



Governance Committee Meeting Agenda August 18, 2015

Committee Members

Richard A. Gerentine, Chairman
Roger P. Higgins
C. Vane Lashua

1. Adopt the Minute of the April 16, 2015 meeting
2. Review proposed By-Law changes and consider a recommendation to the Board
3. Review proposed Procurement Policy updates and consider a recommendation to the Board
4. Other Business
5. Adjourn

New York State Bridge Authority Governance Committee Meeting Minutes of April 16, 2015

The New York State Bridge Authority's Governance Committee met at the Authority's Headquarters in Highland, New York, at 3:35 p.m. on April 16, 2015.

In addition to Governance Committee Chairman Richard Gerentine and Committee members Vane Lashua and Roger Higgins, those in attendance included:

Roderick Dressel
Joseph Ramaglia
Joseph Ruggiero
Brian Bushek
Carl G. Whitbeck, Jr., Esq.
John R. Bellucci

Upon a motion made by Chairman Gerentine and seconded by Mr. Higgins, the minutes of the January 15, 2015 meeting were approved unanimously.

Mr. Bellucci reviewed the updated NYSBA Management-Confidential Compensation Plan. Mr. Bellucci reported that the changes include accounting for employees covered by Section 212 Waivers, updating the managerial compensation chart and including two additional managers in the managerial compensation chart.

Upon a motion made by Chairman Gerentine, seconded by Mr. Lashua, the Updated Management-Confidential Compensation Plan was accepted unanimously and will be sent to the full Board with the Committees' recommendation for adoption.

Having no other business, the meeting adjourned at 3:36 pm.



**Bridge
Authority**

ANDREW M. CUOMO
Governor

JOSEPH RUGGIERO
Executive Director

RICHARD A. GERENTINE
Chairman

To: Members of the Governance Committee
Chairman Richard A. Gerentine
Commissioner Roger Higgins
Commissioner Vane Lashua
Commissioner Joseph Ramaglia
Commissioner Roderick Dressel

Copy: Joseph Ruggiero, Executive Director
Carl Whitbeck Jr., General Counsel

Date: August 12, 2015

Subject: Proposed By-Laws Revisions

The By-Laws of the New York State Bridge Authority provide for the governance and operational procedures of the Board of Commissioners. During a review of Board practices and procedures, it became apparent that the By-Laws lack a provision for continuity of operations should the Board of Commissioners be unable to meet due to a state of emergency or a lack of members of the Board sufficient to provide a quorum.

General Counsel has provided the attached proposal to remedy this matter and add a new article to address Continuity of Operations (new Article VI).

In addition, minor revisions are recommended to the provision for Special Meetings (Article II, Section 3) and several sections to remove the reference to Assistant Secretary, a position previously eliminated by the Board.

The proposed revised By-Laws are attached for your consideration.

Headquarters | P.O. Box 1010, Highland, New York 12528 | P. (845) 691-7245 F. (845) 691-3560 | www.nysba.ny.gov

RIP VAN WINKLE BRIDGE
P.O. Box 286
Catskill, NY 12414
(518) 943-2360

KINGSTON-RHINECLIFF
BRIDGE
P. O. Box 2992
Kingston, NY 12402
(845) 336-8181

MID-HUDSON BRIDGE
P. O. Box 1010
Highland, NY 12528
(845) 691-7221

NEWBURGH-BEACON
BRIDGE
P. O. Box 28
Beacon, NY 12508
(845) 831-3700

BEAR MOUNTAIN BRIDGE
P. O. Box 323
Ft. Montgomery, NY 10922
(845) 446-4721

NEW YORK STATE BRIDGE AUTHORITY

BOARD RESOLUTION

Resolution No.:

Resolution Date: August 18, 2015

WHEREAS the Governance Committee has recommended amendments to the By-Laws of the New York State Bridge Authority regarding adding an Article VI entitled Continuity of Operations and make changes to other sections for clarity; and,

WHEREAS, Authority Counsel has reviewed the proposed amendments and found them in order; now therefore

BE IT RESOLVED that the Board of Commissioners amends ARTICLE II MEETINGS OF THE BOARD AND QUORUM and adds ARTICLE VI CONTINUITY OF OPERATIONS to the By-Laws of the New York State Bridge Authority per the attached documents; and

BE IT FURTHER RESOLVED that the Executive Director, or his designee, is hereby authorized and directed to take the necessary measures to implement this resolution.

IN WITNESS WHEREOF, this resolution has been duly adopted this 18th day of August, 2015.

