NEW YORK JOB DEVELOPMENT AUTHORITY

Meeting of the Members

Thursday

June 23, 2022 – 10:00 a.m.

AGENDA

I. CORPORATE ACTIONS

A. Approval of the Minutes of the June 24, 2021 Members' Meeting

B. Mission Statement, Related Performance Measurements and FY 2021-2022 Performance Measurement Report – Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2021-2022 Performance Measurement Report

C. Annual Financial Reports – Approval of Certain Annual Financial Reports and Authorization to Take Related Actions

D. 2022 Procurement Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

E. Committee Appointments – Appointment of Members to the Audit, Finance and Governance Committee

II. FOR CONSIDERATION

A. JDA Loans through the JDA Agriculture Loan Fund Program - Approval of Hudson Valley Agri-Business Development Corporation ("HVADC") as a JDA Agriculture Loan Fund Program Lender; Authorization to Make a JDA Agriculture Loan Fund Program Loan to HVADC and to Take Related Actions

Item I. A.

DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK JOB DEVELOPMENT AUTHORITY
Meeting of the Members

Via Teleconference

June 24, 2021

MINUTES

Members Present:	Eric J. Gertler, Chair - Acting Commissioner of NYS Department of Economic Development Alfredo Vazquez Assad Adam Barsky Karen Coleman, Designee - Commissioner of NYS Department of Labor Linda Sun, Designee - Superintendent of NYS Department of Financial Services Steve McGrattan - Designee, Commissioner of NYS Department of Agriculture and Markets Emily Youssouf
JDA Staff:	Debbie Royce, Acting Corporate Secretary Kathleen Mize, Controller Douglas Bressette, Treasurer Elizabeth Fine, General Counsel Elaine A. Kloss, Chief Financial Officer Kevin Younis, Executive Vice President and Chief Operating Officer
Present for ESD:	Felisa Hochheiser, Director of Compliance Robert Kwon, Vice President, Portfolio Management & Project Finance Richard Newman, Executive Vice President and Chief of Staff Antovk Pidedjian, Senior Counsel - Lending Programs Pravina Raghavan, Executive Vice President - Small Business and Technology Development Ray Salaberrios, Senior Vice President - Division of Small Business – Capital Access
Also Present:	The Press The Public

Following the roll call and confirmation that a quorum was present, the meeting of the Members of JDA was called to order at 2:30 p.m. by Chair Gertler. He noted for the record that due to public health concerns, this meeting would be conducted by teleconference as authorized by an Executive Order of the Governor.

Next, the Chair noted that the public had been given an opportunity to comment on the Agenda items by submitting their written comments at or before 4:30 p.m. on Friday. He noted that no comments were received on any of the Agenda items.

Chair Gertler then noted that the Members had received the written materials in advance of the meeting and were allowed to asked questions at any time during the presentations.

Next, Chair Gertler asked the Members if anyone had any conflicts of interest to note on any of the Agenda items and no conflicts were noted at this time.

The Chair then asked Mr. Salaberrios to present the first item on the Agenda related to the Performance Measurements for the Fiscal Year 2020-2021 for the Members' consideration.

Mr. Salaberrios explained that in accordance with the Public Authorities Law, the New York Job Development Authority adopted the Mission Statement and related Performance Measurements to assist the Authority in determining how well its mission is being carried out.

Mr. Salaberrios noted that pursuant to the Public Authorities Law, the Mission Statement and Performance Measurements must be re-examined annually to ensure that the mission has not changed and that the performance measurements continue to support its mission.

Following the full presentation, the Chair called for questions or comments. Hearing none, and noting that no comments were received from the public upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY — Mission Statement, Related Performance Measurements, and FY 2020-2021 Performance Measurement Report — Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2020-2021 Performance Measurement Report

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WHEREAS, the New York State Public Authorities Law § 2824-a requires each Authority to re-examine its Mission Statement and Performance Measurements annually, therefore

BE IT RESOLVED, that the Members hereby confirm that they have re-examined the Mission Statement as previously adopted and recommend no further amendments; and

RESOLVED, that the FY 2020-2021 Performance Measurement Report contained in the materials presented to this meeting and hereby ordered to be filed with the records of the Authority is hereby accepted.

* * *

The Chair then called on Kathleen Mize to present the next item on the Agenda related to the Annual Financial Reports for the Members' consideration.

Ms. Mize explained that the Public Authorities Law requires annual approval by the

Authority Members and certifications by the President and Chief Executive Officer and the Chief Financial Officer of certain financial reports.

Ms. Mize further explained that the reports consist of financial information set forth in the combined financial statements and independent auditor's report dated March 31, 2021 and 2020 as prepared by the Authority's independent audit firm EFPR Group, LLP.

Ms. Mize noted that the audit report contains an unmodified, unqualified, clean opinion reflecting that the combined financial statements present fairly, in all material respects, the financial position, results of operation and cash flows of the Authority.

Ms. Mize further noted that the audit firm was able to obtain reasonable assurance that the Authority's financial statements are free of material misstatements by performing tests of compliance with certain provisions of law, regulations, contracts and grant agreements including the Authority's investment guidelines and other matters.

Ms. Mize explained that noncompliance could have had a direct and material effect on the financial statements, but that testing revealed no instances of noncompliance or other matters that are required to be reported.

Ms. Mize noted that the preparation of the audit report included 30 percent participation by MBE and WBE firms and six percent by an SDVOB firm.

Lastly, Ms. Mize noted that the audit committee reviewed the report and recommended its presentation to the Members.

Following the full presentation, Chair Gertler called for questions or comments. Hearing none, and noting that there were no comments from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY (the "Authority") – Annual Financial Reports - Approval of Certain Annual Financial Reports and Authorization to Take Related Actions

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WHEREAS, the Authority wishes to comply with §2800 of the Public Authorities Law (the "Law"), which mandates that public benefit corporations annually prepare certain financial reports (the "Report"), which for the Authority consists of the independent audit;

WHEREAS, an independent audit is required by §2802 of the Law;

WHEREAS, §2800 of said Law also requires the annual approval by the Members and certifications by the President and Chief Executive Officer and Chief Financial Officer of the Report;

WHEREAS, an independent audit has been prepared for the fiscal year ended March 31, 2021;

WHEREAS, the Authority has reviewed said Report and found it to be satisfactory; and

NOW, THEREFORE, based on the materials submitted herewith, IT IS HEREBY RESOLVED that the Report is hereby approved; and it is further

RESOLVED, that the President and Chief Executive Officer, Chief Financial Officer, Controller, Treasurer or their designees be, and each of them hereby is, authorized and empowered to submit said Report, as required by law, and to take such action and execute such agreements and instruments as he or she may consider necessary or desirable or appropriate in connection with the implementation and approval of the Report and to take related actions.

* * *

Chairman Gertler then called on Antovk Pidedjian to present the last item on the Agenda related to the annual adoption of the Authority's Procurement Guidelines.

Mr. Pidedjian explained that the Members were being asked to adopt revised guidelines for JDA's procurement of goods and services.

Mr. Pidedjian noted that there have been no changes to the relevant laws or Executive Orders since the 2020 Guidelines were adopted, but that changes from the previous Guidelines were only made pursuant to ESD staff review.

Mr. Pidedjian further noted that the changes included clarifying that businesses from MWBE firms over $250,000 must be approved by the Members; explaining that pre-qualification follows a member of a pre-qualified firm when that member leaves the firm; clarifying the role of the Procurement Director during the bid evaluation and vendor selection; and establishing a protocol for debriefing unsuccessful bidders post-submission and post-award.

Mr. Pidedjian noted that as with all previous Guidelines, the 2021 Guidelines are a mirror image of ESD's 2021 Procurement Guidelines and those were adopted by the ESD Directors' on March 25, 2021.

Following the full presentation, Chair Gertler called for questions or comments. Hearing none, and noting that there were no comments from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY – 2021 Procurement Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority, the 2021 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts ("Guidelines"), a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the Chairman, President and Chief Executive Officer or his or her designee is authorized to promulgate the Guidelines in electronic form and other media for the use by JDA, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

* * *

There being no further business, the meeting was adjourned at 2:45 p.m.

Respectfully submitted,

Debbie Royce
Acting Corporate Secretary

Item I. B.

New York Job Development Authority

FOR CONSIDERATION
June 23, 2022

TO: The Members

FROM: Hope Knight

SUBJECT: Mission Statement, Related Performance Measurements, and FY 2021 - 2022 Performance Measurement Report

REQUEST FOR: Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2021 - 2022 Performance Measurement Report

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I. BACKGROUND

In accordance with the Public Authorities Law (the "PAL"), the New York Job Development Authority (the "Authority") adopted the following Mission Statement and related Performance Measurements to assist the Authority in determining how well it is carrying out its mission. Furthermore, pursuant to the PAL, the Authority must re-examine its Mission Statement and related Performance Measurements annually to ensure that its mission has not changed, and the Performance Measurements continue to support its mission. To assist the Members in their review, the Mission Statement and related Performance Measurements are set forth below.

a. Mission Statement

The New York Job Development Authority spurs job growth and capital investment in New York State by using the authority granted to it and by leveraging State-guaranteed bonds to support low-interest loans to manufacturers and other targeted industries throughout New York State.

b. Performance Measurements

- Annual number of transactions closed;
- Aggregate value of bonds issued;
- Number of jobs retained and created with each investment transaction;
- Amount of private capital investment leveraged;
- Number of transactions delinquent;
- Number of transactions in default; and
- Number of transactions approved by the Authority during the reporting period.

Upon these measurements, JDA may evaluate its performance and the achievement of its goals.

II. FY 2021-2022 PERFORMANCE MEASUREMENT REPORT

During FY 2021-2022, the Authority continued its efforts to expand the Authority's loan portfolio and increase awareness of the Authority's products in the lending and business communities throughout the State. Pursuant to Article 8 of Title 8 of the Public Authorities Law, projects were approved prior to its actual commencement. Closing on the Authority's loans and disbursement of its funds occurs upon project completion. It generally takes several months to more than a year to complete typical projects subsequent to approval by the Authority (and Public Authorities Control Board). Because job creation and/or retention, and the measurement of capital investment leveraged can only properly be done after project completion and closing, the projects approved by the Authority this year have not yet resulted in reportable job creation/ retention or capital leveraged. It is noted that staff made significant effort to identify and analyze transactions that for various reasons staff determined were not eligible for presentation to the Members.

Five new loans totaling $543,242 were approved as part of the aggregate $10,000,000 that established the JDA Agriculture Loan Program back in 2016. It is anticipated that the five JDA Agriculture loans will leverage $20,231,328 in private capital while retaining 54 jobs and creating an additional 18 jobs. The JDA Agriculture Loan Program was created in order to make loans to lenders which will, in turn, provide financing to businesses that serve the agriculture industry which would otherwise face difficulties in obtaining capital at a reasonable cost for establishing or expanding their enterprises and businesses.

In FY 2021-2022, JDA closed a $1,280,000 real estate loan that leveraged $2,070,000 in private capital while retaining 28 jobs and supporting the creation of 7 new jobs.

In FY 2021-2022, two JDA loans went into default. The two loans, a $4,660,000 machinery and equipment loan and a $840,000 real estate mortgage loan, were initially disbursed concurrently to the same borrower. Despite JDA's efforts to intervene, the borrower was forced into Chapter 7 bankruptcy. Through the bankruptcy process, JDA was able to recover a combined total of $999,603 in loan principal. Subsequently, with the approval of JDA's Workout Committee, a total of $4,041,223 was written-off and discharged from JDA's books.

The Authority issued no bonds during the reporting period.

III. REQUESTED ACTIONS

The Members are requested to confirm their re-examination of the Mission Statement and related Performance Measurements, and to accept the FY 2021-2022 Performance Measurement Report in accordance with the Public Authorities Law.

IV. <u>RECOMMENDATION</u>

Based upon the foregoing, I recommend approval of the requested actions.

ATTACHMENT

Resolution

June 23, 2022

NEW YORK JOB DEVELOPMENT AUTHORITY — Mission Statement, Related Performance Measurements, and FY 2021-2022 Performance Measurement Report — Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2021-2022 Performance Measurement Report

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WHEREAS, the New York State Public Authorities Law § 2824-a requires each Authority to re-examine its Mission Statement and Performance Measurements annually, therefore

BE IT RESOLVED, that the Members hereby confirm that they have re-examined the Mission Statement as previously adopted and recommend no further amendments; and

RESOLVED, that the FY 2021-2022 Performance Measurement Report contained in the materials presented to this meeting and hereby ordered to be filed with the records of the Authority is hereby accepted.

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Item I. C.

New York Job Development Authority

FOR CONSIDERATION
June 23, 2022

TO: The Members

FROM: Hope Knight

SUBJECT: Annual Financial Reports

REQUEST FOR: Approval of Certain Annual Financial Reports and Authorization to Take Related Actions

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I. Background

The Public Authorities Law (the "Law") requires annual approval by the New York Job Development Authority (the "Authority") and certifications by the President and Chief Executive Officer and Acting Chief Financial Officer/Controller of certain annual financial reports (the "Report"). The Report consists of financial information set forth in the independent audit required by the Law. The independent audit (the "Audit"), entitled New York Job Development Authority Combined Financial Statements and Independent Auditors' Report March 31, 2022 and 2021 (the "Combined Financial Statements") which contains the required information, is attached hereto.

II. The Report

The Report includes the following:

1. *Independent Auditors' Report* (pages 1-3)
   - In this report the independent audit firm enumerates both Management's and Auditors' Responsibility and renders its opinion as to whether the Combined Financial Statements present fairly, in all material respects, the financial position, changes in financial position and cash flows of the Authority as of March 31, 2022 and 2021 in accordance with accounting principles generally accepted in the United States of America.

This report contains an unmodified (clean) opinion reflecting that the Combined Financial Statements present fairly, in all material respects, the financial position, changes in financial position and cash flows of the Authority, as of March 31, 2022 and 2021 in accordance with accounting principles generally accepted in the United States of America.

2. *Management's Discussion and Analysis* (pages 4-10)
   - This is not part of the basic financial statements, but is supplementary information required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic combined financial statements in an appropriate operational, economic, or historical context. The auditors applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, but do not express an opinion.

3. *Combined Financial Statements, including Notes* (pages 11-29)
   - Combined Statements of Net Position (page 11);
   - Combined Statements of Revenue, Expenses and Changes in Net Position (page 12);
   - Combined Statements of Cash Flows (pages 13-14); and
   - Notes to Combined Financial Statements (pages 15-29).

4. *Independent Auditors' Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards* (pages 30-31)
   - In this report, which is addressed to the Authority Members, includes the definition of a deficiency in internal control over financial reporting, a material weakness and a significant deficiency and reports whether the audit firm has discovered any deficiencies in internal control that would be considered material weaknesses or significant deficiencies. The report also includes the audit process for obtaining reasonable assurance that the combined financial statements are free from material misstatement through tests of the Authority's compliance with certain provisions of laws, regulations, contracts and grant agreements, non-compliance with which could have a direct and material effect on the combined financial statements.

This report indicates that for the limited purpose of determining the audit procedures, no deficiencies in internal control that would be considered material weaknesses were identified and for the purpose of assuring that the combined financial statements are free from material misstatement, disclosed no instances of non-compliance or other matters that are required to be reported under Government Auditing Standards.

5. *Independent Auditors' Report on Investment Compliance* (pages 32-34)
   - In this report, which is addressed to the Authority Members, includes sections defining Management's and Auditors' Responsibility and an opinion whether the Authority exercised compliance with the requirements of Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York. In addition, the report includes all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws and regulations that have a material impact on the Authority's compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York and any other instances that warrant the attention of those charged with governance;

noncompliance with provisions of contracts and grant agreements, and abuse that has a material effect on the subject matter.

This report indicates that the Authority complied, in all material respects, with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York for the year ended March 31, 2022 and there are no matters that are required to be reported in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards.

III. <u>Related Filing Requirements</u>

As required under the Law certain annual reports, including various reports not of a financial nature, but including the Report, will be submitted to the Governor, the Chairman and ranking minority member of the Senate Finance Committee, the Chairman and ranking minority member of the Assembly Ways and Means Committee and the State Comptroller, within ninety (90) days after the end of the Authority's fiscal year, but not later than June 30.

As also required by the Law, the Audit will be submitted to the Governor, the Chairman and ranking minority member of the Senate Finance Committee, the Chairman and ranking minority member of the Assembly Ways and Means Committee and the State Comptroller, within thirty (30) days after receipt thereof by the Authority, but not later than June 30.

IV. <u>Certifications</u>

The Report has been certified in writing by the President and Chief Executive Officer and Acting Chief Financial Officer/Controller of the Authority that based on the officer's knowledge: (a) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the Report to be misleading in light of the circumstances under which such statements are made; and (c) fairly presents, in all material respects, the financial condition and results of operations of the Authority as of, and for, the periods presented in the Report.

<u>Attachments</u>
Resolutions
Certifications
New Job Development Authority Combined Financial Statements and Independent Auditors' Report March 31, 2022 and 2021

June 23, 2022

NEW YORK JOB DEVELOPMENT AUTHORITY (the “Authority”) – Annual Financial Reports - Approval of Certain Annual Financial Reports and Authorization to take Related Actions

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WHEREAS the Authority wishes to comply with §2800 of the Public Authorities Law (the “Law”), which mandates that public benefit corporations annually prepare certain financial reports (the “Report”), which for the Authority consists of the independent audit;

WHEREAS an independent audit is required by §2802 of the Law;

WHEREAS §2800 of said Law also requires the annual approval by the Members and certifications by the President and Chief Executive Officer and Chief Financial Officer of the Report;

WHEREAS an independent audit has been prepared for the fiscal year ended March 31, 2022;

WHEREAS, the Authority has reviewed said Report and found it to be satisfactory; and

NOW, THEREFORE, based on the materials submitted herewith, IT IS HEREBY RESOLVED that the Report is hereby approved; and it is further

RESOLVED, that the President and Chief Executive Officer, Chief Financial Officer, Controller, Treasurer or their designees be, and each of them hereby is, authorized and empowered to submit said Report, as required by law, and to take such action and execute such agreements and instruments as he or she may consider necessary or desirable or appropriate in connection with the implementation and approval of the Report and to take related actions.

*   *   *

CERTIFICATION

I hereby certify that to the best of my knowledge (a) the information provided in the New York Job Development Authority Combined Financial Statements and Independent Auditors' Report for the years ended March 31, 2022 and 2021 is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (c) fairly presents in all material respects the financial condition and results of operations of the New York Job Development Authority as of, and for, the periods presented in the financial statements.

Hope Knight
President and Chief Executive Officer

CERTIFICATION

I hereby certify that to the best of my knowledge (a) the information provided in the New York Job Development Authority Combined Financial Statements and Independent Auditors' Report for the years ended March 31, 2022 and 2021 is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (c) fairly presents in all material respects the financial condition and results of operations of the New York Job Development Authority as of, and for, the periods presented in the financial statements.

