Job Development Authority Meeting

Via Teleconference

Thursday, 8/20/2020
12:30 - 1:30 PM ET

I. Corporate Actions

A. Approval of the Minutes of the December 19, 2019 Member's Meeting

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B. Mission Statement, Related Performance Measurements and FY 2019-2020 Performance Measurement Report

Re-examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2019-2020 Performance Measurement Report

Mission Statement and Performance Measures - Page 6

C. Annual Financial Reports

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

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D. 2020 Procurement Guidelines

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

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DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK JOB DEVELOPMENT AUTHORITY
Meeting of the Members
Empire State Development
633 Third Avenue
New York, New York 10017

and

New York State Department of Labor
State Campus
Building 12, Room 500
Albany, New York 12240

and

NYS Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

December 19, 2019

MINUTES

Members Present:	Elaine A. Kloss, Acting Chair - Designee - Commissioner of NYS Department of Economic Development Alfredo Vazquez Assad Adam Barsky Shaunik Panse, Designee - Superintendent of NYS Department of Financial Services Steve McGrattan, Designee - Commissioner of NYS Department of Agriculture and Markets Yvonne Martinez, Designee - Commissioner of NYS Department of Labor
JDA Staff:	London Cruz, Acting Corporate Secretary Kathleen Mize, Controller
Present for ESD:	Timothy Anderson, Senior Financial Analyst Yvonne Cooper, Paralegal Benson Martin, Director of Compliance Antovk Pidedjian, Senior Counsel - Lending Programs Ray Salaberrios, Senior Vice President - Division of Small Business – Capital Access
Also Present:	The Press The Public

The meeting of the Members was called to order at 12:33 p.m. by Acting Chair Kloss. It was noted for the record that notice to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

Acting Chair Kloss then set forth the guidelines regarding comments by the public on matters on the Agenda, as well as with regard to any conflicts of interest the Members may have regarding any of the items on the Agenda. It was noted that no such conflicts exist.

Next, Acting Chair Kloss entertained a motion to approve the Minutes of June 26, 2019 Members' Meeting.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF THE MINUTES AND RATIFICATIONS OF ACTIONS TAKEN AT THE JUNE 26, 2019 MEMBERS' MEETING OF THE NEW YORK JOB DEVELOPMENT AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held June 26, 2019 as presented to this meeting, are hereby approved and all actions taken by the Members present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

* * *

The Acting Chair then asked Mr. Salaberrios to present the final item on the Agenda.

Mr. Salaberrios noted that the Members were being asked to authorize JDA to make a real estate loan in the amount of $3,212,757 to Zweigle's, Inc.

Mr. Salaberrios explained that the loan will be used for the acquisition and renovation of real property located in Rochester, New York for a total project cost of $5,354,595.

Mr. Salaberrios further explained that the loan will assist the company in adding 13,159 square-feet of production space to its already existing 55,000 square-foot facility.

Mr. Salaberrios noted that the expansion will result in the immediate hiring of 9 new employees, with plans to hire an additional 31 new employees within five years, and will include general help, mid-level skilled labor, clerical and supervisory growth.

Following the full presentation, Acting Chair Kloss called for questions or comments. Member Barsky asked for clarification regarding the interest rate of the loan.

First, Mr. Salaberrios noted that the interest rate is 3.9 percent fixed for 20 years and further explained that DSL Federal Credit Union, the participating bank is offering an interest rate is 4.02 percent putting them in first position for a ten-year loan, 20/20 amortization at 4 percent.

Mr. Salaberrios further noted that if the loan was closed today, JDA would offer Zweigle's, Inc. a 20-year rate at 3.9 percent.

The Acting Chair called for any further questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Rochester (Monroe County) – Authorization to Make a Real Estate Loan for the Benefit of Zweigle's, Inc. and Take Related Actions

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RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a New York Job Development Authority Real Estate Loan for the benefit of Zweigle's, Inc. for an amount not to exceed $3,212,757 or 60% of the total project eligible real estate project cost, whichever is less, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chief Executive Officer of the Authority or his 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 appropriate in the administration of the Loan; and be it further

RESOLVED, that the 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; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals.

* * *

There being no further business, the meeting was adjourned at 12:42 p.m.

Respectfully submitted,

Debbie Royce
Acting Corporate Secretary

NEW YORK STATE OF OPPORTUNITY. | New York Job Development Authority

FOR CONSIDERATION
August 20, 2020

TO: The Members

FROM: Eric J. Gertler

SUBJECT: Mission Statement, Related Performance Measurements, and FY 2019 - 2020 Performance Measurement Report

REQUEST FOR: Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2019 - 2020 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.

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

II. FY 2019-2020 PERFORMANCE MEASUREMENT REPORT

During FY 2019-2020, 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. During this period, the Members approved one loan for a project evidencing firm commitments from responsible financial sources for the total project costs, exclusive of any loan request from the Authority. The total JDA Board approved amount of the loan was $3,212,757. Pursuant to Article 8 of Title 8 of the Public Authorities Law, this project was 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.

It is anticipated that the approved project of $3,212,757 will leverage $2,141,839 in private capital while retaining 57 jobs and creating 31 new jobs. Five new loans totaling 1,881,000 were approved as part of an aggregate $10,000,000 that established the JDA Agriculture Loan Program. It is anticipated that the five JDA Agriculture loans will leverage $1,528,500 in private capital while retaining 10 jobs and creating an additional 9 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.

Two transactions went into default during FY 2019—2020. The transactions, a machinery and equipment loan and a real estate loan, were made to the same borrower. The total amount of delinquent principal is $5,040,826. Resolution of these defaults is still pending.

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 2019-2020 Performance Measurement Report in accordance with the Public Authorities Law.

