



## Harlem Community Development Corporation

### MEMORANDUM

**TO:** The Directors

**FROM:** Rose Jeffrey, Corporate Secretary

**DATE:** July 16, 2019

**RE:** **Board of Directors' Meeting – Friday, July 19, 2019**

**CC:** Eunice A. Jackson

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Notice is hereby given to all Directors of the Harlem Community Development Corporation ("Harlem CDC") that a Board of Directors meeting, duly called by the President of the Corporation, will be held on **Friday, July 19, 2019 at 10:00 a.m.** in the offices of the Corporation, located in the Adam Clayton Powell Jr. State Office Building at 163 West 125<sup>th</sup> Street, 17<sup>th</sup> Floor, New York, New York.

The agenda and description of the matters to be considered at the meeting are attached.



**Harlem Community  
Development  
Corporation**

**BOARD OF DIRECTORS' MEETING**

**Friday, July 19, 2019**

**10:00 A.M.**

**AGENDA**

**CORPORATE ACTION:**

Approval of minutes for the March 22, 2019 Board of Director's Meeting.

**FOR CONSIDERATION:**

**WEATHERIZATION DIVISION AMENDED BUDGET** – Approval of Harlem CDC's Amended Weatherization Division Budget for Fiscal Year 2018/2019 (April 1, 2018 – March 31, 2019); Authorization to Take Related Actions

**VICTORIA THEATER REDEVELOPMENT PROJECT** – Operator and Manager of Cultural Arts Component - Authorization to Designate Operator and Manager and Enter into Lease/Operating Agreement; Authorization to Take Related Actions

**PROPERTY DISPOSITION GUIDELINES** - Approval of Property Disposition Guidelines, Appointment of Contracting Officer and Authorization to Take Related Actions

**PROCUREMENTS GUIDELINES** - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

**FOR INFORMATION:**

President's Report

**NEW BUSINESS**

**OLD BUSINESS**

**ADJOURNMENT**

**ITEM**

**1**

**Harlem Community Development Corporation  
Meeting of the Board of Directors  
163 West 125<sup>th</sup> Street, 17<sup>th</sup> Floor  
New York, NY 10027**

**March 22, 2019**

**Minutes**

**In Attendance**

**Directors:** Freida Foster, Chairperson Pro Tem  
Holley Drakeford  
Keisha Sutton-James

**Designees:**

Earnestine Bell-Temple for Assemblyman Al Taylor  
Mili Bonilla for Council Member Diana Ayala  
Aneiry Batista for NYS Congressman, Adriano D. Espaillat  
Yolanda Ford for Superintendent of NYS DFS, Linda A. Lacewell  
Shana Harmongoff for New York State Senator, Brian Benjamin  
Aya Keefe for Councilman Mark Levine  
Lermond Mayes for NYS Assembly Member, Inez E. Dickens  
Nicole Migliore for NYS Assembly Member, Daniel O'Donnell  
Arva Rice for Manhattan Borough President, Gale Brewer  
Keith Lilly for Councilman Bill Perkins  
Terell Berock for Senator Jose M. Serrano

**Harlem CDC  
Officers:** Curtis L. Archer, President  
Rose Jeffrey, Corporate Secretary

**Harlem CDC Staff:** Melvin Norris, Exec. V.P. & Director of Small Business Services

**ESDC Staff  
& HCDC Counsel:** Eunice Jackson, Esq., Senior Counsel

**Guests Present:** Destiny Burns, ESD  
Deneane Brown from Housing and Community Renewal

**Stenographer:** Nicole Ellis, MGR Reporting, Inc.

The meeting of the Board of Directors (the "Board" or the "Directors") of the Harlem Community Development Corporation ("Harlem CDC" or the "Corporation") was called to order at 10:28 A.M. by Corporate Secretary Rose Jeffrey. It was noted for the record that the meeting was being webcast. Ms. Jeffrey further noted that the Chairperson's position for the Board of Directors is currently vacant. Robert's Rules of Order state that in the absence of a Chairperson or a Vice-President, it is the duty of the secretary to call the meeting to order, and to preside until the election of a Chairperson, Pro Tem.

Ms. Jeffrey stated, that it is proposed that the Directors elect Freida Foster as Chairperson, Pro Tem, for the purpose of chairing the March 22, 2019 meeting. Ms. Jeffrey asked if there was any objection to Ms. Foster serving as Chairperson Pro Tem. Hearing no objection, Ms. Jeffrey announced that Freida Foster would serve as Chairperson Pro Tem and turned the meeting over to Madam Chairperson (the "Chair").

Ms. Foster stated that, before getting started she would like to recognize the new members to the Board; Mr. Terrell Brock from Senator Serrano's office, Ms. Yolanda Ford from Superintendent Linda Lacewell's office and Mr. Keith Lilly from Senator Perkins office.

After a round table introduction of all attendees, the Chair stated that the Directors have received all relevant written materials in advance of the meeting and are free to ask questions at any time. Consistent with the policy of the parent corporation, Empire State Development, public comments on the items on the agenda are also welcome. After each item is presented and any comments are received from the Directors, the members of the public will be allowed to provide comments which will be limited to two minutes and should only address the items that are under consideration.

Before beginning the substantive portion of the meeting, the Chair asked the Directors whether anyone had any potential conflicts of interest with respect to any of the items on the proposed agenda.

Hearing none, the Chair stated that the foregoing has been noted for the record.

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The Chair then asked for a motion on the minutes for the Directors' May 11, 2018 meeting.

There being no further questions or comments, upon motion duly made and seconded, the May 11, 2018 board meeting minutes were adopted.

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The Chair then called on Ms. Destiny Burns to present the request for approval of Harlem CDC's Fiscal Year 2019/2020 Operating, Capital and Weatherization budgets.

Ms. Burns stated that according to the New York State Finance Law, the Directors are requested to adopt Harlem CDC's annual operating, capital and weatherization budgets for the fiscal year ending March 31, 2019.

Ms. Burns stated that the proposed 2019/2020 budget is largely consistent with the previous year for the Operating Budget at \$1,417,336, which reflects an increase of approximately \$48,000, most of which covers fringe and salaries for Harlem CDC's nine full time staff at a total of \$1,178,741. The remaining \$238,595 covers administrative and operational costs. A breakdown of the budget is provided in the materials as Attachment A.

Ms. Burns then said that the adoption of this budget will ensure that HCDC continue to provide grants, small business development, home buyer and workforce development assistant to the local Harlem Community.

Ms. Burns further stated that the proposed capital budget of \$250,000 will allow HCDC to cover the cost of the renovation of its current office space which is scheduled to take place during this fiscal year.

