

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

Procurement Policy and Guidelines

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Article 1. Procurement Guideline Overview and Purpose

A. Introduction and Purpose

The Dormitory Authority of the State of New York (herein, “**DASNY**”) is a New York State (“**State**”) public benefit corporation with a mission to deliver exceptional service and professional expertise on every financing and construction project for our Clients and the public, in a cost-effective manner, while advancing the policy goals of New York State.

These Procurement Policy and Guidelines (the “**Guidelines**”) are established pursuant to Public Authorities Law §2879 and set forth DASNY’s operative policies and principles regarding DASNY’s use, awarding, monitoring, and reporting of Procurement Contracts to achieve compliance with applicable laws, regulations, and best practices.

Capitalized terms used herein and not otherwise defined are defined in Appendix 1 – Defined Terms.

B. Procurement Policy of the Dormitory Authority of the State of New York

It is the policy of DASNY to procure Goods and Services in a manner that:

1. Complies with all provisions of law governing procurements by DASNY;
2. Ensures fair and open competition and the acquisition of quality Goods and Services at a Reasonable Price;
3. Guards against favoritism, extravagance, fraud, and corruption;
4. Ensures compliance with statutory requirements pertaining to the use of Minority-Owned Business Enterprises, Women-Owned Business Enterprises, Service-Disabled Veteran-Owned Business Enterprises and Small Businesses;
5. Ensures that procurement results meet DASNY needs effectively, efficiently, and with integrity and that Procurement Contractors are qualified, Responsive and Responsible;
6. Provides for checks and balances to regulate and oversee DASNY’s procurement activities; and
7. Protects the interest of DASNY and its Clients while ensuring the wise and prudent use of the resources of DASNY, its Clients, and the taxpayers of the State of New York.

All Procurement Contracts are to be awarded in accordance with the Act, other applicable provisions of law, these Guidelines, and applicable DASNY procedures on a Competitive basis to the maximum extent practicable. Such awards are generally made after notice of the procurement opportunity is published in the New York State (NYS) Contract Reporter where the amount of the Procurement Contract is \$50,000 or more, and, whenever practicable after soliciting bids or proposals from at least three qualified Vendors. Monetary thresholds may not be avoided by artificially splitting or breaking up contracts into lesser agreements, or entering into a series of agreements, for sums below the dollar thresholds.

The terms and specifications of a Competitive procurement may not be knowingly tailored to favor a particular proposer or bidder.

Article 2. Applicability of Guidelines

A. Procurement Contracts Covered by these Guidelines

These Guidelines apply to all Procurement Contracts. The types of Goods or Services requiring a Procurement Contract include Goods and Services necessary to proceed with a Client project or to support the administrative and operational needs of DASNY.

Construction contracts and Alternative Project Delivery Systems are not Procurement Contracts pursuant to Public Authorities Law §2879 despite inclusion within the scope of the definition of a Procurement Contract pursuant to these Guidelines. 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. In the event of a conflict between these Guidelines and any authorizing legislation, the authorizing legislation shall control.

B. Types of Procurement Contracts

Procurement Contracts include the following:

1. Procurement Contracts for Goods;
2. Procurement Contracts for Construction and Non-Professional Services;and
3. Procurement Contracts for Professional Services.

Article 3. Procurement Process Overview

A. Determination of Need

Before beginning a procurement process, DASNY must consider its business needs and/or those of its Client to determine whether it needs the Goods or Services proposed to be procured and whether it needs to conduct a procurement to obtain the Goods or Services.

Factors considered when conducting a procurement may include:

1. Lack of, or unavailability of, sufficient staff, facilities, equipment, or other resources of DASNY to adequately and cost effectively provide the contemplated services;
2. Required special expertise or abilities not adequately possessed by DASNY employees;
3. Timing;
4. Nature, magnitude or complexity of services required; and
5. Frequency of needed services.

B. Principles of Conducting a Competitive Procurement

Competition in the procurement process serves both DASNY and Vendors by ensuring that the procurement process produces an optimal solution at a Reasonable Price and allowing qualified Vendors an opportunity to obtain DASNY business. Upon deciding to conduct a procurement, DASNY must conduct procurements in accordance with the following general principles:

1. Make reasonable efforts to ensure that Vendors, including, but not limited to, Minority-Owned Business Enterprises, Women-Owned Business Enterprises, Service-Disabled Veteran-Owned Business Enterprises and Small Businesses, are aware of opportunities to compete for DASNY business and adhere to the requirements incorporated into DASNY's solicitation documents;
2. Define the process by which the procurement is being conducted;
3. Disclose the general process and criteria upon which a firm will be evaluated to Vendors;
4. Adhere to the process while conducting the procurement;
5. Document the process, including information gathering and decisions made relating to the procurement;
6. Award to Vendors that are both Responsive and Responsible; and
7. Review Unsuccessful Proposals and Bids (Debriefing Requirements).

In the event that an unsuccessful proposer or bidder requests DASNY to review the award of a Procurement Contract to a bidder or proposer other than itself, DASNY shall allow the unsuccessful bidder or proposer the opportunity to review its bid or proposal with DASNY. In addition, DASNY shall provide the reasons that the unsuccessful bidder or proposer was not awarded the Procurement Contract. DASNY shall ensure that in the process of reviewing the bid or proposal of an unsuccessful bidder or proposer, such bidder or proposer is treated fairly and equitably.

C. Types of Procurement Solicitations

1. Best Value/Qualifications Based Selections.

DASNY shall award Procurement Contracts for Professional Services and, where permitted by law, Procurement Contracts for Alternative Project Delivery Systems which optimize quality, cost, and efficiency at a Reasonable Price. DASNY shall assure that the award of such contracts are made to Procurement Contractors evidencing proven experience with projects of the scope, magnitude, and complexity that are the subject of the contract and that such Vendors can perform all work required in a professional and timely manner. DASNY shall also consider factors such as financial responsibility, reliability, skill, past performance on DASNY projects, judgment, and integrity.

As part of the Competitive process, DASNY shall:

- a) Competitively solicit proposals from qualified firms in the area of the service to be provided;
- b) Evaluate those proposals received based on the proposers' qualifications and other appropriate factors recited in the Request for Proposals. Contract price and fee may be the subject of Competitive Negotiation; and
- c) Require, in the procurement of architectural, engineering, construction management, and surveying services with respect to DASNY projects, that such professional firms submit statements of their qualifications and performance data. Each professional firm submitting such statements and performance data shall be ranked or scored on the basis of its demonstrated competence and qualifications for the type of professional services rendered and enter into Competitive Negotiations with the highest qualified professional firm at a fee determined by DASNY to be Reasonable.