IV. RECOMMENDATION

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

August 20, 2020

NEW YORK JOB DEVELOPMENT AUTHORITY — Mission Statement, Related Performance Measurements, and FY 2019-2020 Performance Measurement Report — Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2019-2020 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 2019-2020 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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FOR CONSIDERATION
August 20, 2020

TO: The Members

FROM: Eric J. Gertler

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 Chief Financial Officer 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, 2020 and 2019 (the "Combined Financial Statements"), which contains the required information, is attached hereto.

The Report is being presented today instead of before June 30, 2020, as required under the Law, consistent with Executive Order No. 202.11 that allows the Director of the Authorities Budget Office (the "ABO") to disregard reporting deadlines during the current state of emergency. The ABO encouraged all public authorities to make reasonable efforts to submit the required reports as timely as is practicable, but no later than 90 days after the original deadline. The COVID-19 pandemic affected the ability of both the ESD financial team and the independent audit firm to safely work in ESD's NYC office and prevented the audit firm from being able to conduct certain on-site audit testing and other processes required under their auditing standards before the original June 30 deadline. It should be noted that the delay is only due to restrictions in place and related to COVID-19 and it is not related to the Authority's financial performance or operating results.

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II. The Report

The Report includes the following:

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

2. *Management's Discussion and Analysis* (pages 4-9)
   - This is not a required part of the basic financial statements, but is supplementary information required by the Government Accounting Standards Board and in accordance with accounting principles generally accepted in the United States of America. It is considered 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 apply certain limited procedures to the 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* (pages 10-27)
   - Combined Statements of Net Position (page 10);
   - Combined Statements of Revenue, Expenses and Changes in Net Position (page 11);
   - Combined Statements of Cash Flows (pages 12-13); and
   - Notes to Combined Financial Statements (pages 14-27).

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 28-29)
   - 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, and other matters, non-compliance with which could have a direct and material effect on the 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 they 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 30-31)
   - 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 recently completed fiscal year and there are no matters that are required to be reported under Government Auditing Standards.

III. Audit Committee

The Audit Committee of the Authority has reviewed the Report and recommends approval by the Members.

IV. Related Filing Requirements

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. However, as noted above, this submission has been delayed due to COVID-19.

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. However, as noted above, this submission has been delayed due to COVID-19.

V. **Certifications**

The Report has been certified in writing by the President and Chief Executive Officer and Chief Financial Officer 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.

Attachments
Resolutions
Certifications
New Job Development Authority Combined Financial Statements and Independent Auditors' Report March 31, 2020 and 2019

August 20, 2020

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, 2020;

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, 2020 and 2019 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.

Eric Gertler
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, 2020 and 2019 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.

Elaine A. Kloss
Chief Financial Officer

NEW YORK JOB DEVELOPMENT AUTHORITY

Combined Financial Statements
and Independent Auditors’ Report

March 31, 2020 and 2019

NEW YORK JOB DEVELOPMENT AUTHORITY

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INDEPENDENT AUDITORS' REPORT

The Authority Members
New York Job Development Authority:

Report on the Combined Financial Statements

We have audited the accompanying 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 years ended March 31, 2020 and 2019, and the related notes to combined financial statements, which collectively comprise the Authority's combined financial statements as listed in the table of contents.

Management's Responsibility for the Combined Financial Statements

Management is responsible for the preparation and fair presentation of these combined financial statements in accordance with accounting principles generally accepted in the United States of America; this includes 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.

Auditors' Responsibility

Our responsibility is to express an opinion on these combined financial statements based on our audits. We conducted our audits 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. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the combined financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the combined financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the combined financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Authority's preparation and fair presentation of the combined financial statements 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, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the combined financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the financial position of New York Job Development Authority as of March 31, 2020 and 2019, and the changes in financial position and cash flows thereof for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 4 through 9 be presented to supplement the basic combined financial statements. Such information, 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 August 12, 2020 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 the Authority's internal control over financial reporting and compliance.

EFPR Group, CPAs, PLLC

Williamsville, New York
August 12, 2020

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 year ended March 31, 2020. Please read it in conjunction with the Authority's combined financial statements.

Overview

During the year ended March 31, 2020, the Authority continued its mission to spur 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. 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 $128.4 million and $121.9 million at March 31, 2020 and 2019, respectively, as a result of improvements in collections of the reserved loans in the loan portfolio, the absorption of personnel costs by UDC, and the consolidation of the net position of 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 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 of New York and the New York Job Development Authority.

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

A summary of the Authority's financial information as of March 31, 2020 and 2019 is as follows:

Summary of Combined Statements of Net Position

	2020	2019
Assets		
Cash and equivalents, restricted cash and temporary investments	$ 137,040,480	127,696,014
Accrued interest receivable	120,471	104,719
Loans receivable, net	24,275,896	27,308,344
Financing leases, net	997,785	1,586,607
Total assets	162,434,632	156,695,684
Liabilities		
Due to New York State Urban Development Corporation	27,297,921	26,913,586
Accounts payable and accrued expenses	89,057	124,543
Total liabilities	27,386,978	27,038,129
Deferred inflows of resources - unearned income	6,608,047	7,738,831
Net position - restricted	$ 128,439,607	121,918,724