Joseph Ruggiero, Secretary

Amended June 27, 2002
Amended November 15, 2012
Amended August 18, 2015

**NEW YORK STATE BRIDGE AUTHORITY
BYLAWS**

**ARTICLE I
OFFICES**

Section 1. Headquarters. The principal office and headquarters of the corporation shall be at the Mid-Hudson Bridge Plaza in Highland, New York. Except as otherwise specified by resolution of the Board, all books and records of the corporation shall be maintained at the principal office.

Section 2. Other Offices. The corporation may have other offices at such place or places as the Board may from time to time designate.

**ARTICLE II
MEETINGS OF THE BOARD AND QUORUM**

Section 1. Annual Meeting. An annual meeting of the Board shall be held between the 15th day of April and the 31st day of May of each year at the principal office of the Authority, or at such other time and place as may be designated by the Board on at least five days notice. At such meeting, the Board shall elect officers and transact such other business as is within the power of the Board.

Section 2. Regular Meetings. Regular meetings of the Board may be held without notice at such places and times as shall be determined from time to time by resolution of the Board.

Section 3. Special Meetings. Special meetings of the Board for any purpose or purposes may be called on at least one day's notice by the Chair, Vice-Chair or Secretary, and shall be called on at least one day's notice by the Chair, Vice-Chair or Secretary at the request in writing of a majority of the Board.

Section 4. Quorum. A majority of the members of the full Board present in person shall constitute a quorum for the transaction of business. If at any meeting of the Board, there shall be less than a quorum present, a majority of those present may, without further notice, adjourn the meeting from time to time until a quorum shall attend, but no business shall be transacted at any such adjourned meeting except such as might have been lawfully transacted had the meeting not been adjourned. Except as otherwise provided in the Bylaws, any act of at least *four (4)* members present at a meeting at which there is a quorum shall be the act of the Board.

Section 5. Notice and Waiver of Notice. Notice of any meeting, stating the place and time thereof, shall be given by the Secretary to each member of the Board. Whenever notice of meeting is required by the Bylaws to be given, it shall be construed to mean personal notice given by telephone or telegram, or notice given in writing by depositing the same in a United States post office or letter box, in a sealed post-paid wrapper addressed to the person entitled thereto at his or her address as the same appears on the books of the corporation and such notice shall be deemed to have been given on the day of such mailing, provided however, that any notice of three days or less must be given by telephone or telegram.

Whenever notice of any meeting shall have been waived in writing by all of the members, no notice thereof shall be required; and a waiver of notice for any meeting signed by any member, shall be equivalent for all purposes to due notice of such meeting to the member so signing. Whenever all the members shall attend a meeting, such meeting shall be valid for all purposes, without call or notice, and at such meeting any and all business may be transacted.

Notice shall also be given to the news media and the public as required by Section 104 of the Public Officers Law.

Section 6. Electronic Participation. Any one or more members of the Board or any committee thereof may participate in a meeting of such Board or committee by means of a videoconference or similar communications equipment allowing all persons participating in the meeting to hear and observe each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE III OFFICERS

Section 1. Officers. The Board at its annual meeting shall elect from its number a Chair and Vice-Chair. It shall also elect a Secretary, Treasurer and General Counsel who need not be members of the Board. Each officer shall hold office at the pleasure of the Board and until his or her successor shall have been duly elected and qualified. The term of office shall be one year unless he or she shall have died, resigned, been removed or replaced prior to the expiration of said one-year period. Any vacancy in any of the above offices shall be filled for the unexpired portion of the term by the Board at any regular or special meeting.

Section 2. Chair. The Chair shall be the executive officer of the corporation and shall preside at all meetings of the Board at which he shall be present. The Chair shall see that all orders and resolutions of the Board are carried into effect and shall perform all duties, as from time to time, may be assigned to the Chair by the Board.

Section 3. Vice-Chair. The Vice-Chair shall, in the absence or disability of the Chair, or in the case of a vacancy in the office of the Chair, perform the duties and exercise the powers of the Chair, and shall perform such other duties as may be assigned to the Vice-Chair by the Board.

Section 4. Secretary. The Secretary shall attend the meetings of the Board and keep the minutes of the meetings in books provided for the purpose. The Secretary shall have the

authority to call a meeting and to give or cause to be given notice of the meetings of the Board required by the Bylaws. The Secretary shall be the custodian of the records and of the corporate seal of the corporation and shall see that the corporate seal is affixed to all instruments requiring it, the execution of which, on behalf of the corporation, is duly authorized, and when so affixed may attest the same. The Secretary shall have authority to cause copies to be made of minutes or other records or papers of the corporation and certificates under seal of the corporation to the effect that such copies are true copies thereof and shall perform such other duties as may be assigned to the Secretary by the Board.

Section 5. (Section Removed 11.15.12)

Section 6. Treasurer. The Treasurer shall perform such financial duties as shall be assigned from time to time by the Board.