DASNY shall not refuse to negotiate with a professional firm solely because the ratio of the "allowable indirect costs" to direct labor costs of such firm or the hourly labor rate in any labor category of the professional firm exceeds a limitation generally set by the DASNY in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather DASNY shall also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the professional firm. "Allowable indirect costs" of a professional firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits. As used in this paragraph, the term "professional firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association,

or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.

2. Competitive Bid and Quotations.

Procurement Contracts for Goods, Procurement Contracts for Construction and Non-Professional Services and, where applicable, Procurement Contracts for Alternative Project Delivery Systems are to be awarded to the lowest Responsible bidder after the submission of a Responsive bid. This is the most common procurement method for Goods and construction contracts.

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, may authorize the utilization of single prime contractors and/or 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 a Board Exempt Contract or is made using any of the following Source Selection Methods: Assignment, Designation, Emergency/Critical Contract, Single Source or Sole Source. In addition, all DASNY-held construction contracts shall comply with the provisions of the Labor Law requiring the payment of prevailing wage rates, as may be applicable.

Any method of procurement employed for any construction contract shall assure that the work is done by qualified and experienced contractors at a Reasonable Price to DASNY. If a contract is awarded on a Competitive basis, DASNY shall ensure 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 DASNY projects, judgment and integrity. Determinations of the responsibility of bidders shall be made consistent with the guidelines established by Executive Order No. 125, 170.1 and 192.

3. Types of Procurement Contract Awards.

a) Single Award.

This is a Competitive procurement that results in award of a Procurement Contract to a single Vendor. In the case of a single award Competitive procurement, DASNY will follow the principles noted in Article 3, Section C above for conducting a Competitive procurement. Types of single award Procurement Contracts shall include, but shall not be limited to, design bid build construction contracts, design-build contracts, Construction Management-Build Contracts, Professional Service Contracts and Purchase Orders.

b) Multi-Award or Term Award

This is a Competitive procurement that results in award to or empanelment of more than one Vendor. In a multi-award Competitive procurement, DASNY will follow the principles noted in Article 3, Section C above for conducting a Competitive procurement. Types of multi-award or term award Procurement Contracts shall

include, but shall not be limited to, Professional Service term contracts, job order contracting construction contracts, general contractor community minor maintenance, construction requirement contracts, legal services and underwriting.

4. Minimum Qualifications.

DASNY may establish minimally acceptable qualifications that a bidder or proposer must meet in order to be deemed Responsive. These may include but are not limited to: adequacy of resources, staffing, licenses or certifications, experience (company and/or employee), recently completed projects of similar scope/size, references, MWBE/SDVOB utilization and past performance. If DASNY elects to establish minimum qualifications, it shall disclose in the solicitation both the qualification criteria and that bidders and proposers not meeting these criteria will be eliminated without further evaluation. Minimum qualification criteria are evaluated on a pass/fail basis.

5. Procedures and Procurement Record.

a) Procedures.

All Procurement Contracts shall be awarded in compliance with written procedures adopted by the Procurement Unit within the Division of Construction for the applicable type of Procurement Contract. All such procedures shall be consistent with these Guidelines and shall address the solicitation, evaluation and selection and award of Procurement Contracts. These procedures shall provide for, among other things, the promotion of Minority and Women-Owned Business Enterprises, Service-Disabled Veteran-Owned Businesses 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. The Director, Procurement shall establish procedures to affect this policy, and will ensure that transactions are adequately supported, recorded, and carried out in accordance with these Guidelines.

b) Role of Procurement Unit.

To help ensure that the operating policies and principles set forth herein 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 procurements of Goods and Services by DASNY.

c) Procurement Record.

(1) For every procurement, a written and/or electronic record shall be maintained by the Procurement Unit ("**Procurement Record**") documenting the basis for all the decisions made by DASNY during the procurement process. Such record shall contain documentation related to the procurement process, any Competitive solicitation or exemption therefrom, proposals and/or bids received, scoring sheets and/or tabulations, Vendor responsibility documentation and other documents prepared or used by DASNY staff in the Vendor selection process. All Procurement Contracts shall be in writing or securely stored electronically.

(2) Prior to entering into a Non-Competitive Procurement Contract, DASNY's Procurement Record must include, but not be limited to, the following:

- a. Vendor selection and alternatives considered; or, explanation of why no alternatives were available;
- b. Vendor responsibility determination; and,
- c. Price justification, including that the price to be paid is Reasonable.

Article 4. Source Selection Methods

A. Choosing a Procurement Method

All Procurement Contracts shall be awarded using a Competitive basis, unless these Guidelines and any applicable provisions of law permit the use of a Non-Competitive Source Selection Method. Prior to using any other Source Selection Method, DASNY must, in accordance with the requirements of §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 set forth herein.

B. Source Selection Methods

Subject to the requirements of these Guidelines and applicable law, DASNY may utilize the following Source Selection Methods to obtain Goods or Services from a Procurement Contractor.

1. Competitive Source Selection Methods.

a) Centralized Contracts.

Goods or Services 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.

b) Comparative Pricing.

Solicitation of pricing from qualified potential Vendors and analysis of the cost of each Good or Service required. An award need not go to the lowest price, but the price must be Reasonable.

c) Competitive Bid.

Solicitation of price bids by advertising for specified services (other than Professional Services) and Goods to be awarded to the lowest Responsible bidder after the submission of a Responsive bid.

d) 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.

e) Requests for Information (RFI).

Solicitation appropriate when DASNY does not know the precise scope of Services or Goods required and wishes to obtain this information from prospective Vendors.

f) Requests for Statement of Qualifications (RFQ)/Expression of Interest (EOI).

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 to retain a qualified pool of Procurement Contractors. The Requests for Statement of Qualifications and/or Expression of Interest shall be publically advertised when required and followed by a solicitation directed only to the potential Vendors on the pre-qualified list.

g) 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 based upon factors such as the characteristics, quality and cost of such proposals. A Request for Proposal may result in a single award or an award to or empanelment of more than one Vendor. Where more than one firm is awarded a Procurement contract, assignments shall occur pursuant to a mini-bid or as otherwise authorized by applicable procedures.

h) Other State DASNY Procurement Contracts.

Procurement Contracts of other state authorities as defined in § 2 of the Public Authorities Law shall be deemed a Procurement Contract of DASNY subject to:

(1) 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

(2) 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 these Guidelines and consistent with all other applicable law.