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

	2020	2019
Operating revenue:		
Loan interest	$ 1,207,781	1,547,663
Grant income	1,275,475	3,236,702
Bond fee income	2,425,000	4,075,243
Other revenue	831,014	1,234,607
Total operating revenue	5,739,270	10,094,215
Operating expenses:		
Provision for loss on loans receivable, loan guarantees and financing leases	119,733	354,287
Credit and bond related fees	60,000	59,255
General and administrative	204,768	241,595
Grant expense	1,275,475	3,236,702
Total operating expenses	1,659,976	3,891,839
Operating income	4,079,294	6,202,376
Non-operating revenue - investment income	2,845,028	2,477,429
Non-operating expenses - interest expense	(403,439)	(379,811)
Non-operating revenue, net	2,441,589	2,097,618
Change in net position	6,520,883	8,299,994
Net position - restricted at beginning of year	121,918,724	113,618,730
Net position - restricted at end of year	$ 128,439,607	121,918,724

Liquidity

The Authority's Cash and equivalents, restricted cash and temporary investments totaled approximately $137.0 million and $127.7 million at March 31, 2020 and 2019, respectively. The $9.3 million increase is primarily due to increases in the following:

- Loan and lease principal and interest collections of $6.6 million;
- Interest on investments of $3.2 million; and
- Bond fee income of $2.4 million.

These increases were offset by a $1.3 million reduction in grant funding from the Port Authority of New York and New Jersey, $1.5 million of loan disbursements and $0.1 million of other cash inflows and outflows.

The Authority's loans receivable balance totaled $24.3 million and $27.3 million at March 31, 2020 and 2019, respectively. The $3.0 million decrease is primarily due to $4.8 million principal loan collections offset by the issuance of $1.5 million in new loans and a reduction of $0.3 million in loan loss reserves.

Cash generated from operations exceeded the Authority's operating requirements for the year ended March 31, 2020 by approximately $3.1 million, primarily due to the receipt of the following:

- Bond fee income of $2.4 million;
- Loan and lease interest income of $0.6 million; and
- Contractual and program related fees of $0.4 million.

These receipts were offset by a $0.2 million reduction in General and administrative expenses and $0.1 million in bond related expenses.

Change in Net Position

The change in net position for the fiscal year ended March 31, 2020 was $6.5 million compared with $8.3 million in fiscal 2019. The $1.8 million decrease is primarily due to decreases in the following:

- Loan interest of $0.3 million;
- Grant income of $2.0 million;
- Bond fee income of $1.7 million; and
- Other revenue of $0.4 million.

These decreases were offset by a $0.2 million reduction in Provision for loss on loans receivable, loan guarantees and financing leases, $2.0 million in Grant expense and a $0.4 million increase in Investment income, including change in fair value.

Revenue

Operating revenue was approximately $5.7 million in fiscal 2020 compared to $10.1 million in fiscal 2019. The $4.4 million decrease is primarily due to a $1.7 million decrease in Bond fee income, $2.0 million in Grant income and $0.7 million in Loan interest and Other revenue.

Loan interest decreased by approximately $0.3 million due to principal loan collections of $4.8 million offset by the issuance of $1.5 million in new loans.

Grant income through ESLDC decreased by $2.0 million as less projects were funded than in the previous fiscal year.

Bond fee income decreased by approximately $1.7 million due to a lower bond issuance during the fiscal year ended March 31, 2020.

Other revenue decreased by approximately $0.4 million primarily due to a decrease in application and commitment fees.

Non-operating revenue related to Investment income, including change in fair value, increased by $0.4 million due to an increase in investment income as a result of slightly higher investment rates throughout the year.

Expenses

Operating expenses for the fiscal year ended March 31, 2020 were $1.7 million compared to $3.9 million in the fiscal year ended March 31, 2019. The $2.2 million decrease is primarily due to a $2.0 million decrease in grant expenses for ESLDC and $0.2 million in the Provision for loss on loans receivable, loan guarantees and financing leases.

Grant expense represents immediate disbursement of funds received from the Port Authority, which is an ESLDC pass through. There is no effect on net income.

In fiscal year 2020, six new loans closed totaling $1.5 million. All of the loans were issued from the JDA Agriculture Loan Fund Program. The program was created to select lenders who are authorized to make loans to New York State agribusiness firms that are looking to expand, but have limited capital access opportunities aside from providing their own capital contributions.

There were approximately $17.6 million in additional loans approved, but not closed.

Anticipated Future Events

The United States, including New York State, is presently in the midst of a national health emergency related to the COVID-19 virus. New York State was put on "pause" by Executive order of the Governor on March 22, 2020. The "pause" order remained fully in place in New York City until June 8, 2020, when Phase 1 of reopening began. The overall financial impact of COVID-19 on JDA is presently unknown, but the potential for some economic consequences exists. The total fiscal impact of COVID-19 on JDA and its future operations is not presently determinable.

Request for Information

This financial report is designed to provide a general overview of the Authority's finances for all those with an interest in 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, 2020 and 2019

Assets	2020	2019
Cash and equivalents	$ 4,996,474	1,812,134
Cash and equivalents - restricted	57,057	87,926
Temporary investments in marketable securities	131,986,949	125,795,954
Accrued interest receivable	120,471	104,719
Loans receivable, net of allowance of $1,774,392 in 2020 and $2,003,727 in 2019	24,275,896	27,308,344
Financing leases, net of allowance of $119,152 in 2020 and $226,649 in 2019	997,785	1,586,607
Total assets	162,434,632	156,695,684
Liabilities		
Due to New York State Urban Development Corporation	27,297,921	26,913,586
Accounts payable and accrued expenses	89,057	124,543
Total liabilities	27,386,978	27,038,129
Commitments and contingencies (notes 9 and 10)		
Deferred inflows of resources - unearned income	6,608,047	7,738,831
Net position - restricted	$ 128,439,607	121,918,724

