

UNITED NATIONS DEVELOPMENT CORPORATION

Guidelines for Procurement Contracts

These Guidelines, originally adopted effective January 1, 1990 by the Board of Directors of the Corporation pursuant to Section 2879 of the Public Authorities Law of the State of New York, are reviewed and approved annually by the Corporation in accordance with that Section.

1. Definitions.

As used in these Guidelines, the following terms have the meanings indicated below:

- a. **Procurement Contract** -- any written agreement for the acquisition by the Corporation of goods or Personal Services of any kind, in the actual or estimated amount of \$5,000 or more.
- b. **Minority-Owned Business Enterprise** -- any business enterprise so defined in, and certified as such pursuant to, Section 2879(3)(c) or (d) of the Public Authorities Law.
- c. **Women-Owned Business Enterprise** -- any business enterprise so defined in, and certified as such pursuant to, Section 2879(3)(e) of the Public Authorities Law.
- d. **Outside Contractor** -- a person or business enterprise, including a partnership or corporation, performing Personal Services for or providing goods to the Corporation pursuant to a Procurement Contract.

- e. **Personal Services** -- any services performed for the Corporation for a fee or other compensation, including legal, accounting, management consulting, investment banking, financial custody, investment management, construction management, construction, repair, planning, training, statistical research, public relations, architectural, engineering, surveying or other consulting, professional or technical services. Personal Services do not include any services performed for the Corporation by its employees within the scope of their employment responsibilities.
- f. **Responsible Official** -- the President of the Corporation or such other officer or employee of the Corporation who is designated by the President to be responsible in one or more areas of the Corporation's activities including responsibility for determining whether the use of Outside Contractors for the provision of goods or services is appropriate and responsibility for selecting and supervising the work of Outside Contractors.
- g. **New York State Business Enterprise** -- a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods that are sought by the Corporation and that are substantially manufactured, produced or assembled in New York State, or services that are sought by the

Corporation and that are substantially performed within New York State.

h. **New York State Resident** -- 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.

i. **Procurement Lobbying Law** - Sections 139-j and 139-k of the State Finance Law.

2. **Types of goods purchased; areas of responsibility and oversight requiring use of Personal Services.**

The Corporation's functions and responsibilities and its customary methods of operation generally call for (a) the procurement of goods of the following types: building equipment, supplies and inventories; and construction materials; and (b) the procurement of Personal Services with respect to the following: architecture and design, property management and operations, investment management, legal or accounting matters, construction, construction management, maintenance, repair and cleaning. The President may from time to time determine that the provision of Personal Services is appropriate in other areas of the Corporation's operations.

3. **Reasons for use of Procurement Contracts for Personal Services.**

The Corporation will use an Outside Contractor to provide Personal Services only after the President, or other Responsible Official after consultation with the President or the Senior Vice President, determines that

it is appropriate to do so. In making such a determination, the following will be considered:

- a. The amount of time likely to be required in performing the services.
- b. The degree of special skill likely to be required in performing the services.
- c. The availability of employees of the Corporation possessing the skills needed to perform the services.
- d. The likely expense of training employees of the Corporation to perform the services, and the likely future benefits to the Corporation of such training.
- e. The availability of Outside Contractors and the likely expense of using Outside Contractors.
- f. The requirement that the services be rendered by an independent professional, as in the case of auditors' opinions or legal opinions.
- g. The effect of use of Outside Contractors on other agreements and operations of the Corporation.
- h. The extent to which the Corporation has successfully used Outside Contractors to provide the services in the past.
- i. The need to assure that the Corporation conducts its operations in the most effective and efficient manner.

4. Selection of Outside Contractors.

All Outside Contractors will be selected on a competitive basis, except in the following circumstances:

- a. The President, or the Responsible Official after consultation with the President, determines that (i) the need to obtain high quality goods or services or goods or services having unique or extraordinary features or time requirements substantially outweighs possible cost savings from selection on a competitive basis, or (ii) the Corporation has other cost control procedures to protect the Corporation from paying more for goods or services than necessary.
- b. The Board of Directors determines that competition would be inappropriate, including any such determination (a "subd. 3(b)(i) determination") that concerns any purchase, with a cost not to exceed \$200,000, of goods or services from small business concerns* or from Minority-Owned Business Enterprises or Women-Owned Business Enterprises, or of goods or technology that are recycled commodities* or remanufactured*, which subd. 3(b)(i) determination will be controlling as provided for in Section 2879 of the Public Authorities Law, subd. 3(b)(i), effective October 13, 2010, notwithstanding any other provision of law requiring competition.

* As such terms are defined in the State Finance Law.

Except as provided in subparagraph b above, the foregoing does not affect any requirements for competitive bidding, or for giving notice of proposal solicitation, which may be binding on the Corporation under applicable law.

Where selection is made on a competitive basis, the Responsible Officer shall request proposals from at least three prospective suppliers, contractors or other providers known to have experience in providing the type of goods or services in question. Where the total value of the procurement is likely to exceed \$15,000, the proposals must be in writing. The Corporation shall evaluate proposals on the basis of all relevant factors, which in any instance may include the experience, reputation, technical qualifications, financial condition and past performance of the prospective suppliers, contractors or other providers, the size, quality and availability of staff and the identity of supervisory personnel of the prospective suppliers, contractors or other providers, possible conflicts of interest, proposed scope of work, and proposed fee, cost or commission. No single factor will necessarily be controlling and the prospective supplier, contractor or other provider submitting the proposal which is most favorable on an overall basis will be selected, except that the President, or the Responsible Official after consultation with the President, may reject any or all proposals if he or she considers such action to be in the best interests of the Corporation.