Finally, Ms. Burns stated that the weatherization budget of \$1,160,015 represents an increase of approximately \$143,000 from the previous year. The salaries and fringe benefits for the program's seven full-time staff, totaling \$608,848 represents an increase of approximately \$21,000. Non-personal costs equaling \$551,221 increased about \$120,000.

The Weatherization Assistance Program ("WAP") is federally funded by the U.S. Department of Energy and the U.S. Department of Health and Human Services and is administered through the New York State Department of Homes and Community Renewal. Adoption of the WAP budget will allow the staff to facilitate upgrades that will help to reduce energy use and lower the heating and cooling costs of residents of Harlem.

There being no questions or comments, upon motion duly made and seconded, the following resolutions for Harlem CDC's Corporate, Capital and Weatherization budgets for Fiscal Year 2019/2020 were unanimously adopted.

Harlem Community Development Corporation ("Harlem CDC") – Approval of Harlem CDC's Fiscal Year 2019-20 Operating and Capital Budgets; Authorization to Take Related Actions

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RESOLVED, that based upon the materials presented at this meeting (the 'Materials'), a copy of which is ordered filed with the records of the Corporation, the Board of Directors of the Corporation does hereby authorize, approve and adopt the Harlem Community Development Corporation's FY2019-20 Operating and Capital Budgets, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the President of the Corporation and/or President's designee(s) be, and each of them, hereby is authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Corporation's FY2019-20 Operating and Capital Budgets; and be it further

RESOLVED, that the President of the Corporation and/or the President's designee(s), and each of them, hereby is authorized and directed to execute and deliver all documents and to take all related actions as each of them deems necessary or appropriate to effectuate the forgoing.

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Harlem Community Development Corporation ("Harlem CDC") – Approval of Harlem CDC's Fiscal Year 2019-20 Weatherization Division Budget; Authorization to Take Related Actions

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RESOLVED, that based upon the materials presented at this meeting (the 'Materials'), a copy of which is ordered filed with the records of the Corporation, the Board of Directors of the Corporation does hereby authorize, approve and adopt the Harlem Community Development Corporation's FY2019-20 Weatherization Budget, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the President of the Corporation and/or President's designee(s) be, and each of them, hereby is authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Weatherization Division's FY2019-20 Budget; and be it further

RESOLVED, that the President of the Corporation and/or the President's designee(s), and each of them, hereby is authorized and directed to execute and deliver all documents and to take all related actions as each of them deems necessary or appropriate to effectuate the forgoing.

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Next, the Chair asked Mr. Archer to present the President's Report.

Mr. Archer stated that the President's Report is in the materials and is for informational purposes only, no vote will be required. Mr. Archer spoke briefly about the record number of small business and homebuyer workshops that were held in 2018. He thanked board member Holly Drakeford for facilitating a workshop with community Board 11 and encouraged the board members to inform their constituents of the services offered by Harlem CDC.

In addition, Mr. Archer mentioned that Harlem CDC has been hosting the Service Core of Retired Executives ("SCORE"), for counseling small businesses one-on-one in the office and Workshop In Business Opportunities ("WIBO") which teaches business owners how to grow sustainable businesses, through a 16-week program.

Mr. Archer concluded that Harlem CDC is the Harlem satellite office for the State certification of MWBE businesses.

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There being no further business, upon motion duly made and seconded, the Harlem CDC's Board of Directors meeting was adjourned at 10:41 A.M.

Respectfully Submitted by,

Rose Jeffrey  
Corporate Secretary



**ITEM**

**2**



**FOR CONSIDERATION**

July 19, 2019

**TO:** The Directors

**FROM:** Curtis L. Archer, President

**SUBJECT:** Weatherization Amended FY 2018/2019 Budget

**REQUEST FOR:** **WEATHERIZATION DIVISION AMENDED BUDGET** – Approval of Harlem CDC's Amended Weatherization Division Budget for Fiscal Year 2018/2019 (April 1, 2018 – March 31, 2019); Authorization to Take Related Actions

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**I. Requested Action**

It is requested that the board of directors of Harlem CDC (the "Directors") approve an amendment to Harlem CDC's Weatherization Division Budget for Fiscal Year 2018/2019 ("Weatherization Budget").

**II. Background**

The Weatherization Assistance Program ("WAP") is funded by allocations from the US Department of Energy ("DOE") and the US Department of Health and Human Services and administered through the NYS Homes and Community Renewal ("HCR"). On March 16, 2018 the Directors approved a Weatherization Budget of \$1,016,640 consisting of program allocation of \$946,640 augmented by \$70,000 of HCDC WAP Construction Management fees.

**III. HCDC FY 2018/2019 Weatherization Budget Amendment**

In November of 2018 HCR/DOE approved a budget increase of \$193,611; increasing its portion of the program budget from \$946,640 to \$1,140,251. The Weatherization budget has been amended to \$1,210,251 to reflect the increased WAP funding of \$1,140,251 in addition to the \$70,000 construction management fees.

**IV. Recommendation**

It is recommended that the Directors approve the amendment of Harlem CDC's Amended Weatherization Division Budget for Fiscal Year 2018/2019 as set forth in these materials.



July 19, 2019

**Harlem Community Development Corporation ("Harlem CDC") – Approval of Harlem CDC's Amended Weatherization Division Budget for Fiscal Year 2018/2019 (April 1, 2018 – March 31, 2019); Authorization to Take Related Actions**

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RESOLVED, that based upon the materials presented at this meeting (the 'Materials'), a copy of which is ordered filed with the records of the Corporation, the Board of Directors of the Corporation does hereby authorize, approve and adopt the Harlem Community Development Corporation's Amended Weatherization Division Budget for Fiscal Year 2018/2019, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the President of the Corporation and/or President's designee(s) be, and each of them, hereby is authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Amended Weatherization Division's FY 2018/2019 Budget; and be it further

RESOLVED, that the President of the Corporation and/or the President's designee(s), and each of them, hereby is authorized and directed to execute and deliver all documents and to take all related actions as each of them deems necessary or appropriate to effectuate the foregoing.

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**ITEM**

**3**



FOR CONSIDERATION

July 19, 2019

TO: The Directors

FROM: Curtis L. Archer

SUBJECT: Victoria Theater Redevelopment Project – Operator/Manager of Cultural Arts Component

REQUEST: **VICTORIA THEATER REDEVELOPMENT PROJECT** – Operator and Manager of Cultural Arts Component - Authorization to Designate Operator and Manager and Enter into Lease/Operating Agreement; Authorization to Take Related Actions

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I. Background

The Victoria Theater, located at 235-237 West 125th Street, is owned by HCDC and has been vacant since 1997. Harlem Community Development Corporation (“HCDC”, “Owner”) and its parent corporation, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), in 2012 adopted a General Project Plan (“GPP”) and in 2013 affirmed a Modified General Project Plan (“MGPP”) for the Victoria Theater Redevelopment Project.