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, 2020 and 2019

	2020	2019
Operating revenue:		
Loan interest	$ 1,207,781	1,547,663
Grant income	1,275,475	3,236,702
Bond fee income	2,425,000	4,075,243
Other revenue	831,014	1,234,607
Total operating revenue	5,739,270	10,094,215
Operating expenses:		
Provision for loss on loans receivable, loan guarantees and financing leases	119,733	354,287
Credit and bond related fees	60,000	59,255
General and administrative	204,768	241,595
Grant expense	1,275,475	3,236,702
Total operating expenses	1,659,976	3,891,839
Operating income	4,079,294	6,202,376
Non-operating revenue (expenses):		
Investment income, including change in fair value	2,845,028	2,477,429
Interest expense - New York State Urban Development Corporation	(403,439)	(379,811)
Non-operating revenue, net	2,441,589	2,097,618
Change in net position	6,520,883	8,299,994
Net position - restricted at beginning of year	121,918,724	113,618,730
Net position - restricted at end of year	$ 128,439,607	121,918,724

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY
Combined Statements of Cash Flows
Years ended March 31, 2020 and 2019

		2020	2019
Cash flows from operating activities:			
Cash received from interest on loans and financing leases	$	544,638	1,283,400
Cash received from bond and related fees		2,425,000	4,075,243
Other operating cash receipts		374,449	934,382
Cash paid for related bond expenses		(60,000)	(59,255)
Cash paid for general and administrative expenses		(224,752)	(244,687)
Cash paid for NYLDC operating expenses		(3,652)	(252)
Cash paid for BALDC operating expenses		-	(583)
Cash paid for NYTDC operating expenses		(86)	(583)
Net cash provided by operating activities		3,055,597	5,987,665
Cash flows from investing activities:			
Proceeds from sale of temporary investments in marketable securities		374,242,391	234,776,773
Purchase of temporary investments in marketable securities		(380,659,785)	(241,127,862)
Interest on investments		3,216,119	2,097,900
Loan disbursements		(1,496,666)	(4,528,207)
Principal collected on loans receivable		4,758,450	3,180,453
Principal collected on financing leases		821,667	1,053,707
Principal written off on financing leases		522,042	-
Reduction of Port Authority appropriation for grant disbursements		(1,275,475)	(3,236,702)
Net cash provided by (used in) investing activities		128,743	(7,783,938)
Net change in cash and equivalents		3,184,340	(1,796,273)
Cash and equivalents at beginning of year		1,812,134	3,608,407
Cash and equivalents at end of year	$	4,996,474	1,812,134

(Continued)

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY

Combined Statements of Cash Flows, Continued

		2020	2019
Reconciliation of operating income to net cash provided by operating activities:			
Operating income	$	4,079,294	6,202,376
Adjustments to reconcile operating income to net cash provided by operating activities:			
Provision for loss on loans receivable, loan guarantees and financing leases		(336,832)	54,062
Operating expenses paid by UDC		(19,105)	(10,127)
Amortization - deferred lease premiums		(647,391)	(290,911)
Changes in:			
Accrued interest receivable		(15,752)	26,648
Accounts payable and accrued expenses		(4,617)	5,617
Net cash provided by operating activities	$	3,055,597	5,987,665

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 New York 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 New York 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 New York 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.

The United States, including New York State, is presently in the midst of a national health emergency related to the COVID-19 virus. The overall consequences of the COVID-19 on a national, regional and local level are unknown, but has the potential to result in a significant economic impact. The impact of this situation on the Corporation and its future results and financial position is not presently determinable.

In May, 2020, GASB issued Statement No. 95 - "Postponement of the Effective Dates of Certain Authoritative Guidance." This Statement 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. Disclosures in note 11 have been updated accordingly.

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, 2020 and 2019 are as follows:

		2020	2019
Cash and equivalents	$	170,834	137,673
Temporary investments in marketable securities		56,582,486	52,781,979
Net position	$	56,753,320	52,919,652

The summarized statements of revenue, expenses and changes in net position of NYLDC for the years ended March 31, 2020 and 2019 are as follows:

		2020	2019
Bond fee income	$	2,425,000	-
Investment income		1,383,818	1,158,162
Other revenue		28,502	-
Operating expenses		(3,652)	(252)
Changes in net position	$	3,833,668	1,157,910

Note 3 - Local Development Corporations, Continued

(a) New York Liberty Development Corporation, Continued

In August 2019, NYLDC issued Series 2019 Liberty Bonds in the amount of $650 million, the proceeds of which will be used, together with other funds provided by the Borrower, to defease in whole, the Issuer's Second Priority Liberty Revenue Refunding Bonds, Series 2010 (Bank of America Tower at One Bryant Park Project) (the "Series 2010 Liberty Bonds"). The proceeds of the Series 2010 Liberty Bonds were used to refinance a portion of the costs of the acquisition, development and construction of the Facility.

NYLDC did not issue Liberty Bonds or notes during the year ended March 31, 2019.

Since inception, NYLDC has issued an aggregate of approximately $6.81 billion of Liberty Bonds (at face amount of approximately $6.61 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, 2020, the total outstanding conduit debt amounted to approximately $5.47 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.

(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, 2020 and 2019 is as follows:

		2020	2019
Cash and equivalents	$	830,101	243,827
Temporary investments in marketable securities		5,777,946	7,495,004
Deferred inflows of resources - unearned revenue		(6,608,047)	(7,738,831)
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, 2020 and 2019 is as follows:

		2020	2019
Grant revenue	$	1,275,475	3,236,702
Grant expenses		(1,275,475)	(3,236,702)
Change in net position	$	-	-

Note 3 - Local Development Corporations, Continued

(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, 2020 and 2019 is as follows:

	2020	2019
Cash and equivalents	$ 298,976	41,856
Temporary investments in marketable securities	2,676,702	2,868,387
Net position	$ 2,975,678	2,910,243

The summarized statements of revenue, expenses and changes in net position of BALDC for the years ended March 31, 2020 and 2019 is as follows:

	2020	2019
Interest income	$ 65,435	61,737
Other revenue	-	650,000
Operating expenses	-	(583)
Change in net position	$ 65,435	711,154

BALDC did not issue bonds during the years ended March 31, 2020 and 2019.