The Corporation shall conduct procurements in the actual or estimated amount of \$15,000 or more in accordance with Article 4-C of the Economic Development Law, which requires publication of notices of procurement

contract opportunities and procurement contract award information in the New York State Contract Reporter. The exemption of any proposed procurement from the publication requirements of Article 4-C of the Economic Development Law must be approved in advance by the President or Senior Vice President.

In selecting Outside Contractors for Procurement Contracts involving an estimated annualized expenditure in excess of \$15,000, the Corporation shall comply with the Procurement Lobbying Law, which provides that contacts that are intended to influence a governmental procurement can only be made to designated contact persons within the governmental entity that is conducting the procurement. The Corporation shall provide a copy of its policy regarding permissible contacts during a procurement to all potential bidders.

5. **Board approval of Procurement Contracts.**

All Procurement Contracts involving services to be rendered over more than twelve months shall be approved in advance by the Board of Directors, and performance under such contracts shall be reviewed annually by the Board of Directors. In addition, any Procurement Contract shall be approved by the Board of Directors if it is likely to result in total payments to the Outside Contractor in excess of \$50,000 per year and is not in the ordinary course of the Corporation's business of maintaining, managing and operating the properties of the Corporation.

6. **Responsibilities of Outside Contractors.**

All Outside Contractors shall comply with the Procurement Lobbying Law, including the submission of any disclosure forms required by the Corporation, in connection with the competitive selection process. All Outside Contractors shall perform all required services, and shall provide all required goods, to the satisfaction of the Corporation in accordance with the terms and conditions of their contracts. They shall meet with appropriate officials of the Corporation upon request at a reasonable time, shall present upon request written reports satisfactory to the Corporation of the progress of the services they are providing and shall provide invoices for all services rendered or goods provided in sufficient detail to enable the Corporation to identify the services or goods.

7. **Participation by Minority Owned-Business Enterprises and Women-Owned Business Enterprises.**

It is the Corporation's policy to promote and assist participation by Minority-Owned Business Enterprises and Women-Owned Business Enterprises (collectively, "MWBEs") in the Corporation's procurements at least to the extent provided under the Public Authorities Law.

Those areas or types of Procurement Contracts for which awards to MWBEs would be most appropriate, with or without a competitive process, include, but are not limited to, contracts for goods or Personal Services for buildings operations, construction, design, construction management, repair and cleaning.

The Corporation shall promote and assist: (i) participation by MWBEs in the Corporation's procurement

opportunities; (ii) the award of Procurement Contracts to MWBEs; (iii) the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Corporation; and (iv) the utilization of partnerships, joint ventures or other similar arrangements between MWBEs and others having Procurement Contracts with the Corporation.

8. Participation by New York State Business Enterprises.

It is the Corporation's policy to promote the participation by New York State Business Enterprises and New York State Residents in Procurement Contract opportunities in accordance with the Public Authorities Law.

9. Provisions of Procurement Contracts.

In addition to any provisions otherwise required by law or by these Guidelines or by the Responsible Official, all Procurement Contracts must contain the following provisions:

- a. A description of the services to be performed or the goods to be provided, the standards for performance, if practical, and any relevant time requirements or deadlines.
- b. A statement of the cost to the Corporation of the services to be performed or the goods to be provided, including the method and time of payment.
- c. A requirement, where appropriate, that any Outside Contractor provide periodic progress reports in sufficient detail to permit

monitoring of the services to be performed or the goods to be provided.

- d. Provisions relating to conditions and circumstances, if any, under which supplies, facilities and personnel of the Corporation may be used by an Outside Contractor in performing services or providing goods.
- e. Where required by law or otherwise appropriate, provisions under which the Corporation may terminate the contract.

10. Contracts with former officers and employees.

Any Procurement Contract with persons who were formerly officers or employees of the Corporation shall, in addition to complying with these Guidelines, be approved by the Chairman of the Board of the Corporation or by a member of the Board of Directors designated by the Chairman.

11. Reporting.

The President or his designee shall submit to the Board of Directors annually for its review and approval a report which: summarizes the Corporation's procurement activity for the preceding calendar year, including an identification of any new Procurement Contracts entered into during the preceding year and a description of the manner in which Outside Contractors for those new contracts were selected; reflects the status of existing Procurement Contracts; includes a copy of these Guidelines and an explanation thereof and of any amendments thereto since the last such report; and provides any other information required under applicable

laws or regulations. The Corporation shall submit each such annual report to government officials and entities as specified in Section 2879 of the Public Authorities Law and shall make the same available to the public on reasonable request.

12. Comptroller approval of contracts.

The Corporation shall comply with Section 2879-a of the Public Authorities Law, which provides that state authority contracts in excess of \$1,000,000 and awarded on a non competitive basis are subject to approval by the State Comptroller. The Corporation will provide written notice to the State Comptroller of any such contract in the manner prescribed by the State Comptroller.

13. Miscellaneous.

No provision of these Guidelines may be the basis for any claim against the Corporation or any of its directors, officers, or employees.

These Guidelines do not alter any rights or obligations under any contract of the Corporation with a third party executed before adoption of these Guidelines, nor may these Guidelines be deemed to alter the terms of any contract or affect the validity of any contract made in violation of or without compliance with these Guidelines.