Victoria Theater Redevelopment Project (“Victoria Project”), scheduled for completion in 2019 is a \$164 million project that will transform the long-vacant Victoria Theater into a 385,000-square foot and 27-story mixed-use development. The Victoria Project consists of a full-service hotel with approximately 200 keys; approximately 200 affordable and market-rate residential rental apartments; 25,000 square feet of retail space; and 25,000 square feet of Cultural Arts Space (“Cultural Unit”). The Victoria Project will be operated as a condominium with HCDC as the owner of the Cultural Unit condominium unit.

233 West 125th Street Danforth LLC (“Danforth”) pursuant to a development lease between Danforth and HCDC (“Development Lease”), is obligated to construct the Victoria Project, including the buildout of the core and shell of the Cultural Unit. The Development Lease also obligates Danforth to direct its architect to incorporate within the architectural plans and specifications for the Victoria Project, specific design requirements for the Cultural Unit. The Developer has retained Flintlock Construction Services LLC (“Flintlock” or “Contractor”) for construction services and Aufgang Architects (“Aufgang”) for architectural services.

In June 2015, the HCDC Directors (“Directors”) Conditionally Designated Apollo Theater Foundation, Inc. (“Apollo” or “Tenant”) as the Operator/Manager of the Cultural Unit at the

Victoria Project. The HCDC further authorized HCDC to enter into negotiations with Apollo over the terms of a lease/operating agreement to operate and manage the Cultural Unit.

HCDC and Apollo have worked diligently on the planning and construction of the Cultural Unit and the negotiation of lease terms and are nearing the end of lease negotiations.

II. Essential Terms of the Lease

**LANDLORD:** Harlem Community Development Corporation

**TENANT/OPERATOR:** Apollo Theater Foundation, Inc. ("Apollo")

**PREMISES:** 233-237 West 125<sup>th</sup> Street New York, NY

**ANNUAL BASE RENT:** \$1

**TERM:** Commencing upon substantial completion of the Victoria Project and ending on November 15, 2083

**PERMITTED USE:** Theaters and offices for not-for-profit cultural arts organizations and related ancillary space in accordance with the operation of first-class performance and office space.

**DESIGN COSTS:** Apollo agrees to pay certain architectural fees associated with preparing the plans and specifications for the core and shell, interior build-out and finishes of the Cultural Unit and for administering the construction thereof. The Developer's architect shall file the plans and will be the architect of record.

**VICTORIA THEATER**

**CULTURAL PARTNERS**

**("CULTURAL PARTNERS"):** Cultural Partners Harlem Arts Alliance, JazzMobile and The Classical Theatre of Harlem, or other locally-based cultural organizations to be selected and approved by Apollo in consultation with HCDC, are to be offered office space and theater space at below-market rents. Apollo will offer other not-for-profit and community organizations use of the theater space on a sliding scale basis comparable to rates charged at comparable theaters.

**CONSTRUCTION BUDGET:** Apollo commits to invest, a minimum of two million (\$2,000,000.00) dollars for the purchase and installation of furniture, fixtures and equipment ("FF&E") for the Cultural Unit.

<b>COMMON CHARGES:</b>	Tenant will be responsible for 100% of the common charges allocable to the Cultural Unit.
<b>OPERATING EXPENSES:</b>	Tenant responsible for all operating expenses related to the Cultural Unit, including but not limited to the cost of gas, electric, heat, hot water, cleaning, extermination, and trash removal.
<b>REAL PROPERTY TAX:</b>	Any real property tax due on the Cultural Unit shall be the responsibility of the Landlord for the first twenty (20) years of the Term. HCDC as the owner of the Cultural Unit will be exempt from real property taxes.
<b>PILOT:</b>	For so long as a not-for-profit arts organization is operating the space for qualifying cultural non-profit purposes, HCDC will not require the operator to pay PILOT payments.
<b>NAMING RIGHTS:</b>	Apollo shall have the right to name the Cultural Unit, including, without limitation, the theaters and lobby, stages, ticket booth or kiosk, gallery, concession area and all elements of the office space, subject to the approval of HCDC, such approval not to be unreasonably withheld, conditioned or delayed.

### III. Responsible Parties

Pursuant to State Finance Law Section 139-j and 139-k and ESD's policy related thereto, staff has (a) considered the ability of Apollo Theater Foundation, Inc. to perform the services as set forth in these materials, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff finds Apollo Theater Foundation, Inc. to be responsible.

### IV. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises (MWBEs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30%. The overall goal shall include a Minority-Owned Business Enterprise Participation Goal of 22% and a Women-Owned Business Enterprise Participation Goal of 8% related to the cost of the construction of the core and shell, interior build-out and finishes.

V. Environmental Review

ESD staff on behalf of HCDC has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VI. Requested Actions

The Directors are requested to authorize the Corporation to Designate the Apollo Theater Foundation as the Operator/Manager of the Cultural Arts Space at the Victoria Theater Redevelopment Project (235-237 West 125<sup>th</sup> Street) and enter into a lease/operating agreement with Apollo Theater Foundation, Inc. substantially as set forth in these materials.

VII. Recommendation

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

VIII. Attachments

Resolution





July 19, 2019

**VICTORIA THEATER REDEVELOPMENT PROJECT – Operator and Manager of Cultural Arts Component - Authorization to Designate Operator and Manager and Enter into Lease/Operating Agreement; Authorization to Take Related Actions**

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RESOLVED, that based on the materials presented at this meeting (the “Materials”) a copy of which is hereby ordered filed with the records of the corporation, the Corporation hereby finds Apollo Theater Foundation, Inc. to be responsible; and be it further.

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to Designate Apollo Theater Foundation, Inc. as the operator and manager of the Cultural Arts Space at the Victoria Theater Redevelopment Land Use Improvement and Civic Project at 235-237 West 125th Street and enter into a lease/operating agreement with Apollo Theater Foundation, Inc. on terms and conditions substantially in accordance with those described in the Material and be it further.

RESOLVED, that the President, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions.

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**ITEM**

**4**



**Harlem Community  
Development  
Corporation**

A Subsidiary of Empire State Development

FOR CONSIDERATION

July 19, 2019

TO: The Directors

FROM: Curtis Archer

SUBJECT: Property Disposition Guidelines

REQUEST FOR: **PROPERTY DISPOSITION GUIDELINES** - Approval of Property Disposition Guidelines, Appointment of Contracting Officer and Authorization to Take Related Actions

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I. Background

The Public Authorities Accountability Act, Chapter 766 of the 2005 Laws of New York was signed into law by the Governor on January 13, 2006 and was amended by the Public Authorities Reform Act of 2009 (collectively, the "Act"). The Act establishes standards for the governance and operation of public authorities such as Empire State Development ("ESD") and its subsidiaries.