As of March 31, 2020, the total of outstanding BALDC bonds ("Bonds") is $520.32 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.

Note 3 - Local Development Corporations, Continued

(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, 2020 and 2019.

(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 of New York and the New York Job Development 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 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, 2020 and 2019 is as follows:

	2020	2019
Cash and equivalents	$ 500,672	189,400
Temporary investments in marketable securities	13,294,759	12,986,153
Net position	$ 13,795,431	13,175,553

The summarized statements of revenue, expenses and changes in net position of NYTDC for the years ended March 31, 2020 and 2019 is as follows:

	2020	2019
Bond fee income	$ -	4,075,243
Interest income	319,964	277,878
Other revenue	300,000	192,000
Operating expenses	(86)	(583)
Change in net position	$ 619,878	4,544,538

NYTDC did not issue bonds during the year ended March 31, 2020.

Note 3 - Local Development Corporations, Continued

(e) New York Transportation Development Corporation, Continued

In April 2018, NYTDC issued Special Facilities Revenue Bonds, Series 2018 (Delta Air Lines, Inc.- LaGuardia Airport Terminals C&D Redevelopment Project) in the aggregate face amount of $1.38 billion (at an issue price of $1.52 billion) (the "Series 2018 Bonds") (i) to finance a portion of the costs relating to a construction project to be undertaken by Delta at LaGuardia Airport in Queens, New York, consisting of the demolition of the existing Terminals C and D at LaGuardia Airport , the design and construction of new terminal facilities to be leased by Delta at LaGuardia Airport , and the design and construction of certain other facilities at LaGuardia Airport that will not be leased to Delta , and (ii) to pay certain costs of issuance related to the Series 2018 Bonds.

As of March 31, 2020, the total outstanding conduit debt is approximately $4.60 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, 2020 and 2019, 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:

		2020		2019	
		Carrying amount	Bank balance	Carrying amount	Bank balance
Insured (FDIC)	$	335,789	335,789	337,926	337,926
Uninsured - collateral held by custodian in UDC's name		4,717,742	4,717,742	1,562,134	1,562,134
Total cash and cash equivalents	$	5,053,531	5,053,531	1,900,060	1,900,060

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;
- 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, 2020 and 2019 consist of the following:

	2020		2019	
	Cost	Fair value	Cost	Fair value
U.S. Government and Federal Agency obligations	$ 131,270,034	131,986,949	124,836,420	125,795,954

Note 5 - Investments, Continued

Fair Value Measurements

Generally accepted accounting principles 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 $131,986,949 and $125,795,954 at March 31, 2020 and 2019, 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, 2020 were as follows:

2021	$ 2,128,845
2022	2,705,596
2023	2,557,025
2024	2,442,216
2025	2,422,538
Thereafter	13,794,068
	26,050,288
Less - allowance for estimated loan losses	(1,774,392)
Total	$ 24,275,896

Note 6 - Loans and Financing Leases Receivable, Continued

Minimum lease payments to be received under financing lease agreements for each year as of March 31, 2020 were as follows:

2021	$ 621,274
2022	375,704
2023	207,130
	1,204,108
Less:	
Portion attributable to interest	(87,171)
Allowance for possible credit losses	(119,152)
Total	$ 997,785

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, 2020, with comparative totals for the year ended March 31, 2019, is as follows:

	Allowances for losses on			
		Financing	Totals	
	Loans	leases	2020	2019
Beginning balances	$ 2,003,727	226,649	2,230,376	2,176,314
Net provisions (reductions)	(229,335)	(107,497)	(336,832)	54,062
Ending balances	$ 1,774,392	119,152	1,893,544	2,230,376

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, 2020 and 2019, 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 $0.6 million during the years ended March 31, 2020 and 2019, respectively. The balance due at March 31, 2020 and 2019, excluding grant funds held by the Authority, amounted to $27.3 million and $26.9 million, respectively. 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-five fiscal years and amounts to approximately $8.5 million at March 31, 2020.

Note 9 - Commitments

Special Purpose Fund loans approved by the Authority, but not yet closed, approximated $17.6 million at March 31, 2020.

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. 83 - "Certain Asset Retirement Obligations." This Statement, issued in November 2016, addresses accounting and financial reporting for certain asset retirement obligations (AROs). Governments that have legal obligations to perform certain future asset retirement activities related to tangible capital assets should recognize a liability based on the guidance in this Statement. The requirements of this Statement are effective for reporting periods beginning after June 15, 2019, which is the fiscal year beginning April 1, 2020 for the Authority. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

GASB Statement No. 84 - "Fiduciary Activities." This Statement, issued in January 2017, established criteria for identifying fiduciary activities of all state and local governments. The focus of the criteria generally is on (1) whether a government is controlling assets of the fiduciary activity and (2) the beneficiaries with whom a fiduciary relationship exists. This Statement is effective for reporting periods beginning after December 15, 2019, which is the fiscal year beginning April 1, 2020 for the Authority. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

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.