Section 7. General Counsel. The General Counsel shall be the legal advisor to the Board and the Executive Director. The General Counsel shall provide information and advice on laws, regulations and judicial decisions, draft and examine agreements and contracts, and advise on all legal matters affecting the Authority.

ARTICLE IV OBLIGATIONS AND CONTRACTS

Section 1. Obligations and Contracts. All bonds, notes or other evidences of indebtedness issued in the name of the corporation, and all contracts or other instruments imposing liability on the corporation shall be signed by such officer or officers or agent or agents of the corporation, and in such manner, as shall be determined from time to time by the Board.

ARTICLE V ADMINISTRATION

Section 1. Executive Director. The Board shall appoint an Executive Director who shall be responsible for the administrative management of the business of the Authority, subject to the direction of the Board. The Executive Director shall attend all meetings of the Board, preside at meetings of the staff and shall be a member of all committees of the Authority.

Section 2. Deputy Executive Director. The Board may appoint a Deputy Executive Director who, in the absence of the Executive Director or in the case of a vacancy in the office of the Executive Director, shall perform the duties and exercise the powers of the Executive Director.

Section 3. Other Offices. The Board (1) may, by resolution, create other senior management offices and designate the duties and powers thereof and (2) may reserve the power to confirm the filling of such offices by resolution.

ARTICLE VI CONTINUITY OF OPERATIONS

Section 1. **Essential Functions.** The Board recognizes that during a local, state or national emergency, there must be continuity of operations and the performance of essential functions of the Authority. Hence, a plan and procedures shall be adopted to address orders of succession, delegations of authority and the stabilization of facilities upon the happening of such an event.

Section 2. **Definition of Emergency.** An emergency means an urgent and unexpected event where health and public safety or the conservation of public resources is at risk. It may also include an accident or unanticipated occurrence, which can adversely impact public buildings, property, or the life, health, and safety of New York State residents and requires immediate action. Further, a man-made or natural disaster, as defined under Article 2-B of the Executive Law § 20 (2)(a), shall also constitute an emergency under this Section. This definition additionally consists of a national defense emergency as proclaimed by the President of the United States in conformity with subsection (13) of § 9103 of Article 1 of the New York State Defense Emergency Act. It additionally includes instances when the Board of Commissioners is unable to act because there are fewer than a quorum of the members acting as such or able to act or due to vacancies, as outlined, pursuant to § 30 of the Public Officers Law, of Board members. Lastly, the Board's inability to convene a special or regular meeting due to being unable to form a quorum on three consecutive occasions shall constitute an emergency.

Section 3. **Orders of Succession.** During an emergency, in the event that the Board is unable to convene a meeting or to form a quorum as set forth under Article II, the Executive Director, in consultation with General Counsel, shall manage and direct the vital operations of the Authority until such a time that the Board can act. Should the Executive Director not be able to perform his or her duties when an emergency occurs, the Deputy Executive Director, in consultation with General Counsel, shall manage and direct the vital operations of the Authority until such a time that the Board can act. The Governor, Attorney General and Comptroller shall be afforded notice of such an emergency and the orders of succession in effect at that time.

Section 4. **Delegations of Authority.** Upon the occurrence of an emergency and the Board not being able to convene a meeting or to form a quorum as set forth under Article II, the Executive Director, in consultation with General Counsel, shall act on behalf of the Board to transact business and/or procure goods and services required to undertake response measures appropriate for the circumstances until such a time that the Board can act.

Section 5. **Stabilization of Facilities.** At the time of an emergency, if the Board cannot assemble to meet or form a quorum pursuant to Article II, the Executive Director, in consultation with General Counsel and the Chief Engineer, shall take any appropriate or necessary action to ensure the stabilization of the Authority's facilities and bridges with the same authority as the Board until such a time that the Board can act.

ARTICLE VII SEAL

Section 1. The official seal of the Authority shall be a circular design bearing the words "New York State Bridge Authority, A.D. 1932" around the circumference thereof and the words "Corporate Seal" in the center. The Secretary shall be custodian of the seal.

ARTICLE VIII INDEMNIFICATION

New York State Bridge Authority shall indemnify any member of its Board or any officer of the Authority who is made a party to an action or proceeding by reason of the fact that he or she was a member of the Board or an officer, in connection with any official action taken by such member or officer against judgments, amounts paid in settlement with the consent of the New York State Bridge Authority, and reasonable expenses including attorneys' fees actually and necessarily incurred as a result of such action or proceeding or any appeal therein, if such person acted in good faith, for a purpose which he reasonably believed to be in the best interests of the New York State Bridge Authority and, in addition, had no reasonable cause to believe that his or her conduct was unlawful or improper. This indemnification is intended to conform to Section 18 of the Public Officers Law and to apply to all Authority members, officers and employees.