Title 5-A of the Act requires the adoption of guidelines with respect to property disposition. The Act also requires that the guidelines must be annually reviewed and approved by the respective authority. ESD historically engages in transactions that involve property dispositions subject to the Act. As a consequence, since 2006, ESD has adopted and implemented the guidelines that are described below (the "Guidelines"), which effectively incorporate all requirements of the Act. In March 2019 ESD adopted these Guidelines, without change. It is now proposed that the Harlem Community Development Corporation (the "Corporation") adopt these same guidelines.

II. Guidelines Regarding Disposition of Property

In conformity with the Act, as recently amended and described below, the Guidelines Regarding Property Disposition for the Corporation generally provide for the following:

- a. appointment of a contracting officer;
- b. disseminating and posting the Guidelines;
- c. inventory and reporting of status of corporation property; and
- d. obligations of the corporation with respect to pricing and methods of disposition.

The obligations with respect to pricing generally require disposition of property at no less than fair market value as determined after publicly advertising for bids. Property consists of both real and personal property and appraisals are required for disposition of real property and certain other not readily valued property.

The most significant exceptions to the bidding requirement are negotiated transfers to the State or any political subdivision and circumstances described in Section 7 of the Guidelines. These exceptions can permit sole sourcing.

Section 7 of the Guidelines provides for disposing of property without soliciting bids or for less than fair market value. If the transfer is to a government or other public entity or the purpose of the transfer is within the purpose or mission of the Corporation, disposal is permitted. If not, the transfer is subject to denial by the governor, senate or assembly. In a permitted sale below fair market value or without bids, certain transactional information must be submitted to the Board of the Corporation, which must make a written determination that there is no reasonable alternative to the transfer.

Finally, for most larger negotiated transactions, including exchanges, leases and real property dispositions, an explanatory statement of the transaction must be sent 90 days in advance of such disposal to the Comptroller, Director of the Budget, Commissioner of General Services and the Legislature.

### III. Environmental Review

ESD staff on behalf of the Corporation has determined that the requested approval of Property Disposition Guidelines and appointment of an officer constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this approval. At such time that any property disposition is proposed, it would be subject to environmental review pursuant to SEQRA.

### IV. Requested Action

The Directors are being asked to adopt the attached Guidelines, appoint the Vice President Contracts Administration, ESD, (or any successor Vice President) as the Contracting Officer for purposes of the Guidelines and to authorize the taking of related actions.

### Attachments

Resolution

New York State Urban Development Corporation d/b/a/ Empire State Development Guidelines  
Regarding Disposition of Property – Dated March 28, 2019



July 19, 2019

**HARLEM COMMUNITY DEVELOPMENT CORPORATION – (the “Corporation”) - Property  
Disposition Guidelines - Approval of Property Disposition Guidelines, Appointment of Contracting  
Officer and Authorization to Take Related Actions**

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WHEREAS, the Corporation wishes to comply with Title 5-A of the Public Authorities Accountability Act (“Law”) as amended by the Public Authorities Reform Act of 2009 which mandates that public benefit corporations annually prepare the Corporation’s Guidelines Regarding Disposition of Property (the “Guidelines”) attached hereto.

WHEREAS, the Corporation’s parent corporation, Empire State Development, has prepared the Guidelines in accordance with the Act as amended; and

WHEREAS, the Corporation has reviewed said Guidelines and found them to be satisfactory;

WHEREAS, the Guidelines require the appointment of a Contracting Officer;

NOW, THEREFORE, IT IS HEREBY RESOLVED that in accordance in the materials presented to this meeting and ordered filed in the records of the Corporation, the Guidelines as amended are hereby approved; and it is further

RESOLVED, that the Vice President Contracts Administration of the Empire State Development, (or any successor Vice-President) is hereby appointed as Contracting Officer as required and set forth in the Guidelines; and it is further

RESOLVED, that the President, the Chief Financial Officer, or their designees be, and each of them hereby is, authorized and empowered to submit and file the Guidelines, 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 of the Guidelines and to take related actions.

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NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION D/B/A EMPIRE STATE  
DEVELOPMENT  
GUIDELINES REGARDING DISPOSITION OF PROPERTY

I. Definitions. As used herein, unless a different meaning is required by the context.

1. "Contracting officer" shall mean the Vice President Contracts Administration, ESD (or any successor Vice President) who shall be appointed by resolution of the Board of Directors to be responsible for the disposition of property.

2. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with these guidelines.

3. "Property" shall mean personal property in excess of five thousand dollars in value, real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

II. Duties of the Corporation with respect to guidelines related to the disposal of property.

1. a. The contracting officer shall be responsible for the Corporation's compliance with, and enforcement of these guidelines.

b. The Corporation's contracting activities shall comply with Title 5-A of the Public Authorities Law, the New York State Urban Development Act (the "Act") and any other applicable law for the disposal of property.

c. These guidelines shall be annually reviewed and approved by the Board of Directors.

d. On or before the thirty-first day of March in each year, the Corporation shall file with the comptroller a copy of the guidelines most recently reviewed and approved by the Corporation, including the name of the Corporation's designated contracting officer. At the time of filing such guidelines with the comptroller, the Corporation shall also post such guidelines on the Corporation's internet website. Guidelines on the Corporation's internet website shall be maintained on such website at least until the procurement guidelines for the following year are posted on such website.

2. Inventory. The Corporation shall:

- a. maintain adequate inventory controls and accountability systems for all property under its control;
- b. periodically inventory such property to determine which property shall be disposed of;
- c. produce a written report of such property in accordance with subdivision three of this section;
- d. transfer or dispose of such property as promptly as possible in accordance with Section III.

3. Reporting.

a. The Corporation shall publish, not less frequently than annually, a report listing all real property of the Corporation. Such report shall include a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Corporation and the name of the purchaser for all such property sold by the Corporation during such period.

b. The Corporation shall delivery copies of such report to the comptroller, the director of the budget, the commissioner of general services, the legislature and Authorities Budget Office.

III. Disposal of Corporation's property.

1. Supervision and direction. Except as otherwise provided in this section, the contracting officer shall have supervision and direction over the disposition of property of the Corporation.

2. Custody and control. The custody and control of the property of the Corporation, pending its disposition, and the disposal of such property, shall be performed by the Corporation or by the commissioner of general services when so authorized under this section.

