

RESOLUTION NO. 2564

A RESOLUTION OF THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION WITH RESPECT TO THE ANNUAL REVIEW AND APPROVAL OF THE CORPORATION'S PROCUREMENT CONTRACT GUIDELINES

WHEREAS, the Corporation is required by the provisions of Public Authorities Law Section 2879 to adopt and to annually review and approve its Procurement Contract Guidelines, and to prepare and approve a report on Procurement Contracts, which are defined as any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of five thousand dollars or more; and

WHEREAS, pursuant to Resolution No. 2494, the Board of Directors approved the Corporation's Procurement Contract Guidelines on June 1, 2017; and

WHEREAS, the Board of Directors desires to amend the Procurement Contract Guidelines to explain Corporation procedures regarding emergency contracts, prompt payment to contractors, allowable expenses, and when Board approval is required for certain Procurement Contracts, and to adopt provisions required by recent Executive Orders; and

WHEREAS, the Board of Directors desires to approve the amended Procurement Contract Guidelines of the Corporation as reflected in Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION, AS FOLLOWS:

Section 1. The Corporation's Procurement Contract Guidelines, dated June 7, 2018, a copy of which is annexed hereto and made a part hereof as Exhibit A, together with the Annual Report on Procurement Contracts which is annexed hereto and made a part hereof as Exhibit B, are hereby approved.

Section 2. This Resolution shall take effect immediately upon its adoption.

SIGNED BY: _____ /s/
ANNETTE M. HARRIS
SECRETARY TO THE CORPORATION

Exhibit A

New York State Environmental Facilities Corporation Procurement Contract Guidelines

June 7, 2018

INTRODUCTION

The following Procurement Contract Guidelines (the "Guidelines") set forth the policy of the New York State Environmental Facilities Corporation (the "Corporation") with respect to Procurement Contracts.

By virtue of a resolution adopted by the Corporation's Board of Directors (the "Board") on the 7th day of June, 2018, these Guidelines provide an internal administrative policy for the guidance of the Corporation's officers and employees in connection with Procurement Contracts. The Guidelines are not intended and shall not be deemed to grant or confer any rights or remedies to or upon any third party.

I. Definitions:

The following terms are defined herein as follows. Unless otherwise specified, all other terms shall be defined as set forth in Public Authorities Law ("PAL") § 2879, 2 NYCRR Part 206, or Executive Law Article 15-A.

- (1) **"Centralized Contract"** means any contract let by the Office of General Services Procurement Services for use by authorized users, including but not limited to the Corporation, for the purchase of goods or services. Centralized Contracts are established or approved by the Commissioner of General Services as meeting the State's requirements.
- (2) **"Contact,"** pursuant to State Finance Law §§ 139-j and 139-k, means any oral, written or electronic communication with the Corporation under circumstances where a reasonable person would infer that the communication was intended to influence the Corporation's conduct or decision regarding the procurement.
- (3) **"Designated Contact(s)"** means a person or persons who are knowledgeable about a procurement and that the Corporation designates for such procurement, pursuant to State Finance Law § 139-j, as the person or persons who may be contacted by Offerers relating to the procurement.
- (4) **"Discriminatory Jurisdiction,"** pursuant to PAL § 2879(5), means any other country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State Business Enterprise in the procurement of goods and services by the same or a non-governmental entity influenced by the same. Such discrimination may include, but is not limited to, any law, regulation, procedure or practice, terms or license, authorization, or

funding or bidding rights which requires or encourages any agency or instrumentality of the state or political subdivision thereof or non-governmental entity influenced by the same to discriminate against a New York State Business Enterprise.