ARTICLE IX AMENDMENTS

The Bylaws may be altered, amended or repealed, or new Bylaws may be made, by resolution of the Board. Such resolution, unless adopted by the unanimous vote of all the members of the Board upon submission, shall after submission, be laid on the table until the next succeeding meeting of the Board when it shall become effective upon adoption by the Board. In the event that such next meeting is a special meeting, notice thereof shall state the substance of the proposed alternation or amendment, or of the new Bylaws, or that it is proposed that the Bylaws be repealed.

NEW YORK STATE BRIDGE AUTHORITY
BOARD RESOLUTION

Resolution No.:

Resolution Date: August 18, 2015

WHEREAS the Governance Committee has recommended amendments to the Procurement Policy of the New York State Bridge Authority regarding consideration and execution of change orders to previously approved construction contracts and the issuance of an emergency change order when specific criteria are met; and,

WHEREAS, Authority Counsel has reviewed the proposed amendments and found them in order; now therefore

BE IT RESOLVED that the Board of Commissioners amends the Procurement Policy of the New York State Bridge Authority as recommended by the Governance Committee; and

BE IT FURTHER RESOLVED that the Executive Director, or his designee, is hereby authorized and directed to take the necessary measures to implement this resolution.

IN WITNESS WHEREOF, this resolution has been duly adopted this 18th day of August, 2015.

Joseph Ruggiero, Secretary

1. Procurement Guidelines

In support of the Authority's mission as outlined in section 2 of this manual, the Board adopts annually the NYSBA Procurement Guidelines.

NEW YORK STATE BRIDGE AUTHORITY
ESTABLISHING STANDARDS FOR THE USE, AWARD
MONITORING AND REPORTING OF PROCUREMENT CONTRACTS

ARTICLE I

Sec. 1.01 Statement of Purpose. These guidelines are adopted pursuant to the provision of the Act and Section 2879 of the Public Authorities Law, as amended, and shall be reviewed and approved by the Authority Board, at least annually.

ARTICLE II

A. DEFINITIONS

Sec. 2.01 Definitions. The following terms shall, for purposes of these guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

“Act” shall mean Chapter 67 of the Laws of 1985.

“Authority” shall mean the New York State Bridge Authority.

“Authority Board or Board” shall mean the collective members of the Authority Corporate Board as defined in Section 527 of the Public Authorities Law.

“Authority Employee” shall mean employees of the Authority or any governmental agency with which the Authority has entered into an agreement for the provision of services to the Authority.

“Authority Officer” shall mean an officer of the Authority duly appointed by the Authority Board, as defined in the Corporate By-Laws of the Authority.

“Construction Contracts” shall mean a written agreement whereby the Authority is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

“Counsel” shall mean an attorney or firm of attorneys in the regular employment of the Authority or of any governmental agency with which the Authority has entered into an agreement for the provision of legal services to the Authority.

“Emergency” shall mean an urgent and unexpected event where health and public safety or the conservation of public resources is at risk. It may also include an

accident or unanticipated occurrence, which can adversely impact public buildings, property, or the life, health, and safety of New York State residents and requires immediate action. Further, a man-made or natural disaster, as defined under Article 2-B of the Executive Law § 20 (2)(a), shall also constitute an emergency under this Section. This definition additionally consists of a national defense emergency as proclaimed by the President of the United States in conformity with subsection (13) of § 9103 of Article 1 of the New York State Defense Emergency Act. Lastly, it includes times when the Board of Commissioners is unable to act because there are fewer than a quorum of the members are acting as such or able to act.

“Emergency Procurement” shall mean one in which an urgent and unexpected situation occurs where health and public safety or the conservation of public resources is at risk and a purchase of goods and/or services must be made in response thereto. A failure to properly plan in advance, which then results in a situation where normal purchasing practices cannot be followed does not constitute an emergency procurement.

“Foreign Business Enterprises” shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the Authority and which are substantially produced outside New York State, or services sought by the Authority and which are substantially performed outside of New York State.

“Minority Business Enterprise” shall mean any business enterprise, including a sole proprietorship, partnership or corporation that is:

- a. At least fifty-one percent (51%) owned by Blacks, Hispanics, Asians, Pacific Islanders or Native Americans, or , in the case of a publicly-owned business, at least fifty-one percent (51%) of the common stock or other voting interests of which is owned by Blacks, Hispanics, Asians, Pacific Islanders or Native Americans;
- b. An enterprise in which the minority ownership is real, substantial and continuing;
- c. An enterprise in which the minority ownership has, and exercises, the authority to control independently day-to-day business decisions;
- d. An enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

"New York Resident" shall mean a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return.

"New York State Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the Authority and which are substantially manufactured, produced or assembled in New York State, or services which are sought by the Authority and which are substantially performed within New York State.