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

GASB Statement No. 88 - "Certain Disclosures Related to Debt, Including Direct Borrowings and Direct Placements." This Statement, issued in April of 2018, requires that additional essential information related to debt be disclosed in notes to financial statements, including unused lines of credit; assets pledged as collateral for the debt; and terms specified in debt agreements related to significant events of default with finance-related consequences, significant termination events with finance-related consequences, and significant subjective acceleration clauses. This Statement also requires that existing and additional information be provided for direct borrowings and direct placements of debt separately from other debt. The provisions of this Statement are effective for reporting periods beginning after June 15, 2019, which is the fiscal year beginning April 1, 2020 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. 89 - "Accounting for Interest Cost Incurred before the End of a Construction Period." This Statement, issued in June 2018, establishes accounting requirements for interest cost incurred before the end of a construction period. Such interest cost includes all interest that previously was accounted for in accordance with the requirements of paragraphs 5-22 of Statement No. 62 - "Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements" which are superseded by this Statement. The requirements of this Statement are effective for reporting periods beginning after December 15, 2020, which is the fiscal year beginning April 1, 2021 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. 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.

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

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. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

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. This Statement is not expected to have a material effect 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.

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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, which comprise the combined statement of net position as of March 31, 2020, and the related combined statements of revenue, expenses and changes in net position and cash flows for the year then ended, and the related notes to combined financial statements, and have issued our report thereon dated August 12, 2020.

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) to determine the 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 may exist that have not been identified.

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 determination of financial statement amounts. 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
August 12, 2020

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INDEPENDENT AUDITORS' REPORT ON INVESTMENT COMPLIANCE

The Authority Members
New York Job Development Authority:

Report 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, 2020.

Management's Responsibility

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.

Auditors' Responsibility

Our responsibility is to express an opinion on investment compliance based on our audit of the compliance requirements referred to above. We conducted our audit 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. An audit includes examining, on a test basis, evidence supporting the Authority's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on investment compliance. However, our audit does not provide a legal determination of the Authority's compliance.

Opinion on Investment Compliance

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, 2020.

Other

In accordance with Government Auditing Standards, we are required to report 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 effect 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 or grant agreements, and abuse that has a material effect on the subject matter. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our audit to express an opinion on whether the Authority complied with the aforementioned requirements and not for the purpose of expressing an opinion on the internal control over compliance with those requirements or other matters; accordingly, we express no such opinion. The results of our tests disclosed no matters that are required to be reported under Government Auditing Standards.

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
August 12, 2020

FOR CONSIDERATION
August 20, 2020

TO: The Members

FROM: Eric J. Gertler

SUBJECT: 2020 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 26, 2019 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 "2019 Guidelines"). There have been no substantive changes to Executive Orders and discretion to authorities in the past year. However, in the past year the State Finance law subdivision 6 of section 163 was amended to increase the threshold amount for discretionary buying without a formal competitive process from $200,000 to $500,000 for Small Businesses, certified MWBE and SDVOB vendors. (section 2.6). ESD internal staff review changes include a section to define pre-qualified lists, adding a separate section for conflicts of interest and minor revisions across the guidelines for consistency and clarity. Accordingly, the proposed 2020 Guidelines (the "2020 Guidelines") incorporate this amendment, as well as the changes for consistency.

As with the 2019 Guidelines, the 2020 Guidelines are in lockstep with ESD's procurement guidelines.

II. Procurement Guidelines Summary

The proposed 2020 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 2020 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 2020 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the Corporation's Bid Opening Guidelines and the compilation of a procurement record for every covered procurement contract.

The proposed 2020 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.

Clarification changes, notably defining a pre-qualified list and to encourage a broader solicitation within such list have been made (section 2.8).

The proposed 2020 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 2020 Guidelines presented to the Members for approval.

III. Environmental Review

ESD staff has determined that approval of the proposed 2020 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 2020 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 2020 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

August 20, 2020

NEW YORK JOB DEVELOPMENT AUTHORITY – 2020 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 2020 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.

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NEW YORK JOB DEVELOPMENT AUTHORITY
Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts

Effective August 20, 2020

Table of Contents

NEW YORK JOB DEVELOPMENT AUTHORITY
Guidelines Regarding the Use, Awarding, Monitoring and
Reporting of Procurement Contracts

Effective August 20, 2020

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 in lockstep with those of the New York State Urban Development Corporation, d/b/a Empire State Development ("ESD").

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 "**offerer**" or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming a JDA vendor, a "**respondent**."

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 p. 12), 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 ESD'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 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 (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 Procurements Director.

1.2. <u>Types of Procurement Contracts</u>

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with a 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 <u>personal services</u> 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.

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.TheProcurement Process Guide

I. Over $5,000 and below $50,000

If JDA's procurement needs can be met by a preferred source vendor, you must use this option. See next page.

If JDA's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.

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. See Section 2.6.

If JDA's needs cannot be met by the above options, you may elect to use an informal solicitation. 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 Source or Sole Source this request in the justification memo.

If JDA's needs cannot be met by the above options, you may elect to use a discretionary purchase through the use of a

II. $50,000 and over

If JDA's procurement needs can be met by a preferred source vendor, you must use this option. See next page.

If JDA's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.

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, 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 ESD's needs can be met by more than one vendor.

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. Information about centralized contract offerings can be obtained from the list of approved State contractors maintained by OGS.

Note that even if an OGS centralized contractor is available, it is required where feasible that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, including at least one MWBE or SDVOB certified firm (see s. 2.6), unless a compelling justification exists (e.g., experience with a particular project). Staff should confirm that a firm is certified on either the MWBE directory (https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp) or SDVOB directory https://online.ogs.ny.gov/SDVOB/search).

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), ESD may purchase services or commodities from small business concerns, from those certified pursuant to Article 15-A of the Executive Law (MWBEs), rom 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 ESD’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 ESD’s needs;
- ensure that the commodities, services or technology acquired meet ESD’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 ESD buys from responsible vendors.