2. Non-Competitive Source Selection Methods.

a) Assigned Contracts.

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.

b) Board Exempt Procurement Contracts.

DASNY may enter into Procurement Contracts with Procurement Contractors for Goods or Services for which a procurement process is otherwise impractical, including but not limited to the following:

- (1) Services provided by monopolies, utility agreements (water, sewer, electric, gas), hotels or transportation services;
- (2) Contracts for computer or telephone hardware, software or services where current DASNY license or use restrictions render competition impractical;
- (3) Where the compatibility of Technology, software, equipment, accessories, or spare or replacement parts is the paramount consideration;
- (4) Certain insurance and healthcare products that do not readily lend themselves to a Competitive solicitation;
- (5) Technology, software or services are required to extend or complement a prior procurement and it is impracticable or uneconomical to have a source other than the original source continue the work;
- (6) Financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services;
- (7) Direct placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, works of art for display, tuition or other fees associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which DASNY participates; and

(8) Completion Contracts.

c) Client Designated Contracts.

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.

d) Completion Contracts.

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 possible or as otherwise required by procedures adopted by DASNY.

e) Discretionary Contracts.

Pursuant to PAL § 2879(3)(b)(i), DASNY may purchase Goods and Services from a Small Business or those certified pursuant to Article 15-A of the Executive Law (MWBES), or commodities or technology products that are recycled or remanufactured, in an amount up to \$500,000, without a “formal Competitive process.” In such a case, at least three quotes should be obtained wherever practicable, and NYS Contract Reporter advertising is advisable when time permits. Further negotiations of price may occur as needed.

Staff should assess whether a formal Competitive process, or one that is less formal but still competitive, may best meet DASNY’s needs.

DASNY must consider the reasonably expected aggregate amount of all purchases of the same Goods and Services to be made within a twelve-month period commencing on the date of purchase when determining whether a discretionary purchase is allowable. Aggregate purchases of the same Goods and Services within a twelve-month period will be deemed a single transaction. Purchases of Goods and Services shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds. A change to, or renewal of, a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount for all purchases of the same Goods and Services from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount.

f) Emergency/Critical Contracts.

- (1) Upon the approval of the President or an Officer designee, DASNY may procure and empanel Vendors through a Competitive Source Selection method solely to address and respond to future emergencies involving danger to life, safety or property that requires immediate action. Work is limited to stabilizing the emergency situation and shall not be utilized to restore a facility to its original condition or to take other non-emergency related corrective action. A failure to properly and timely plan in advance for a procurement, which then results in a situation in which normal procurement practices cannot be followed, will not constitute a basis for an Emergency Contract; or
- (2) In the case of an immediate 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.

g) Single Source Contracts.

Pursuant to 2 NYCRR § 206.2, single source means a procurement in which, although two or more Vendors can supply the required Goods or Services, DASNY has

determined, and the President or his or her designee has approved in writing setting forth the material and substantial reasons therefore, to award a contract or amendment to a contract to one Vendor over the other without complying with formal Competitive bidding requirements. Factors to be considered include whether 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.

h) Sole Source Contracts.

Pursuant to 2 NYCRR § 206.2, sole source means a procurement in which only one Vendor is capable of supplying the required Goods or Services. When DASNY determines, and the President or his or her designee approves in writing setting forth the material and substantial reasons therefore, that there is only one Vendor capable of supplying the required Goods or Services, a Procurement Contract for that Good or Service may be awarded without complying with a formal Competitive process. In addition, Board Exempt Contracts, other than Completion Contracts, may also be procured on a Sole Source basis without the approval of the President.

i) Unsolicited Proposal Contracts.

A Procurement Contract based upon an Unsolicited Proposal or offer, submitted at the sole initiative of the proposer, and involving unique, innovative, or unusually meritorious methods or ideas, after having considered other options.

Article 5. Advertisement

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 and Service-Disabled Veteran-Owned Business Enterprises provisions herein. The minimum time for Vendors to respond to a NYS Contract Reporter solicitation is 15 business days (i.e., Saturdays, Sundays and legal holidays are excluded).

B. NYS Contract Reporter – Procurements \$50,000 or More

As required by § 142 of the Economic Development Law, DASNY shall place a notice of all such opportunities in the NYS Contract Reporter for all Procurement Contracts in the actual or estimated amount of fifty thousand dollars (\$50,000) or more, unless the Procurement Contract is otherwise exempt from such requirement. Advertisements should provide prospective bidders with an overview of the proposed procurement and shall otherwise comply with applicable law.

C. Publication on DASNY's Website

All Competitive Procurement Contracts advertised as required by §142 of the Economic Development Law shall be made available on DASNY's website concurrent with or after publication in the NYS Contract Reporter.

D. NYS Contract Reporter – Determination of Intent to Award

When a determination of intent to award a Procurement Contract is made, DASNY shall submit for inclusion in the NYS Contract Reporter, (a) for Procurement Contracts let by the invitation for bid process, the result of the bid opening including the names of bidding firms and the amounts bid by each; (b) for Procurement Contracts let by RFPs, the names of firms submitting proposals and the proposal selected as the best value offer; and (c) for all other Procurement Contracts, the name of the proposed awardee.

E. Exemptions from Prior Publication Requirements

The following Non-Competitive Source Selection Methods are not required to be pre-advertised in the NYS Contract Reporter and on DASNY's website:

1. Assigned Contracts;
2. Board Exempt Contracts;
3. Centralized Contracts;
4. Client Designated Contracts;
5. Emergency/Critical Contracts;
6. Preferred Sources Contracts;
7. Re-bid Contracts;
8. Single Source Contracts;

9. Sole Source Contracts; or
10. Unsolicited Proposals.

F. Post-Award Publication Requirements

Whenever a Procurement Contract is let or awarded as an Emergency/Critical Contract, Single Source Contract or Sole Source Contract and a notice was not advertised in the NYS Contract Reporter prior to the award or letting of the contract, DASNY shall, after the award or letting of such Procurement Contract, publish a notice of such award or letting stating the basis for not publishing advance notice of the procurement.

Article 6. Unsolicited Proposals

DASNY's policy is to award contracts on a Competitive Basis to the maximum extent possible. Unsolicited Proposals allow unique and innovative ideas or approaches that have been developed outside the government to be made available to government agencies for use in accomplishment of their missions. Unsolicited Proposals are offered with the intent that the government will enter into a contract with the offeror for research and development or other efforts supporting the government mission, and often represent a substantial investment of time and effort by the offeror.