"Other Than Personal Service Contracts" shall mean any written agreement or purchase order entered into by the Authority for the acquisition of goods, materials or other than personal services in the actual or estimated amount of five thousand dollars (\$5,000) or more. Goods, materials or other than personal services that the Authority may require for five thousand dollars (\$5,000) or more included, but are not limited to, the following: vehicles, computer equipment, telephone equipment, and photocopying equipment, furniture, office supplies, printing and offsetting services, utilities and maintenance supplies. This does not include construction contracts.

"Personal Services" shall mean any services performed for a fee, commission or other compensation by persons or organizations that are not providing such services as Authority employees or officers or employees of any state agency or public corporation. Personal services include, but are not limited to, legal, accounting, management consulting, investment banking, planning, training, statistical research, public relations, architectural, engineering, surveying or any other services of a consulting, technical or professional nature.

"Procurement Contracts" shall mean, for purposes of these guidelines, any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of five thousand dollars (\$5,000) or more.

"Time Critical" shall mean a requirement so important that if it is not met immediately, the outcome will become or approach a state of material risk to Authority assets.

"Women-owned Business Enterprise" shall mean any business enterprise, including a sole proprietorship, partnership or corporation that is:

- a. At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women, or, in the case of a publicly owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;

- b. An enterprise in which the ownership of women is real, substantial and continuing;
- c. An enterprise in which the women ownership has, and exercises, the authority to control independently day-to-day business decisions;
- d. An enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

ARTICLE III

A. USE AND SELECTION OF PROCUREMENT CONTRACTORS

Sec. 3.01 Use and Selection of Other than Personal Service Contracts

- (1) For the procurement of Other than Personal Service Contracts the Authority is required to follow internal control policies and procedures related to the purchase of such goods or materials as promulgated by the Authority from time to time, subject to the limitations of Section 3.03 of these guidelines. Reference to these procedures can be found under Purchasing in the Authority's policy and procedures manual.
- (2) For the procurement of construction contracts the Authority is required to follow internal control policies and procedures related to the purchase of such goods or materials as promulgated by the Authority from time to time, subject to the limitations of Section 3.03 of these guidelines. Reference to these procedures can be found under Facility Design, Contract Bidding and Award in the Authority's policy and procedures manual.

Sec. 3.02 Use, Selection and Award of Personal Service Contractors

- (1) Use of Personal Service Contractors. It is the preference of the Board that Authority responsibilities be performed by employees and that, when personal services are used, contracts be awarded to as broad a spectrum of providers as is practical. Personal Service Contractors shall be used only when it has been determined by the Executive Director:
 - (a) That such services are necessary or convenient to the performance of Authority responsibilities, and
 - (b) That such service is not available from an officer or employee of the Authority, and that the performance of such service requires it be undertaken by someone independent of the Authority or that use of Authority personnel for such service would not be cost effective.
- (2) Selection of Personal Service Contractors. It is the policy of the Authority that contracts for personal service be awarded by competition.

Where compensation is to exceed or expected to exceed \$50,000, formal requests for proposals shall be circulated and the contractor selected from among those submitting proposals.

Where compensation is expected to be between \$5,000 and \$50,000, proposals shall be requested by telephone or letter from at least three qualified providers when practical and the contractor selected from among those submitting proposals. The individual soliciting such proposals shall make a record of the scope of services requested, the name of each individual requested to submit a proposal, the amount of each proposal offered, and any other pertinent information, this record shall be maintained for a period of at least three years following the date of approval of the next annual report on Procurement Contracts of the Authority. Where a total compensation in any calendar year is expected to be below \$5,000, contracts may be awarded without competition.

- (3) Awards of Personal Service Contracts. The Board shall award, by resolution, all contracts for personal services greater than \$15,000 following evaluation of proposals received, balancing price, services offered, experience, reputation in the field, personal interviews with key personnel and any other relevant Authority priority or policy. In cases of emergency requiring immediate action, the power to award such a contract shall be granted to the Executive Director who shall report such an award with supporting reasons for the award to the Board at its next meeting.
- (4) All contracts for personal services shall be limited to a maximum of one year unless the Board, by resolution, determines that a longer period for a particular contract is in the best interest of the Authority. Contracts for periods of longer than one year must be approved by Board resolution and reviewed annually by the Board.
- (5) Except in cases of emergency requiring immediate action, all contracts for personal services shall be in writing.
- (6) The form of all contracts for personal services shall be approved by counsel.
 - (a) Such contracts should clearly establish and state basis of need, purpose, and services to be rendered.

- (b) Such contracts, except in individual multi-year project situations, should not be open-ended but require an annual review and justification by the Authority Board.
- (c) All such contracts, to the extent appropriate, should be based on unit costs and should provide for a detailed review of performance prior to approval for payment by the Executive Director.

