shall be awarded. These procedures shall provide for, among other things, the promotion of Minority and Women-Owned Business Enterprises, New York State Business Enterprises, New York State Residents and Small Businesses and an assessment of the Diversity Practices of Procurement Contractors in accordance with the requirements of Article 15-A of the Executive Law and any regulations promulgated thereunder.
- D. Review of Unsuccessful Bids (Debriefing Requirements). In the event that an unsuccessful bidder or proposer requests DASNY to review the award of a Procurement Contract to a bidder or proposer other than itself, DASNY shall afford the unsuccessful bidder or proposer the opportunity to review its bid or proposal with DASNY. In addition, DASNY shall provide the reasons to the unsuccessful bidder or proposer for not receiving the award of the Procurement Contract. DASNY shall ensure that in the process of reviewing the bid or proposal of an unsuccessful bidder or proposer that such bidder or proposer is treated in a fair and equitable manner.
- E. Promotion of Minority and Women-Owned Business Enterprises. It is the goal of DASNY to (a) promote and assist participation by Certified Minority and Women-Owned Business Enterprises in competition for Procurement Contracts and to (b) award a fair share of Procurement Contracts to Certified Minority and Women-Owned Business Enterprises. It is also DASNY's goal to award contracts to those contractors who have evidenced compliance with the laws of the State of New York prohibiting discrimination in employment. DASNY recognizes that this goal may be achieved by awarding Procurement Contracts to those firms who have demonstrated that they do not discriminate in employment. Furthermore, if the performance of any contract permits or requires the use of a subcontractor, said contract shall require the contractor to act affirmatively to secure participation by Certified Minority and Women-Owned Business Enterprises in such subcontract and to report the nature and extent of such efforts to DASNY. All Procurement Contracts, where required, shall be in compliance with Article 15-A of the Executive Law.
1. In furtherance of the above, and to promote the use of Certified Minority and Women-Owned Enterprises in Procurement Contracts, DASNY shall:
    - i. establish appropriate goals for participation of Minority and Women-Owned Business Enterprises in Procurement Contracts and for the utilization of Minority and Women-Owned Business Enterprises as

subcontractors and suppliers by entities having Procurement Contracts with DASNY in accordance with Article 15-A of the Executive Law and any regulations promulgated thereunder.

- ii. solicit offers from Minority and Women-Owned Business Enterprises known to have experience in the area of the goods or service to be provided, regardless of the type of contract.
- iii. provide notice of any procurement to appropriate professional organizations that serve Minority and Women-Owned Business Enterprises so that members of these organizations are apprised of potential opportunities to contract with DASNY.
- iv. maintain a database of Minority and Women-owned Business Enterprises that have expressed interest in doing business with DASNY and ensure that such entities receive direct notice of any impending procurements.
- v. consult any list maintained by any State agency or department known to DASNY, including the Department of Economic Development, which identifies Minority and Women-Owned Business Enterprises by area of expertise and shall contact appropriate Certified Minority and Women-Owned Business Enterprises listed therein to solicit their offers.
- vi. designate appropriate staff to oversee DASNY's programs established to promote and assist: (i) participation by certified Minority or Women-owned Business Enterprises in DASNY's procurement opportunities and facilitation of the award of procurement contracts to such enterprises; (ii) the utilization of certified Minority and Women-Owned Business Enterprises as subcontractors and suppliers by entities having procurement contracts with DASNY; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified Minority and Women-Owned Business Enterprises and other entities having procurement contracts with DASNY. Such staff shall be familiar with the procurement of the types of construction, financial, legal or professional services utilized by DASNY, report directly to DASNY's President and either directly or through their designees participate in the procurement process.
- vii. Establish requirements to conduct procurements in a manner that will enable DASNY to achieve the maximum feasible portion of the goals established pursuant to subparagraph (i) of this subsection and that eliminates barriers to participation by Minority and Women-Owned Business Enterprises on Procurement Contracts. Such procedures shall, in accordance with the requirements of section 2879 of the

Public Authorities Law, include, without limitation:

- a. a requirement that each contract solicitation document accompanying each solicitation provide the expected degree of Minority and Women-Owned Business Enterprise participation;
- b. provisions relating to joint ventures, under which a bidder may count toward meeting its Minority Business Enterprise Participation goal, the Minority and Women-Owned Business Enterprise portion of the joint venture;
- c. provisions under which DASNY may waive obligations of the contractor relating to Minority and Women-Owned Business Enterprise participation after a showing of good faith efforts to comply with the requirements of these Guidelines and all applicable laws pursuant to the waiver provisions contained in Article 15-A of the Executive Law; and
- d. verification that Minority and Women-Owned Business Enterprises listed in a successful bid are participating to the extent listed on the project for which the bid was submitted

2. In implementing the provisions of this Section E, DASNY shall:

- a. Consider, where practicable, the severability of construction projects and other bundled contracts;
- b. Implement a program that will enable it to evaluate each contract to determine the appropriateness of the established goal;
- c. Consider compliance with the requirements of any federal law concerning opportunities for Minority and Women-Owned Business Enterprises which effectuates the purpose of this section; and
- d. Consult the most recent disparity study pursuant to Article 15-A of the Executive Law.

F. Promotion of New York State Business Enterprises and New York State Residents. It is the goal of DASNY to promote the participation of New York State Business Enterprises and New York State Residents in Procurement Contracts. Accordingly, the following procedures shall apply:

1. DASNY shall collect and consult the specifications of New York State Business Enterprises in developing specifications for any Procurement Contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding. DASNY shall, where feasible, make

use of the stock item specification forms prepared by the New York State Commissioner of General Services, and where necessary, consult with said Commissioner in developing such specifications and making such determinations.

2. DASNY shall, with the cooperation of the Department of Economic Development and through cooperative efforts with contractors, provide for the notification of New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts let by DASNY in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification as a condition of awarding bids. Such contractors shall, as supplementary materials to their bids, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on Procurement Contracts equal to or greater than one million dollars; attest to compliance with the federal Equal Employment Opportunity Act of 1972 (P.L. 92-261) as amended; and document their efforts to provide notification to New York State Residents of employment opportunities through listing any such positions with the community service division of the New York State Department of Labor or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.
3. DASNY shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development; a statement notifying potential bidders located in foreign countries that DASNY may assign or otherwise transfer offset credits created by such Procurement Contracts to third parties located in New York State, and it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of Certified Minority and Women Owned Business Enterprises where possible, in the procurement of goods and services.
4. DASNY, with the cooperation of the community service division of the New York State Department of Labor and through cooperative effort with contractors, shall provide for the notification of New York State Residents of employment opportunities arising in New York State out of Procurement Contracts let by DASNY in an amount estimated to be equal to or greater than one million dollars, and shall require contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community service division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

5. DASNY shall notify the New York State Commissioner of Economic Development 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 one million dollars simultaneously with notifying the successful bidder therefore. DASNY shall not thereafter enter into a Procurement Contract for said goods until at least fifteen days has elapsed, except for Procurement Contracts awarded on an emergency or critical basis. The notification to the Commissioner of Economic Development shall include the name, address and telephone and facsimile number of the Foreign Business Enterprise, the amount 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.
  6. DASNY shall comply with the provision of paragraphs (b), (c) and (d) of subdivision five of section 2879 of the Public Authorities Law in relation to dealing with discriminatory jurisdictions as such term is defined therein.
- G. Approval and Annual Review of Certain Contracts. DASNY may enter into Procurement Contracts for Professional Services for periods of longer than one year in accordance with these Guidelines provided such contracts are presented to the Board of DASNY for approval and review annually as part of the approval of the Annual Report on Procurement Contracts. Such Procurement Contracts may also be terminated by the Board of DASNY.
- H. Contracts Requiring Approval of the Board of DASNY. All Procurement Contracts for the general corporate purposes of DASNY, other than Exempt Contracts, that are in excess of three hundred thousand dollars (\$300,000.00), or are for the retention of outside legal counsel or independent auditors must be approved by the Board of DASNY.
- I. Requirement that Procurement Contracts be in Writing. All Procurement Contracts shall be in writing, and except as provided in the DASNY By-Laws or separate Board resolution, approved and executed by an authorized officer of DASNY.
- J. Limitations on Contracts with Former Officers and Employees. DASNY shall not enter into a Procurement Contract with a former officer or employee of DASNY or any entity in which such officer or employee has an interest (including a position of employment with such entity) unless there has been compliance with these Guidelines and the applicable provisions of the Public Officers Law.
- K. Joint Source Selections. No provision of these Guidelines shall prohibit DASNY from undertaking any Source Selection Method (Competitive Basis) pursuant to Section 3[B] hereof for one or more Procurement Contracts jointly with one or more state authorities as defined in section 2 of the Public Authorities Law,

provided however, that each requirement of such Source Selection Method (Competitive Basis) shall be satisfied with respect to any contractor selected by DASNY under a Joint Source Selection procurement, and that no other state authority shall be a party to any specific Procurement Contract authorizing the purchase of goods or services by DASNY resulting from such Source Selection Method (Competitive Basis).