Kathleen Mize

Kathleen Mize
Acting Chief Financial Officer
Controller

NEW YORK JOB DEVELOPMENT AUTHORITY

Combined Financial Statements
and Independent Auditors' Report

March 31, 2022 and 2021

NEW YORK JOB DEVELOPMENT AUTHORITY

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INDEPENDENT AUDITORS' REPORT

The Authority Members
New York Job Development Authority:

Report on the Audit of the Combined Financial Statements

Opinion

We have audited the accompanying combined financial statements of the New York Job Development Authority (the "Authority"), a component unit of the State of New York, as of and for the years ended March 31, 2022 and 2021, and the related notes to combined financial statements, which collectively comprise the Authority's basic combined financial statements as listed in the table of contents.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the financial position of the Authority, as of March 31, 2022 and 2021, and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Combined Financial Statements section of our report. We are required to be independent of the Authority and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Combined Financial Statements

Management is responsible for the preparation and fair presentation of the combined financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of combined financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the combined financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditors' Responsibilities for the Audit of the Combined Financial Statements

Our objectives are to obtain reasonable assurance about whether the combined financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and Government Auditing Standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the combined financial statements.

In performing an audit in accordance with GAAS and Government Auditing Standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audits.
- Identify and assess the risks of material misstatement of the combined financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the combined financial statements.
- Obtain an understanding of internal control relevant to the audits in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the combined financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audits, significant audit findings, and certain internal control-related matters that we identified during the audits.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis be presented to supplement the basic combined financial statements. Such information is the responsibility of management and, although not a part of the basic combined financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic combined financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic combined financial statements, and other knowledge we obtained during our audit of the basic combined financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with Government Auditing Standards, we have also issued our report dated June 15, 2022 on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering Authority's internal control over financial reporting and compliance.

EFPR Group, CPAs, PLLC

Williamsville, New York
June 15, 2022

Our discussion and analysis of the New York Job Development Authority’s (“JDA” or “Authority”) financial performance provides an overview of the Authority’s financial activities for the fiscal years ended March 31, 2022 and 2021. Please read it in conjunction with the Authority’s combined financial statements.

Overview

During the fiscal year ended March 31, 2022, the Authority continued its mission to spur job growth and capital investment in New York State (the “State”) by using the authority granted to it and by leveraging State-guaranteed bonds to support low interest loans to manufacturers and other targeted industries throughout the State. The loan program provides financing to encourage the growth of manufacturing and other private sector business in the State without requiring appropriation of taxpayers’ funds.

Since 1995, the Authority has done business as Empire State Development (“ESD”) and has been administratively consolidated with the New York State Urban Development Corporation (“UDC”) d/b/a Empire State Development. The Authority had a restricted net position balance of $146.9 million and $137.2 million at March 31, 2022 and 2021, respectively. The 2022 and 2021 net position of JDA is a result of improved collections of the reserved loans in the loan portfolio, the absorption of personnel costs by UDC, and the consolidation of the net position of the New York Liberty Development Corporation (“NYLDC”), Brooklyn Arena Local Development Corporation (“BALDC”) and New York Transportation Development Corporation (“NYTDC”).

NYLDC was created in 2002 to provide a vehicle for the State to issue Liberty Bonds in the wake of the terrorist attacks of September 11, 2001. BALDC was created in November 2008 to finance certain components of the Atlantic Yards Land Use Improvement and Civic Project. NYTDC was created in 2015 to relieve and reduce unemployment, to promote and provide for additional and maximum employment, to improve, better and maintain job opportunities, and to lessen the burdens of government in the State.

In October 2003, the Authority created the Empire State Local Development Corporation (“ESLDC”), which has state-wide jurisdiction to carry out various economic development initiatives through the use of pass through grants received from outside sources.

In June 2010, the Authority created the Canal Side Local Development Corporation (“CSLDC”) and filed the certificate of incorporation in February 2012. CSLDC was created to help facilitate the financing of the Canal Side Land Use Improvement Project in Buffalo.

Summarized Statements

The following is a summary of the Authority's financial information as of and for the years ended March 31, 2022, 2021 and 2020:

Summary of Combined Statements of Net Position

	2022	2021	2020
Assets			
Cash and equivalents, restricted cash and temporary investments	$ 160,512,018	149,355,701	137,040,480
Accrued interest receivable	42,180	47,930	120,471
Prepaid insurance	23,803	-	-
Loans receivable, net	19,383,812	21,079,418	24,275,896
Financing leases, net	287,125	596,674	997,785
Total assets	180,248,938	171,079,723	162,434,632
Liabilities			
Due to New York State Urban Development Corporation	27,399,380	27,407,107	27,297,921
Accounts payable and accrued expenses	89,557	589,128	89,057
Total liabilities	27,488,937	27,996,235	27,386,978
Deferred inflows of resources - unearned income	5,903,188	5,901,668	6,608,047
Net position - restricted	$ 146,856,813	137,181,820	128,439,607

Summary of Combined Statements of Revenue,
Expenses and Changes in Net Position

	2022	2021	2020
Operating revenue:			
Loan interest	$ 677,691	536,210	1,207,781
Grant income	-	714,962	1,275,475
Bond fee income	8,802,535	11,861,058	2,425,000
Other revenue	561,734	527,192	831,014
Total operating revenue	10,041,960	13,639,422	5,739,270
Operating expenses:			
Provision for loss on loans receivable, loan guarantees and financing leases	141,473	3,992,757	119,733
Credit and bond related fees	60,000	60,000	60,000
General and administrative	98,059	193,374	204,768
Grant expense	-	714,962	1,275,475
Total operating expenses	299,532	4,961,093	1,659,976
Operating income	9,742,428	8,678,329	4,079,294
Non-operating revenue:			
Investment income	114,408	465,214	2,553,427
Unrealized gain (loss) in fair value of investments	(162,890)	(300,659)	291,601
Total non-operating revenue	(48,482)	164,555	2,845,028
Non-operating expenses - interest expense	(18,953)	(100,671)	(403,439)
Non-operating revenue, net	(67,435)	63,884	2,441,589
Change in net position	9,674,993	8,742,213	6,520,883
Net position - restricted at beginning of year	137,181,820	128,439,607	121,918,724
Net position - restricted at end of year	$ 146,856,813	137,181,820	128,439,607

Liquidity

Fiscal Year Ended March 31, 2022

The Authority's Cash and equivalents, restricted cash and temporary investments totaled approximately $160.5 million and $149.3 million at March 31, 2022 and 2021, respectively. The $11.2 million increase is primarily due to the following:

- Bond fee income of $8.8 million from NYTDC bond issuances of approximately $2.5 billion;
- Loan and lease principal and interest collections of $4.5 million;
- Bond administration and application fee receipts of $0.3 million; and
- Interest on investments of $0.1 million.

These increases are offset by $1.8 million of new loan disbursements, $0.5 million reduction in grant funding from the Port Authority of New York and New Jersey and $0.2 million in general and administrative expenses.

The Authority's Loans receivable, net balance totaled $19.4 million and $21.1 million at March 31, 2022 and 2021, respectively. The $1.7 million decrease is primarily due to loan collections totaling $3.5 million offset by $1.8 million of new loans.

Cash generated from operations exceeded the Authority's operating requirements for the year ended March 31, 2022 by approximately $9.5 million, primarily due to receipt of the following:

- Bond fee income of $8.8 million;
- Loan and lease interest income of $0.6 million; and
- Other revenue of $0.3 million related to contractual and program related fees.

These receipts are offset by a $0.2 million reduction in general and administrative expenses.

Fiscal Year Ended March 31, 2021

The Authority's Cash and equivalents, restricted cash and temporary investments totaled approximately $149.3 million and $137.0 million at March 31, 2021 and 2020, respectively. The $12.3 million increase was primarily due to increases in the following:

- Bond fee income of $11.9 million due to NYTDC bond issuances of approximately $3.4 billion;
- Loan and lease principal and interest collections of $4.8 million; and
- Interest on investments of $0.2 million.

These increases were offset by $4.4 million of new loan disbursements and $0.2 million reduction in grant funding from the Port Authority of New York and New Jersey.

The Authority's Loans receivable, net balance totaled $21.1 million and $24.3 million at March 31, 2021 and 2020, respectively. The $3.2 million decrease was primarily due to loan collections totaling $3.7 million and $4.1 million of loan write-offs, offset by $4.4 million of new loans and a $0.2 million loan loss reserve reduction.

Cash generated from operations exceeded the Authority's operating requirements for the year ended March 31, 2021 by approximately $12.5 million, primarily due to receipt of the following:

- Bond fee income of $11.9 million;
- Loan and lease interest income of $0.5 million; and
- Other revenue of $0.3 million related to contractual and program related fees.

These receipts were offset by a $0.2 million reduction in general and administrative expenses.

Change in Net Position

Fiscal Year Ended March 31, 2022

The change in net position for the fiscal year ended March 31, 2022 was $9.7 million compared with $8.7 million in fiscal 2021. The $1.0 million increase is primarily due to a $0.2 million increase in Loan interest.

This increase is offset by the following decreases:

- Bond fee income of $3.0 million;
- Non-operating revenue, including change in fair value, of $0.2 million;
- Provision for loss on receivable, loan guarantees and financing leases of $3.9 million; and
- General and administrative expenses of $0.1 million.

Fiscal Year Ended March 31, 2021

The change in net position for the fiscal year ended March 31, 2021 was $8.7 million compared with $6.5 million in fiscal 2020. The $2.2 million increase was primarily due to a $9.5 million increase in Bond fee income.

This increase was offset by the following:

- Provision for loss on loans receivable, loan guarantees and financing leases totaling $3.9 million;
- Non-operating revenue, including change in fair value, decrease of $2.7 million; and
- Loan interest reduction of $0.7 million.

Revenue

Fiscal Year Ended March 31, 2022

Operating revenue was approximately $10.0 million in fiscal 2022 compared to $13.6 million in fiscal 2021. The $3.6 million decrease is primarily due to decreases in Bond fee income of $3.0 million and Grant income of $0.7 million offset by an increase in Loan interest of $0.1 million.

Loan interest increased by approximately $0.1 million due to principal loan collections of $3.5 million offset by the issuance of $1.8 million in new loans, as well as, additional loan deferrals related to COVID-19.

Grant income through ESLDC decreased by $0.7 million as no projects were funded in the current fiscal year.

Bond fee income decreased by approximately $3.0 million due to a decrease in NYTDC bond issuances during the fiscal year.

Other revenue increased by approximately $0.03 million, primarily due to a increase in application and commitment fees.

Non-operating revenue from investment income, including change in fair value, decreased by $0.2 million due to lower interest rates on investments throughout the year. The change in the interest rate environment resulted in unrealized losses in the fair value of investments of $162,890 in 2022 and $300,659 in 2021. Because the Authority intends to hold these investments until maturity, these losses will not be realized.

Fiscal Year Ended March 31, 2021

Operating revenue was approximately $13.6 million in fiscal 2021 compared to $5.7 million in fiscal 2020. The $7.9 million increase is primarily due to a $9.5 million increase in bond fee income, offset by $0.7 million decrease in loan interest and $0.9 million in grant income and other revenue combined.

Loan interest decreased by approximately $0.7 million due to principal loan collections of $3.7 million offset by the issuance of $4.4 million in new loans, as well as, loan deferrals provided due to the COVID-19 pandemic.

Grant income through ESLDC decreased by $0.6 million as fewer projects were funded than in the previous fiscal year.

Bond fee income increased by approximately $9.5 million due to an increase in NYTDC bond issuances during the fiscal year.

Other revenue decreased by approximately $0.3 million, primarily due to a decrease in application and commitment fees.

Non-operating revenue from investment income, including change in fair value, decreased by $2.7 million due to lower interest rates on investments throughout the year. The change in the interest rate environment resulted in the unrealized loss in the fair value of investments of $300,659 in 2021 and an unrealized gain in the fair value of investments of $291,601 in 2020. Because the Authority intends to hold these investments until maturity, these gains and losses will not be realized.

Expenses

Fiscal Year Ended March 31, 2022

Operating expenses were $0.3 million for the fiscal year ended March 31, 2022, compared to $5.0 million in the fiscal year ended March 31, 2021. The $4.7 million decrease is primarily due to decreases of $3.9 million in the Provision for loss on loans receivable, loan guarantees and financing leases due to the write-off of a loan in fiscal 2021, $0.7 in Grant expense for ESLDC and $0.1 in General and administrative expense.

Grant expense represents the immediate disbursement of funds passed through ESLDC as received from the Port Authority. Grant expense decreased by $0.7 million as no projects were funded during the fiscal year.

In fiscal year 2022, $1.8 million of new loans were issued through the JDA Agriculture Loan Fund Program. This program was created to select lenders authorized to make loans to State agribusiness firms with limited access to capital, aside from their own capital contributions.

During the fiscal year, there were also approximately $4.1 million in loans approved, but not closed.

Fiscal Year Ended March 31, 2021

Operating expenses were $5.0 million for the fiscal year ended March 31, 2021, compared to $1.7 million in the fiscal year ended March 31, 2020. The $3.3 million increase is primarily due to a $3.9 million increase in the Provision for loss on loans receivable, loan guarantees and financing leases due to the write-off of a loan, offset by a $0.6 decrease in Grant expense for ESLDC and General and administrative expense.

Grant expense represents the immediate disbursement of funds passed through ESLDC as received from the Port Authority. This passthrough expense has no effect on net income.

In fiscal year 2021, $4.4 million of new loans were issued through the JDA Agriculture Loan Fund Program. This program was created to select lenders authorized to make loans to State Agribusiness firms with limited access to capital, aside from their own capital contributions.

During the fiscal year, there were also approximately $5.3 million in loans approved, but not closed.

Request for Information

This financial report is designed to provide a general overview of the New York Job Development Authority's finances. Questions concerning any of the information provided in this report, or requests for additional financial information should be addressed to the Chief Financial Officer, New York Job Development Authority d/b/a Empire State Development, 633 Third Avenue, New York, New York 10017.

COMBINED FINANCIAL STATEMENTS

NEW YORK JOB DEVELOPMENT AUTHORITY

Combined Statements of Net Position

March 31, 2022 and 2021

Assets		2022	2021
Cash and equivalents	$	4,861,942	7,420,953
Cash and equivalents - restricted		57,057	57,057
Temporary investments in marketable securities		155,593,019	141,877,691
Accrued interest receivable		42,180	47,930
Prepaid insurance		23,803	-
Loans receivable, net of allowance of $1,523,262 in 2022 and $1,552,183 in 2021		19,383,812	21,079,418
Financing leases, net of allowance of $44,648 in 2022 and $77,919 in 2021		287,125	596,674
Total assets		180,248,938	171,079,723
Liabilities			
Due to New York State Urban Development Corporation		27,399,380	27,407,107
Accounts payable and accrued expenses		89,557	589,128
Total liabilities		27,488,937	27,996,235
Commitments and contingencies (notes 9 and 10)			
Deferred inflows of resources - unearned income		5,903,188	5,901,668
Net position - restricted	$	146,856,813	137,181,820

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY
Combined Statements of Revenue, Expenses and Changes in Net Position
Years ended March 31, 2022 and 2021

	2022	2021
Operating revenue:		
Loan interest	$ 677,691	536,210
Grant income	-	714,962
Bond fee income	8,802,535	11,861,058
Other revenue	561,734	527,192
Total operating revenue	10,041,960	13,639,422
Operating expenses:		
Provision for loss on loans receivable, loan guarantees and financing leases	141,473	3,992,757
Credit and bond related fees	60,000	60,000
General and administrative	98,059	193,374
Grant expense	-	714,962
Total operating expenses	299,532	4,961,093
Operating income	9,742,428	8,678,329
Non-operating revenue (expenses):		
Investment income	114,408	465,214
Unrealized loss in fair value of investments	(162,890)	(300,659)
Interest expense - New York State Urban Development Corporation	(18,953)	(100,671)
Non-operating revenue (expenses), net	(67,435)	63,884
Change in net position	9,674,993	8,742,213
Net position - restricted at beginning of year	137,181,820	128,439,607
Net position - restricted at end of year	$ 146,856,813	137,181,820

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY
Combined Statements of Cash Flows
Years ended March 31, 2022 and 2021

	2022	2021
Cash flows from operating activities:		
Cash received from interest on loans and financing leases	$ 610,370	535,681
Cash received from bond and related fees	8,802,535	11,861,058
Other operating cash receipts	358,069	312,216
Cash paid for related bond expenses	(60,000)	(60,000)
Cash paid for general and administrative expenses	(159,300)	(184,609)
Cash paid for NYLDC operating expenses	(12,105)	-
Cash paid for NYTDC operating expenses	(511)	(180)
Net cash provided by operating activities	9,539,058	12,464,166
Cash flows from investing activities:		
Proceeds from sale of temporary investments in marketable securities	365,731,935	413,788,784
Purchase of temporary investments in marketable securities	(379,583,186)	(424,344,597)
Interest on investments	112,765	838,209
Loan disbursements	(1,779,999)	(4,435,000)
Principal collected on loans receivable	3,504,526	3,812,464
Principal collected on financing leases	415,890	515,415
Reduction of Port Authority appropriation for grant disbursements	(500,000)	(214,962)
Net cash used in investing activities	(12,098,069)	(10,039,687)
Net change in cash and equivalents	(2,559,011)	2,424,479
Cash and equivalents at beginning of year	7,420,953	4,996,474
Cash and equivalents at end of year	$ 4,861,942	7,420,953

(Continued)

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY

Combined Statements of Cash Flows, Continued

		2022	2021
Reconciliation of operating income to net cash provided by operating activities:			
Operating income	$	9,742,428	8,678,329
Adjustments to reconcile operating income to net cash provided by operating activities:			
Provision for loss on loans receivable, loan guarantees and financing leases		(62,192)	3,777,781
Operating expenses paid by UDC		(50,483)	8,515
Amortization - deferred lease premiums		(73,071)	(73,071)
Changes in:			
Accrued interest receivable		5,750	72,541
Prepaid insurance		(23,803)	-
Accounts payable and accrued expenses		429	71
Net cash provided by operating activities	$	9,539,058	12,464,166

See accompanying notes to combined financial statements.

Note 1 - Corporate Background and Activities

(a) General

New York Job Development Authority (the "Authority" or "JDA"), doing business as Empire State Development ("ESD"), is a public benefit corporation organized and existing under the laws of the State of New York (the "State"). The Authority's mission is to spur job growth and capital investment in the State by using authority granted to it and by leveraging State-guaranteed bonds to support low interest loans to manufacturers and other targeted industries throughout the State. As a public benefit corporation, the Authority is tax-exempt. The Authority is a component unit of the State and, as such, its combined financial statements are included in the State's general purpose financial statements.

(b) Activities

The principal activity of the Authority is providing business and industry loans, described in the New York Job Development Authority Act as "Special Purpose Loans." All such loans are made to entities with operations in the State and are provided for real estate acquisition, construction, rehabilitation or improvement or machinery and equipment. The Authority requires security for the loans with the underlying assets and other available collateral.