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://nyspro.ogs.ny.gov/sites/default/files/uploaded/PSPiggybackGuide_2.2015.pdf. 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 ESD 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.

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:

Sole Source. Only one source for the goods or services is available. Three examples of sole source procurements: (i) proprietary software compatible with ESD 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.

(a) **Single Source**. The required goods or services are available from two or more vendors, but a particular vendor is preferable because of specific factors such as, without limitation, past experience with a particular issue; familiarity with JDA and/or ESD's operations; experience with similar projects of JDA and/or ESD, other agencies or at other levels of government; demonstrated expertise; or capacity and willingness to respond to the situation. An example would be a competitively-procured environmental consultant who worked on an EIS for a project and now a Supplemental EIS is required for the same project; many consultants could do the work, but the original consultant's familiarity with the project justifies selection as a single source. Where a vendor's past experience or familiarity with JDA/ESD was gained through a non-competitively awarded contract, staff are strongly encouraged to conduct a competitive solicitation rather than pursue a single source exemption for that vendor to perform additional work. ***In general, JDA's policy is to minimize the use of single source contracts and to maximize the use of competitive procurement methods.***

(b) **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

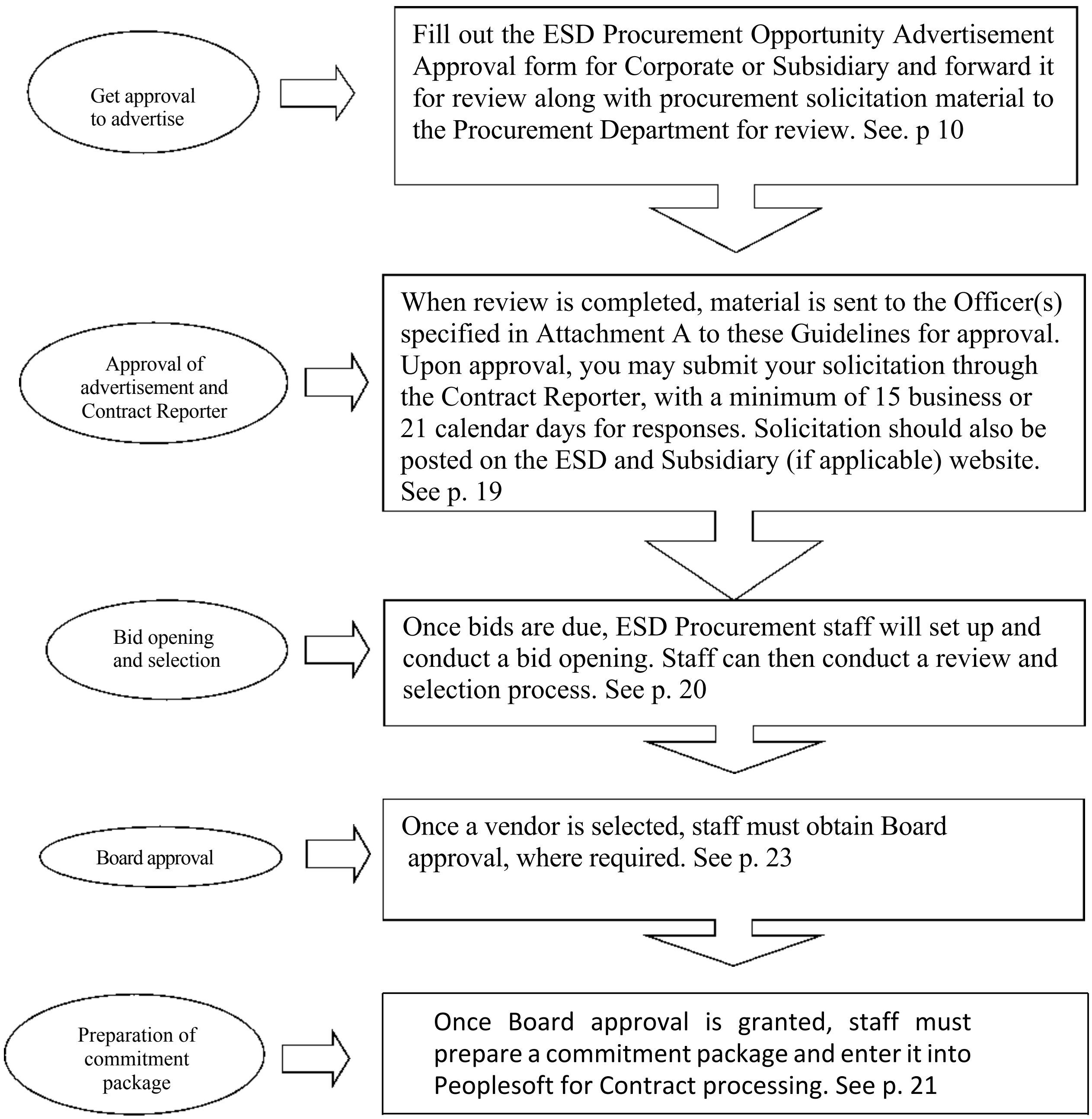
The initiator of the proposed contract must complete a Contract Reporter Exemption form, signed by the Officer(s) specified in Attachment A to these Guidelines.

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 here. 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 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



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 ESD 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 ESD'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 SDVOB[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 ESD who is the only person at ESD to whom communications about the solicitation may be directed. Failure to abide by this requirement may result in disqualification of the bidder.

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[1] Program regulations provide that ESD/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) ESD/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;

A copy of the ESD standard terms and conditions to which the successful bidder will be expected to agree. This will generally be JDA'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.

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

(x) 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;

(xi) 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 here.

7. Types of Solicitations

7.1. General

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).

Click here to view ESD's standard RFP template.

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.