A valid Unsolicited Proposal, as determined by the President or his or her designee, must be innovative and unique; be independently originated and developed by the offeror; be prepared without government supervision, endorsement, direction, or direct government involvement; include sufficient detail to permit a determination that government support could be worthwhile and the proposed work could benefit DASNY's research and development or other mission responsibilities; not be an advance proposal for a known DASNY requirement that can be acquired by Competitive methods; and not address a previously published DASNY requirement. Unsolicited Proposals in response to a publicized general statement of DASNY needs are considered to be independently originated.

DASNY shall establish procedures for controlling the receipt, evaluation, and timely disposition of Unsolicited Proposals. The procedures shall include, but shall not be limited to, establishing points of contact to coordinate the receipt and handling of Unsolicited Proposals, controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions, and review of proposals.

Article 7. Vendor Integrity

Pursuant to Executive Order 125 – Establishing a Council of Contracting Agencies, Executive Order 170.1 - Guidelines for Responsibility Determination, Executive Order 192 – Executive Order Imposing Continuing Vendor Integrity Requirements in State Contracts, DASNY is required to undertake an affirmative review of and determine the responsibility of Procurement Contractors prior to the award of a Procurement Contract. Such review shall be designed to provide reasonable assurances that the Procurement Contractor is Responsible. Whether a Vendor is "Responsible" is a question of fact to be determined on a case-by-case basis after a comprehensive weighing of all factors. An unfavorable rating in one or more areas of evaluation does not need to result in a non-responsibility determination; however, it does require DASNY to determine that it has reasonable assurance that the proposed contractor is indeed Responsible or non-responsible, as applicable.

Before finding a Vendor non-responsible, DASNY must ensure that the Vendor was afforded due process rights and provided with the opportunity to explain its position in writing and, in some instances, in person, at a responsibility meeting. If responsibility issues cannot be resolved or explained to the satisfaction of DASNY, DASNY may issue a finding of non-responsibility to the bidder. This finding must be provided in writing to the Vendor. Notification of the non-responsibility determination must be submitted to OGS.

Provided further, that any such Procurement Contractor is also required to maintain responsibility throughout the term of the applicable Procurement Contract.

In furtherance of the above, and to promote the use of Responsive and Responsible subcontractors, DASNY shall include in all bid and contract documents to potential proposers and bidders a statement that: (i) when selecting all subcontractors or subconsultants, a Procurement Contractor shall consider whether the proposed subcontractor or subconsultant has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform; (ii) the Procurement Contractor shall not subcontract with any entity on the list of non-responsible entities maintained by the NYS Office of General Services pursuant to Executive Order No. 192 or that is otherwise debarred pursuant to New York State Law; and that (iii) the Procurement Contractor shall also monitor each subcontractor for responsibility during the term of the Procurement Contract and shall immediately notify DASNY of any material or adverse information.

DASNY may request additional information from Procurement Contractors and their subcontractors deemed necessary to assist in making responsibility determinations.

Article 8. Standard Provisions for Procurement Contracts

Requirements for All Procurement Contracts: Procurement Contracts shall be in writing and detail the scope of services to be performed and the time frame for performance, the monitoring or reviewing of that performance by DASNY personnel and, where appropriate, any permitted use of DASNY 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 Procurement Contract. In addition, if performance of a particular Procurement Contract will require the use of subcontractors, the contract shall require the contractor to act affirmatively to secure such participation by Minority and Women-Owned Business Enterprises, Service-Disabled Veteran-Owned Business Enterprises and to report such efforts to DASNY.

Standard Procurement Contract Provisions All Procurement Contracts shall generally include, the following provisions:

1. Scope of Services;
2. Contract Price or Fee Structure;
3. Method of Monitoring Work Performed;
4. Use of DASNY Supplies and Facilities;
5. Use of DASNY 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/or 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;
19. Promotion of New York State Business Enterprises, New York State Residents and Small Businesses; Service-Disabled Veteran-Owned Businesses; and
20. Integrity Guidelines and Certification.

Article 9. Procurement Contract Approval

A. Contracts Requiring Approval of the Board of DASNY

All original, amended or renewed Procurement Contracts for the general corporate purposes of DASNY, other than Board Exempt Contracts, that have or are reasonable anticipated to have a value that exceeds three hundred thousand dollars (\$300,000.00) in any fiscal year or are for the retention of outside legal counsel or independent auditors, must be approved by the Board of DASNY. Further, as required by Public Authorities Law §2802, DASNY's independent auditor is prohibited from performing any non-audit services without prior written approval by DASNY's Audit Committee.

B. Approval and Annual Review of Certain Contracts

DASNY may enter into Procurement Contracts 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.

C. Procurement Contracts Subject to Approval or Filing with the Office of the State Comptroller

Pursuant to Public Authorities Law §2879-a, DASNY must annually report to OSC on March 1st of each year all Eligible Contracts/Amendments that it anticipates in the next fiscal year, and revise such report within 30 days of learning of any significant changes to such annual report. DASNY must give OSC ten (10) days' notice before (i) publishing a solicitation that DASNY expects will result in an Eligible Contract/Amendment that was not previously reported to OSC or (ii) executing a Non-Competitive Eligible Contract/Amendment that was not previously reported to OSC. Certain Eligible Contracts/Amendments that are the subject of a written notice must also be approved or disapproved by OSC within 90 days after the contract is signed. If approval or disapproval by OSC has not been obtained, the signed contract shall become valid and enforceable without such approval. DASNY must file all Eligible Contracts/Amendments that are not subject to OSC pre-approval with OSC within 60 days of execution.

Article 10. Procurement Ethics and Compliance with Other Laws

A. General Ethical Considerations

Procurements result in an expenditure of public monies, and DASNY employees must always ensure that all procurements are conducted so as not to cause even the appearance of a concern that special considerations have been shown to a Vendor. Actions such as providing a Vendor with information that is not available to other Vendors, accepting a gift, or having a meal with a potential Vendor could be construed as showing favoritism to a Vendor, and may violate State law. Certain meetings with existing or potential Vendors may also need to be reported pursuant to Project Sunlight.

Questions regarding procurement ethics should be directed to DASNY's Ethics Officer.

B. Procurement Contracts Involving DASNY Employees or Relatives

No DASNY employee may take part in any contracting process or decision relating (i) to a relative; or (ii) to any entity in which a DASNY employee or a Relative of such DASNY employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to such, the employee must advise in writing his or her supervisor and DASNY's Ethics Officer of the relationship and must be recused from any and all discussions or decisions relating to the matter.