Sec. 3.03 Approval and Award for Procurement Contracts

- (1) Source Selection Methods. The Authority shall not approve Procurement Contractors unless the source selection is performed in accordance with one of the following selection methods:
 - (a) Competitive Bid. Solicitation of price bids for specified services, or goods, materials or other than personal services, to be awarded to qualifying contractors primarily on the basis of the lowest price. Competitive bids are to be solicited when the goods or services required are of a standardized nature that may reasonably be made the subject of specifications to which bidders respond with required qualification data and price offers.
 - (b) Requests for Proposals. Solicitation of specific proposals which indicate an understanding of identified financial, organizational, logistical and technical requirements and/or problems and which detail elements of performance including techniques and procedures as well as prices. Award of a contract within this method is made on the basis of a formal evaluation of the characteristics, quality and costs of such proposals.
 - (c) Competitive Negotiations. Solicitation of qualifying potential contractors who have submitted materials pursuant to a request for proposal to further negotiate their proposals, including prices for contract award, on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.
 - (d) Sole Source. When the Authority determines, and the Executive Director approves in writing, that there is only one source for

required goods or services or that one firm has a unique advantage with respect to the provision of particular goods or services which would render competitive procedures futile, the contract for those goods or services may be awarded without competitive procedures.

- (e) Emergency. In the case of a public emergency arising out of an accident or other unforeseen occurrence of condition whereby circumstances affecting property of the Authority of life, health or safety require immediate action, the Executive Director or an Officer designee may award a contract without competitive procedures.
- (f) Pre-qualified Slate. The Authority may select contractors for any procurement activity from a qualified slate of potential contractors, selected on the basis of qualification and performance data, which data shall be updated and/or re-certified on a regular basis. Contract award is based upon formal evaluation of qualifications and the subsequent negotiation of fair and reasonable compensation for the specific services then required.
- (g) Exceptions. The Authority reserves the right to award Procurement Contracts valued below \$15,000 without competitive procedures, subject to internal control policies and procedures promulgated by the Authority from time to time.

Sec. 3.04 Limitations on Contracts with Former Officers, Board Members and Employees. Former Officers, Board Members, or employees of the Authority shall receive no preference or special consideration in the award of procurement contracts and the award of a contract to any former Officer, Board Member or employee shall be made only if the Board determines unanimously that it will be in the best interests of the Authority to do so.

The Authority may not award a Procurement Contract to any former Officer, Board Member or employee, within a period of two years after the termination of such service or employment.

Sec. 3.05 Contract Provisions. Contracts for Personal Services shall detail the scope of services to be performed and the time frame for performance, the monitoring or reviewing of that performance by Authority personnel and, where appropriate, any permitted use of supplies, facilities or personnel.

Such contracts shall also state the compensation for the services, the timing of payment, the preconditions for receiving payment from the Authority, procedures for termination of the contract and any other provisions counsel deems necessary or appropriate for each particular contract. In addition, if performance of a particular service contract will require the use of subcontractors, the contract shall require the contractor to act affirmatively to secure such participation by minority and women-owned business enterprises and to report such efforts to the Authority in accordance with predetermined Authority participation goals.

Sec. 3.06

Execution of Contracts. All such contracts for personal services (other than emergency contracts) following award by Board resolution and approval as to form, by counsel, shall be executed by the Chairman, or his designee, as duly authorized by resolution in accordance with Article IV, Section 1, of the Authority By-Laws.

Each contract shall contain provisions concerning the nature and monitoring of work to be performed, the use of corporate supplies and facilities, the use of Authority personnel and any other provision deemed necessary by counsel.

ARTICLE IV

B. ADVERTISEMENTS

Sec. 4.01 Advertisements of Procurement Contracts. Advertisement Requirements for Competitive Source Selection Methods. The solicitation of bids, proposals or submissions of qualification data or offers for Procurement Contracts shall be made by the Authority in a manner determined by the Executive Director to be the most cost effective for providing reasonable competition of the Authority's contracts. This may include advertisement in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these guidelines, including the minority and women-owned business provisions herein, In addition, in the case of Procurement Contracts in the actual or estimated amount of fifteen thousand dollars (\$15,000) or more, and in the establishment of pre-qualified slates, as of January 1, 1990, the Authority will advertise all such opportunities in the "Procurement Opportunities Newsletter" published by the New York State Department of Economic Development, subject to the following exemptions:

- (a) Emergency Contracts: Contracts awarded without competitive procedures as a result of an accident or other unforeseen occurrence or condition in which circumstances affecting property of the Authority or life, health or safety require immediate action as determined by the Executive Director or an Officer designee.
- (b) Critical Contracts: Contracts which must be awarded within a set time period because of delay of award would have a serious adverse effect on the Authority that outweighs the benefits of advertisement in the newsletter as determined by the Executive Director, the Chief Financial Officer, or an Officer designee.
- (c) Contract opportunities being re-bid or re-solicited within forty-five (45) business days after proposals were originally due pursuant to publication in the newsletter are exempt from further publication.
- (d) Contracts containing a renewal clause in which the renewal clause is being exercised for another term.