The Authority finances these activities through recycled loan proceeds and the issuance of State guaranteed bonds and notes (the "Bonds") limited by the Constitution of the State and applicable legislation to an aggregate principal amount of $900 million outstanding at any time. To date, enabling legislation allows an aggregate principal amount of $750 million to be outstanding at any time.

The guarantee of the Bonds by the State is authorized by the New York Job Development Authority Act, as amended by Section 1813 of Title 7 Article 8 of the Public Authorities Law and Section 8 Article X of the Constitution of the State. Under these provisions, if the Authority fails to pay when due, the principal or interest on the Bonds, or, if sued by any holder of the Bonds, the State Comptroller must set apart from the first revenues thereafter received from any source, applicable to the General Fund of the State, a sum sufficient to pay such principal and interest, and shall so apply the monies thus set apart. Effectively, the State is subrogated to the rights of the bondholders. The net position of the fund is considered restricted.

The Authority has the power to create local development corporations under Section 1804 of the New York Job Development Authority Act and Section 1411 of the New York Not-for-Profit Corporation Law. The Authority has created five Local Development Corporations: New York Liberty Development Corporation ("NYLDC"), Empire State Local Development Corporation ("ESLDC"), Brooklyn Arena Local Development Corporation ("BALDC"), Canal Side Local Development Corporation ("CSLDC"), and New York Transportation Development Corporation ("NYTDC").

Note 1 - Corporate Background and Activities, Continued

(b) Activities, Continued

The Authority substantially controls the operations of the Local Development Corporations. Under Governmental Accounting Standard Board ("GASB") Statement No. 39 - "The Financial Reporting Entity," NYLDC, ESLDC, BALDC, CSLDC and NYTDC are considered blended component units of the Authority, and their assets, liabilities, and results of operations are combined with the operations of the Authority for financial reporting purposes.

Note 2 - Summary of Significant Accounting Policies

(a) Basis of Accounting

The Authority is an enterprise fund that follows the economic resource measurement focus and the accrual basis of accounting.

The Authority complies with all applicable pronouncements of GASB as well as with authoritative pronouncements applicable to non-governmental entities (e.g. Financial Accounting Standards Board Statements) that do not conflict with GASB pronouncements.

The Authority's combined financial statements are presented consistent with enterprises whose principal activities are considered a financing enterprise.

(b) Use of Estimates

The preparation of combined financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the combined financial statements and accompanying notes. Accordingly, actual results could differ from those estimates.

(c) Cash and Equivalents

Cash and equivalents include cash deposits with banks and highly liquid temporary investments with original or remaining maturities of 90 days or less.

(d) Investment Securities

Investment securities consist of temporary investments of available cash and debt service reserve funds in marketable securities. Investment securities are reported at fair value in the combined statements of net position, and investment income, including changes in fair value, is reported as non-operating revenue in the combined statements of revenue, expenses and changes in net position.

Note 2 - Summary of Significant Accounting Policies, Continued

(d) Investment Securities, Continued

The fair value of investment securities, which include United States Government and Federal Agency obligations, and obligations of state and local governments is generally based on quoted market prices. Interest earning investment instruments, including time deposits and repurchase agreements with maturities of one year or less, are reported at amortized cost. Investment income also includes realized gains and losses from disposition of investments on a specific identification basis. Collateral for these investments is held in the Authority's name by financial institutions as custodians. Investment securities that are not required by bond indentures to be held by independent trustees are maintained and held by the New York State Department of Taxation and Finance.

(e) Loans and Financing Leases Receivable

Loans and financing leases are generally reported at their principal amounts outstanding, net of allowances for possible credit losses. The Authority lends funds for the acquisition of land and buildings which are generally repayable over 15 to 20 years. Loans to fund machinery and equipment are generally repayable over 7 to 10 years. Generally, all loans represent second mortgages or other subordinated positions. Interest revenue on loans and financing leases is credited to interest income based on loan principal amounts outstanding at appropriate interest rates. Interest is not accrued on loans which are delinquent three or more months and which management considers uncollectible. In addition, the Authority provides financing leases for property previously acquired in foreclosure. Financing leases generally require repayment over periods ranging from 1 to 20 years.

(f) Allowance for Possible Credit Losses and Estimated Loan Losses

The allowance for possible credit losses provides for risks of losses inherent in the credit extension process. The Authority maintains this allowance on a specific and general basis at levels considered adequate to meet present and future losses on loans and financing leases. This evaluation encompasses business and economic conditions, the character, quality and performance of the portfolios, availability of collateral and the risks inherent in these loans. Accordingly, these estimates could change in the near term.

(g) Foreclosed Properties

The Authority may hold title to properties acquired in satisfaction of loans, including in-substance foreclosures. Such amounts, if any, are carried at the lower of cost or estimated fair market value.

(h) Grant Revenue and Expense

ESLDC administers certain grant funds from various sources. These grants are awarded for specifically designated projects and are distributed directly to the projects. ESLDC records revenue upon disbursement of the grants to grantees. Grant advances not disbursed to grantees are recorded as unearned income.

NYLDC recognizes grant expense upon the disbursement of grants to grantees.

Note 2 - Summary of Significant Accounting Policies, Continued

(i) Subsequent Events

The Authority has evaluated subsequent events through the date of the report which is the date the combined financial statements were available to be issued.

On April 5, 2022, New York Transportation Development Corporation issued Special Facility Revenue Bonds, Series 2022 (Tax Exempt/AMT) Terminal 4 John F. Kennedy International Airport Project in the face amount of $1,323.9 million (the "Series 2022 Bonds"). Proceeds of the Series 2022 Bonds were issued to (i) provide funds to finance a portion of the costs of the 2022 expansion project at John F. Kennedy International Airport, (ii) fund a debt service reserve fund for the Series 2022 Bonds, (iii) fund capitalized interest and (iv) pay costs associated with the issuance of the Series 2022 Bonds.

(j) Risk and Uncertainty

The United States, including New York State, continues to deal with health matters related to COVID-19 that have had a significant impact on the national, regional and local level. The Authority has continued its support of businesses throughout the state. Potential changes to its future results and financial position is not presently determinable.

Note 3 - Local Development Corporations

(a) New York Liberty Development Corporation

In August 2002, at the request of the Governor, the Authority caused the creation of New York State Liberty Development Corporation ("NYLDC"). NYLDC was created as a conduit for the issuance of qualified New York Liberty Bonds ("Liberty Bonds") and such other non-federally tax-exempt obligations as may be appropriate. Bond proceeds are used to finance private projects primarily in the New York Liberty Zone located in lower Manhattan. NYLDC receives fees in connection with each bond or note issuance. In certain instances, the bond issuance fees earned are shared with other entities. The summarized statements of net position of NYLDC as of March 31, 2022 and 2021 are as follows:

	2022	2021
Cash and equivalents	$ 76,881	202,833
Temporary investments in marketable securities	64,842,721	56,626,523
Net position	$ 64,919,602	56,829,356

The summarized statements of revenue, expenses and changes in net position of NYLDC for the years ended March 31, 2022 and 2021 are as follows:

	2022	2021
Bond fee income	$ 8,077,235	-
Investment income (loss)	(49,884)	76,036
Other revenue	75,000	-
Operating expenses	(12,105)	-
Changes in net position	$ 8,090,246	76,036

Note 3 - Local Development Corporations, Continued

(a) New York Liberty Development Corporation, Continued

In March 2022, NYLDC issued $457.5 million in Liberty Revenue Refunding Bonds $449.2 million Series 2022A (7 World Trade Center Project) (Green Bonds) (Tax-Exempt) and $8.3 million Series 2022B (7 World Trade Center Project) (Green Bonds), Class 1 (Federally Taxable), (collectively, "the Series 2022AB Bonds"). The proceeds of the Series 2022AB Bonds were used to refund in whole on March 15, 2022 all of the New York Liberty Development Corporation Liberty Revenue Refunding Bonds, Series 2012 (7 World Trade Center Project) outstanding in the principal amount of $450,290,000.

In December 2021, NYLDC issued $638.8 million in Liberty Revenue Refunding Bonds, Series 1WTC-2021 (Secured by Port Authority Consolidated Bonds). The proceeds of the Series 1WTC-2021 Bonds were used by the Issuer to purchase the Port Authority of New York and New Jersey's (the Port Authority) Consolidated Bonds, Two Hundred Twenty-Eighth Series A in the principal amount of $70,000,000, Consolidated Bonds, Two Hundred Twenty-Eighth Series B in the principal amount of $175,000,000, Consolidated Bonds, Two Hundred Twenty-Eighth Series C in the principal amount of $160,000,000 and Consolidated Bonds, Two Hundred Twenty-Eighth Series D in the principal amount of $233,805,000 (collectively, the "2021 Consolidated Bonds"). The 2021 Consolidated Bonds are direct and general obligations of the Port Authority pledging the full faith and credit of the Port Authority for the payment of principal thereof and interest thereon. The Port Authority used the proceeds of the 2021 Consolidated Bonds, together with other available monies, to redeem its Consolidated Bonds, One Hundred Seventieth Series in the principal amount of $672,480,000 (the "2011 Consolidated Bonds"), which were purchased by the Issuer with the proceeds of the Issuer's Liberty Revenue Bonds, Series 1WTC-2011 (secured by Port Authority Consolidated Bonds) (the "Series 1WTC-2011 Bonds"). The amounts received by the Issuer from the redemption of the 2011 Consolidated Bonds were used to refund, and effect the defeasance and redemption of, the Issuer's outstanding Series 1WTC-2011 Bonds.

In September 2021, NYLDC issued $1,236.9 million in Liberty Revenue Refunding Bonds (4 World Trade Center Project) $1,225.5 million Series 2021A (Tax-Exempt) (Green Bonds) and $11.4 million Series 2021B (Federally Taxable) (Green Bonds) (the "Series 2021 Tower 4 Bonds"). The proceeds of the Series 2021 Tower 4 Bonds will be loaned by the Issuer to 4 World Trade Center LLC, a Delaware limited liability company, pursuant to a Tower 4 Loan Agreement, dated as of September 1, 2021 for the purpose of defeasing and redeeming all of the Issuer's outstanding Liberty Revenue Bonds, Series 2011 (4 World Trade Center Project), issued in the original aggregate principal amount of $1,225,520,000.

NYLDC did not issue Liberty Bonds or notes during the year ended March 31, 2021.

Since inception, NYLDC has issued an aggregate of approximately $9.1 billion of Liberty Bonds (at face amount of approximately $8.9 billion), $338 million of Recovery Zone Bonds, and $730 million of taxable notes excluding remarketing and refunding bonds on behalf of project owners. As of March 31, 2022, the total outstanding conduit debt amounted to approximately $6.1 billion. Liberty Bonds, Recovery Zone Bonds, and taxable notes are not the obligation of NYLDC, the Authority or the State. Repayment of the bonds and notes is the obligation of respective project owners.

Note 3 - Local Development Corporations, Continued

(b) Empire State Local Development Corporation

In October 2003, the Authority caused the creation of Empire State Local Development Corporation ("ESLDC"). ESLDC has state-wide jurisdiction and was created to carry out various economic development initiatives through the use of pass through grants received from outside sources. The summarized statements of net position of ESLDC as of March 31, 2022 and 2021 is as follows:

	2022	2021
Cash and equivalents	$ 119,201	616,732
Temporary investments in marketable securities	5,783,987	5,784,936
Accounts payable and accrued expenses	-	(500,000)
Deferred inflows of resources - unearned revenue	(5,903,188)	(5,901,668)
Net position	$ -	-

The deferred inflows of resources - unearned revenue represents grant funds received from the Port Authority of New York and New Jersey (the "Port Authority") under its Transportation, Economic Development and Infrastructure Renewal ("TEDIR") projects program that have not yet been disbursed to the designated grantees. The projects included in this grant program are approved by the Port Authority in accordance with TEDIR program requirements and payments are processed through JDA. In general, these projects have a long-life span.

The summarized statements of revenue, expenses and changes in net position of ESLDC for the years ended March 31, 2022 and 2021 is as follows:

	2022	2021
Grant revenue	$ -	714,962
Grant expenses	-	(714,962)
Change in net position	$ -	-

(c) Brooklyn Arena Local Development Corporation

In November 2008, the Authority caused the creation of Brooklyn Arena Local Development Corporation ("BALDC"). BALDC has state-wide jurisdiction and was created as a conduit for the issuance of both taxable and tax-exempt bonds to finance the construction and related cost of the Barclays Center Project.

The summarized statements of net position of BALDC at March 31, 2022 and 2021 is as follows:

	2022	2021
Cash and equivalents	$ 303,824	302,336
Temporary investments in marketable securities	2,672,478	2,676,839
Net position	$ 2,976,302	2,979,175

The summarized statements of revenue, expenses and changes in net position of BALDC for the years ended March 31, 2022 and 2021 is as follows:

Note 3 - Local Development Corporations, Continued

(c) Brooklyn Arena Local Development Corporation, Continued

	2022	2021
Interest income (loss)	$ (2,873)	3,496
Other revenue	-	-
Operating expenses	-	-
Change in net position	$ (2,873)	3,496

BALDC did not issue bonds during the years ended March 31, 2022 and 2021.

As of March 31, 2022, the total of outstanding BALDC bonds ("Bonds") is $490.3 million. The Bonds are special limited obligations payable solely from and secured by the payments-in-lieu-of taxes ("PILOT") made by the Barclays Center Project developer. As noted below, since BALDC has assigned its obligations to the trust account that services the Bonds, BALDC treats the Bonds as conduit debt.

Additionally, BALDC acts as landlord through a long-term lease agreement with the developer of the Barclays Center Arena, ("Arena Co.") BALDC's obligations as landlord include maintaining fiduciary responsibility for a trust account, funded with annual PILOT payments made by the tenant, Arena Co., and used to pay all debt service costs in relation to the conduit debt issued by BALDC, as well as certain operating and maintenance costs of the Arena. However, BALDC has assigned all of its rights and obligations with respect to the trust account to the PILOT Bond Trustee and retains no rights in any amounts held in trust and no obligation to fund any amounts to the trust account and is further indemnified from any such obligation. The transactions of the trust account are not considered to be transactions of BALDC and are not recorded in BALDC's financial statements.

Rental payments for the Arena do not support or secure the Bonds. Rental payments received by BALDC are assigned to ESD as the landlord of the Arena ground lease.

(d) Canal Side Local Development Corporation

In June 2010, the Authority authorized the creation of Canal Side Local Development Corporation ("CSLDC"). CSLDC was created to help facilitate the financing of the Canal Side Land Use Improvement Project in Buffalo. There was no activity during the years ended March 31, 2022 and 2021.

(e) New York Transportation Development Corporation

In August 2015, the Authority authorized the creation of New York Transportation Development Corporation ("NYTDC"). NYTDC was formed for the public purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government of the State and the Authority. It will undertake its public purpose by issuing tax-exempt bonds for transportation and any other purposes or objectives described above (the "Bonds") and in the case of certain tax-exempt bonds, shall obtain the approval of the Governor of the State of New York to the

Note 3 - Local Development Corporations, Continued

(e) New York Transportation Development Corporation, Continued
extent required by applicable federal tax law; by issuing such other non-federally tax-exempt obligations as may be appropriate (the "Obligations"); and by exercising all or any part of such public functions and doing any work related to or in connection with the issuance of the Bonds or Obligations, and engaging in all other lawful business purposes.

The summarized statements of net position of NYTDC at March 31, 2022 and 2021 is as follows:

	2022	2021
Cash and equivalents	$ 1,320,582	2,317,409
Temporary investments in marketable securities	25,541,055	23,568,936
Accounts payable and accrued expenses	-	(71)
Net position	$ 26,861,637	25,886,274

The summarized statements of revenue, expenses and changes in net position of NYTDC for the years ended March 31, 2022 and 2021 is as follows:

	2022	2021
Bond fee income	$ 725,300	11,861,058
Interest income (loss)	(24,497)	25,036
Other revenue	275,000	205,000
Operating expenses	(440)	(251)
Change in net position	$ 975,363	12,090,843

In June 2021, NYTDC issued Special Facility Revenue Bonds, Series 2021 (American Airlines, Inc. John F. Kennedy International Airport Project) in the aggregate face amount of $150.1 million (the "Series 2021 Bonds"). The Series 2021 Bonds were issued on behalf of American Airlines, Inc. to provide funds for the following purposes: (i) to finance a portion of the cost of the renovation and expansion of a passenger terminal facility known as Terminal 8 at John F. Kennedy Internal Airport located in Queens, New York; (ii) to defease in full the August 1 2021 maturity of the outstanding NYTDC Special Facility Revenue Refunding Bonds, series 2016 (American Airlines, Inc. John F. Kennedy International Airport Project); (iii) to defease a portion of the NYTDC Special Facility Revenue Bonds, Series 2020 (American Airlines Inc. John F. Kennedy International Airport Project) maturing on August 1, 2031; and (iv) to pay costs of the issuance related to the series 2021 Bonds.

In March 2021, NYTDC issued NYTDC Exempt Facility Revenue Bonds, Series 2021 (Tax Exempt/AMT) - NYS Thruway Service Areas Project (the "Series 2021 Bonds") in the aggregate face amount of $269.4 million. The Series 2021 Bonds were issued (i) to pay a portion of the costs and expenses incurred in connection with the construction and financing of the New York State Thruway Service Areas Project; (ii) pay a portion of the interest payable on the Series 2021 Bonds during construction of the Project; and (iii) pay certain costs of issuing the Series 2021 Bonds and other permitted financing costs.

Note 3 - Local Development Corporations, Continued

(e) New York Transportation Development Corporation, Continued

In December 2020, NYTDC issued NYTDC Special Facility Revenue Bonds, Series 2020C (Tax Exempt/AMT) (the "Series 2020C Bonds") in the aggregate face amount of $610.8 million. The Series 2020C Bonds were issued to (i) provide funds to defease and/or redeem in full the outstanding Port Authority of NY and NJ Special Project Bonds, Series 8, (ii) fund a debt service reserve fund for the Series 2020C Bonds and (iii) pay costs associated with the issuance of the Series 2020C Bonds.

In December 2020, NYTDC issued NYTDC Special Facility Revenue Bonds, Series 2020A (Tax Exempt/AMT) and Series 2020B (Taxable)- Terminal 4 JFK Project in the aggregate face amount of $324.2 million (the "Series 2020A Bonds"). The Series 2020A Bonds were issued to (i) provide funds to defease and/or redeem in full the outstanding Port Authority of NY and NJ Special Project Bonds, Series 6 and (ii) pay costs associated with the issuance of the series 2020A Bonds. The series 2020B Bonds are being issued to (i) provide funds to repay the Subordinated Port Authority Investment in full, (ii) fund a debt service reserve fund for the series 2020B and (iii) pay costs associated with the issuance of the series 2020A Bonds and series 2020B Bonds.

In September 2020, NYTDC issued NYTDC Special Facility Revenue Bonds, Series 2020 (Delta Air Lines, Inc. LaGuardia Airport Terminals C&D Redevelopment Project) in the aggregate face amount of $1.5 billion (the "Series 2020 Bonds"). The Series 2020 Bonds were issued (i) to finance a portion of the costs of a construction project that Delta is undertaking at LaGuardia Airport; (ii) to pay interest on a portion of the Series 2020 Bonds through April 30, 2022, and a portion of the NYTDC Special Facilities Revenue Bonds, series 2018 through April 30, 2022; and (iii) to pay costs of the issuance related to the Series 2020 Bonds.