C. Procurement Contracts Involving Former DASNY Employees

Former DASNY Officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines and their engagement is not barred by New York Public Officers Law § 73(8). An opinion from JCOPE that such engagement is permissible may be required. DASNY's Ethics Counsel must be consulted.

D. New York Public Officers Law §73(8)

No DASNY Officer or employee is eligible, within a period of two years after the termination of DASNY service, to appear or practice before DASNY or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before DASNY.

No DASNY Officer or employee is eligible, at any time after the termination of DASNY service, to appear, practice, communicate or otherwise render services before DASNY or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.

Pursuant to the provisions of New York Public Officers Law §73(8-b), notwithstanding the provisions of b and c above, a former DASNY Officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to DASNY, if, prior to engaging in such service, the President of DASNY or his or her designee certifies in writing to JCOPE that such former Officer or employee has expertise, knowledge or experience with

respect to a particular matter which meets DASNY's needs and is otherwise unavailable at a comparable cost.

E. Political Considerations in Contracting

No DASNY employee who is involved in the award of a Procurement Contract may ask any officer, director or employee of such current or prospective Vendor to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office. No DASNY employee may award or decline to award any Procurement Contract, or recommend, promise or threaten to do so because of a current or prospective contractor's refusal to answer any prohibited inquiry or giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

F. Conflicts of Interest

All actions of DASNY staff are subject to DASNY's Ethics Policy and the provisions of Public Officers Law §§73 and 74. Staff charged with the evaluation and selection of bid/proposal submissions should ensure that they do not have any conflict of interest with respect to any bidder or proposer and should alert DASNY's Ethics Officer immediately upon identifying any potential conflict.

G. Firms Involved in Procurement

To the extent practical, firms that develop or draft specifications, requirements, statements of work, or requests for bids or proposals for a project or a procurement must be excluded from competing in any resulting procurement.

H. Compliance with Other Laws

1. Procurement Lobbying Law – State Finance Law §§139-j and 139-k.

To protect the integrity and fairness of the procurement process and maintain public confidence in DASNY, all DASNY procurement decisions shall be based solely on the merits of bids and proposals, free of any inappropriate lobbying influence.

State Finance Law ("SFL") § 139-j and 139-k apply to all Procurement Contracts over \$15,000, and among other things: (i) govern permissible and impermissible communications between an Offerer and staff of DASNY during the procurement process; (ii) require the disclosure of certain communications, as well as prior determinations of Vendor non-responsibility; (iii) establish sanctions for knowing and willful violations of such provisions, including disqualification from eligibility for an award of any contract.

State Finance Law §§ 139-j and 139-k (Procurement Lobbying Law) impose certain restrictions on Contacts between DASNY and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making Contacts from the date of the earliest notice of intent to solicit offers/bids through the date of the final award, and, if applicable, approval of the contract by OSC, to other than "designated staff" or "Designated Contacts" (as identified by the DASNY). The interval between these points is known as the "Restricted Period." However, not all Contacts during the Restricted Period are impermissible.

Specifically, SFL § 139-j and 139-k require that only Designated Contacts may communicate with an Offerer regarding the solicitation during the Restricted Period. Certain exceptions to this restriction are provided in State Finance Law §139-j (3) (a). An example of an exception would be communication during contract negotiations. Employees are also required to obtain certain information when contacted during the Restricted Period and to make a determination of the responsibility of the Vendor pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award. In the event of two such findings within a four-year period, the Vendor is debarred from obtaining governmental procurement contracts.

2. Project Sunlight.

Project Sunlight is an important component of the Public Integrity Reform Act of 2011. Under this law, State governmental entities specified in the law are required to cooperate with OGS and identify in a database developed by OGS all individuals, firms or other entities (other than State or local governmental agencies) that appear before such entity on behalf of themselves or in a representative capacity on behalf of a Client or customer for any of various specified purposes. This includes appearances related to (a) procurement, (b) ratemaking, (c) regulatory matters, (d) judicial or quasi-judicial proceedings, and (e) adoption or repeal of a rule or regulation.

Project Sunlight's reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a DASNY Procurement Contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to DASNY contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated. Appearances during the Restricted Period—whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law—do not need to be reported. Appearances following the award of a DASNY Procurement Contract do not need to be reported.

3. Iran Divestment Act of 2012.

Public Authorities Law §2879-c imposes limitations on Vendors that do business with the Iranian energy sector and seek procurement contracts with New York State agencies and public authorities, including DASNY. Each person who proposes to enter into, renew, or assume responsibility for a procurement contract for commodities, services, construction, or printing shall certify at the time the bid is submitted or the contract is renewed or assigned that it is not on the list created pursuant to paragraph (b) of subdivision 3 of § 165-a of the State Finance Law. Such certification must be included in the Procurement Record.

4. Workers Compensation and Disability Insurance.

All solicitations must make it clear that the Vendor will be required to provide proof of Workers' Compensation and Disability Insurance (or proof of exemption from such requirements) prior to being awarded a contract or receiving a contract renewal.

5. Prompt Payment Policy – PAL §2880.

DASNY will comply with standards for the payment of invoices within a specified period of time and for payment of interest penalties when invoices are not paid accordingly, as set

forth in Public Authorities Law §2880 and in accordance with DASNY's Prompt Payment Policy.

6. Statement of Non-Collusion in bids or proposals to Public Authority – PAL §2878.

It is the policy of DASNY to promote increased public confidence in its procurement practices, including requiring Vendors to certify in writing, upon submission of their proposal or bid and at the time of execution of a contract with DASNY as follows:

- a) The prices in the bid or proposal have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor.
- b) Unless otherwise required by law, the prices which have been quoted in the bid or proposal have not knowingly been disclosed by Proposer, and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor.
- c) No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not submit a bid or proposal for the purpose of restricting competition.

Article 11. Compliance and Participation Requirements

DASNY is committed to providing and ensuring Minority-Owned Business Enterprises, Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Business Enterprises with opportunities to participate in DASNY's contracting and procurement processes in accordance with New York State Executive Law, Articles 15-A, 17-B, and all applicable federal and state laws, rules, regulations and Executive Orders, including but not limited to Executive Order 177-Prohibiting State Contracts with Entities that Support Discrimination.

DASNY is also committed to entering into Procurement Contracts only with entities who treat all individuals equally, regardless of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis.

All Procurement Contractors are subject to these requirements and the procedures applicable to that type of Procurement Contract. In accordance with such, all Procurement Contracts and procurements are required to contain certain requirements pertaining to compliance with this Article 11.