## **Section 6. STANDARD PROVISIONS FOR PROCUREMENT CONTRACTS**

- A. Procurement Contracts for Professional Services. Procurement Contracts for Professional Services shall detail the scope of services to be performed and the time frame for performance, the monitoring or reviewing of that performance by Authority personnel and, where appropriate, any permitted use of Authority supplies, facilities or personnel. Such contracts shall also state the compensation for the services, the schedule of payment, the pre-conditions for receiving payment from DASNY, procedures for termination of the contract and any other provisions deemed necessary or appropriate for each particular Contract. In addition, if performance of a particular Procurement Contract for Professional Services will require the use of subcontractors, the contract shall require the contractor to act affirmatively to secure such participation by Certified Minority and Women-Owned Business Enterprises and to report such efforts to DASNY.
- B. Requirements for All Procurement Contracts: All Procurement Contracts shall generally include, without limitation, the following provisions:
1. Scope of Services;
  2. Contract Price or Fee Structure;
  3. Method of Monitoring Work Performed;
  4. Use of Authority Supplies and Facilities;
  5. Use of Authority Personnel;
  6. Method or Basis of Payment;
  7. Compliance with Laws, Rules and Regulations;
  8. Contract Deemed Executory;
  9. Termination of Agreement for Cause and for Convenience;
  10. Suspension or Alteration of Agreement;
  11. Death of Consultant, if such consultant is an individual or partnership;
  12. Laws of New York State Apply;
  13. Creation of Independent Contractor Relationship;
  14. Provisions Required by Law Deemed Inserted;
  15. Certification of Non-Segregated Facilities and Non-Discrimination in Employment in Northern Ireland, compliance with Federal Equal Employment Opportunity Act, Commitment to New York State Business Enterprises and Non Collusive Bidding Requirement;
  16. Indemnity and Insurance;
  17. Severability;

18. Promotion of Certified Minority and Women-Owned Business Enterprises; and
  19. Promotion of New York State Business Enterprises, New York State Residents and Small Businesses.
  20. Integrity Certification.
- C. Compliance with Procedures of the Procurement Unit. All Procurement Contracts shall be awarded in compliance with procedures adopted by the Procurement Unit within the Division of Construction for the applicable type of Procurement Contract.
- D. Compliance with Title 4 of Article 9 of Public Authorities Law. DASNY shall comply with all provisions of Title 4 of Article 9 of the Public Authorities Law as they relate to Procurement Contracts of DASNY; provided however, that DASNY shall not be required to comply with the provisions of subdivision one of section 2603-a of that statute (relating to the use of domestic steel) if the Managing Director of Construction has advised the Board of DASNY that the criteria contained in subdivision two of that section is satisfied. Under Public Authorities Law §2879-a and the regulations promulgated thereunder, Procurement Contracts in excess of one million dollars that either: (i) are to be paid for in whole or in part from moneys appropriated by the State to DASNY for the purpose of paying such contractual expenditure; or (ii) are not to be awarded after a competitive process (regardless of funding source) are subject to approval by the Office of the State Comptroller (“OSC”) if OSC has notified DASNY in writing that any such contract or category of contracts requires the OSC’s approval. Upon the receipt of any such notice from OSC, DASNY shall include appropriate language in the affected Procurement Contract stating that the OSC’s approval is required for the Procurement Contract to be effective and valid and enforceable against the parties thereto.
- E. Compliance with State Finance Law §§ 139-j and 139-k (the Procurement Lobbying Law). In order to comply with the Procurement Lobbying Law, DASNY has established Policy and Procedures pertaining to contacts regarding Procurement Contracts. Consistent with the Procurement Lobbying Law and DASNY’s Policies and Procedures, DASNY shall designate one or more persons who may be contacted by Procurement Contractors regarding a given procurement and shall require disclosure from Procurement Contractors of persons or organizations designated, retained or employed to attempt to influence the procurement process. DASNY shall incorporate a summary of the Policy and Procedures in all solicitation of proposals, bid documents or specifications. Procurement Contracts must contain a certification by the Procurement Contractor that all information provided to DASNY with respect to the Procurement Lobbying Law is complete, true and accurate, and a provision authorizing termination of the Procurement Contract where it is found that the Procurement Contractor intentionally violated the Procurement Lobbying Law. DASNY shall consider as part of its determination of responsibility of a Procurement Contractor