3. Method of disposition. Subject to Section II of these guidelines, the Corporation may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the contracting officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, that no disposition of real property, or any interest in real property, shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction and, provided further, that no disposition of any property, which because of its unique nature or the unique

circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

4. Sales by the commissioner of general services. When it shall be deemed advantageous to the state, the Corporation may enter into an agreement with the commissioner of general services where under such commissioner may dispose of property of the Corporation under terms and conditions agreed to by the Corporation and the commissioner of general services. In disposing of any such property of the Corporation, the commissioner of general services shall be bound by the terms of this title and references to the contracting officer shall be deemed to refer to such commissioner.

5. Validity of deed, bill of sale, lease or other instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Corporation, purporting to transfer title or any other interest in property under these guidelines shall be conclusive evidence of compliance with the provisions of these guidelines insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

6. Bids for disposal; advertising; procedure; disposal by negotiation; explanatory statement.

a. all disposals or contracts for disposal of property of the Corporation made or authorized by the contracting officer shall be made after publicly advertising for bids except as provided in paragraph c of this subdivision.

b. Whenever public advertising for bids is required under paragraph a of this subdivision:

(i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;

(ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

c. Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to paragraphs a and b of this subdivision but subject to obtaining such competition as is feasible under the circumstances, if:

(i) the personal property involved has qualities separate from the



utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of under paragraphs a and b of this subdivision, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(ii) the fair market value of the property does not exceed fifteen thousand dollars;

(iii) bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

(iv) the disposal will be to the state or any political subdivision, and the fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or

(v) under the circumstances permitted by section 7; or

(vi) such action is otherwise authorized by law.

d. (i) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(A) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

(B) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (C) and (D) of this subparagraph;

(C) any real property disposed of by lease if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars;

(D) any real property or real and related personal property disposed of by exchange, regardless of value or any property any part of the consideration for which is real property.

(ii) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under section II of these guidelines not less than ninety days in advance of such disposal, and a copy thereof shall be preserved in the files of the Corporation.

e. For purposes of Section c(ii), (v) and Section d of this paragraph 6 when an appraisal is not feasible or practical, fair market value shall be determined by the board of directors based on the recommendation of the contracting officer. In making such recommendation, the contracting officer shall make due inquiry of values of comparable property including, as appropriate, geographic location, use, occupancy, condition, obsolescence, outstanding debts, taxes and liens and intended future use.

7. Disposal of property for less than fair market value

(a) No asset owned, leased or otherwise in the control of a public authority may be sold, leased, or otherwise alienated for less than its fair market value except if:

(i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;

(ii) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or

(iii) in the event a public authority seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the authority's mission, purpose or governing statutes, such authority shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during months of January through June, provided that if the legislature receives notification of such proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate and assembly, the public authority may effectuate such transfer. Provided, however, that with respect to a below market transfer by a local authority that is not within the purpose, mission or governing statute of the local authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which such local authority resides, and the transfer is of property obtained by the authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

(b) In the event a below fair market value asset transfer is proposed, the following

Information must be provided to the authority board and the public:

- (i) a full description of the asset;
- (ii) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the board.
- (iii) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer.
- (iv) a statement of the value to be received compared to the fair market value;
- (v) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
- (vi) the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

(c) Before approving the disposal of any property for less than fair market value, the board of an authority shall consider the information described in paragraph b of this subdivision and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

Dated: March 28, 2019

**ITEM**

**5**



FOR CONSIDERATION

July 19, 2019

TO: The Directors

FROM: Curtis Archer

SUBJECT: Harlem Community Development Corporation Procurements Guidelines

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

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I. BACKGROUND

In March 2018 the HCDC Directors adopted revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "Guidelines"). There have been no substantive changes to relevant laws in the past year. However, in the past year the Governor has issued Executive Orders requiring all State contractors to be and remain "responsible" throughout the term of their contract with state entities, including ESD and its subsidiaries). Accordingly, the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") Procurements Manager and staff from the Legal Department, supported by representatives of the Contracts Administration and Finance Departments, engaged in a revision of the Guidelines, incorporating this directive as well as other non-substantive changes for clarity and efficiency. Examples include a new provision permitting the short (up to 3 months) extension of contracts without Board approval in limited circumstances, and the recognition of open retainer contracts (often called "term contracts") with vendors (see s.7.3 of the Guidelines)

On March 28, 2019, the ESD Board adopted the revised Guidelines (the "2019 Guidelines"), which are designed to govern procurements by ESD and its subsidiaries, such as HCDC. A copy of the proposed 2019 Guidelines is attached. Approval is sought for the adoption by the HCDC Directors of the 2019 Guidelines.

II. PROCUREMENT CONTRACTS GUIDELINES SUMMARY

The 2019 Guidelines attached to these materials set forth the policies and procedures to be followed by HCDC 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 the Guidelines have not been followed.

The 2019 Guidelines define the universe of procurement transactions subject to the policies and procedures. Generally, all HCDC procurements 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 2019 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the ESD Bid Opening Guidelines and the compilation of a procurements record for every covered procurement contract.

The 2019 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law, and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all State agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness, and transparency.

The 2019 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 ESD policy and procedure documents also can be accessed from within the document by hyperlinks. These appear in blue font in the hard copy of the 2019 Guidelines attached to these materials.

### III. ENVIRONMENTAL REVIEW

ESD staff has determined that approval of the 2019 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. RECOMMENDATION AND REQUESTED ACTION

The Directors are requested to adopt the 2019 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of the date of approval.

### ATTACHMENTS

Resolution

2019 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts  
Procurement Guidelines Attachment A-June 2019



July 19, 2019

**HARLEM COMMUNITY DEVELOPMENT CORPORATION – Procurements 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 Corporation (the “Materials”), the 2019 Guidelines, for the Use, Awarding, Monitoring and Reporting of Procurement Contracts (the “Guidelines”), a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the President or his or her designee is authorized to promulgate the Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

\* \* \* \* \*

Revised Procurement Guidelines 2019

NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
D/B/A EMPIRE STATE DEVELOPMENT  
Guidelines Regarding the Use, Awarding, Monitoring  
and Reporting of Procurement Contracts

Effective March 29, 2019



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NEW YORK STATE URBAN DEVELOPMENT CORPORATION  
D/B/A EMPIRE STATE DEVELOPMENT (“ESD”)

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

Effective March 29, 2019

**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 State Urban Development Corporation, d/b/a Empire State Development and its subsidiaries (collectively, “ESD”). ESD 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 ESD Board of Directors (“Board”), including subsidiary Boards.