- (5) **“Eligible Contract”** means any contract executed by the Corporation on or after March 1, 2010, other than an exempt contract, as that term is defined in 2 NYCRR Part 206, where the aggregate consideration proposed for exchange (including all reasonably anticipated renewals and amendments) may reasonably be valued in excess of \$1 million and such contract either:
- (1) shall be paid in whole or in part with monies appropriated by the State, either directly to the Corporation or to a State agency which pays the money to the Corporation; or
 - (2) was or shall be awarded on a Single Source basis, a Sole Source basis or pursuant to any other method of procurement that is not a competitive procurement. For purposes of determining the value of a contract that has no term or is perpetual in nature, the contract shall be deemed to have a term of five years.
- (6) **“Eligible Contract Amendment”** means
- (1) any modification to an Eligible Contract; or
 - (2) any modification other than an exempt contract amendment, as that term is defined in 2 NYCRR Part 206, to a contract executed by the Corporation where such modification was executed on or after March 1, 2010, and where the aggregate consideration under the contract as amended may reasonably be valued in excess of \$1 million and:
 - (i) the contract as amended will be paid in whole or in part with monies appropriated by the State, either directly to the Corporation or to a State agency which pays the money to the Corporation; or
 - (ii) the contract was originally awarded on a noncompetitive basis; or
 - (iii) the contract was originally awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.
- (7) **“Emergency”** means urgent and unexpected circumstances where the public health or safety or the use or conservation of public resources is at risk, requiring immediate action. Failure to properly plan in advance does not constitute an emergency.
- (8) **“Foreign Business Enterprise,”** pursuant to PAL § 2879(5), means a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods which are sought by the Corporation and which are substantially produced outside the State, or services, other than construction services, sought by the corporation which are substantially performed outside the State. For purposes of construction services, Foreign Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside the State.
- (9) **“Goods,”** also referred to as commodities, means material goods, supplies, products, construction items, electronic information resource, or other standard articles of commerce

which are the subject of any purchase or other exchange.

- (10) **“Minority-owned Business Enterprise,”** pursuant to Executive Law Article 15-A, means a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
- (1) at least fifty-one percent owned by one or more minority group members;
 - (2) an enterprise in which such minority ownership is real, substantial and continuing;
 - (3) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
 - (4) an enterprise authorized to do business in this State and independently owned and operated;
 - (5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
 - (6) an enterprise that is a small business pursuant to Executive Law Article 15-A.
- (11) **“New York Resident,”** pursuant to PAL § 2879, means a natural person who maintains a fixed, permanent and principal home located within the State and to which such person, whenever temporarily located, always intends to return.
- (12) **“New York State Business Enterprise,”** pursuant to PAL § 2879, means 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 Corporation and which are substantially manufactured, produced or assembled in the State, or services, other than construction services, which are sought by the Corporation and which are substantially performed within the State. For purposes of construction services, a New York State Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in the State.
- (13) **“Offerer,”** pursuant to State Finance Law §§ 139-j and 139-k, means the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the Corporation about a procurement during the Restricted Period of such procurement whether or not the entity has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicates with the Corporation regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offerer.
- (14) **“Preferred Source,”** pursuant to State Finance Law § 162, refers to those vendors

afforded preferred source status meaning they are exempted from the competitive procurement requirements otherwise applicable to Procurement Contracts for certain goods and services that meet the form, function, and utility required by the governmental entity.

- (15) **“Procurement Contract,”** pursuant to PAL § 2879, means any written agreement for the acquisition of goods or services of any kind by the Corporation, in the actual or estimated amount of five thousand dollars (\$5,000) or more. A purchase order shall be deemed to be a Procurement Contract unless the purchase order is issued pursuant to an existing Corporation contract or a Centralized Contract where neither the contract nor the relevant procurement guidelines require a mini-bid or similar competitive process.
- (16) **“Restricted Period,”** pursuant to State Finance Law §§ 139-j and 139-k, means the period of time commencing with the earliest posting, on the Corporation’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Economic Development Law Article 4-C, of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerers intending to result in a Procurement Contract with the Corporation and ending with the final contract award and approval by the Corporation and, where applicable, the Office of the State Comptroller.
- (17) **“Service-Disabled Veteran-Owned Business Enterprise,”** pursuant to Executive Law Article 17-B, means a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
- (1) at least fifty-one percent owned by one or more service-disabled veterans;
 - (2) an enterprise in which such service-disabled veteran ownership is real, substantial, and continuing;
 - (3) an enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
 - (4) an enterprise authorized to do business in this State and is independently-owned and operated;
 - (5) an enterprise that is a small business which has a significant business presence in the State, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto; and
 - (6) certified by the Office of General Services (“OGS”).
- (18) **“Services”** means the performance of a task or tasks and may include a material good or quantity of material goods, and which is the subject of any purchase or other

exchange. Technology shall be deemed a service for purposes of these Guidelines.