In June 2020, NYTDC issued Special Facility Revenue Bonds, Series 2020 (American Airlines, Inc. John F. Kennedy International Airport Project) in the aggregate face amount of $360.4 million (the "Series 2020 Bonds"). The Series 2020 Bonds were issued to provide funds for the following purposes: (i) to finance a portion of the cost of renovation and expansion of a passenger terminal facility known as Terminal 8 at John F. Kennedy International Airport; (ii) to defease the August 1, 2020 maturity of the outstanding NYTDC Special Facility Revenue Refunding Bonds, Series 2016 (American Airlines, Inc. John F. Kennedy International Airport Project); and (iii) to pay the cost of issuing the Series 2020 Bonds.

In April 2020, NYTDC issued Lease Revenue Bonds, Series 2020 (Taxable) (Fuller Road Management Corporation-Nanotechnology Facilities project) in the aggregate face amount of $318.0 million (the "Series 2020 Bonds"). The proceeds of the Series 2020 bonds were used to (i) defease or redeem the outstanding Fuller Road Management Corporation Taxable lease Revenue Bonds, Series 2005A; Fuller Road Management Corporation Multi-Mode Variable Rate Bonds, Series 2007; Construction/Term Loan Facilities to Fuller Road Management Corporation from Manufacturers and Traders Trust Company and KeyBank National Association as Co-arrangers and Albany County Capital Resource Corporation Multi-Mode Revenue Bonds, Series 2014 A&B; (ii) terminate up to six fixed-payor interest rate swap agreements associated with the variable-rate bonds and the credit agreement; and (iii) pay the costs of issuance of the Series 2020 Bonds.

Note 3 - Local Development Corporations, Continued

(e) New York Transportation Development Corporation, Continued

As of March 31, 2022, the total outstanding conduit debt is approximately $7.8 billion. NYTDC bonds are not the obligation of NYTDC, the Authority or the State. Repayment of the bonds is the obligation of the respective project borrower.

Note 4 - Cash and Equivalents

Demand deposits are secured by surety bonds and collateral held by a bank or trust company as custodians. Securities are either delivered or registered by book entry in UDC's name with bond trustees or custodian banks.

At March 31, 2022 and 2021, cash held in demand and custodial deposits, as well as cash equivalents were collateralized by the depository, generally with obligations of the United States, its agencies, or New York State obligations with a remaining maturity when purchased of 90 days or less, as follows:

		2022		2021	
		Carrying amount	Bank balance	Carrying amount	Bank balance
Insured (FDIC)	$	500,000	500,000	500,000	500,000
Uninsured - collateral held by custodian in UDC's name		4,418,999	4,418,999	6,978,010	6,978,010
Total cash and cash equivalents	$	4,918,999	4,918,999	7,478,010	7,478,010

Note 5 - Investments

Authorization for investments is governed by written internal investment guidelines, statutes, State guidelines and bond resolutions. Permitted investments include:

- Obligations of the United States Treasury, agencies and instrumentalities;
- Direct obligations of the State of New York, its political subdivisions, and public authorities;
- Bonds and other obligations of governmental authorities, political subdivisions, Federal Agencies, Government Sponsored Enterprises ("GSE's") or public authorities of the State or of the United States of America, which are securities in which the Corporation lawfully may invest pursuant to applicable statutes, regulations and bond resolutions including but not limited to Federal National Mortgage Association ("FNMA"), Federal Farm Credit Bank ("FFCB"), Federal Home Loan Bank ("FHLB"), Federal Home Loan Mortgage Corporation ("FHLMC - Freddie Mac"), and Student Loan Marketing Association ("SLMA - Sallie Mae");
- Repurchase agreements with financial institutions authorized to do business in New York State which are listed as primary government securities dealers by New York's Federal Reserve Bank and which are collateralized by U.S. Government securities;

Note 5 - Investments, Continued

- Commercial paper issued by domestic banks, corporations and financial companies rated "A-1" or better by Standard & Poor's Corporation or "P-1" or better by Moody's Investors Services, Inc.;
- Certificates of deposit of banks or trust companies authorized to do business in the State;
- Units, shares or interest in a mutual fund or money market fund of regulated investment companies that meet specified criteria; and
- Real property.

Temporary and debt service reserve fund investments, reported at fair value, at March 31, 2022 and 2021 consist of the following:

	2022		2021	
	Cost	Fair value	Cost	Fair value
U.S. Government and Federal Agency obligations	$ 155,678,198	155,593,019	141,826,947	141,877,691

Fair Value Measurements

Accounting principles generally accepted in the United States of America established a framework that provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy under generally accepted accounting principles are as follows:

- Level 1 - Valuations are based on quoted prices in active markets for identical assets or liabilities that the Authority has the ability to access.
- Level 2 - Valuations are based on quoted prices in markets that are not active or for which all significant inputs are observable directly, or indirectly.
- Level 3 - Valuations are based on inputs that are unobservable and significant to overall fair value measurement.

The Authority holds financial instruments with quoted prices in active markets for identical assets (level 1) of $155,593,019 and $141,877,691 at March 31, 2022 and 2021, respectively.

Note 6 - Loans and Financing Leases Receivable

Future payments due on loans receivable for each of the next five years and thereafter as of March 31, 2022 were as follows:

2023	$ 1,280,236
2024	1,654,942
2025	1,611,324
2026	1,582,973
2027	1,251,333
Thereafter	13,526,266
	20,907,074
Less - allowance for estimated loan losses	(1,523,262)
Total	$ 19,383,812

Minimum lease payments to be received under financing lease agreements for each year as of March 31, 2022 were as follows:

2023	$ 304,798
2024	53,959
	358,757
Less:	
Portion attributable to interest	(26,984)
Allowance for possible credit losses	(44,648)
Total	$ 287,125

Note 7 - Allowances for Possible Credit Losses and Estimated Loan Losses

The estimated allowances for possible credit and loan losses are based primarily on a continuing evaluation of the portfolios, and of current economic conditions and such other factors which management believes require consideration in estimating future risks. Additions to the allowances are made by charges to expense. Reductions of the allowances are reported as other revenue. A summary of loan loss allowance activity for year ended March 31, 2022, with comparative totals for the year ended March 31, 2021, is as follows:

	Allowances for losses on			
		Financing	Totals	
	Loans	leases	2022	2021
Beginning balances	$ 1,552,183	77,919	1,630,102	1,893,544
Net provisions (reductions)	(28,921)	(33,271)	(62,192)	(263,442)
Ending balances	$ 1,523,262	44,648	1,567,910	1,630,102

Note 8 - Due to New York State Urban Development Corporation

New York State Urban Development Corporation ("UDC") provides all of the management and operational oversight for the Authority. At March 31, 2022 and 2021, amounts due to UDC are primarily attributable to costs, including all payroll and related costs, allocated to or paid by UDC on behalf of the Authority for various general and administrative expenses. These costs, plus interest, approximated $0.09 and $0.3 million during the years ended March 31, 2022 and 2021, respectively. The balance due at March 31, 2022 and 2021, excluding grant funds held by the Authority, amounted to $27.4 million. The interest rate used is the annualized average weighted yield earned by UDC on its investment portfolio. The interest portion of the accumulated liability covers the last twenty-seven fiscal years and amounts to approximately $8.6 million at March 31, 2022.

Note 9 - Commitments

Special Purpose Fund loans approved by the Authority, but not yet closed, approximated $4.1 million at March 31, 2022.

Note 10 - Contingencies

The Authority has been named as a defendant in legal actions arising from the operation of various economic development initiatives. In addition, defendants in mortgage loan foreclosure proceedings initiated by the Authority have asserted defenses and counter claims for damages. The Authority believes that the ultimate outcome of such litigation will not have a material adverse effect on its financial condition.

Note 11 - Accounting Standards Issued But Not Yet Implemented

GASB Statement No. 95 - "Postponement of the Effective Dates of Certain Authoritative Guidance." This Statement, issued in May 2020, has the primary objective of providing temporary relief to governments and other stakeholders in light of the COVID-19 pandemic. That objective is accomplished by postponing the effective dates of certain provisions in Statements and Implementation Guides that first became effective or are scheduled to become effective for periods beginning after June 15, 2018, and later. Earlier application of the provisions addressed in this Statement is encouraged and is permitted to the extent specified in each pronouncement as originally issued. The following disclosures have been updated accordingly.

Note 11 - Accounting Standards Issued But Not Yet Implemented, Continued

GASB Statement No. 87 - "Leases." This Statement, issued in June 2017, requires recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. The requirements of this statement are effective for financial statements for periods beginning after June 15, 2021, which is the fiscal year beginning April 1, 2022 for the Authority. Management is in process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

GASB Statement No. 91 - "Conduit Debt Obligations." This Statement, issued in May of 2019, requires a single method be used for the reporting of conduit debt obligations. The focus of the Statement is to improve financial reporting by eliminating diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. The requirements of this Statement are effective for reporting periods beginning after December 15, 2021, which is the fiscal year beginning April 1, 2022 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

GASB Statement No. 92 - "Omnibus 2020." This Statement, issued in January 2020, clarifies implementation of GASB Statements No. 73, 74, 84 and 87, generally effective for fiscal years beginning after June 15, 2021, which is the fiscal year beginning April 1, 2022 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

GASB Statement No. 93 - "Replacement of Interbank Offered Rates." This Statement, issued in March 2020, addresses the accounting and financial reporting implications that result from the replacement of an interbank offered rate (IBOR) - most notably, the London Interbank Offered Rate (LIBOR), which is expected to cease to exist in its current form at the end of 2021. The requirements of this Statement are effective for reporting periods after June 15, 2021, which is the fiscal year beginning April 1, 2022 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

GASB Statement No. 94 - "Public-Private and Public-Public Partnerships and Availability Payment Arrangements." This Statement, issued in March 2020, addresses issues related to public-private and public-public partnerships (PPPs). The requirements of this Statement are effective for reporting periods beginning after June 15, 2022, which is the fiscal year beginning April 1, 2023 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

Note 11 - Accounting Standards Issued But Not Yet Implemented, Continued

GASB Statement No. 96 - "Subscription-Based Information Technology Arrangements." This Statement, issued in May 2020, provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users. To the extent relevant, the standard for SBITAs are based on the standards established in Statement No. 87 - "Leases," as amended. The requirements of this Statements are effective for fiscal years beginning after June 15, 2022, which is the fiscal year beginning April 1, 2023 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

GASB Statement No. 97 - "Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans - an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32." This Statement, issued in June 2020, sets requirements for a primary government's determination of component units which do not have governing boards; amends the financial burden criterion in paragraph 7 of Statement No. 84; sets required classifications for Section 457 plans and applies Statement No. 84, as amended, to IRC Section 457 arrangements; and supersedes remaining provisions of Statement No. 32, as amended, regarding investment valuation requirements for Section 457 plans. The requirements of this Statement in (1) paragraph 4 of this Statement as it applies to defined contribution pension plans, defined contribution OPEB plans, and other employee benefit plans and (2) paragraph 5 of this Statement are effective immediately. All other requirements of this Statement are effective for reporting periods beginning after June 15, 2021 which is the fiscal year beginning April 1, 2022 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

GASB Statement No. 99 - "Omnibus 2022." This Statement, issued in April 2022, enhances the comparability in accounting and financial reporting and improved the consistency of authoritative literature by addressing (1) practice issues that have been identified during implementation and application of certain GASB Statements and (2) accounting and financial reporting for financial guarantees. The requirements of this Statement are effective for various periods through fiscal years beginning after June 15, 2023. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the consolidated financial statements.

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INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

The Authority Members
New York Job Development Authority:

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, the combined financial statements of New York Job Development Authority (the "Authority"), a component unit of the State of New York, as of and for the year ended March 31, 2022, and the related notes to combined financial statements, and have issued our report thereon dated June 15, 2022.

Report on Internal Control Over Financial Reporting

In planning and performing our audit of the combined financial statements, we considered the Authority's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the combined financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Authority's combined financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's combined financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the combined financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control or on compliance. This report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Authority's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

EFPR Group, CPAs, PLLC

Williamsville, New York
June 15, 2022

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INDEPENDENT AUDITORS' REPORT ON INVESTMENT COMPLIANCE

The Authority Members
New York Job Development Authority:

Report on Investment Program Compliance

Opinion on Investment Compliance

We have audited the New York Job Development Authority's (the "Authority"), a component unit of the State of New York, compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York for the year ended March 31, 2022.

In our opinion, the New York Job Development Authority complied, in all material respects, with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York for the year ended March 31, 2022.

Basis for Opinion Investment Compliance

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of Investment Compliance section of our report.

We are required to be independent of the Authority and to meet our other ethical responsibilities, in accordance with relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion on investment compliance. Our audit does not provide a legal determination of the Authority's compliance with the compliance requirements referred to above.

Responsibilities of Management for Investment Compliance

Management is responsible for compliance with the requirements of Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

Auditor's Responsibilities for the Audit of Investment Compliance

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the Authority's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards and Government Auditing Standards, will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the Authority's investment compliance.

In performing an audit in accordance with generally accepted auditing standards and Government Auditing Standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the Authority's compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- Obtain an understanding of the Authority's internal control over investment compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over investment compliance but not for the purpose of expressing an opinion on the effectiveness of Authority's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

Report on Internal Control over Compliance

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A material weakness in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement will not be prevented, or detected and corrected, on a timely basis. A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over investment compliance that is less severe than a material weakness in internal control over investment compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over investment compliance was for the limited purpose described in the Auditor's Responsibilities for the Audit of Investment Compliance section above and was not designed to identify all deficiencies in internal control over investment compliance that might be material weaknesses or significant deficiencies in internal control over investment compliance. Given these limitations, during our audit we did not identify any deficiencies in internal control over investment compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over investment compliance may exist that were not identified.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over investment compliance. Accordingly, no such opinion is expressed.

This report is intended solely for the information and use of management of the Authority, the New York State Office of the State Comptroller, the New York State Division of the Budget, and the New York State Authority Budget Office and is not intended to be and should not be used by anyone other than those specified parties.

EFPR Group, CPAs, PLLC

Williamsville, New York
June 15, 2022

Item I. D.

New York Job Development Authority

FOR CONSIDERATION
June 23, 2022

TO: The Members

FROM: Hope Knight

SUBJECT: Procurement Guidelines

REQUEST FOR: Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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I. Background

At their June 24, 2021 meeting, the Members adopted updated and revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "2021 Guidelines"). There have been no substantive changes to Executive Orders and discretion to authorities in the past year that would require modification of the proposed 2022 Guidelines (the "2022 Guidelines"). ESD internal staff review changes include the following:

- Changing the adoption date of the Guidelines to coincide with the start of the Corporation's fiscal year to permit staff to disseminate and familiarize themselves with the new Guidelines prior to their effective date;

- Clarifying that additional information regarding Purchase Order procurements (i.e. under $50,000) is available from the Procurement Coordinator;

- Reworking portions of Sections 3 and 4 to eliminate the flow charts and replace them with listed bullet points which are easier to follow;

- Permitting staff to competitively procure additional vendors for current pre-qualified lists if the need arises;

- Clarifying the circumstances that can justify granting a "Single Source" Contract Reporter Exemption (CRE) request;

- Clarifying that a notice to proceed can be utilized both before and after Board approval prior to the full execution of the contract, and establishing that the duration of a notice to proceed shall not exceed one (1) year; and

- In an effort to be more environmentally conscious, new procedures are being added to permit electronic submissions of bids and proposals.

Accordingly, the proposed 2022 Guidelines have been revised to incorporate these revisions, as well as the changes for consistency.

As with the 2021 Guidelines, the proposed 2022 Guidelines are modeled directly upon ESD's procurement guidelines.

II. <u>Procurement Guidelines Summary</u>

The proposed 2022 Guidelines attached to this memorandum, set forth the policies and procedures to be followed by JDA when seeking to contract for goods or services. It should be noted that these Guidelines do not have the force of law, and are intended as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The proposed 2022 Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by JDA must be competitively awarded, except where State law provides for non-competitive sourcing (e.g., goods purchased from approved not-for-profit agencies for the blind, and procurements from the Office of General Services centralized contracts list). Based on the expected cost of procured goods and/or services, procurement contracts must be obtained after advertisement in the NYS Contract Reporter, except in limited instances where an exemption is obtained, generally for sole or single source procurements when only one vendor offers the desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process. The proposed 2022 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of ESD's Bid Opening Guidelines and the compilation of a procurement record for every covered procurement contract.

The proposed 2022 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all State agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

The proposed 2022 Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements.

Sources of help to users and information are included as clickable links, and virtually all required forms and JDA/ESD policy and procedure documents also can be accessed from within the document by hyperlinks. These links appear in blue font in the hard copy of the proposed 2022 Guidelines presented to the Members for approval.

III. Environmental Review

ESD staff has determined that approval of the proposed 2022 Guidelines does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

IV. Requested Action

The Members are requested to adopt the proposed 2022 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of the date of approval.

V. Recommendation

Based on the foregoing, I recommend approval of the requested action.

Attachments
Resolution
Proposed 2022 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

June 23, 2022

NEW YORK JOB DEVELOPMENT AUTHORITY – 2022 Procurement Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority, the proposed 2022 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts ("Guidelines"), a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the Chairman, President and Chief Executive Officer or his or her designee is authorized to promulgate the Guidelines in electronic form and other media for the use by JDA, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

*   *   *

NEW YORK JOB DEVELOPMENT AUTHORITY

Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts

Effective June ___, 2022

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1. Overview and Requirements

The following guidelines (the "Guidelines") are applicable to the use, awarding, monitoring and reporting of procurement contracts of the New York Job Development Authority ("JDA"). JDA is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law ("PAL"). The same law requires annual review and updating of the guidelines by the JDA Members ("Board").

These Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the "SPC Guidelines"). The SPC Guidelines apply to all State agencies and thus provide useful guidance for procurement by JDA (which is not a State agency as that term is defined in the SPC Guidelines). The SPC Guidelines cover some issues and procedures rarely encountered by JDA but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained. View the SPC Guidelines.

In these JDA Guidelines, a person, firm or corporation who wishes to provide goods and/or services to JDA may be called a **"vendor"** or **"offeror"** or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming an JDA vendor, a **"respondent."**

It is imperative that the proper steps are followed when procuring a vendor. Failure to follow the proper steps such as buying goods or services without proper approvals may leave both the purchaser and Corporation in a vulnerable position. Under no circumstance should anyone acquire goods or services without the necessary approvals or required documents. Please be advised that this apply to both new procurement and amendments or modifications of procurements. Corrective steps including but not limited to restarting an entire procurement process may be taken if JDA Procurement Guidelines are not strictly followed.