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 ESD (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 ESD, 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 ESD Guidelines, a person, firm or corporation who wishes to provide goods and/or services to ESD may be called a “**vendor**” or “**offerer**” or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming an ESD 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 ESD (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 ESD in excess of fifteen thousand dollars (\$15,000).

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

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

In connection with certain of its projects, ESD 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, ESD 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 ESD. 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 ESD 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. Types of Procurement Contracts**

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

Procurements of personal services include but are not limited to legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, temporary employees, planning, training, statistical analysis, research, public relations, architectural,

engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of ESD.

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 ESD 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 ESD 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**

ESD’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 ESD, 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 ESD 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 ESD business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain ESD business.

## **2. Procurement: Overview and Requirements**

### **2.1. The Procurement Process Guide**

#### **I. Over \$5,000 and below \$50,000**

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



If ESD'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 ESD'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 ESD'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.

#### **II. \$50,000 and over**

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



If ESD'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 ESD's needs cannot be met by the above options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business up to \$200,000. See Section 2.6.



If ESD'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 ESD 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 ESD, 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 ESD 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>) or SDVOB directory ([http://ogs.ny.gov/Core/Docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf)).

## **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 ESD’s need, such item may be purchased from the centralized contract. However, ESD may competitively procure items otherwise available on a centralized contract when the resultant price is less.

## **2.5. Service Contracts**

ESD 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, ESD 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), ESD may purchase services or commodities from small business concerns or those certified pursuant to Article 15-A of the Executive Law (MWBEs), or commodities or technology products that are recycled or remanufactured, in an amount up to \$200,000, 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**

ESD 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](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 public 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 ESD. This may lead to delay, if OGS decides to seek approval of the proposed ESD 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).



### 3. Contract Reporter Exemptions

#### 3.1. Reasons for Exemptions

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

- (a) **Sole Source.** Only one source for the goods or services is available. Three examples of sole source procurements: (i) proprietary software compatible with 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.
- (b) **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 ESD's operations; experience with similar projects of 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 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, the Corporation's policy is to minimize the use of single source contracts and to maximize the use of competitive procurement methods.*
- (c) **Emergency Circumstances.** Emergency circumstances exist when an urgent and unexpected situation arises which places public health or safety or the use or conservation of resources at risk and requires immediate action. Poor or late planning does not constitute an emergency. Contracts entered into as a result of an emergency situation should only cover the goods or services reasonably necessary to stabilize, ameliorate or remedy the situation. An example is a hazardous condition at a building owned by ESD: 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.

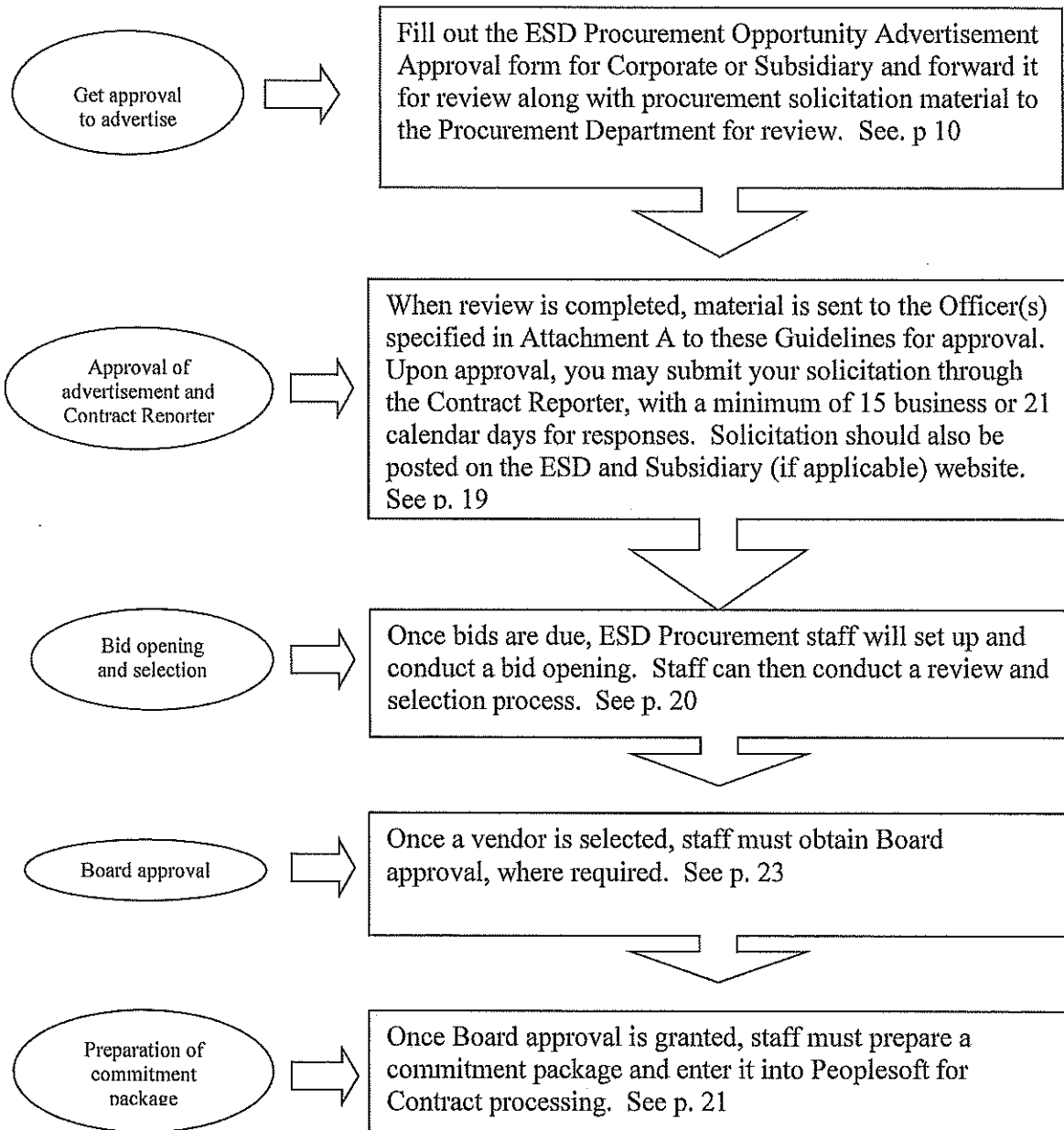
The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that 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 ESD 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 139-k (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 ESD enters into a contract with a single or sole source provider for an amount in \$50,000 or more, ESD 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 for up to \$200,000, 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<sup>1</sup>;
- (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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<sup>1</sup> Program regulations provide that ESD 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's insurance requirements (obtained from Contract Administration for all solicitations);

(vii) ESD'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;

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

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

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

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

A template for informal solicitation language can be viewed [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 ESD are to be guided by the same basic principles:

Clarity: Procurement documents should clearly convey to vendors what ESD 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 ESD 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 ESD 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 ESD 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 ESD 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 ESD 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 ESD 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 ESD or other State surplus property, where the re-use is likely to be dependent on the prospective respondents’ needs or ideas.