A. Compliance Requirements with Executive Law Articles 15-A & 17-B and Supplier Diversity Background

All Procurement Contracts exceeding \$25,000 for Goods or Services and \$100,000 for construction must comply with the requirements of Executive Law Article 15-A, which governs the New York State MWBE Program. The purpose of the MWBE Program is to eliminate historic barriers to participation by Minority-Owned Business Enterprises and Women-Owned Business Enterprises in State contracting. The MWBE Program contributes significantly to DASNY's mission of promoting a growing State economy; encouraging business investment and job creation; and supporting diverse, prosperous local economies across the State.

All Procurement Contracts exceeding \$25,000 for Goods or Services and \$100,000 for construction must also comply with the requirements of Executive Law Article 17-B, which acknowledges that Service-Disabled Veteran-Owned Businesses strongly contribute to the economies of the State and the nation. Staff should familiarize themselves with the Service-Disabled Veteran-Owned Business Operations Guidance published by OGS to ensure compliance with Service-Disabled Veteran-Owned Business-related laws and requirements.

As reflected in the Guidelines, it is the goal of DASNY to (a) promote and assist participation by Minority-Owned Business Enterprises, Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Business in competition for Procurement Contracts and to (b) award a fair share of Procurement Contracts to Minority-Owned Business Enterprises, Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Businesses. 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 Minority-Owned Business Enterprises, Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Businesses 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 and 17-B of the Executive Law.

B. Promotion of Minority and Women-Owned Business Enterprises.

In furtherance of this Article 11, and to promote the use of Minority-Owned Business Enterprise and Women-Owned Enterprises in Procurement Contracts, DASNY shall:

1. Establish appropriate goals for participation of Minority-Owned Business Enterprise and Women-Owned Business Enterprises in Procurement Contracts and for the utilization of Minority-Owned Business Enterprise 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;
2. Solicit offers from Minority-Owned Business Enterprise 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;
3. Provide notice of any procurement to appropriate professional organizations that serve Minority-Owned Business Enterprise and Women-Owned Business Enterprises so that members of these organizations are apprised of potential opportunities to contract with DASNY;
4. Maintain a database of Minority-Owned Business Enterprise 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;
5. Consult any list maintained by any State agency or department known to DASNY, including the Department of Economic Development, which identifies Minority-Owned Business Enterprise and Women-Owned Business Enterprises by area of expertise and shall contact appropriate Minority-Owned Business Enterprise and Women-Owned Business Enterprises listed therein to solicit their offers;
6. Designate appropriate staff to oversee DASNY's programs established to promote and assist: (i) participation by Minority-Owned Business Enterprise 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 Minority-Owned Business Enterprise 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 Minority-Owned Business Enterprise 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;
7. 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 (1) of this subsection and that eliminates barriers to participation by Minority-Owned Business Enterprise and Women-Owned Business Enterprises on Procurement

Contracts. Such requirements shall, in accordance with the requirements of § 2879 of the Public Authorities Law, include, without limitation;

- a. a condition that each contract solicitation document accompanying each solicitation provide the expected degree of Minority-Owned Business Enterprise and Women-Owned Business Enterprise participation;
- b. provisions relating to joint ventures, under which a Vendor may count toward meeting its Minority-Owned 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-Owned Business Enterprise and Women-Owned Business Enterprise participation after a showing of Good faith efforts to comply with the Minority-Owned Business Enterprise and Women-Owned Business Enterprise requirements of the contract and all applicable laws pursuant to the waiver provisions contained in Article 15-A of the Executive Law; and
- d. verification that Minority-Owned Business Enterprises 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.

In implementing the provisions of this Section, DASNY shall:

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

C. Promotion of Service-Disabled Veteran-Owned Business Enterprises

It is the goal of DASNY to:

1. Promote and assist participation by Service-Disabled Veteran-Owned Businesses in competition for Procurement Contracts, and to
2. Award a fair share of Procurement Contracts to Certified Service-Disabled Veteran-Owned Businesses. All Procurement Contracts, where required, shall be in compliance with Article 17-B of the Executive Law.

D. Executive Order 162

Pursuant to Executive Order Number 162 (“EO 162”), all New York State contracts, agreements and procurements issued and executed on or after June 1, 2017 require contractors to submit detailed workforce utilization reports that include the job title and gross wages of each employee of a contractor and subcontractor performing work on a DASNY contract or, if the individuals working directly on a DASNY contract cannot be identified, each employee in the contractor’s and subcontractor’s entire workforce. A DASNY contract includes all agreements in excess of \$25,000 for Goods and Services, and all agreements in excess of \$100,000 for construction. Contractors and subcontractors performing work on construction contracts with a total value in excess of \$100,000 are required to submit workforce utilization reports to the Office of Opportunity Programs on a monthly basis, within ten (10) days of the end of that month. Contractors and subcontractors performing work on commodities and service contracts with a total value in excess of \$25,000 are required to submit workforce utilization reports to the Office of Opportunity Programs on a quarterly basis within ten (10) days of the end of that quarter.

E. Compliance with Executive Order 177 (Prohibiting Contracts with Entities that Fail to Address Discrimination)

Executive Order No. 177, issued on February 3, 2018, directs all State agencies, including public authorities, to amend their procurement procedures to prevent contracting with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability or other protected basis. All Authority Procurement Contracts must contain a representation that the Vendor’s policies or practices do not fail to address harassment and discrimination.

Article 12. Promotion of NYS Business Enterprises and NYS Residents

It is the policy of DASNY to promote participation in Procurement Contracts by New York State business enterprises and New York residents, including without limitation, business enterprises located in the service area and residents of the service area, by encouraging them to compete through measures including, but not limited to:

- A. Collecting and consulting the specifications of New York State business enterprises in developing any specifications for any Procurement Contract for the purchase of Goods where possible, practicable, feasible, and consistent with open bidding, except for Procurement Contracts for which DASNY would be expending funds received from another state. DASNY will, where feasible, make use of the stock order specification forms prepared by the Commissioner of General Services and, where necessary, consult with the Commissioner of General Services in developing such specifications and make such determinations.
- B. With the cooperation of the Department of Economic Development and through cooperative efforts with contractors, providing for the notification of New York State business enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts 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. Once awarded the contract, contractors shall be required to document their efforts to encourage the participation of New York State business enterprises as subcontractors and suppliers on such Procurement Contracts. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from New York State business enterprises, including Minority-Owned Business Enterprises, Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business Enterprises, or (b) contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals, and other trade publications circulated in New York State, or (d) participated in Vendor outreach conferences. If a contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.
- C. Except for Procurement Contracts for which DASNY would be expending funds received from another state, including in all solicitations 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, including the directory of Minority-Owned Business Enterprise, Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Business Enterprises, and that it is the policy of DASNY to encourage the use of New York State subcontractors and suppliers and to promote the participation of Minority-Owned Business Enterprise, Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Business Enterprises, where possible, in the procurement of Goods and Services.
- D. With the cooperation of the Community Services Division of the Department of Labor and through cooperative efforts with contractors, providing for the notification to New York State residents of employment opportunities arising in New York State out of Procurement Contracts in an amount estimated to be equal to or greater than one million dollars; and

assuring compliance by contractors by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the Community Services Division or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