- (19) **“Single Source,”** pursuant to 2 NYCRR § 206.2, means a procurement in which although two or more vendors can supply the required goods or services, the Corporation, upon written findings setting forth the material and substantial reasons therefore, may award a contract or amendment to a contract to one vendor over the other.
- (20) **“Small Business,”** pursuant to State Finance Law § 160(8), means a business which is resident in the State, independently owned and operated, not dominant in its field and employs one hundred or less persons.
- (21) **“Sole Source,”** pursuant to 2 NYCRR § 206.2, means a procurement in which only one vendor is capable of supplying the required goods or services.
- (22) **“State”** means New York State.
- (23) **“Technology”** means either a good or service or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity. Technology shall be deemed a service for purposes of these Guidelines.
- (24) **“Women-owned Business Enterprise,”** pursuant to Executive Law Article 15-A, means a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
- (1) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
 - (2) an enterprise in which the ownership interest of such women is real, substantial and continuing;
 - (3) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
 - (4) an enterprise authorized to do business in this State and independently owned and operated;
 - (5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
 - (6) an enterprise that is a small business pursuant to Executive Law Article 15-A.

II. Applicability

Except as otherwise provided herein, all Corporation Procurement Contracts are subject to these Guidelines. A representative (but not exclusive) list of types of goods purchased and a description

of those areas of responsibility and oversight requiring the use of services and the reasons for the use of services in such areas is set forth in Attachment 1.

III. Determination of Need for Services

- A. Before entering into a Procurement Contract, the Corporation should consider whether the contemplated services can be adequately and cost-effectively performed by staff within the Corporation.
- B. The Corporation's reasons for utilizing a Procurement Contract may include the need for specialized expertise not available within the Corporation or the need for providing such a service which does not arise on a sufficiently recurring basis to justify the Corporation's maintaining staff to provide such service.

IV. Requirements Regarding the Selection of Contractors for Procurement Contracts

A. Preferred Sources

If a Preferred Source has goods or services available that meet the form, function, and utility requirements of the Corporation, the Corporation shall procure such goods or services in accordance with State Finance Law § 162 before pursuing other methods of procurement. If goods or services that can meet the Corporation's form, function, and utility requirements are not available from a Preferred Source, the Corporation may pursue another method of procurement as set forth herein.

B. Centralized Contracts

If a Centralized Contract has goods or services available that meet the form, function, and utility requirements of the Corporation, the Corporation will evaluate the suitability of using a Centralized Contract prior to engaging in a competitive or non-competitive procurement pursuant to Sections IV(C) or (D).

C. Competitive Selection of Contractors

The Corporation shall make every effort to secure offers from contractors for Procurement Contracts on a competitive basis and to select from such offers the qualified contractor offering the most favorable terms. In its attempt to secure a Procurement Contract on a competitive basis and upon the most favorable terms, the Corporation shall, to the extent practicable, as determined by the President, utilize the following procedure:

1. Solicit offers from several firms known to be qualified in the area of goods or services to be provided.
2. Where required by law, or where otherwise determined to be appropriate by the President, publish notice of the opportunity to submit a bid or proposal through advertisement in the procurement opportunities newsletter published by the Department of Economic Development ("New York State Contract Reporter").

3. Evaluate offers received on the basis of each offerer's technical qualifications, financial stability, past performance for the Corporation, staff availability, experience, possible conflicts of interest, contract price, fee structure, vendor responsibility, status as a certified MWBE, proposed joint ventures or partnering arrangements, record of diversity and equal employment, and any other necessary criteria.
4. Document in the procurement record the processes for: solicitation of offers, selection of contractors, and the negotiation and acceptance of contract terms.
5. In the event that an unsuccessful offerer that responded to a request for proposal or an invitation for bids requests a debriefing, afford the unsuccessful offerer the opportunity to review its offer or proposal with the Corporation and provide the reasons why the unsuccessful proposer was not selected for award.

D. Non-Competitive Selection of Contractors

The Board, upon adoption of these Guidelines, hereby waives the use of a competitive procedure for selecting contractors, as outlined in Section IV(C), when:

1. The amount of a Procurement Contract does not exceed \$50,000;
2. The amount of a Procurement Contract does not exceed \$200,000 and:
 - a. the goods and/or services that are the subject of the Procurement Contract are purchased from a Small Business; or
 - b. the goods and/or services that are the subject of the Procurement Contract are purchased from a certified MWBE; or
 - c. the goods or technology that are the subject of the Procurement Contract are recycled or remanufactured.
3. The President determines that there is an Emergency such that the procurement of goods or services cannot await the competitive selection of a contractor pursuant to this procedure.
4. The President determines that a Single Source or Sole Source procurement is justified.