1.1. Contracts covered, and not covered, by the Guidelines

Pursuant to PAL § 2879 (2), **"Procurement Contracts"** are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars ($5,000) or more. Contracts which are intended to earn money or other assets or benefits to JDA (often referred to as **"revenue contracts")** are also considered Procurement Contracts for the purposes of these Guidelines.
For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see section 8.1), Procurement Contracts also include the purchase or lease of any interest in real property which involves an estimated annualized expenditure by JDA in excess of fifteen thousand dollars ($15,000).

Disposition of property (real or personal) by JDA is not a procurement covered by these Guidelines but is instead subject to JDA's Property Disposition Guidelines. However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines to the extent practicable.

Loans and grants made by JDA in furtherance of its economic development mission are not Procurement Contracts, but may be subject to certain provisions of these Guidelines, including Office of the State Comptroller ("OSC") review and approval for grants over $1 million (see p. 23, Section 10.5).

A Contract or Memorandum of Understanding ("MOU") with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement, as well as OSC approval for binding agreements) may apply to MOUs.

In connection with certain of its projects, JDA may need to obtain a license from a governmental agency, authority, or company or a public utility in order to enter the licensor's premises and perform work. As a precondition to receiving the license, JDA can be required to enter into agreements with the licensor that prescribe conditions for work to be performed on the site, including work and/or oversight of work which must be performed by the licensor's personnel or contractors, as well as payment of licensor costs by JDA. Examples include licenses for work on rail and utility facilities. Agreements of this kind, often referred to as **"forced contracts,"** are not covered by the competitive solicitation requirements of these Guidelines, because JDA has no discretion or authority with respect to the work to be performed by the licensor's personnel and contractors. However, appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) would apply.

Procurement Contracts **under $50,000** may be handled by **Purchase Order** approved by Department Head, Procurement Department, Controller's Office and Contracts Administration. A formal competitive solicitation is not required, but these purchases should be made after obtaining three quotes whenever practicable. For further information, consult the Procurement Coordinator.

1.2. Types of Procurement Contracts

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with an JDA project, or to support the administrative needs of JDA. Procurements of goods cover the entire spectrum of goods, ranging from pens to motor vehicles.

Procurements of personal services include but are not limited to legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, temporary employees, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of JDA.

Reasons for procuring personal services include:

a. Requirements of special expertise or unusual qualifications;
b. Nature, magnitude or complexity of services required;
c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
d. Short-term or infrequent need for the services; and
e. Distance of the location(s) where the services must be performed from JDA offices or facilities.

Term Contracts (sometimes referred to as "open retainer" contracts) are also included in and covered by these Guidelines. These contracts may be used when JDA anticipates using a vendor or vendors multiple times over a given period of time. In such cases, a maximum contract period must be specified when the contract is entered into. In all other respects, these Guidelines apply.

1.3. General Procurement Principles

JDA's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet agency needs;
- Provide checks and balances to regulate agency procurement activities; and
- Protect the interests of JDA, the State and taxpayers.

Procurement Contracts are to be awarded 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 Contract Reporter** where the amount of the contract is **$50,000 or more** and after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents, including where practicable at least one State-certified minority-or woman-owned business enterprise ("MWBE") and one service-disabled veteran-owned business ("SDVOB"). (See Section 7: Types of Solicitations). 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. Also, if a mini bid is completed and the bidders have all submitted costs that are equal to or greater than the threshold of $50,000, an RFP must be posted on the contract reporter.

Competition in the procurement process serves both JDA and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain JDA business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain JDA business.

2. Procurement: Overview and Requirements

2.1. The Procurement Process Guide

I. Purchases greater than $5,000 and less than $50,000

- If JDA's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.
- If JDA's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.
- If JDA's needs cannot be met by the above options, you may elect to do an informal solicitation, in the following order: a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business (see section 2.6), a mini-bid off a pre-qualified list (see section 2.8) or a mini-bid to a minimum of three vendors equipped to provide services. One of the vendors should be an MWBE/SDVOB whenever practicable (see section 6) Contact the Procurement Unit for further assistance if needed.
- If this is an emergency situation or only one vendor can meet the needs required for service, the initiating department head must justify the need to Single or Sole Source this request in the justification memo and with the us

II. Purchases of $50,000 or greater

- If JDA's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.
- If JDA's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.
- If JDA's needs cannot be met by the above options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business **up to $500,000**. See Section 2.6.
- If JDA's needs cannot be met by the above options, you may elect to do a mini bid off of a prequalified list. You must solicit to a minimum of three vendors. One vendor should be an MWBE/SDVOB whenever practicable. See section 2.8.
- If JDA's needs cannot be met by the above options, use a Request for Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI"), and **advertise in the Contract Reporter** if this is not an emergency situation and JDA's needs can be met by more than one vendor. See Section 4.

- In an emergency situation or if only one vendor can meet the needs required, obtain a Contract Reporter Exemption using a Single Source or Sole Source exemption as appropriate. See Section 3.

2.2. NYS Preferred Sources

Goods and services needed by JDA may be available, without the need for competitive procurement, from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by JDA, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. For information on these Preferred Sources, see State Finance Law §162 and the Office of General Services ("OGS") Preferred Sources Guide. The Guide is exhaustive, but the main points are easy to follow.

2.3. OGS Centralized Contracts

Goods and services needed by JDA may be available, without the need for a competitive procurement, through Centralized Contracts held by OGS. Please follow the OGS guidelines for each specific contract.

2.4. Commodities Contracts

The OGS Procurement Services Group (PSG) establishes centralized contracts for commodity contracts in the form, function and utility required by State agencies, for a wide range of items commonly acquired by agencies. If the commodity is available from a centralized contract in form, function and utility consistent with JDA's need, such item may be purchased from the centralized contract. However, JDA may competitively procure items otherwise available on a centralized contract when the resultant price is less.

2.5. Service Contracts

JDA has discretion to use the OGS centralized service contracts list. A wide and diverse range of services from routine maintenance to complex technology-based acquisitions are available through these OGS contracts. Again, JDA may competitively procure items otherwise available on the OGS centralized contract list when the resultant price is less.

2.6. Discretionary Purchases

Pursuant to PAL § 2879(3)(b)(i) and State Finance Law §163(6), JDA may purchase services or commodities from small business concerns, from those certified pursuant to Article 15-A of the Executive Law (MWBEs), from those certified pursuant to Article 17-B of the Executive Law (SDVOBs), 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, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits.

Staff should assess whether a formal competitive process, or one that is less formal but still competitive, may best meet JDA's needs. The award of a discretionary purchase contract should be published in the Contract Reporter.

As with any other procurement, for discretionary purchases the initiator must:

- review the Preferred Source list and OGS Centralized Contracts to determine whether the desired goods or services are available to meet JDA's needs;
- ensure that the commodities, services or technology acquired meet JDA's form, function and utility needs;
- document and justify the selection of the vendor;
- document and justify the reasonableness of the price; and
- ensure that JDA buys from responsible vendors.
- Obtain board approval if the contract amount is over $250,000

2.7. Piggyback Contracts

JDA may find it efficient to establish a contract based on another governmental entity's contract. This is known as "piggybacking" and may be used in accordance with the criteria established by OGS in the Contract Piggybacking Guidelines under State Finance Law § 163(10)(e), available at https://ogs.ny gov/procurement/piggybacking-using- other-existing-contracts-0# :—:text=Guide for Piggybacking in NYS New York State, of the State Comptroller and under appropriate circumstances. Note that a piggyback procurement requires approval by the OGS Procurement Services Group — this can be difficult and time-consuming to accomplish, as the OGS staff are not very familiar with pubic authority procurement policies and practices. For example, if the agency you wish to piggyback on is a State agency, it will have different contractual terms than those used by JDA. This may lead to delay, if OGS decides to seek approval of the proposed JDA contract terms from the Attorney General. Piggybacking is better accomplished when you wish to use a contract established by another public authority (rather than a State Agency).

2.8. Pre-Qualified Lists

Goods and services needed by JDA may be available without the need for full competitive procurement, from a pre-qualified list of vendors that have been vetted for qualifications and pricing. When selecting from a pre-qualified list, solicitations should go out to as many providers on the list as practicable including an MWBE or SDVOB entity if pre-qualified.

When a member of a prequalified firm leaves the firm to one that is not on the prequalified list, the prequalification follows the member. A new contract would be required.

Also, JDA staff will have the option of adding additional vendors to Prequalified Lists for a variety of reasons including but not limited to increasing the number of prequalified vendors to better serve JDA's needs.

A list of all current JDA Pre-Qualified Lists will be made available to JDA Staff. A link to exact location will be sent via Broadcast messages to all JDA staff.

3. Contract Reporter Exemptions

3.1. Reasons for Exemptions

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption. A Contract Reporter exemption may be granted by the Officer(s) specified in Attachment A to these Guidelines, only if any of the following circumstances can be demonstrated:

(a) **Sole Source.** Only one source for the goods or services is available. Three examples of sole source procurements: (i) proprietary software compatible with JDA operating systems that no-one else offers; (ii) a printer's warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty; (iii) a vendor has developed a proprietary system for remediating contaminated land, unavailable from anyone else.

(b) **Single Source.** The required goods or services are available from two or more vendors, but a compelling reason exists to make the award to a particular vendor. A request for a single source exemption must include information about the alternatives considered and justification that price is reasonable. One common example of a single source procurement is where a vendor needs to complete work on a project for which it was originally competitively procured.

In general, the Corporation's policy is to minimize the use of single source contracts and to maximize the use of competitive procurement methods. Please discuss a contract reporter exemption request early on in the process with the Contracts department and Procurement Counsel.

(c) **Emergency Circumstances.** Emergency circumstances exist when an urgent and unexpected situation arises which places public health or safety or the use or conservation of resources at risk and requires immediate action. Poor or late planning does not constitute an emergency. Contracts entered into as a result of an emergency situation should only cover the goods or services reasonably necessary to stabilize, ameliorate or remedy the situation. An example is a hazardous condition at a building owned by JDA: a contractor can be hired immediately to deal with the situation.

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract awarded in the amount of $50,000 or more should be published in the Contract Reporter (Economic Development Law, §143(4)). This publication requirement does not apply to contract amendments.

3.2. Authorization for Exemptions

The initiator of the proposed contract must complete a Contract Reporter Exemption form, signed by the Officer(s) specified in Attachment A to these Guidelines.

The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances. The Contract Reporter Exemption form can be found http://intranet.empire.internal/Finance/2018/ContractReporterExemptionRequestForm_Nov.2018.docx. If the proposed contract amount is over $250,000 or is a personal services contract that will last more than one year, the exemption authorization should be obtained before JDA Board or President approval. If the proposed amount is $250,000 or less, and the term of the contract is less than one year, the exemption authorization should be obtained from the Officer(s) specified in Attachment A to these Guidelines, prior to contract execution and the commencement of any services or delivery of any goods.

Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139k (Lobbying Laws) and State Tax Law § 5-a must still be satisfied (see Section 8.1, p.12). Where appropriate, a statement from the staff initiator that the price obtained for the goods or service is compatible with market pricing must be presented with the exemption request.

At the time JDA enters into a contract with a single or sole source provider for an amount in $50,000 or more, JDA should submit an announcement of the contract for publication in the NYS Contract Reporter and must identify the recipient of the contract.

4. How to Conduct a Competitive Solicitation

- **Get Approval to Advertise:** Fill out the JDA Procurement Opportunity Advertisement Approval form for Corporate or Subsidiary and forward it for review along with procurement solicitation material to the Procurement Department for review. See section 5.

- **Approval of Advertisement and Contract Reporter:** When review is completed, material is sent to the Officer(s) specified in Attachment A to these Guidelines for approval. Upon approval, you may submit your solicitation through the Contract Reporter, with a minimum of 15 business days for responses. Solicitation should also be posted on the ESD and Subsidiary (if applicable) website. See section 8.9.

- **Bid Opening and Selection:** Once bids are due, ESD Procurement staff will set up and conduct a bid opening. Staff can then conduct a review and selection process. See section 8.11.
  In order to avoid the risk of submitting a late proposal, JDA will include new language in the RFP suggesting that all proposals be submitted 24 hours prior to deadline.

- **Board Approval:** Once a vendor is selected, staff must obtain Board approval, where required. See section 9.1

- **Preparation of Commitment Package:** Once Board approval is granted; staff must prepare a commitment package and enter it into Peoplesoft for Contract processing. See section 10.1.

5. Approval to Advertise

Prior written approval of the Officer(s) specified in Attachment A to these Guidelines is required when you need to advertise a procurement opportunity, including Requests for Proposals ("RFPs"), Requests for Statements of Qualifications ("RFQs") and Requests For Expression of Interest ("RFEIs") (See Section 7: Types of Solicitation).

Note also that other approvals may be required to comply with State Division of Budget procedures (see Section 11.4). Submit the JDA Procurement Opportunity Advertisement Approval form (select Corporate or Subsidiary) to the appropriate officer at least 10 business days in advance of the relevant New York State Contract Reporter publication submission date (the Contract Reporter is published daily).

6. Contents of ANY Procurement Solicitation

For all Procurement Contracts (see section 1.1), whether the procurement is formal (such as an RFP, RFQ or RFI) or informal (such as procurement for less than $50,000, or a Discretionary Purchase from an MWBE or SDVOB for up to $500,000, or procurement from a pre-qualified list) the same basic information should be included in the solicitation:

(i) What goods are being sought or what scope of services is desired;
(ii) What the projected length ("term") of the resultant contract will be;
(iii) What criteria will be used in evaluating bids, and how those criteria are weighted. For example, price, bidders' expertise, the qualifications of the proposed staff; past history of government contracts, references/testimonials, understanding of JDA's mission, and either diversity practices (commitment to sound diversity practices within the firm) or a firm's status as a certified MWBE and/or SDV0B[1];
(iv) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings/interviews held, etc.);
(v) Contact information for a designated contact at JDA is the only person at JDA to whom communications about the solicitation may be directed. Failure to abide by this requirement may result in disqualification of the bidder.

Program regulations provide that JDA can either score a firm's diversity practices or the firm's status as a certified MWBE, but not both in the same procurement. So, if certified firms are likely to respond, then the solicitation should request proof of certified status. But if it is more likely that no MWBE will respond to a solicitation, the solicitation should request diversity practice information instead. In either event, this factor must not exceed 10% of the overall technical score.

(vi) JDA's insurance requirements (obtained from Contract Administration for all solicitations);

(vii) JDA's contractor and supplier diversity requirements: MWBE and SDVOB goals, if applicable (goals should be identified before seeking approval to advertise);

(viii) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;

(xi) A copy of the JDA standard terms and conditions to which the successful bidder will be expected to agree. This will generally be ESD's Schedule A - Standard Terms and Conditions (For Materials and Services or for Law Firms). IMPORTANT: ESD's standard terms and conditions must be sent to potential vendors as early in the process as possible, to avoid later disputes about terms.

(x) VENDREP Form where needed (See Section 8.13);

(xi) Proof that the vendor is authorized to do business in New York State, if services are to be performed in New York State. Generally, this will require NYS Department of State Registration, which can be checked here.

(xii) Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.6).

A template for informal solicitation language can be viewed in the below link. https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf.

7. Types of Solicitations

7.1. General Information

There are a number of procurement techniques available, including Request for Proposals (RFP) and Request for Statements of Qualifications (RFQ) and, rarely, Requests for Expressions of Interest (RFEI). When selecting among these various approaches, the determining factors are:

- The importance of price or cost as a component in the review of incoming bids or proposals; and
- The ability to define specifications for goods or services being acquired, or to obtain those specifications from potential vendors (where the RFEI may be useful).

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible vendors. "Best value" is the basis for awarding service and technology contracts to the vendor that optimizes quality, cost and efficiency, among responsive and responsible vendors. The basis for a "best value" contract award must be, wherever possible, quantifiable. However, all procurement solicitations issued by JDA are to be guided by the same basic principles:

Clarity: Procurement documents should clearly convey to vendors what JDA wants to buy;
Fairness: No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria (note that vendors must submit a statement of non-collusion (see s. 7.2 below)

Openness: All relevant vendors should have an equal opportunity to respond to the offering.
Disclosure of Selection Criteria: The criteria for awards should be developed before bids/proposals are received. Vendors should know generally the basis upon which their offers are being judged. Note that if cost is weighted below 20%, a written justification for such weighting should be prepared and included in the Procurement Record;

Efficiency: The process should be efficient, fair and able to withstand public scrutiny.

7.2. Requests for Proposals ("RFP")

RFP solicitations may range from relatively uncomplicated procurements to highly complex, long term efforts involving the significant commitment of both JDA and vendor resources. RFPs follow a common format, focusing on a description of tasks including, but not limited to:

- Description of program objectives and background;
- Scope of services to be provided;
- Detailed requirements or specifications (required qualifications of vendors, "what" is needed and "how" services should be provided). Note that the terms of the RFP may not be knowingly tailored to favor a particular vendor;
- Statement of Non-Collusion required by s. 2878 of the Public Authorities Law (responders must certify that they have not colluded with any other responder(s) in their proposal).

Please see below link to view ESD's standard RFP template.
http://intranet.empire.internal/Finance/2019/RFP_Template-June2019v2.docx

7.3. Requests for Statements of Qualification ("RFQ")

RFQs are appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by JDA on a regular or semi-regular basis as the need arises. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of contractors or property appraisers. If JDA has established a list of pre-qualified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a pre-set maximum, three quotes should be obtained from vendors on the list, and/or from vendors known to JDA outside the list. Amendments to contracts with vendors selected from a pre-qualified list should also follow this mini-bid process (and comply with all requirements in Section 9.2).
Where a vendor's eligibility to be on a pre-qualified list is contingent upon the vendor's agreement that professional services will be rendered at pre-established rates, or will not exceed certain limits, this solicitation should be accomplished through an RFP.

After JDA has established a list of pre-qualified vendors, staff may enter into open retainer contracts (sometimes called "Term Contracts") with one or more vendors on the list, for no set dollar amount but, in the case of personal services, not to exceed a term of three years. This process facilitates the use of purchase orders against the contract, and Board or President/CEO approval, if required, can be obtained at such time as a scope of services and dollar amount are identified, or if the term will be extended beyond one year. All transactions executed as part of a Term Contract will follow standard approval procedures as per sections 9 and 10 of these guidelines. Please consult with Procurement and Legal if you wish to enter into such an arrangement.

7.4. Requests for Expressions of Interest ("RFEI")

RFEIs are generally appropriate when JDA does not know the precise scope of services or goods required and wishes to obtain this information from prospective vendors. An example would be a proposal for adaptive re-use of JDA or other State surplus property, where the re-use is likely to be dependent on the prospective respondents' needs or ideas.

8. Compliance with Other Laws

8.1. Compliance with State Finance Law 4 139-i and 139-k (Lobbying)

State Finance Law ("SFL") § 139-j and 139-k apply to all Procurement Contracts over $15,000, regardless of whether the contract was competitively bid.