- E. Including in each solicitation a statement notifying potential Proposers in foreign countries that DASNY may assign or otherwise transfer offset credits created by such Procurement Contract to third parties located in New York State; providing for the assignment or other form of transfer of offset credits created by such Procurement Contracts, directly or indirectly, to third parties located in New York State, in accordance with the written directions of the Commissioner of Economic Development; and providing for DASNY otherwise to cooperate with the Department of Economic Development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York State created by such Procurement Contracts.
- F. Each contract shall expressly obligate contractors to comply with the federal Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), as amended.

Article 13. Foreign Business Enterprises

DASNY shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of Goods and/or Services from a Foreign Business Enterprise in an amount equal to or greater than \$1 million simultaneously with notifying the successful Vendor. DASNY shall not enter into the Procurement Contract for said Goods and/or Services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, 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 acting on behalf of same who is principally responsible for the proposed Procurement Contract.

DASNY shall not include any Foreign Business Enterprises on invitations to bid and shall not enter into a Procurement Contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development ("DED"). The provisions of this section may be waived by the President or Board as applicable, if it is determined in writing that it is in the best interests of DASNY to do so, as further set forth in the above-referenced law.

Article 14. Reporting Requirements

A. Annual Report

On an annual basis, after the end of each fiscal year, the Board of DASNY shall approve an annual report on Procurement Contracts as required by subdivision 7 of § 2879 of the Public Authorities Law. Such annual report will include:

1. these Guidelines and any amendments hereto;
2. an explanation of these Guidelines and any amendments hereto;
3. a list of the fiscal year's Procurement Contracts;
4. 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;
5. the total number and total dollar value of Procurement Contracts awarded to Minority-Owned Business Enterprises and Women-Owned Business Enterprises pursuant to Public Authorities Law § 2879(3)(b)(i). The percent of contracts awarded, and total compensation paid, to Minority-Owned Business Enterprises 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.
6. a list of the aforesaid contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; and
7. a list of contracts exempted from reporting in the NYS Contract Reporter and the basis for each exemption.

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. Copies of the annual report on Procurement Contracts shall also be available to the public upon reasonable request at DASNY's main office.

B. 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 Minority-Owned Business Enterprise and Women-Owned Business Enterprise Procurement Contractors, shall also include, without limitation, DASNY's annual goals for contracts with Minority-Owned Business Enterprise and Women-Owned Business Enterprises; the number of actual contracts issued to Minority-Owned Business Enterprise and Women-Owned Business Enterprises; and a summary of all waivers of the requirements of subdivisions 6 and 7 of § 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.

Article 15. 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 DASNY 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.

Appendix 1 – Defined Terms

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

“**Act**” shall mean the Dormitory Authority Act.

“**Alternative Project Delivery System**” shall mean any project delivery system authorized by law, including (but not limited to) Construction Manager Build, Construction Manager at Risk, Design/Build and P3, 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 or SDVOBE 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.

“**Board Exempt Contracts**” shall mean: any written agreement for Goods or Services for which a procurement process is impractical, including but not limited to:

- A. Services provided by monopolies, utility agreements (water, sewer, electric, gas), hotels or transportation services;
- B. Contracts for computer or telephone hardware, software or services where current DASNY license or use restrictions render competition impractical;
- C. Certain insurance and healthcare products that do not readily lend themselves to a Competitive solicitation;
- D. Financial hedge contracts (including but not limited to swaps, calls, puts or swap options) or credit rating services;
- E. Direct placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, works of art for display, tuition or other fees associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which DASNY participates.
- F. Completion Contracts.

“**Client**” shall mean those entities for which DASNY is authorized to perform work under the Act or by other statute.

“Competitive” shall mean any of the Source Selection Methods enumerated in Article 4(B)(1) of these Guidelines.

“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.

“Contact,” pursuant to State Finance Law §§ 139-j and 139-k, means any oral, written or electronic communication with the Corporation under circumstances where a reasonable person would infer that the communication was intended to influence the Corporation’s conduct or decision regarding the procurement.

“Construction Manager Build” or **“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.

“Counsel” shall mean an attorney in the regular employment of DASNY.

“DASNY” shall mean the Dormitory Authority of the State New York.

“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.
Contacts

“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 NYS Contract Reporter as determined by the President or his or her designee.

“Designated Contact(s)” means a person or persons who are knowledgeable about a procurement and that the Corporation designates for such procurement, pursuant to State Finance Law § 139-j, as the person or persons who may be contacted by Offerers relating to the procurement.

“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.

“Disparity Study” shall refer to the disparity study regarding Minority-Owned Business Enterprises and Women-Owned Business Enterprises and other matters pursuant to Article 15-A of the Executive Law.

“Diversity Practices” shall mean the contractor’s practices and policies with respect to:

- A. Utilizing or mentoring Minority-Owned Business Enterprises 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 Minority-Owned Business Enterprises and Women-Owned Business Enterprises, including without limitation establishment of a mentor-protégé program pursuant to State Finance Law § 147.

“Eligible Contract” means any contract executed by the Corporation on or after March 1, 2010, other than an exempt contract, as that term is defined in 2 NYCRR Part 206, where the aggregate consideration proposed for exchange (including all reasonably anticipated renewals and amendments) may reasonably be valued in excess of \$1 million and such contract either:

- A. shall be paid in whole or in part with monies appropriated by the State, either directly to the Corporation or to a State agency which pays the money to the Corporation; or
- B. was or shall be awarded on a Single Source basis, a Sole Source basis or pursuant to any other Non-Competitive procurement. For purposes of determining the value of a contract that has no term or is perpetual in nature, the contract shall be deemed to have a term of five years.