2. Compliance with Other Laws

8.1. Compliance with State Finance Law § 139-j 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 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 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 Offerer'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 Offerer's Affirmation of Understanding and Agreement; and 2) the Offerer's Disclosure of Prior Non-Responsibility Determinations.
When contacted during the Restricted Period, 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, staff must inquire whether the person or organization making the contact was the offerer or retained, employed or designated by the offerer. All such recorded contacts must be included in the procurement record for the procurement contract.
In addition, 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 offerer 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, staff engaged in the procurement process should review JDA's policy regarding permissible lobbying contacts, and the required language for solicitations by JDA 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 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 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 § 5-a 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 ESD contracts must contain a representation that the vendor's policies or practices do not fail to address harassment and discrimination.

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

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 <u>MWBE Operations Primer</u> 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 <u>SDVOB Operations Guidance and the</u> Guidelines for the Use of Set Aside Contracts with SDVOBs published by OGS to ensure compliance with SDVOB-related laws and requirements.
***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/files/rfp/MWBE%20BGA%202019%20Listing%20of%20Certified%20Firms%20Expressing%20Interest.pdf

Executive Order 162

Pursuant to Executive Order Number 162 ("EO 162"), all New York State contracts, agreements and procurements issued and executed on or after June 1, 2017 require contractors to submit detailed workforce utilization reports that include the job title and gross wages of each employee of a contractor and subcontractor performing work on a 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 ESD'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 ESD's compliance with the MWBE and SDVOB Programs. OCSD works with 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.

[2] "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 Firms 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, ESD/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://intranet.empire.internal/financeProcurement.asp or https://esd.ny.gov/about-us/corporate-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.internal/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 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/FrontEnd/VendorSearchPublic.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 taken into account. 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. See also Section 7.1 above if price is weighted at less than 20%.

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. <u>Bid Opening Procedures</u>

All 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 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 coverbids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. JDA 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. <u>Bid Evaluation and Vendor Selection</u>

The initiating Department Head should establish, as early as practicable prior to bid opening, a team of at least three JDA/ESD staff members with relevant knowledge and experience of the goods and/or services being procured. One member should come from Contracts Administration or Finance. In some cases, one or more non-JDA/ESD team members may 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/ESD 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/ESD staff is included in the review team, the team must be expanded in number such that a majority will always be JDA/ESD 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.

In reviewing bids, all members of the team 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 retained by the Procurements Director as part of the Procurement Record.

8.13. Determination of Responsibility – "CLIP Review" and the VendRep form

Category	**Factors to be considered include, but not are limited to:**
Financial and Organizational **C**apacity	Assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, and proper auditing and accounting controls.
Legal Authority	Authority to do business in New York State, licenses, and registrations.
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.
Previous Contract **P**erformance	Reports of less than satisfactory performances, early contract termination for cause, contract abandonment, court determinations of breach of

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." There are two methods of ascertaining vendor responsibility:"CLIP" review. This review involves an assessment of responsibility in four categories:**For all procurements, the initiator must submit a memo to the Procurements Director attesting that the initiator conducted a CLIP review and finds the vendor to be responsible and indicating what steps were taken to make that determination.** 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.

CLIP review is not needed for procurements from the OGS Centralized Contracts list.

- 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 https://nyspro.ogs.ny.gov/sites/default/files/uploaded/OSCBestPracticeforVendorResponsibility. 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 ESD), must remain "responsible" throughout the term of the contract. There are serious consequences if contractors maintain responsible. This requirement is expressly included in ESD 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 ESD 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 ESD 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.

8.15 Conflicts of Interest

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

ESD shall have the right to disqualify any Respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD 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 ESD/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 ESD/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 ESD/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. <u>Contract Approval</u>

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 JDA 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 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 source.

9.2. ESD 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.

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 Board, 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.

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 Board. 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 Chief Executive Officer or Chief Financial Officer <u>without further Board approval</u>, unless the amendment increases the contract to an amount above $250,000 and the Board's approval has not been previously obtained.

iii. If a proposed amendment to a contract for personal services will increase the **<u>term</u>** of the contract to more than one year, <u>Board approval is necessary, and Contract Reporter advertising is necessary</u> 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 **<u>will not increase the contract amount</u>**, the initiator need not submit a new Commitment Request Package.

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 JDA. Note that such an amendment may require OSC review and approval (see section 10.5). If in doubt, consult the Legal Department.

<u>Example A</u>: 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.

<u>Example B</u>: 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 is less than $50,000, it too can be procured via purchase order. However, staff should carefully examine future needs to avoid repeated awards of small noncompetitive amendments.

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 s. 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 more)

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 (Offerer 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 more clear and 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 responsibility determination/CLIP 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. JDA Board 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 JDA 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. 8. A completed Commitment Package Checklist. The initiator signs and obtains the Department Head approval on the Commitment Request form and forwards the commitment package (all documents listed above) to Procurement for compliance review and approval. When approved, Procurement will route the commitment package to Contract Administration.

   b. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various departments.

c. Upon obtaining in-house approvals, Contract Administration sends all three (3) sets of the contract or amendment package to the vendor for signature(s).

d. After receiving three (3) signed sets from the vendor, Contract Administration sends all three sets to the Officer(s) specified in Attachment A to these Guidelines for signature.

e. One 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. Department 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.

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/ESD 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/ESD 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

Public Officers Law § 73 and ESD's Ethics Policies impose restrictions on former ESD officers and employees deriving compensation from JDA/ESD contracts or appearing before JDA/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 JDA/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 JDA/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 Members when and as required.

15. Reporting

15.1. Annual Reports

Annually, ESD's VP/Contract Administration shall prepare for the Board's 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)