Among other things, SFL § 139-j and 139-k: (i) govern permissible communications between potential vendors, and staff of JDA, its subsidiaries, or other involved governmental entities during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and willful violations of such provisions, including disqualification from eligibility for an award of any contract. Specifically, SFL § 139-j and 139-k require that only permitted JDA and subsidiary contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from the issuance of the earliest written notice of a Request for Proposal through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL § 139-j (6)(b) also requires potential vendors to complete the Offeror's Affirmation of Understanding and Agreement to comply with JDA's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by JDA after an initial affirmation is received with an initial bid.

SFL § 139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k (5) requires potential vendors to certify that the information they provide to JDA for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL § 139j and § 139-k as part of their proposals: 1) the Offeror's Affirmation of Understanding and Agreement., and 2) the Offeror's Disclosure of Prior Non-Responsibility Determinations.

When contacted during the Restricted Period, JDA staff must obtain the following information: the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact. Further, JDA staff must inquire whether the person or organization making the contact was the offeror or retained, employed or designated by the offeror. All such recorded contacts must be included in the procurement record for the procurement contract.

In addition, JDA staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL § 139-j and 139-k do not prohibit an offeror from communicating with a member of the State legislature or legislative staff about a government procurement, provided such member of the State legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

For further guidance, JDA staff engaged in the procurement process should review ESD's policy regarding permissible lobbying contacts, and the required language for solicitations by ESD and its subsidiaries to ensure compliance with SFL § 139-j and 139-k. See also the OGS website on procurement lobbying, found at https://ogs.ny.gov/acpl.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an JDA employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported and asked to communicate directly with the designated contact person in the future.

8.2. Compliance with State Tax ST-220 or Law 5-a (Sales Tax Registration)

State Tax Law § 5-a prohibits JDA from approving any contract valued at more than $100,000 with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over $300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

Accordingly, all respondents to a solicitation where the amount of the contract is expected to exceed $100,000 must include in their responses a properly completed Form ST-220-CA. However, if a vendor is not registered with DTF because of a lack of sales of over $300,000 within the relevant period, the vendor must submit an affidavit so certifying. Note also that § 5a does not apply to contracts for architectural, engineering or surveying services. If in doubt, contact the ESD legal department after having reviewed DTF Publication 223.

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. However, the vendor or respondent should be given an opportunity to cure such failure, because some agencies do not require the form until contract signing, and vendors may not realize that JDA practice is different. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor's sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the sub-contractors.

Further in accordance with the requirements of § 5-a, any contract resulting from a solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

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

EO 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. As of June 1, 2018, all JDA contracts must contain a representation that the vendor's policies or practices do not fail to address harassment and discrimination.

8.4. Compliance with Executive Law Articles 15-A & 17-B: Contractor and Supplier Diversity

Background

All Procurement Contracts 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 and women-owned business enterprises in State contracting. The MWBE Program contributes significantly to JDA's mission of promoting a growing State economy; encouraging business investment and job creation; and supporting diverse, prosperous local economies across the State. Staff should be familiar with the MWBE Operations Primer published by the Division of Minority and Women's Business Development to ensure compliance with MWBE-related laws and requirements.

All Procurement Contracts must also comply with the requirements of Executive Law Article 17B, which acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Staff should familiarize themselves with the SDVOB Operations Guidance and the Guidelines for the Use of Set Aside Contracts with SDVOBs published by OGS to ensure compliance with SDVOB-related laws and requirements.

JDA staff are expected to encourage the use of MWBEs and SDVOBs in all procurements, including any amendments to existing contracts. Staff must reach out to the Office of Contractor and Supplier Diversity ("OCSD") as early as possible in the procurement process in order to facilitate goal setting for each contract. Additionally, upon advertising a solicitation for a new opportunity, staff should consider publicly posting a list of State-certified MWBEs or SDVOBs who have expressed interest in subcontracting opportunities in connection with the solicitation. Click here for an example of how to advertise interested MWBEs and SDVOBs:

https://esd.ny.gov/sites/default/fi les/rfp/M WB E%20BGA%202019%20Listing%20of%20Certified%20Firms%20Expressing%20Interest.pdf

Executive Order 162

Pursuant to Executive Order Number 162 ("E0 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 State contract either or each employee in the contractor's and subcontractor's entire workforce, if the individuals working directly on a State contract cannot be identified. A State contract includes all agreements in excess of $25,000 for services and commodities, 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 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 on a quarterly basis within ten (10) days of the end of that quarter.

Goal setting

All State contracts, including revenue contracts, as defined in State Finance Law Section 139-j, exceeding 25 000 for commodities or services and $100,000 for construction **must** be assessed for MWBE & SDVOB goals. For JDA's purposes, a State contract includes commodities procurements, professional services contracts, loans, grants, and leases of real property involving construction, demolition, replacement, and major repairs or renovation.

OCSD is responsible for ensuring JDA's compliance with the MWBE and SDVOB Programs. OCSD works with JDA program staff (project managers, program directors, originators and procurement officers) to determine if a contract is eligible for MWBE and SDVOB goal setting, exempted[2] from goal setting, or excluded[3] from goal setting.

It is important to note that whole projects cannot be assessed for goals; rather individual contracts must be assessed for goals.

OCSD may determine that an MWBE goal below the agency-specific goal of 30% is appropriate because there are limited or no subcontracting opportunities and/or limited or no availability of certified MWBEs to perform or provide specific good or services. All goals of less than 30% MWBE participation, other than a zero-goal determination, must be forwarded to the Executive Chamber for review and must include documentation to reflect the reason for goal reduction.

Waiver Requests
A firm responding to a solicitation or already engaged on an JDA contract, after making good faith efforts to achieve the maximum feasible portion of an MWBE and/or SDVOB participation goal, may submit a Waiver Request Form to OCSD with appropriate information documenting its "good faith efforts"[4] to meet its goals. The waiver process includes reviews by: OCSD and the OCSD Counsel. The Executive Chamber must approve MWBE waiver requests before a waiver before it can be issued.

MWBE waivers must be sought even if the overall MWBE goal is met but either the Minority-owned Business Enterprise or the Women-owned Business Enterprise component of the MWBE goal is not met in part or in full. SDVOB waivers must be sought if the assessed goal is not achieved.

"Exemptions" are defined contracts which are excluded from MWBE and SDVOB goal setting. Some examples of exemptions are wages, benefits, and other employee-expenditures; debt service; travel reimbursement; utilities; OGS centralized services; sole source contracts (subject to there being no MWBE or SDVOB available to participate as sub-contractor when subcontracting is appropriate); postage; telephones; operating transfers; certain rentals and repairs; and special departmental charges (i.e. unemployment insurance and tuition reimbursement).

[3] "Exclusions" are contracts that either do not have subcontracting opportunities or no availability of certified MWBEs or SDVOBs to perform or provide specific goods or services. In cases where a contract is awarded by a means other than an RFP, including, but not limited to discretionary purchases and single source contracts, **DMWBD/OGS will only grant an exclusion if MWBEs or SDVOBs are solicited to participate as prime contractors or no MWBEs or SDVOBs are available to participate as prime contractors.**

[4] "Good Faith Efforts" are the actions that all contractors must demonstrate to certify they have performed their due diligence to solicit MWBE and SDVOB participation in support of their State contract goals. Good Faith Efforts requirements are outlined in 5 NYCRR §142.8 (MWBEs) and 9 NYCRR § 252.2(n) (SDVOBs). A waiver of MWBE or SDVOB goals will not be granted unless the contractor has provided documentation of good faith efforts. In addition to completing a waiver request form, the contractor shall also provide OCSD with supporting information including, but not limited to:

- A statement setting forth the basis for the waiver request;
- The names of general circulation, and trade association publications in which certified MWBE/SDVOBs were solicited for the purposes of complying participation goals related to this contract;
- A list identifying the date(s) that all solicitations for certified MWBE/SDVOB participation were published in any of the above publications;
- A list of all certified MWBEs appearing in the NYS Directory of Certified Firm: and all certified SDVOBs appearing in the OGS Directory that were solicited for purposes of complying with the participation goals;

- Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations to all certified MWBEs/SDVOBs;
- Copies of responses to solicitations received from certified MWBEs/SDVOBs;
- Copies of bid prices from all respondents to a solicitation; and
- A description of any contract documents, plans, or specifications made available to certified MWBEs/SDVOBs for purposes of soliciting bids and the date and manner in which these documents were made available.

In the event that a waiver is not granted or approved by one or all of the above parties, OCSD may assess liquidated damages or seek settlement in accordance with the MWBE and/or SDVOB Regulations and the provisions of the contract language.

Where practical, feasible and appropriate, JDA shall promote and encourage participation by MWBEs and SDVOBs in the selection and award of all contracts. Such MWBE and SDVOB participation shall be documented in a regular supplement, prepared by OCSD, for inclusion in the quarterly and annual reports made by Contracts Administration to the Board. To assist in the gathering of this information, the originator must provide OCSD with a completed Utilization Plan of MWBE and, separately, SDVOB Participation, from the potential contract awardee, for OCSD's review and approval, prior to contract award. The required forms are accessible at http ://i ntranet. emp ire . i nternal/fi nanceProcurement. asp or https ://esd .n y gov/abo ut-us/c orpo rate-info (scroll down to "Non-Discrimination and Contractor & Supplier Diversity Forms").

8.5. Compliance with Iran Divestment Act of 2012

Every bid or proposal made to JDA pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is no on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State finance law The list in question is maintained by OGS and is available here:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestiture Act (contact the Legal Department for guidance in such a case).

8.6. Encouragement of use of New York Businesses as sub-contractors and suppliers.

The Secretary to the Governor has issued a directive that provides that all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts must be encouraged (but not required) to use New York State businesses. All procurement solicitations of any kind must include specific language aimed at such encouragement. The model language can be found at http://intranet.empire.intemal/Finance/USEOFNYSBUSINESSES.pdf

8.7. 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 the Office of General Services (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, (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 State contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to State 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. As well as, appearances following the award of a State contract do not need to be reported.

8.8. Publication on ESD Website

Competitive solicitations must be made available on the ESD (and subsidiary, if applicable) website after advertisement in the NYS Contract Reporter. This website is also the appropriate place to post Questions and Answers regarding the procurement.

8.9. Contract Reporter Advertising Process

As stated above, JDA must advertise in the New York State Contract Reporter all contracts for the acquisition of goods and services of $50,000 or more, unless an exemption is granted. In order to access the online system and place the advertisement, the initiator should contact Contracts Administration.

The minimum time for vendors to respond to a Contract Reporter solicitation is 15 business days (i.e., Saturdays, Sundays and legal holidays are excluded). The Contract Reporter website provides authorized users with a publication calculator tool in order to calculate the earliest due date for a solicitation.

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate MWBEs, listed at https://ny.newnycontracts.com/FrontEndNendorSearchPublic.asp., as well as any appropriate SDVOBs, listed at https://online.ogs.ny.gov/SDVOB/search

8.10. Selection Criteria

Written selection criteria shall generally be established for each proposed Procurement Contract and shall be included in any written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP wherever practicable and, in the absence of written weighting, each criterion shall be deemed to have the same weight.

The selection criteria shall generally include price as an important factor to be considered in the selection process; however, many JDA procurements are based on "Best Value," which allows for factors other than price to the considered. Such factors commonly include the quality of goods and services, the experience of the vendor and specific expertise with respect to the goods or services to be supplied. <u>See also Section 7.1 above if price is weighted at less than 20%.</u>

Starting in January 2020, for MWBE prime contractors, a ten percent bidding credit was established for low-bid construction projects subject to public buildings law §8 that are up to $1.4 million in value.

8.11. Bid Opening Procedures

In an effort to be more environmentally conscious, JDA has recently moved toward electric submissions of bids/proposals. Proposals must be submitted on time and compliant with RFP/RFQ requests. There is no bid opening for electronic submission. The entire process is controlled by the Procurement, Director. If it is a mini bid, it is controlled by the originator with the Procurement Director overseeing the process.

However, there might be circumstances under which, because of the size of the expected proposals or other reasons, JDA reverts back to the old model of have proposals/bids submitted via hard copies. In such case, bidders will have to adhere to the below format. Proposals should be received by the Procurement Department (unless the Procurements Director directs otherwise), and immediately should be stamped with the date and time of receipt. **<u>Do not open any bid packages for any reason before the formal bid opening.</u>** JDA staff members representing Contracts Administration, Procurements, Legal and the initiating Department/Subsidiary should be present at bid openings in person or by teleconference. Bids shall be opened by the Procurement Director or his/her designee, and the time and date of receipt shall be entered into the Bid Log, which must be signed by all staff members present. Teleconference participants must confirm their presence by email to the Procurements Director. The Bid Log shall also record the presence of SFL 139j-k and ST-220 forms in the bid.

A Public Bid Opening is required for Public Works contract solicitations, pursuant to UDC Act § 11 (which incorporates by reference State Finance Law § 135). This section generally covers bids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. JDA or a subsidiary must be a party to the contract, which must involve the use of laborers, mechanics or workers (not, for example, architects and engineers). Construction contracts must be awarded to the lowest qualified and responsible bidder. See UDC Act § 11. The definition of a "Public Work" is more a matter of art than law: if in doubt as to whether the contract is for Public Work, contact the Legal Department for guidance.

8.12. Bid Evaluation and Vendor Selection

The initiating Department Head should establish, as early as practicable prior to bid opening, a team of at least three JDA staff members with relevant knowledge and experience of the goods and/or services being procured. One member should come from Contracts Administration or Finance. The Procurement Department controls and monitors the integrity of the entire procurement process. The Procurement Director must be present at the first meeting held for planning an RFP through the approval of the selected bidder by JDA's Board of Directors; In order to maintain transparency, the Procurement Director will serve as the only liaison between the Procurement Department and Potential bidders. As such, the primary and secondary contact names on the RFP should be those of the Procurement Directors. At times, the Procurement Director can serve on the Review Committee, but must always be present to monitor the integrity of the procurement process. The Procurement Director will assign staff if there is a conflict and the Procurement Director is unable to attend. It is possible to have one or more non-JDA team members join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. This involvement of non-JDA persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as JDA to "take into consideration the views and policies of any elected official or body, or other person" in the exercise of its powers and duties, provided that JDA must "apply independent judgment in the best interest of the authority, its mission and the public." If non-JDA staff is included in the review team, the team must be expanded in number such that a majority will always be JDA staff members.

Analysis of the proposals and/or bids submitted, and the award of the contract shall be documented in reasonable detail. Award to anyone other than the low bidder must include in the documentation the reason the low bidder was not selected JDA always seeks to award the best value proposal.

In an effort to streamline and bring a level of uniformity to the process, both the Q&A matrix and the scoring matrix will be provided and maintained by the Procurement Director, All members of the Review Committee must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must not include anything other than numerical ratings (i.e., no comments/opinions/notes, etc.). Original scoring sheets must be signed and submitted to only the Procurement Director as part of the Procurement Record.

8.13. Determination of Responsibility — "DOR" and the VendRep Form

Pursuant to State Finance Law § 139-j (7), JDA must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. In any event, whether or not a formal Determination of Responsibility is sought from the relevant Board, the initiator should ensure that all vendors are "responsible." **For all procurements, the initiator must submit a memo to the Procurements Director attesting that the initiator conducted both a DOR and a thorough review of the VendRep.** View Determination of Responsibility form. In addition to consulting the resources listed on the Determination of Responsibility form, staff may find it useful to consult

OSC's list of suggested resources, at http://www.osc.State.ny.us/vendrep/webresources.htm, or review OGS's bulletin of best practices for determining vendor responsibility.

Category and Factors to be considered include but not limited to:

a) Financial and Organizational and Capacity: Assets, liabilities, recent bankruptcies, equipment, facilities personnel resources and expertise, and proper auditing and accounting controls.

b) Legal Authority: Authority to do business in New York State, licenses, and registrations.

c) Integrity: Criminal indictments or convictions, civil fines and injunctions imposed by other agencies, anti-trust investigations, ethical violations, tax delinquencies, or debarment by federal, State or local governments.

d) Previous Contract Performance: Report of less satisfactory performances, early contract termination for cause, contract abandonment, court determination of breach of contract.

It is imperative that the DOR is conducted very early in the process in order to avoid wasting time on proposals for bidders that might be ineligible.

- The OSC VendRep Questionnaire, which should be used wherever possible and is required for all purchases of $100,000 or more. This form seeks information about the vendor, its affiliates and subsidiaries, officers and owners, past responsibility determinations by agencies and investigations/prosecutions. It must be notarized, and false statements may be actionable and, in some cases, may be criminal. The VendRep forms for different types of vendors can be accessed here: www.osc.state.ny.us/vendrep/webresources.htm.

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a meeting. Consult the ESD Legal Department in such cases, after having reviewed the Information at h ups :/ /ny spro.ogs.ny . go v/sites/default/fi les/uploaded/OSCBestPracticeforVendorResponsib ilit y. pdf.

Pursuant to Governor Cuomo's Executive Order No. 192, issued on January 15, 2019, all vendors, suppliers, service firms and most other contractors to State agencies and Public Authorities (such as JDA), must remain "responsible" throughout the term of the contract. There are serious consequences if contractors fail to maintain responsibility. This requirement is expressly included in JDA standard contracts, being set forth in Schedule A.

8.13.1. Cancellation of a Solicitation

On occasion, the competitive solicitation process does not yield any satisfactory responses and JDA wishes to pursue other methods of procurement. To notify the public that JDA has cancelled a solicitation, the initiator should (1) inform all respondents via phone call (which should be documented for the procurement record), letter or email of the cancellation and (2) publish or post notice of the cancellation in each place that the solicitation was published (usually the Contract Reporter and the JDA website) for no less than 2 weeks. If the decision is made to re-advertise the opportunity, the project team should scrutinize the initial solicitation document to determine whether any restrictions can be lifted, or the document can otherwise be revised to produce better results.

8.14. Procurement Record

The initiator shall be responsible for creating and maintaining a record of the procurement process. Such record shall contain documentation related to the procurement process, any competitive solicitation exemption, proposals and/or bids received, scoring sheets, vendor responsibility documentation and other documents prepared or used by the bid reviewers in their vendor selection process. Note that final scoring sheets must be sent to the Procurements Director before a contract is executed.

8.14.1 Post Proposal Submission Activities - Debriefing of Unsuccessful Respondents

With respect to unsuccessful respondents, a debriefing is available upon request. The solicitation must include information advising bidders that a debriefing may be requested by any unsuccessful offeror, within 15 calendar days of notification by JDA that the proposal or bid submitted by the unsuccessful offeror was not selected for an award. While a debriefing is typically conducted in person, it may be conducted by video conference, over the phone, or through written correspondence. The purpose of the debriefing is to be open and transparent, and to promote future competition. The debriefing should address strengths, weakness; and provide other relevant information that JDA used to determine best value, including the qualitative and quantitative analysis used in assessing the relative merits of the proposal The Procurement Director is responsible for debriefing unsuccessful respondents and all correspondence must come from Procurement. JDA is precluded from disclosing the content of any other proposal during the debriefing that would jeopardize the integrity of the procurement or impede contract negotiations.