“Eligible Contract Amendment” means

- A. Any modification to an Eligible Contract; or
- B. Any modification other than an exempt contract amendment, as that term is defined in 2 NYCRR Part 206, to a contract executed by the Corporation where such modification was executed on or after March 1, 2010, and where the aggregate consideration under the contract as amended may reasonably be valued in excess of \$1 million and:
 - a. the contract as amended will be paid in whole or in part with monies appropriated by the State, either directly to the Corporation or to a State agency which pays the money to the Corporation; or
 - b. the contract was originally awarded on a Non-Competitive basis; or
 - c. the contract was originally awarded on the basis of a Competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such Competitive procurement.

“Emergency Contract” shall mean a Procurement Contract awarded in the case of an emergency arising out of an accident or other unforeseen occurrence or condition affecting property or other interests of DASNY or situations endangering life, health or safety requiring immediate action as determined by the President or his or her designee.

“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.

“Goods” shall mean material or tangible Goods, supplies, products, construction items, electronic information resources or other standard articles of commerce other than technology and printing which are the subject of any purchase or exchange.

“Minority-Owned Business Enterprise” shall mean, unless the context requires otherwise, those minority business enterprises certified (or decertified) by the Division of Minority and Women-Owned Business Development as such pursuant Article 15-A of the Executive Law.

“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.

“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.

“Non-Competitive” shall mean any of the Source Selection Methods enumerated in Section 4(B)(2) of these Guidelines.

“Officer” shall mean any person so defined in the By-Laws of DASNY.

“Offerer,” pursuant to State Finance Law §§ 139-j and 139-k, means the 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 procurement during the Restricted Period of such procurement whether or not the entity has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicates with the Corporation regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offerer.

“OGS” shall mean the NYS Office of General Services.

“OSC” shall mean the Office of the New York State Comptroller

“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. Goods or Services procured by a Client and paid by DASNY with bond proceeds, Loans or grants administered by DASNY in the furtherance of its mission, a contract or Memorandum of Understanding (“MOU”) with a State agency, a Client or another authority and easements or access licenses are not Procurement Contracts and are excluded by these Guidelines.

“Procurement Contractor” shall mean any Vendor who enters into a Procurement Contract with DASNY.

“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.

“Procurement Contracts for Construction and 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.

“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. *Alternative Project Delivery Systems Consulting* – professional services related to or in support of Alternative Project Delivery Systems undertaken by DASNY, the State of New York and/or Clients, including but not limited to architectural, engineering, project feasibility and development, construction and project management, accounting and related or associated financial services and real property services
- B. *Appraisal* - independent appraisals of properties or art work.
- C. *Art Work* - provide selected art objects for display to enhance the aesthetic appearance of DASNY projects.
- D. *Construction and Design Consulting*
 - 1. Architectural - professional architectural services related to the design and construction of DASNY and Client-owned facilities.
 - 2. Construction Management - management services on certain designated DASNY projects including on-site inspections and overall coordination of all prime construction contracts.
 - 3. Controlled Inspection - professional engineering services to assure conformance to certain requirements of New York State and City Building Code.
 - 4. Engineering - professional engineering services related to the design and construction of DASNY and Client-owned facilities.

5. Scheduling - construction Critical Path Method (CPM) scheduling services or other scheduling services as may be required.
 6. Surveying - surveys of DASNY and Client-owned, or to be acquired, properties to establish boundaries, utility locations, etc.
 7. Test Boring - test borings services for the purpose of analyzing sub-surface soil conditions on DASNY construction sites.
 8. 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 DASNY 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 DASNY investments and the structure of DASNY debt instruments.
 - J. *Legal* - bond and other outside counsel retained by DASNY.
 - K. *Investment Banking* - purchase of DASNY bonds, including assistance in the preparation, marketing, distribution and sale of DASNY 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 DASNY 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. *Cloud computing, hosting and software as a service.*

S. Such other Professional Services DASNY determines to be necessary pursuant to paragraph A of Section 5 hereunder.

“Reasonable” or **“Reasonable Price”** means a fair market price based on normal Competitive conditions and not necessarily the lowest possible price. Reasonableness of price can be documented in several different ways, including but not limited to: obtaining or attempting to obtain informal quotes (e.g., telephone or written), from at least three Vendors if possible; comparing costs of the same Goods or Services provided to other governmental entities; or, making historical cost or price comparisons.

“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.

“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 NYS Contract Reporter.

“Responsible” or **“Responsibility”** means the financial ability, legal capacity, integrity, and past performance of a business entity and as such terms have been interpreted relative to public procurements.

“Responsive” means a Vendor meeting the minimum specifications or requirements as prescribed in a solicitation.

“Restricted Period,” pursuant to State Finance Law §§ 139-j and 139-k, means the period of time commencing with the earliest posting, on the Corporation’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Economic Development Law Article 4-C, of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerers intending to result in a Procurement Contract with the Corporation and ending with the final contract award and approval by the Corporation and, where applicable, the Office of the State Comptroller.

“Requests for Expressions of Interest” (“RFEI”) RFEIs are formal informational inquiries and a means to gather data to provide DASNY with preliminary information to help inform the technical possibilities of future potential solicitations. RFEIs are not a Government Procurement as defined under SFL 139-j. RFEIs are generally appropriate when DASNY does not know the precise scope of Goods or Services required, and wishes to obtain this information from prospective Vendors.

“Service” or **“Services”** means the performance of a task or tasks and may include a material Good or a quantity of material Goods, and which is the subject of any purchase or other exchange. For the purposes of this article, technology shall be deemed a service.

“Service-Disabled Veteran-Owned Business Enterprises” shall mean those service-disabled veteran-owned businesses certified as such by the New York State Office of General Services pursuant to Article 17-B of the Executive Law.

“Small Business” shall, unless the context requires otherwise, 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.

“Source Selection Method” shall mean any method of procurement set forth in Paragraphs B and C of Section 3 of these Guidelines.

“Vendor” a person, firm, contractor, consultant, supplier, manufacturer, joint venture, partnership or similar entity responding to a public solicitation who wishes to provide Goods and/or Services to DASNY.

“Unsolicited Proposals” shall mean a written proposal for a new, unique, or innovative idea submitted to DASNY on the initiative of the offeror for the purpose of obtaining a contract with DASNY, and is not in response to a request for proposal, DASNY announcement, or any other solicitation or program initiated by or on behalf of DASNY, a Client or New York State. Unsolicited Proposals in response to a publicized general statement of agency needs are considered to be independently originated.

“Women-Owned Business Enterprise” shall mean, unless the context requires otherwise, those women-owned business enterprises certified (or decertified) by the Division of Minority and Women-Owned Business Development as such pursuant to Article 15-A of the Executive Law.