## **8. Compliance with Other Laws**

### **8.1. Compliance with State Finance Law § 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 of ESD, its subsidiaries, or other involved governmental entities during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and

willful violations of such provisions, including disqualification from eligibility for an award of any contract.

Specifically, SFL § 139-j and 139-k require that only permitted ESD and subsidiary contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from the issuance of the earliest written notice of a Request for Proposal through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL § 139-j (6)(b) also requires potential vendors to complete the Offerer's Affirmation of Understanding and Agreement to comply with ESD's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by ESD 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 ESD 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 § 139-j 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, ESD 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, ESD 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, ESD 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, ESD staff engaged in the procurement process should review ESD's policy regarding permissible lobbying contacts, and the required language for solicitations by ESD and its subsidiaries to ensure compliance with SFL § 139-j and 139-k. See also the OGS website on procurement lobbying, found at <https://ogs.ny.gov/acpl>.



Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an ESD 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 ESD and its subsidiaries 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 ESD 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. Compliance with Executive Law Articles 15-A & 17-B: Contractor and Supplier Diversity**

##### **Background**

All Procurement Contracts must comply with the requirements of Executive Law Article 15-A, which governs the New York State MWBE Program. The purpose of the MWBE Program is to eliminate historic barriers to participation by minority and women-owned business enterprises in State contracting. The MWBE Program contributes significantly to ESD's mission of promoting a growing State economy; encouraging business investment and job creation; and supporting diverse, prosperous local economies across the State. Staff should be familiar with the MWBE Operations Primer published by the Division of Minority and Women's Business Development to ensure compliance with MWBE-related laws and requirements.

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

**ESD 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 potential opportunities for MWBEs: <http://www.punynj.gov/business-opportunities/pdf/OBDCR-LGA-MWBE-Flyer-16-F4%20.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 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 ESD program staff (project managers, program directors, originators and procurement officers) to determine if a contract is eligible for MWBE and SDVOB goal setting, exempted<sup>2</sup> from goal setting, or excluded<sup>3</sup> 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 ESD contract, after making good faith efforts to achieve the maximum feasible portion of an MWBE and/or SDVOB participation goal, may submit an MWBE Waiver Request Form or SDVOB Waiver Request Form to OCSD with appropriate information documenting its "good faith efforts"<sup>4</sup> to meet its goals. The waiver process includes reviews by: OCSD and the OCSD Counsel. The Executive Chamber must approve a waiver before it can be issued.

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<sup>2</sup> "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).

<sup>3</sup> "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.

<sup>4</sup> "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 §142.7 (MWBEs) and 9 NYCRR § 252.2(n) (SDVOBs).

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.

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 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/finance/Procurement.asp> (scroll down to "MWBE/SDVOB/DBE Non-Discrimination and Contractor & Supplier Diversity Forms").

#### **8.5. Compliance with Iran Divestment Act of 2012**

Every bid or proposal made to ESD 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 not 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/USEOPNYSBUSINESSES.pdf>

#### **8.7. Project Sunlight**

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

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

#### **8.8. Publication on ESD Website**

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

#### **8.9 Contract Reporter Advertising Process**

As stated above, ESD 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 maintained by OCSD, 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 ESD procurements are based on "Best Value," which allows for factors other than price to be 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%.

#### **8.11. Bid Opening Procedures**

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. **Do not open any bid packages for any reason before the formal bid opening.** ESD staff members representing Contracts Administration, Procurements, Legal and the initiating

Department/Subsidiary should be present at bid openings in person or by teleconference. Bids shall be opened by the Procurement Director or his/her designee, and the time and date of receipt shall be entered into the Bid Log, which must be signed by all staff members present. Teleconference participants must confirm their presence by email to the Procurements Director. The Bid Log shall also record the presence of SFL 139j-k and ST-220 forms in the bid.

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

#### **8.12. Bid Evaluation and Vendor Selection**

The initiating Department Head should establish, as early as practicable prior to bid opening, a team of at least three 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-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-ESD persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as ESD 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 ESD must “apply independent judgment in the best interest of the authority, its mission and the public.” If non-ESD staff is included in the review team, the team must be expanded in number such that a majority will always be 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**

Pursuant to State Finance Law § 139-j(7), ESD or the Subsidiary Board 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:

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

**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](http://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 ESD 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.

### **9. Contract Approval**

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

Procurement Contracts priced at **over \$250,000**, as well as contracts for any amount involving personal services to be rendered over a period in excess of one year, must be approved by the ESD (or subsidiary) 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 ESD (or subsidiary) Directors, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.
- c. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, and before Board or President approval if required, the officer named in Attachment A to these Guidelines may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents ("**Notice to Proceed**"), provided that:
  - i. the contract is not subject to OSC approval (See Section 10.5); and
  - ii. the authorization contained in the Notice to Proceed is (a) \$250,000 or less and (b) does not exceed 20% of the total contract value; and
  - iii. the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of the Officer(s) specified in Attachment A to these Guidelines.
- 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.

- ii. Amendments that increase the **contract amount** to more than \$250,000 must be approved by the ESD (or subsidiary) Directors. Amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the ESD officer named in Attachment A to these Guidelines without further Board approval, unless the amendment increases the contract to an amount above \$250,000 and Directors' approval has not been previously obtained.
- iii. If a proposed amendment to a contract for personal services will increase the **term** of the contract to more than one year, Board approval is necessary, and Contract Reporter advertising is necessary unless (i) as discussed in paragraph (a) above, the original contract contained a clause specifically permitting extension; or (ii) the amendment is awarded to a vendor on a pre-qualified list following wherever practicable the receipt of three quotes from other vendors on the list including at least one from a certified MWBE or SDVOB firm; or (iii) the amendment increases the term of the contract by not more than three months, and approval for the extension is given by the person named in Attachment A to these Guidelines. If the amendment will increase the amount of time or other terms of the contract but **will not increase the contract amount**, the initiator need not submit a new Commitment Request Package.
- iv. In the case of contracts for more than \$1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and/or the Chief Financial Officer of the corporation. Note that such an amendment may require OSC review and approval (see section 10.5). If in doubt, consult the Legal Department.