whether there has been past or present non-compliance with the Procurement Lobbying Law.

- F. Requirements for Procurement Contracts Based on Procurements of Other State Authorities. Where a DASNY contract is procured in accordance with the provisions of Section 3.B.10. hereof, to the extent the other state authority has negotiated a procurement contract with the subject vendor, the terms of the procurement contract of the other state authority shall apply to the DASNY Procurement Contract with said vendor to the extent the terms do not conflict with DASNY policy and standard contract terms. In the event the other state authority has not yet entered into a procurement contract with the subject vendor by the time the subject DASNY Procurement Contract is negotiated, the terms negotiated in the DASNY Procurement Contract shall control, provided however, that to the extent the other state authority subsequently negotiates more favorable terms with the subject vendor, the more favorable terms of the other state authority procurement contract shall be incorporated into DASNY's Procurement Contract with the subject vendor.

## **Section 7. REPORT ON PROCUREMENT CONTRACTS**

- A. Annual Report. Following each fiscal year, the Board of DASNY shall approve an annual report on Procurement Contracts as required by subdivision 7 of section 2879 of the Public Authorities Law. Such annual report will include: (i) these Guidelines and any amendments hereto; (ii) an explanation of these Guidelines and any amendments hereof; (iii) a list of the year's Procurement Contracts; (iv) a list of the aforesaid contracts entered into with New York State Business Enterprises (as defined in Public Authorities Law, §2879(3)(i)), and the subject matter and value thereof; (v) a list of the aforesaid contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; (vi) a list of contracts exempted from reporting in the Contract Reporter and the basis for each exemption; and, (vii) the total fees, commissions or other compensations, by payee, paid for Professional Services. The percent of contracts awarded, and total compensation paid, to Minority and Women-Owned Business Enterprises as well as all referrals made and penalties imposed pursuant to Executive Law § 316 shall be reported in accordance with the provisions of Article 15-A of the Executive Law and need not be included in the Annual Report required by these Guidelines.
- B. Submission of Annual Report. The annual report on Procurement Contracts, after being approved by the Board of DASNY, shall be submitted to the Division of the Budget with copies to the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee and the Assembly Ways and Means Committee.
- C. Availability to Public. Copies of the annual report on Procurement Contracts shall also be available to the public upon reasonable request at DASNY's main office.

- D. Article 15-A Reports. Reports made pursuant to Article 15-A of the Executive Law, with respect to activities undertaken by DASNY to promote and increase participation by certified Minority and Women Business Enterprise Procurement Contractors, shall also include, without limitation, DASNY's annual goals for contracts with Minority-owned and Women-owned Business Enterprises; the number of actual contracts issued to Minority-owned and Women-owned Business Enterprises; and a summary of all waivers of the requirements of subdivisions 6 and 7 of section 313 of Article 15-A of the Executive Law allowed by DASNY during the preceding year, including a description of the basis of the waiver request and the rationale for granting such waiver. DASNY shall also include in such annual report whether or not it has been required to prepare a remedial plan, and, if so, the plan and the extent to which DASNY has complied with each element of the plan.

**Section 8. MISCELLANEOUS PROVISIONS**

- A. Amendment of Guidelines. Any modification or amendment of these Guidelines may be made by a Supplemental Resolution adopted at any duly constituted meeting of the Board of DASNY; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Authority contracts, the terms of which were established pursuant to these Guidelines.
- B. No Recourse Under these Guidelines. No provision contained solely in these Guidelines shall be the basis for any claim based on these Guidelines against any member, officer or employee of DASNY or DASNY itself.
- C. Effect of Noncompliance of Guidelines. Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these Guidelines.

Dated: October 5, 2016