8.15 Conflicts of Interest

Respondents must have read, understood and comply with the provisions of the conflict of interest attestation found here: https://esd.ny.govisitesidefault/files/Conflict-of-Interest-Attestation-June-2019.pcif

JDA shall have the right to disqualify any Respondent to this RFP or terminate any contract entered into as a result of this RFP should JDA determine that the Respondent has violated any of these requirements.

a. Gifts and Offers of Employment: Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of JDA, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of JDA who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

b. Disclosure of Potential Conflicts: Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with 15 any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of JDA, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

c. Disclosure of Ethics Investigations: Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

9. Contract Approval

Procurement Contracts in amounts of **$250,000 and under** that will be completed within one year (for services contracts) must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts, but contracts **between $50,000 and $250,000** (or for subsidiaries, whatever the board approval threshold is) must be approved by the President of the JDA (or subsidiary) Board or his or her designee.

Procurement Contracts priced at **over $250,000,** as well as contracts for any amount involving personal services to be rendered over a period in excess of one year, must be approved by the JDA Board.

Note that **insurance policies, warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases and software support services)** are not considered personal service contracts and do not require approval by the Board unless the amount of the contract is over $250,000 in aggregate through its term. All contracts with a technology component must be approved by ESD's Information Security Officer or designee prior to execution or Board approval.

9.1. Board Materials

The initiator writes a memorandum from the respective Department Head to the Officer(s) specified in Attachment A to these Guidelines, explaining the need for the contract. View Model Directors' Materials for Procurement Contracts (these materials can also be used for obtaining approval of the President or his or her designee by adding a CEO/Designee Approval Cover Memo).

The Board materials must set out:

a. the need for goods and services;
b. a brief description of the goods or services needed;
c. the expected maximum cost of the proposed goods or services;
d. the selection process used to determine an award based on best value, or where not quantifiable, the justification which demonstrates the best value will be achieved; and
e. the funding sources.

9.2. JDA Contract and Approval - Contracts Over One Year.

a. If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted. If a contract has already been presented to the board and it needs to be extended because the work took longer than expected; A No Cost Time Extension can be provided as long as sufficient funds remain to cover the work that needs to be done.

b. **Contracts for personal services** to be rendered over a period of more than one year, regardless of the amount of the contract, which must have been approved by the Board, must in addition be reviewed annually by the JDA Directors, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.

c. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, and before Board or President approval if required, the officer named in Attachment A to these Guidelines may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents **("Notice to Proceed")**, provided that:

i. the contract is not subject to OSC approval (See Section 10.5); and

ii. the authorization contained in the Notice to Proceed is (a) $250,000 or less and (b) does not exceed 20% of the total contract value; and

iii. the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of the Officer(s) specified in Attachment A to these Guidelines.

iv. Notice to Proceed can be used prior or after board approval and has a lifespan of just one year. No more than one Notice to Proceed can be used per contract.

d. **Contract Amendments**

i. **Amendments** to **existing contracts** generally follow the same process as new contracts, i.e., any amendment over $50,000 needs to be advertised in the Contract Reporter, exempted, or awarded to a firm on a pre-qualified list after soliciting bids from three other firms including at least one MWBE firm and one SDVOB firm. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated. If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of SFL §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed $1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds. If the proposed amendment will be for a different scope of work, the process for a new contract should be followed

ii. Amendments that increase the **<u>contract amount</u>** to more than $250,000 must be approved by the JDA Directors. Amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the JDA officer named in Attachment A to these Guidelines <u>without further</u>

Board approval, unless the amendment increases the contract to an amount above $250,000 and Directors' approval has not been previously obtained.

iii. If a proposed amendment to a contract for personal services will increase the **term** of the contract to more than one year, Board approval is necessary, and Contract Reporter advertising is necessary unless (i) as discussed in paragraph (a) above, the original contract contained a clause specifically permitting extension; or (ii) the amendment is awarded to a vendor on a pre-qualified list following wherever practicable the receipt of three quotes from other vendors on the list including at least one from a certified MWBE or SDVOB fir; or (iii) the amendment increases the term of the contract by not more than three months, and approval for the extension is given by the person named in Attachment A to these Guidelines If the amendment will increase the amount of time or other terms of the contract but **will not increase the contract amount,** the initiator need not submit a. new Commitment Request Package.

iv. In the case of contracts for more than $1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and/or the Chief Financial Officer of the corporation. Note that such an amendment may require OSC review and approval (see section 10.5). If in doubt, consult the Legal Department.

Example A: Original contract for $100,000 was awarded competitively. The initiator wishes to amend the contract for an additional $5,000. Because the amendment is for less than $50,000 it does not require advertisement or an exemption, and because it will not increase the total contract amount to more than $250,000* and is less than 10% of the original contract amount, it does not require Board approval. This example also assumes that the amendment will not extend personal services beyond one year, and so will not require Board approval.

*Some subsidiaries have lower monetary thresholds for board approval.

Example B: Original contract for $40,000 was awarded via purchase order. Due to unforeseen circumstances, the initiator wishes to amend the contract for an additional $20,000. Because the amendment will bring the total revised amount over the threshold of $50,000, it can no longer be treated as a requisition. Staff will take the necessary steps to complete a sequence package.

Example C: Original contract for $5 million was awarded competitively and approved by the Board and by OSC. The Board also approved the power to amend the contract to reflect an increase in the scope of services/goods, in an amount not to exceed 10% of the original approved amount, with the amendment to be approved by the CEO/CFO. The initiator wishes to amend the contract for an additional $300,000. Because the amendment is less than 10%, and the contract has previously been approved by the Board, no further Board approval is necessary, but Contract Reporter advertising is still necessary, unless an exemption is granted (see section 3.2 above).

Example D: Original contract for $100,000 was awarded to a firm on a Board-approved pre-qualified list. The initiator wishes to amend the contract for an additional $50,000 and extend the term beyond one year. Because the amendment will extend the contract term beyond one year, Board approval is necessary. However, because the firm was pre-qualified through a competitive process no further contract reporter advertising is necessary (but the initiator should solicit bids from three other firms on the list where practicable, including at least one MWBE and one SDVOB.

10. Steps After Contract Approval Is Obtained

10.1. Commitment Request Process (for contracts of $50,000 or amendments that bring the total revised amount over the threshold of $50,000)

a. The contract initiator should assemble and submit via Peoplesoft a Commitment Request Package containing the following documents:
   1. A Commitment Request Form (composed in Peoplesoft).
   2. A Contract Summary/Justification Memorandum (composed in PeopleSoft) explaining the need for the procurement and the method of procurement used.

One (1) completed original of the Standard Form Contract - Short Form for Goods/Services or Standard Form Amendment or Modification of Contract with: (i) Schedule A (conditions applicable to procurements of goods/services or legal services); (ii) Schedule B (Participation By Minority and Women-Owned Business Enterprises: Requirements and Procedures); (iv) Schedule B-1 (Participation by Service-Disabled Veteran-Owned Businesses with Respect to State Contracts); (v) Appendix A (ST-220 Contractor Certification Form pursuant to Tax Law § 5-a); (vi) Appendix B (Compliance with SFL § 139-j and 139-k, the Offeror's Affirmation of Understanding and Agreement pursuant to SFL §139-j; and (vii) Appendix C (Offeror). Disclosure of Prior Non-Responsibility Determinations under SFL § 139-k). Remember that the provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and JDA, and the method of payment to the contractor. The clearer and more specific the contract, the easier it will be to monitor. The terms of the contract should include, but not be limited to:

- the scope and purpose of the contract;
- the description of the services to be performed;
- the location where the work is to be performed;
- the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
- the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;

- the projected starting date and the contract period;
- the finished product or the services to be delivered;
- record-keeping and reporting requirements, including a statement that JDA and any relevant State agency has the right to audit the contractor's records;

3. Written explanation of the DOR review. View Determination of Responsibility form. For contracts valued at $100,000 or more, staff must also submit a VendRep Form completed by the vendor (not applicable to vendors outside NY).
4. ESD/Subsidiary Board of Directors or CEO/designee approval, if applicable. View sample Board materials and CEO/Designee Approval Cover Memo.
5. Depending on the procurement method used: (i) the Contract Reporter advertisement and posting of bid results and internal approval to advertise and the scoring sheet/bid opening log; or (ii) an approved exemption letter; or (iii) the OGS Centralized Contract; or (iv) a copy of the relevant Board-approved prequalified list.
   a. All appropriate insurance certificates, as approved by the ESD Insurance Administrator, a copy of the appropriate officer's approval and a copy of the RFP, if applicable. Note that all contractors must have evidence of Workers' Compensation and Disability Insurance coverage.
   b. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various ESD departments via PeopleSoft.
   c. Upon full approval and execution, the original copy of the fully executed contract or amendment is sent by Contract Administration to the vendor.

10.2. Contract Reporter Award Notification

A contract is considered awarded when it is executed (signed) by all parties. If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of MWBE and SDVOB Participation (and/or Disadvantaged Business Enterprise Participation, where applicable), must be posted on the Contract Reporter system. This posting will be done by Contracts Administration.

10.3. [INTENTIONALLY OMITTED]

10.4. Division of Budget ("DoB") Approval

Under DOB Bulletin B-1184, approval for certain procurements over $500 is required. In general, if a State or legislative appropriation is the source of funds, approval is needed. A web-based application known as the "Agency Spending Controls Application" process is used to obtain prior approval. DOB approval is not required when the funding source for the procurement comes from a non-State source (e.g., a developer of an JDA project), where at least 75% of the procurement cost will be reimbursed by federal funds, or when the procurement is needed to address an immediate threat to public health and/or safety. DOB mandated forms are used in cases where approval is required. JDA has implemented the cost control measures described in Bulletin B1184. All spending not involving Federal reimbursement of at least 75 percent, presenting an immediate threat to public health and/or safety or whose funding source is from a Third Party is subject to the preapproval process specified in the Budget Bulletin utilizing forms established by

DOB known as Attachment A. An Attachment B form was also created for spending involving Federal reimbursement of at least 75% or presenting a public health and/or safety issue.

For instructions and forms, see the ESD Employee Intranet: Financial Resources. If in doubt, contact the ESD Controller's Department for guidance.

10.5. OSC Jurisdiction Over Contracts in Excess of $1 Million

Under Public Authorities Law § 2879-a (effective March 1, 2010), JDA must make certain communications to OSC about certain types of contracts valued at more than one million dollars. OSC has issued final regulations implementing this law, and OSC approval shall be deemed part of these Guidelines. A memorandum explaining the application and procedures involved in OSC approval has been circulated to all relevant staff and may be viewed here.

"Eligible Contracts" are contracts in excess of one million dollars that are either: (i) to be paid for in whole or in part by State appropriations; or (ii) noncompetitively awarded (regardless of the funding source).

"Eligible Contract Amendment" is any modification to (A) an Eligible Contract; or (B) a contract executed after March 1, 2010 where is the value as amended is in excess of $1 million where (i) the contract as amended will be funded in whole or in part by State appropriations; or (ii) the contract was originally awarded noncompetitively; or (iii) the contract was originally awarded competitively but the modification was "neither contemplated nor provided for" in the original solicitation (i.e, new scope).

- JDA must annually report to OSC 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 the annual report.
- JDA must give OSC 10 days' notice before (i) publishing a solicitation that JDA expects will result in an Eligible Contract/Amendment that was not previously reported to OSC or (ii) executing a noncompetitive Eligible Contract/Amendment that was not previously reported to OSC.
- JDA must file all Eligible Contracts/Amendments that are not subject to OSC approval (see following paragraph) with OSC within 60 days of execution.
  Certain Eligible Contracts/Amendments that are the subject of a written notice must also be approved by OSC within 90 days after the contract is signed. A list of active

written notices can be viewed here. If approval by OSC has not been obtained, the signed contract "shall not be a valid enforceable contract."
All submissions to and communications with OSC are to be handled by Contracts Administration only. Submit nothing to OSC directly.

OSC has confirmed that contracts for the sale of real property for an amount over $1 million are covered by the Property Disposition Guidelines and are not subject to OSC review and approval under PAL § 2879-a.

11. [INTENTIONALLY OMMITTED]

12. Monitoring of Procurement Contracts

Performance of Procurement Contracts must be monitored by the initiating Department to ensure that the scope of work or services to be provided are being/have been performed; that use of JDA personnel, supplies and facilities is documented; that the MWBE and SDVOB requirements, as provided by OCSD, are being met; and that the established starting and completion dates for major components of the contract are being/have been met.

JDA employees assigned the responsibility of monitoring the work should be familiar with the type of work being performed and with the specific terms of the contract, including MWBE and SDVOB participation goals.

The frequency and manner in which the vendor's performance will be monitored should be clearly stated to the vendor and directly related to the terms of the contract.

Written documentation pertaining to vendor performance, such as progress reports, site visit reports, payment and expenditure data, Memoranda of verbal discussions, MWBE and SDVOB utilization plans and written correspondence should be maintained and reviewed by the initiating Department.
Periodic visits to the work sites should be made where appropriate to review work in progress and work completed. Site visit reports should be completed and include the observations of pertinent matters, such as the number and type of persons employed by the vendor, adequacy of the facilities and equipment, and quality of performance, including any deficiencies in the performance of the work, which may have an impact on satisfactory completion of the project.

The evaluation of the vendor's performance should take into consideration the quantity and quality of the work performed; the timeliness of submission of contract deliverables; the adequacy of cost and performance records and other supporting documentation; the ability of the vendor to meet MWBE and SDVOB participation goals; and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

All MWBE and SDVOB performance should be reported to OCSD.
Performance that is below expectations or established standards should be reported to JDA management immediately. All deficiency reports should be specific and in writing. Management

should review deficiency reports and take appropriate action, which may include termination of a contract.

All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head. No payment should be made unless the work is satisfactory and in accordance with the terms of the contract. Approval on the Payment Authorization form attests to this. ESD's prompt payment procedures can be found at 21 NYCRR 4214.3, available here.

13. Ethical Considerations

13.1 Procurement Contracts Involving Former Employees of ESD

Public Officers Law § 73 and ESD's Ethics Policies impose restrictions on former ESD officers and employees deriving compensation from ESD contracts or appearing before ESD. Accordingly, evaluation team members should carefully review lists of all proposed staff submitted by vendors to identify any former ESD employees. If a former ESD employee is identified, review his/her employment history to ensure it is appropriate and allowable. Direct any questions to the ESD Ethics Officer.

13.2 Conflicts of Interest

All actions of ESD staff, including but not limited to procurement, are subject to ESD's Ethics Policies and the provisions of Public Officers Law §§ 73 and 74. Evaluation team members should ensure that they do not have any conflict of interest with respect to any bidder, and should alert the ESD Ethics Officer immediately upon identifying any potential conflict. For particularly large or complex solicitations, especially where outside consultants are assisting with the evaluation process, the project team should consider having each member of the evaluation team complete an Evaluation Conflict Disclosure Statement. Procurement counsel can advise on how to use this form.

13.3 Unfair Advantage Prohibited

Firms that develop or draft specifications, requirements, statements of work, or requests for bids or proposals for a procurement must be excluded from competing in any resulting procurement.

14. Implementation of These Guidelines

ESD's Legal Department, in conjunction with the Contracts Administration Department, shall be responsible for preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines, as well as preparing proposed amendments to the Guidelines for approval by the CEO and the ESD Directors when and as required.

15. Reporting

15.1. Annual Reports

Annually, ESD's VP/Contract Administration shall prepare for the Directors' review a report on Procurement Contracts as of the end of each fiscal year, summarizing procurement activity by JDA for the period of the report, including a listing of all contracts entered into, the selection process used to select vendors, the status of existing Procurement Contracts and required Schedules of MWBE Participation. ESD's VP/Contract Administration shall also prepare, on an annual basis, a report for submission to:

a. The Division of Budget;
b. The Department of Audit and Control;
c. The Senate Finance Committee;
d. The Assembly Ways and Means Committee;
e. Members of the public (upon receipt of reasonable requests therefor); and
f. The Commissioner of Economic Development.

The reports shall include these Guidelines, any amendments thereto, and an explanation of the amendments.

16. Effect on Awarded Contracts

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, these Guidelines. These Guidelines reflect best and customary practice but are not intended to be rules of law. Note, however, that certain contracts may not be "valid or enforceable" without OSC approval. (See Section 10.5)

Item I. E.

New York Job Development Authority

FOR CONSIDERATION
June 23, 2022

TO: The Members

FROM: Goldie Weixel

SUBJECT: Committee Appointments

REQUEST FOR: Appointment of Members to the Audit, Finance and Governance Committee

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I. BACKGROUND

The New York Job Development Authority ("Authority") is required to establish an Audit, Finance and Governance Committee ("Committee") whose duty is to: keep directors informed of current best practices; review corporate governance trends; recommend updates to the Authority's governance principles; advise appointing authorities on the skills and experiences required of potential board members; examine ethical and conflict of interest issues; perform board self-evaluations; and recommend bylaws which include rules and procedures for the conduct of board business.

Because of a recent resignation, the Committee is currently comprised of one member: Emily A. Youssouf. To avoid the need for future board actions to maintain members of the Committee, it is recommended that the positions of Commissioner of the New York State Department of Economic Development and Superintendent of the New York State Department of Financial Services be appointed as ex-officio members of the Committee.

Currently, Hope Knight serves as Empire State Development's President and Chief Executive Officer and is the Chair of the Authority in her capacity as Commissioner of the New York State Department of Economic Development ("DED"). Adrienne A. Harris serves as a member of the Authority in her capacity as Superintendent of the New York State Department of Financial Services ("DFS").

Pursuant to the Public Authorities Accountability Act, a majority of the members of this Committee must consist of independent directors, i.e., is not employed by the Authority or an affiliate in an executive capacity nor is a relative of any such employee; not employed by an entity that received more than $15,000 in compensation or assistance from the Authority; and not a registered lobbyist.

II. PROPOSED ACTION

It is recommended that the following individuals be appointed to the Committee of the Authority, ex-officio to fill vacancies:

- Hope Knight
- Adrienne A. Harris

III. RECOMMENDATION

Based on the foregoing, I recommend the ex-officio appointments of Hope Knight and Adrienne A. Harris to the Committee, in addition to its current member Ms. Youssouf.

Attachments
Resolution

June 23, 2022

NEW YORK JOB DEVELOPMENT AUTHORITY – Committee Appointments - Appointment of Members to the Audit, Finance, and Governance Committee

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is ordered filed with the records of the Authority, the following individuals are hereby appointed ex-officio to the Audit, Finance, and Governance Committee of the Authority, in addition to its current member Emily A. Youssouf, effective immediately and until their respective resignations or removals as ex-officio Members of the Authority:

- Hope Knight
- Adrienne A. Harris

*   *   *

Item II. A.

New York Job Development Authority

FOR CONSIDERATION
June 23, 2022

TO: The Members

FROM: Hope Knight

SUBJECT: New York State – JDA Loans through the JDA Agriculture Loan Fund Program

REQUEST FOR: Approval of Hudson Valley Agri-Business Development Corporation ("HVADC") as a JDA Agriculture Loan Fund Program Lender; Authorization to Make a JDA Agriculture Loan Fund Program Loan to HVADC and to Take Related Actions

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1. SUMMARY

On June 27, 2016, the JDA Board approved the creation of the JDA Agriculture Loan Fund Program (the "Program"), under which selected lenders were authorized to make loans to New York State agribusiness firms ranging from $50,000 to $200,000. The Program targets agribusiness firms that are looking to expand but have limited opportunities aside from providing their own capital contributions.