**Example A:** Original contract for \$100,000 was awarded competitively. The initiator wishes to amend the contract for an additional \$5,000. Because the amendment is for less than \$50,000 it does not require advertisement or an exemption, and because it will not increase the total contract amount to more

than \$250,000\* and is less than 10% of the original contract amount, it does not require Board approval. This example also assumes that the amendment will not extend personal services beyond one year, and so will not require Board approval.

\*Some subsidiaries have lower monetary thresholds for board approval.

**Example B:** Original contract for \$40,000 was awarded via purchase order. Due to unforeseen circumstances, the initiator wishes to amend the contract for an additional \$20,000. Because the amendment 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.

3. 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 Offerer'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 ESD, 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 ESD and any relevant State agency has the right to audit the contractor's records;
4. 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)..
  5. ESD/Subsidiary Board of Directors or CEO/designee approval, if applicable. View sample Board materials and CEO/Designee Approval Cover Memo.

6. 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.
7. All appropriate insurance certificates, as approved by the ESD Insurance Administrator, a copy of the appropriate officer's approval and a copy of the RFP, if applicable. Note that all contractors must have evidence of Workers' Compensation and Disability Insurance coverage.
8. A completed Commitment Package Checklist.
  - a. 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 ESD 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 ESD 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. ESD has implemented the cost control measures described in Bulletin B-1184. 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), ESD 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 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).

- ESD 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.
- ESD must give OSC 10 days’ notice before (i) publishing a solicitation that ESD 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.



- ESD 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 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.

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 ESD management immediately. All deficiency reports should be specific and in writing. Management should review deficiency reports and take appropriate action, which may include termination of a contract.

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

### **13. Ethical Considerations**

#### **13.1 Procurement Contracts Involving Former Employees of ESD**

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

#### **13.2 Conflicts of Interest**

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

#### **13.3 Unfair Advantage Prohibited**

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

#### **14. Implementation of These Guidelines**

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

#### **15. Reporting**

##### **15.1. Annual Reports**

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

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

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

#### **16. Effect on Awarded Contracts**

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. These Guidelines reflect best and customary practice, but are not intended to be rules of law. Note, however, that certain contracts may not be "valid or enforceable" without OSC approval. (See Section 10.5)

**ITEM**

**6**



# Harlem Community Development Corporation

A Subsidiary of Empire State Development

## PRESIDENT'S REPORT

**TO:** Board of Directors

**FROM:** Curtis L. Archer

**COVERING THE PERIOD:** Friday, March 15, 2019 to Friday, July 12, 2019

**RE:** HCDC's Board Meeting – Friday, July 19, 2019 @ 10:00AM

### BUSINESS SERVICES

	2017	2018	2019
<b>Seminars and Workshops</b>	29	37	22
<b>One-on-One counseling &amp; mentoring</b>	8	99	278
<b>Total Business (workshops, seminars, &amp; one-on-one counseling sessions)</b>	57	143	301

<b>Co-Sponsorships (Hosting and Marketing of other organizations business workshops)</b>	20	7	1
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<b>Attendance Totals</b>	2,266	2,676	1,446
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### **2019 Business Seminars**

Date	Title	Location	Partners	Attendance
June 13	Accessing Financing for Your Business	ACP, Jr. State Office Building	NYWCC, Score, HBA	42
June 18	Building & Maintaining Your Successful Web Presence	ACP, Jr. State Office Building	NYWCC, Score, HBA	63
June 27	Understanding Contracts	ACP, Jr. State Office Building	Start Small Think Big	73
July 1	Start Your Empire: Entrepreneurship For Youths	ACP, Jr. State Office Building	Isaacs Center, HBA	34
July 10	How to Sell Your Product or Services to Other Businesses	ACP, Jr. State Office Building	SCORE	75

## MWBE

### Two (2) Certification Analysts are assigned to Harlem CDC for 2019:

Applications Processed	72
Approved	55
Denied	5
Rejected	4
Returned	6
Withdrawal	2
<b>Total MWBE</b>	<b>72</b>

Other walk-ins seeking business advice 73

## CERSP

- As of July 15<sup>th</sup>, HCDC received 17 CERSP applications for 2019.
- **Seventeen (17)** CERSP applications were received during the period of March 27<sup>th</sup> – July 15<sup>th</sup>
- Total CERSP payments in 2019 - **\$271,217.00**

## COMMUNITY DEVELOPMENT

### Home Buyer and Financial Planning Seminars

Date	Partner	Topic	Participants
March 30, 2019	JP Morgan Chase	All-Day 4-Part Seminar Series	50
April 13, 2019	Ridgewood Savings Bank	All-Day 4-Part Seminar Series	44
April 17, 24, May 1 and 8, 2019	TD Bank	Weekly seminars (four weeks)	24
May 18, 2019	Ridgewood Savings Bank	All-Day 4-Part Seminar Series	36
June 22, 2019	Ridgewood Savings Bank	All-Day 4-Part Seminar Series	44
June 29, 2019	TD Bank	All-Day 4-Part Seminar Series	25
March 30 – July 12, 2019		One-on-one Housing Counseling (HUD)	19*

**\*Eight (8) one-on-one housing clients were able to purchase homes after receiving their counseling**

### Workforce Development

- Since 2015, HCDC has co-hosted and facilitated annual career fairs with various partners, including NYS Department of Labor; NYS Office of Parks, Recreation and Historic Preservation and The City College of New York.
- This year's Career Fair was held on Thursday, May 16, 2019 at Riverbank State Park. Seventy-six (76) employers participated and we had 697 attendees.

## **WEATHERIZATION**

**Total Units for the 2018-2019 WAP Contract:  $237 + 6 = 243$**

**Currently Eligible Units: 284**

**Currently in Production: 115**

**Currently Completed: 0**

**Currently Certified: 0**

<b>No.</b>	<b>Address</b>	<b>Units</b>	<b>Owner</b>	<b>In Production</b>
<b>1</b>	<b>529 West 133<sup>rd</sup> Street</b>	<b>38</b>	<b>NYCHA Housing</b>	<b>Yes</b>
<b>2</b>	<b>120 West 140<sup>th</sup> Street</b>	<b>125</b>	<b>NYCHA Housing</b>	<b>No</b>
<b>3</b>	<b>2640 Frederick Douglass Blvd.</b>	<b>75</b>	<b>Mother Zion HDFC, Inc.</b>	<b>Yes</b>
<b>4</b>	<b>301 West 150<sup>th</sup> Street</b>	<b>44</b>	<b>Northern Manhattan Equities, LLC</b>	<b>No</b>
<b>5</b>	<b>65 West 126<sup>th</sup> Street</b>	<b>2</b>	<b>Laura H. Williams</b>	<b>Yes</b>