All Procurement Contracts shall be limited to a maximum of one year unless the contract contains a renewal clause or the Board, by resolution, determines that a longer period for a particular contract is in the best interest of the Authority.

Contracts for periods of longer than one year must be approved by Board resolution and reviewed annually by the Board.

ARTICLE V

C. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE UTILIZATION

Sec. 5.01 It is the goal of the Authority to (a) promote and assist participation by minority women-owned business enterprises in competition for Procurement Contracts and to (b) award a fair share of Procurement Contracts to minority and women-owned business enterprises.

(a) The Department Director of the Authority department responsible for solicitation of goods, materials or services shall use his/her best efforts to ascertain the identity of minority and women-owned business enterprises in various areas of Authority procurements and, depending on the amount and nature of the procurement, bids, price quotes or proposals shall be solicited from such enterprises to the extent feasible. Consultation should be made to the director of certified minority and women-owned businesses at a minimum.

(b) When compensation is expected to exceed \$25,000 for non-personal and personal service contracts and \$100,000 for construction contracts, the Authority shall require the proposer to submit a minority and women-owned business enterprise utilization plan for achieving a goal for participation of certified minority and women-owned businesses. Goals shall be set at the discretion of the Authority based on the following factors:

- 1) The contract scope of work;
- 2) The number and types of certified minority and women-owned business enterprises available in the directory to perform the state contract work, and their availability in the region of contract performance. In determining the region where the state contract is performed the state agency shall consider:
 - (i) The location of work as stated in the contract, and
 - (ii) The locations in New York State where the contractor performs the contract scope of work;
- 3) The total dollar value of the work required by the state contract in relation to the dollar value of the components of the contract scope of work;
- 4) The relationship of the size and term of a state contract to the size and term of a project for which purpose the state contract is awarded;

- 5) The Authority's ability to identify certified minority and women-owned businesses to meet goals required by the state contract;
- 6) The percentage of minority and women-owned business by type of business as compared to the known businesses of the same type located in the region where the contract scope of work will be performed;
- 7) The known success or failure of minority and women-owned business in obtaining participation on state contracts engaged in the types of work as businesses or suppliers required by the contract; and
- 8) The Authority may also consider the following factors in determining what goals are appropriate in relation to a particular state contract or type of contracts:
 - (i) The ability of the Authority to meet goals for participation by certified minority and women-owned business enterprises established in relation to other similar state contracts or types of contracts in the same region; and
 - (ii) The ability of other state agencies or authorities to meet goals for participation by certified minority and women-owned business enterprises established in relation to similar state contracts, or types of contracts performed in the same region.
- (d) When compensation is expected to be less than \$25,000 for other than personal service contracts and less than \$100,000 for construction contracts, the Authority will give companies or firms certified as minority or women-owned businesses or companies who work in conjunction with certified minority or women-owned businesses, a competitive advantage of up to 10% variance to the lowest qualified bid or proposal in the evaluation of their bids or proposals.

ARTICLE VI

D. PROMOTION OF STATE PARTICIPATION

Sec. 6.01 It is the Authority's policy to promote the participation by New York State business enterprises and New York State residents in procurement contracts. To this end the Authority will:

- (a) Consult the specifications of New York State business enterprises in developing specifications for any procurement contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding. Where feasible the Authority will make use of the stock item specification forms prepared by the Commissioner of General Services, and where necessary, consult with the Commissioner of the Office of General Services, in developing such specifications and make such determinations; and
- (b) With the cooperation of the Department of Economic Development and through cooperative efforts with contractors, provide for the notification of New York State business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let in an amount estimated to be equal to or greater than one million dollars (\$1,000,000) by cooperating with New York State in efforts to obtain offset credits from foreign countries and promulgating procedures which will assure compliance by contractors with such notification as a condition of awarding bids. Such contractors shall, as supplementary materials to their bids, document their efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars (\$1,000,000), attest to compliance with the federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended; and document their efforts to provide notification to New York State residents of employment opportunities through the listing of any such positions with the job service division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements; and
- (c) Include in all bid documents provided to potential bidders a statement that information concerning the availability of New York State subcontractors

and suppliers is available from the New York State Department of Economic Development, which shall include the directory of certified minority and women-owned businesses, and that it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services; and