HVADC was one of the original JDA Agriculture Loan Fund lenders. They have successfully deployed those funds in their region, using them to support $21.4 million in development project activity. They have requested additional funding to continue this work. Established as a nonprofit in 2007, HVADC is dedicated to promoting balanced, market-based solutions that lead to enhanced agricultural entrepreneurship, rural economic growth, and community enhancement. HVADC is the only economic development agency in the Hudson Valley with a specific focus on the viability of the agricultural economy in the region. HVADC's charge is to enhance the agricultural sector in the Hudson Valley by assisting both new and existing agri-businesses and supporting policies and regulations that recognize and support New York State's agricultural economy.

JDA staff recommends the extended approval of HVADC as a Program lender HVADC the authorization of a Program Loan to HVADC of an additional $500,000.

All terms, covenants and conditions contained in the Original Materials shall apply to the HVADC.

2. ENVIRONMENTAL REVIEW

ESD staff on behalf of the JDA has determined that the requested authorization constitutes a Type II ministerial action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. The recipient of loan funds will be responsible for complying with SEQRA as applicable. No further environmental review is required in connection with this authorization.

3. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, JDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises (“MWBEs”) in the performance of the Authority’s contracts. JDA’s Non-Discrimination and Contractor & Supplier Diversity policy will apply to this initiative.

4. ADDITIONAL SUBMISSIONS

Resolution
JDA Finance Memoranda
Summary of Existing HVADC JDA Ag Projects
6/27/16 JDA Members’ Meeting - Original Approval Materials

June 23, 2022

NEW YORK JOB DEVELOPMENT AUTHORITY – New York State – JDA Loans through the JDA Agriculture Loan Fund Program – Approval of Hudson Valley Agri-Business Development Corporation (“HVADC”) as a JDA Agriculture Loan Fund Program Lender; Authorization to Make a JDA Agriculture Loan Fund Program Loan to HVADC and to Take Related Actions

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RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Authority, and on the basis of the materials presented at the meeting dated June 27, 2016 as previously ordered filed with the records of the Authority (attached hereto and made a part hereof) (collectively, the “Materials”) relating to the JDA Agriculture Loan Fund Program (the “Project” or the “Program”), the Authority is hereby authorized to make a loan to HVADC identified in the Materials in an amount not to exceed Five Hundred Thousand Dollars ($500,000) for the purposes and substantially on the terms and conditions described in the Materials, with such changes therein as the President and Chief Executive Officer, or her designee(s), may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer of the Authority or her designee(s) be, subsequent to the making of the loan, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the loan as he or she may deem necessary or appropriate in the administration of the loan; and be it further

RESOLVED, that the provision of JDA financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer of the Authority or her designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

* * *

JDA FINANCE MEMORANDA

Hudson Valley Agri-Business Development Corporation

Background and Lending History

Established in 2007, the Hudson Valley Agri-Business Development Corporation ("HVADC" or the "Corporation") is a nonprofit corporation with a focus on promoting economic development within the agricultural economy of the Hudson Valley region. It is considered the only corporation with such a mission within the region.

HVADC was one of the original JDA Agriculture Loan Fund lenders with an award of $500,000. Although it was the Corporation's first attempt at facilitating a lending program, they have successfully deployed those funds in their region, using them to support $21.4 million in development activity. In order to continue this work, HVADC is seeking an extension of its existing JDA Agriculture Loan Fund loan and an additional $500,000 in loan funds.

JDA Finance Rating (Score): Very Good (5)

Financial Information

Hudson Valley Agribusiness Development Coporation						
		Years Ending December 31,				
	Industry Median	2019	2020		2021	
Statement of Activities						
Revenues		668,665	722,251	8%	703,645	-3%
Total Expenses		659,064	721,302	9%	619,821	-14%
OIBDA*		11,891	4,067		90,294	
Change in Net Assets		19,523	1,011	-95%	190,408	18734%
Statement of Financial Position						
Current Assets		357,562	418,326	17%	630,702	51%
Current Liabilities		24,885	96,695	289%	83,462	-14%
Current Ratio	1.20	14.37	4.33		7.56	
Total Assets		528,281	601,102	14%	1,111,610	85%
Total Debt		166,667	166,667		500,000	
Total Liabilities		191,552	263,362	37%	583,462	122%
Unrestricted Net Assets		326,192	337,740		528,148	
Unrestricted Net Assets/Expenses		0.49	0.47		0.85	
Net Assets		336,729	337,740	0%	528,148	56%
Total debt/total assets	0.53	0.32	0.28		0.45	
Debt Coverage		5945.50	2033.50		4104.27	
*Operating income using average revenues over past 3 years.						
Financial Statements Audited						

Statement of Activities:

- Revenues have remained relatively flat over the last three years.
- The 95% decrease in 2020 Change in Net Assets was due to an increase in programmatic spending in response to the COVID-19 pandemic. The largest increase was in the food security programs, aimed at insuring reliable access to nutritious food within the community.
- The 18,734% increase in 2021 Change in Net Assets was due to both a reduction in programmatic spending and the forgiveness of a $109,466 PPP loan, which was recorded as non-operating income.

Statement of Financial Position:

- The 289% increase in 2020 Current Liabilities was due to growth in accruals and payables as the Corporation withheld payments in order to reserve cash during the pandemic.
- The 51% increase in 2021 Current Assets was due to an influx of cash on hand, as the corporation received additional loan funding from JDA.
- The 122% increase in 2021 Total Liabilities was due primarily to HVADC receiving the final disbursement of its original $500,000 JDA Agriculture Loan Fund loan. JDA is HVADCs only creditor.

Summary of existing HVADC JDA Ag projects

<table>
<tr><th>Business Name</th><th>Loan Amount</th><th>Total Project</th><th>Closing Date</th><th>Status</th></tr>
<tr><td>Arrowood Farms</td><td>$100,000</td><td>$1.8M</td><td>11/1/2020</td><td>Current</td></tr>
<tr><td colspan="5">Project: Arrowood Farms has renovated an existing craft brewery, expanded production capacity, and implemented a marketing program to increase visitation and agri-tourism. The build-out and new distillery project was awarded a CFA grant in 2019. Purchase of the equipment to complete the project left the company short on working capital while awaiting reimbursement from NYS. This working capital loan was a bridge until the CFA grant money was disbursed.</td></tr>
<tr><td>Talbott & Arding Co, LLC</td><td>$100,000</td><td>$2.2M</td><td>6/9/2021</td><td>Current</td></tr>
<tr><td colspan="5">Project: The cheese manufacturer and specialty prepared food company operated on three floors (including a storefront) of a very small and narrow "brownstone" on the 300 block of Warren Street in Hudson. Their project was a relocation allowing T&A to expand catering and special events, prepared food operations and specialty retail groceries, and adding specialty market-aligned merchandise. The loan funds were utilized for equipment.</td></tr>
<tr><td>Klocke Estate Holdings, LLC</td><td>$100,000</td><td>$16.0M</td><td>10/28/2021</td><td>Current</td></tr>
<tr><td colspan="5">Project: Klocke Estate Holdings, LLC (KEH) is creating an exclusive American Brandy bringing artisanal authenticity, distinctiveness, and estate terroir to a resurging spirits category. These fine brandies will be produced with local Hudson Valley grown grapes and fruit, distilled utilizing Old World European methods still used to produce Cognac. The 152-acre destination estate incorporates a vineyard, orchard, distillery, production facility and tasting room. The loan funds are being utilized as working capital during the startup phase of the operation.</td></tr>
<tr><td>Murray Bresky Consultants, LTD</td><td>$100,000</td><td>$300,000</td><td>4/20/2022</td><td>Current</td></tr>
<tr><td colspan="5">Project: The project includes the building of a covered lairage area with piping necessary to collect animal waste to avoid potential infiltration of storm water as required by the New York State Department of Environmental Conservation. The total cost of the project is $300,000, and the $100,000 is a working capital loan to complete the project.</td></tr>
<tr><td colspan="5">Pending Loans:</td></tr>
<tr><td>Tivoli Mushrooms</td><td>$50,000</td><td>$1.1M</td><td>4/20/2022</td><td>Current</td></tr>
<tr><td colspan="5">Project: Tivoli Mushrooms ("TM") originated as a passion project by Chef Devon Gilroy who, in 2014, began supplementing his cooking with wild foods, focusing mainly on foraged mushrooms. Tivoli Mushroom's first farm build out was constructed in 2018 in a 1000 square foot space in the warehouse at 99 South 3rd Street in Hudson, New York. The farm quickly grew out of the space and expanded into a 4000 square foot build out in the same building which Tivoli Mushroom currently cultivates in. Devon has recently closed on a 5-acre land purchase in Hillsdale and plans are rapidly coming together for a 15,000 sq. ft. warehouse that will give Tivoli Mushrooms room to grow into the foreseeable future. The $50,000 loan will be used for equipment. The loan is expected to close in May.</td></tr>
</table>

Original JDA Board Materials (June 27, 2016)

New York Job Development Authority

DATE: June 27, 2016

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: New York State – JDA Loan for the Creation of a Loans to Lender Program – Authorization to Make Loans with New York Job Development Authority Proceeds and Take Related Actions

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I. Background

According to a report published in May 2014 and prepared by the college of Agriculture and Life Sciences at Cornell University, an analysis of the New York State (NYS) economy for 2011 confirmed that agricultural production, support services, and manufacturing directly generated \$37.6 billion in economic activity within the agriculture industry, 115,000 jobs, and \$9.8 billion in gross domestic product.

The agriculture industry has a very strong multiplier effect. It is estimated that for every \$1 of output in agriculture there is an additional \$0.43 in non-agricultural industries activity, every additional job in agriculture generates 0.80 in non-agricultural jobs, and, every additional \$1 spent in the agriculture industry generates an additional \$1.13 in non-agricultural contributions to the NYS GDP. When factoring in these indirect and induced economic impacts, the value of direct output grows to \$53.7 billion, 206,000 jobs, and \$19.6 billion in GDP impact.

A statement of legislative findings in the New York Job Development Authority (JDA) statute acknowledges that the agriculture industry is one of the largest industries in the state. Furthermore, it notes that the agriculture industry growth is often impaired by high interest rates and the inability of agribusiness firms to attract investment capital at reasonable terms and conditions. With that in mind, the NYS legislature has specifically authorized JDA to create a Loans to Lenders Program (Public Authorities Law, Section 1835 et seq.).

II. The Project

To remain successful, agribusiness firms need to effectively and continuously adapt to changing economic conditions, consumer preferences, and technological advancements. In order to retain or grow their share of the consumer food dollar, small agribusinesses require aggressive and innovative financing methods to expand existing facilities, purchase new machinery and equipment to expand existing markets, and develop new markets for their commodities and products.

The proposed JDA Loans to Lenders Fund (the "Fund") will attempt to address the financing needs of NYS agribusiness firms by providing access to capital within a range of $50,000-$200,000.

Traditional banks have historically not made loans to this sector of the industry. Many of the federal agriculture programs are geared toward farmers and agriculture production affiliated with farms. The small agribusinesses that the fund would seek to assist are not necessarily located within rural communities, and may not be directly affiliated with farms.

Descriptions of the few major capital providers in the agriculture financing business, and a summary of how the Fund would complement—not compete with—the existing financing sources for NYS agribusiness firms, are provided below:

1) **Farm Credit East** lends to businesses in the agriculture industry in the Northeast and offers an array of loans and specialized financial products to serve the agriculture, commercial fishing, and forest product businesses. Due to credit limitations, Farm Credit East is not currently meeting the needs of the agribusiness companies that do not directly have a farm connection. Agribusiness firms, like breweries, food hubs, and distribution companies that need financing in the $50,000- $200,000 range would only receive assistance from Farm Credit East on an "exception" basis because these agribusinesses may not have a direct farm connection.

2) **The Farm Service Agency (FSA)** provides financing assistance to the agriculture industry, but potential projects are only eligible if the project is vertically integrated with a farm. Also, in order to be recognized as a farm, the agribusinesses have to produce a commodity in sufficient quantity. A small aggregator in Athens NY, for example, would be ineligible for FSA assistance, but would be a potential client for the Fund.

3) **The USDA Rural Development Program** offers access to business capital through loan guarantees that enable approved commercial lenders to provide affordable financing for businesses in eligible rural communities–"rural community" being defined as any area other than a city or town with a population of less than 50,000 inhabitants. The program bolsters the existing private credit structure through the guaranteeing of loans for rural businesses, allowing private lenders to extend more credit than they would typically be able to offer. Under the program, a small urban agribusiness not located in a rural community is *not* eligible for assistance and loans from $50,000 to $200,000 would *not* be financially feasible for participating banks under the guaranty program.

4) **The USDA Value Added Producer Grant ('VAPG") Program** helps agricultural producers enter into value-added activities related to the processing and/or marketing of bio-based products. In order to qualify, the farm has to be the applicant and grow/raise *at least* 51% of the agricultural commodity to which the value is being added. There is no rural community component for the VAPG program. Independent producers, agricultural producer groups, farmer or rancher cooperatives, and majority-controlled producer-based business ventures are eligible to apply for the grant program and some of these businesses could also be potential applicants to our proposed fund.

To address and help alleviate the economic barriers faced by many small NYS agribusiness owners, staff is seeking the Directors approval to establish a $10 Million Loans to Lenders Program which would be capitalized with existing available JDA funds. The Fund will be established to promote, develop, and advance NYS agribusiness firms throughout the state. Staff believes that the ancillary economic benefit of the Fund will further NYS' efforts to improve the general prosperity and economic welfare of the people residing within rural and surrounding communities. Via selected lenders, the Fund would make loans available to small-scale agribusiness firms that are looking to expand, but face steep economies of scale.

Based on conversations and meetings the JDA staff has had with professionals in the agricultural economic development field, such as faculty at Cornell University's College of Agriculture and Life Sciences and NYS Agriculture and Markets, JDA staff has ascertained that there is a relatively large segment of the agriculture industry that is not directly tied to agricultural production, as defined by the FSA, in need of the type of loans the Fund would provide.

The JDA Loans to Lenders Fund would target agribusiness firms that are looking to scale-up, but have limited opportunities aside from their own capital contributions. There will also be a strong focus to finance agricultural and food businesses' capital project needs by funding requests for equipment and hard assets which are essential to their success. The fund would also consider working capital loans.

The requested $10 million in JDA capital would be utilized to make a low interest loan to selected third party lenders, as per the requirements of the JDA statutes. The loan capital would help expand the selected lenders' capital base and increase access to capital for NYS agribusiness owners. While initially requesting up to $10 million in JDA capital, staff will only utilize $6 million of the approved $10 million funds for the first 5 years in order to assess the success of the program

Loans to these selected lenders would be made at an interest rate of 1% with a Ten (10) year term. Terms may be extended if performance standards, as established by JDA staff and articulated within the loan agreements, are met. The Fund would offer selected lenders, in different sections of NYS up to $2 million in loans to be earmarked for lending under the Fund. Prospective participating lenders could include:

- New York Business Development Corp (NYBDC)
- Community Capital Corp.
- PathStone
- Kinderhook Bank
- Alternatives Federal Credit Union
- Farm Credit East
- Evans Bank
- Pioneer Bank
- The First National Bank of Long Island
- Genesee/ Finger Lakes Regional Planning Council

Each selected lender will submit financial statements and go through a complete financial review process to ascertain whether it has a solid capital base, the financial capabilities to repay the JDA loan, and a history of lending to the agriculture industry.

III. Fund Structure

1) Eligible business borrowers of program funds would include value-added processors, food distribution companies, food aggregators, wineries, breweries, distillers, cider producers, Food Hub participants, and any firm, partnership, corporation, or other entity that meets the lender's criteria and program guidelines, and is approved for a loan from a participating lender to pay the cost of an agriculture business project.

2) An eligible agricultural business project would be the acquisition of and/or improvements to land or buildings located within the state, which would be used for manufacturing, warehousing, research, commercial, industrial, or other business purposes in support of the NYS agricultural industry. An eligible agricultural business project would also include the purchase of machinery and equipment and working capital used in support of the NYS agricultural industry.

3) An eligible lender would be any organization identified by sub-division eleven of section two of the NYS Banking law including any National Bank, Federal Savings and Loan Association, and NYS and Federal Credit Unions. NYBDC and any institution within the state authorized to originate and service loans, such as CDFIs, would also be eligible.

Loan Terms:

A. All loan funds should be deployed within 18-24 months after execution of the loan agreement.

B. The terms of the loans to lenders would be ten (10) years, and, at the JDA staff's discretion. An extension of up to four (4) year could be granted if the borrower is not in default of the loan agreement.

C. Loan advances will be subject to the agreed upon provisions of the loan agreement and funds will be advanced in three (3) installments to be disbursed within twenty-four (24) months of the signed loan agreement. The initial advance will be equal to 33.33% of the loan amount; the second advance will be for an additional 33.33%, and the third advanced will equal the undisbursed portion of the loan.

D. For the second and third advances, the borrower will have to represent that it has disbursed at least 70% of the aggregate of the previous advances.

E. The lenders will cap interest rates charged to potential borrowers at 8.5%.

Loans to small businesses would range from $50K-$200K, with no individual business receiving more than $200K within any 12 month period. Loans would be intended for agricultural business projects.

IV. Conclusion

Staff recommends approval of the JDA Loans to lenders program based on the fact that NYS agriculture industry is an economic engine driving growth and expanding opportunity. The JDA Loans to Lenders program will provide support for crucial funding to projects designed to help agribusinesses expand and grow their operations while creating and retaining employment throughout NYS.

V. Environmental Review

ESD staff on behalf of the JDA has determined that the requested authorization constitutes a Type II ministerial action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. The recipient of loans funds will be responsible for complying with SEQRA as applicable. No further environmental review is required in connection with this authorization.

VI. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, JDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises ("MWBEs") in the performance of the Authority's contracts. JDA's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this initiative

VII. Additional Submissions

Resolution

NEW YORK JOB DEVELOPMENT AUTHORITY – JDA Agriculture Loan Fund Program – New York Job Development Authority; Authorization to Establish Agriculture Loans to Lenders Program and to Take Related Actions

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RESOLVED, that on the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Authority, relating to the JDA Agriculture Loan Fund Program (the "Project"), the Authority is hereby authorized to make loans to the Organizations identified in the Materials in an amount not to exceed Two Million Dollars ($2,000,000) each, for an aggregate amount not to exceed Ten Million Dollars ($10,000,000), for the purposes and substantially on the terms and conditions described in the Materials, with such changes therein as the President and Chief Executive Officer, or his designee(s), may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer of the Authority or his designee(s) be, subsequent to the making of the loans, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the loans as he or she may deem necessary or appropriate in the administration of the loans; and be it further

RESOLVED, that the provision of JDA financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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