- (d) With the cooperation of the job service division of the Department of Labor and through cooperative efforts with contractors, provide for the notification of New York State residents of employment opportunities arising in New York State out of procurement contracts let by the Authority in an amount estimated to be equal to or greater than one million dollars (\$1,000,000); and promulgate procedures which will assure compliance by contractors with such notification by requiring contractors to submit post award compliance reports documenting their efforts to provide such notification through listing any such positions with the job service division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

Sec. 6.02 Notification of Commissioner of Economic Development. The Authority will notify the Commissioner of Economic Development of the award of a procurement contract for the purchase of goods from a foreign business enterprise in an amount equal to or greater than one million dollars (\$1,000,000) simultaneously with notifying the successful bidder and will not enter into a procurement contract for said goods until at least fifteen days has elapsed, except for procurement contracts awarded on an emergency or critical basis. The notification to the Commissioner of Economic Development shall include the name, address, telephone and facsimile number of the foreign business enterprise, the amount of the proposed procurement contract and the name of the individual at the foreign business enterprise or acting on behalf of the same who is principally responsible for the proposed procurement contract. Such notification shall be used by the Commissioner of Economic Development solely to provide notification to New York State business enterprises of opportunities to participate as subcontractors and suppliers on such procurement contracts, to promote and encourage the location and development of new business in the state, to assist New York State business enterprises in obtaining offset credits from foreign countries, and to otherwise investigate, study and undertake means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of New York State business enterprises, industry and commerce.

ARTICLE VII

E. REPORTS ON PROCUREMENT CONTRACTORS

Sec. 7.01 Annual Report. Within ninety days after the close of each fiscal year, the Board of the Authority shall approve an annual report on Procurement Contracts. Such annual report will include:

- These guidelines;
- any amendments hereto enacted during the year;
- any explanation of the guidelines or the amendments appropriate or necessary for purposes of clarity;
- a list of the procurement contracts over \$5,000 entered into during previous years and ongoing during the year;
- the selection process used to select each contractor;
- a description of the duties performed by each contractor;
- the date of each contract and its duration;
- the total amount of each contract;
- the status of each contract, including the amount spent on the contract during the reporting year and during the life of the contract;
- a list of all contracts exempted from the advertisement segments of Article 4-C of the Economic Development Law under Article IV of these guidelines and an explanation of the reason for the exemption; and
- a differentiation between New York State Business Enterprises and Foreign Business Enterprises.

The annual report on Procurement Contractors, after being approved by the Board, shall be submitted to the Division of the Budget with copies to the Department of Audit and Control, the Department of Economic Development, the Senate Finances Committee and the Assembly Ways and Means Committee.

ARTICLE VIII

F. CONSTRUCTION CONTRACT CHANGE ORDER PROCEDURE AND EMERGENCY PROCUREMENT

Sec. 8.01 Change Orders. All change orders related to construction contracts are to be received and reviewed by the Chief Engineer. The Engineer has the sole responsibility to manage and review all proposed change orders consistent with the best interests of the Authority. Additionally, the following will be required of the Chief Engineer:

- Each month, as part of the Jobs in Progress report to the Board, the Chief Engineer will include a page summarizing each individual change order for all active construction contracts. Summarized by contract, a cumulative list from inception of the contract of each change order reflecting a description of the change order, a status indicating whether a change order has been approved or approval pending, and the net dollar value (plus or minus) associated with the change order. In addition, summarized by contract, the report will identify a current estimate of the total contract reflecting all proposed change orders and the original Board approved amount of the contract.
- The Chief Engineer will be responsible to bring to the Board separately, over and above the expanded Jobs in Progress report, a resolution to amend an original contract for additional work to be paid in all instances when the net amount of all contract specific change orders exceeds the originally approved amount of that contract.
- For all change orders, no approval shall be given to a contractor, regardless of whether approval is required by the Board, until it has appeared on at least one board meeting's Jobs in Progress report unless the Board is unable to act by virtue of a lack of a quorum resulting from vacancies on the Board. In the event of a change order where approval is time critical, notice to proceed may be granted by the Executive Director after consultation with both General Counsel and the Chairman of the Board.

Sec. 8.02 Emergency Procurement. It is critical to the process that all change orders be approved by the Board prior to such approval being communicated to a vendor. Prior approval of change orders that increase the value of a contract and those that solely modify an original contract without expending incremental funds are significant in that they modify a Board approved contract. These measures will promote transparency and ensure that no change order is finalized without prior approval of the Board.

Notwithstanding the foregoing, upon the occurrence of an unexpected event requiring immediate action and the Board is not able to convene a meeting or to form a quorum, the Executive Director, in consultation with General Counsel, shall act on behalf of the Board to approve change orders and/or procure goods and services required to undertake response measures appropriate for the circumstances.