Where the President does not use the competitive procedure for selecting contractors as outlined in Section IV(C), the Corporation shall document the following to the procurement record: the procedure used to select such contractor, the basis for selecting such procedure, the negotiation and acceptance of contract terms, and the basis upon which it determined the cost was reasonable.

E. Exemptions from Publication Requirements

The following types of contracts are exempt from publication requirements, and therefore do not require advertisement in the New York State Contract Reporter:

1. Procurement Contracts awarded on an Emergency basis, which exemption is subject to Office of the State Comptroller (“OSC”) approval where required by law;
2. Procurement Contracts with Preferred Sources;
3. Centralized Contracts;
4. Procurement Contracts being re-bid or re-solicited for substantially the same goods or services, within forty-five business days after the date bids or proposals were originally due;
5. Procurement Contracts otherwise exempt from publication pursuant to Economic Development Law Article 4-C;
6. Single Source and Sole Source contracts, which exemption is subject to OSC approval where required by law; and
7. Procurement Contracts for which publication is otherwise not feasible, which exemption is subject to OSC approval where required by law.

Pursuant to PAL § 2879-a and Economic Development Law § 144, for all Procurement Contracts in excess of \$1 million to be awarded by the Corporation to a Single Source, Sole Source, or pursuant to any other method of procurement that is not competitive, OSC may determine to require supervision in the form of prior review and approval. In these cases, the Corporation must seek OSC approval for an exemption from publication requirements. If granted such exemption, the Corporation will publish notice of the awarded Procurement Contract in the New York State Contract Reporter in accordance with the requirements of Economic Development Law § 144.

F. Vendor Responsibility

Prior to awarding a Procurement Contract, the Corporation shall conduct a review of the prospective contractor to provide reasonable assurances that the vendor is responsible. Vendor responsibility is determined by a review of the prospective contractor’s legal authority to do business in the State, business integrity, financial and organizational capacity, and performance history.

The Corporation shall not enter into contracts with any prospective contractors unless a determination of responsibility is made.

G. Types of Provisions in Procurement Contracts

To the extent deemed appropriate by the President or General Counsel, Procurement Contracts

may include, but should not necessarily be limited to, the following types of provisions:

- Scope of Services
- Payment, including Budget and Payment and Reporting Schedule
- Term
- Amendment
- Contractor's Representations and Warranties
- Contractor's Covenants
- Independent Contractor
- Compliance with Laws
- Notices and Service of Process
- Assignment of Contract
- Use of Subcontractors
- Iranian Energy Sector Divestment
- Conflicts of Interest
- Public Officers Law
- Ethics
- Contractor Personnel
- Corporation's Right to Withhold Payments and Setoff
- Indemnification
- Insurance
- Termination
- Suspension of Work
- Promotion of New York State Business Enterprises and New York State Residents in Procurements
- Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified MWBEs and Equal Employment Opportunities For Minority Group Members And Women
- Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses
- Confidentiality and Non-Disclosure
- Ownership of Materials
- Release by the Contractor
- Claims or Actions Related to the Contract
- Publicity
- Performance of Work
- Access to Meetings
- Records, Inspection, and Audit
- Compliance with New York State Information Security Breach and Notification Act
- Arbitration
- Severability
- Net Neutrality Principles (Executive Order No. 175)
- Prohibiting Contracts with Entities that Support Discrimination (Executive Order No. 177)

H. Allowable Expenses

The Corporation may allow for the reimbursement of actual and necessary expenses incurred during the performance of services pursuant to a Procurement Contract. In such cases, the Corporation shall limit reimbursement for travel expenses to the maximum extent allowed in accordance with the OSC Travel Manual, available at www.osc.state.ny.us.

I. Procurement Contracts Subject to Approval by the Corporation's Board

The following types of Procurement Contracts are subject to prior approval by the Corporation's Board of Directors by resolution:

1. Procurement Contracts with a value in excess of \$200,000 in aggregate through the life of the contract, including any renewals or extensions, except for those Procurement Contracts identified in subsection (3) below;
2. Procurement Contracts for a term in excess of one year, including any renewals or extensions, except for those Procurement Contracts identified in subsection (3) below;
3. Procurement Contracts for warranties, product maintenance, product support, hardware, software, or services where current Corporation license or use restrictions render competition impractical, where the contract value exceeds \$300,000 in aggregate through the life of the contract including any renewals or extensions;
4. An amendment to a Procurement Contract not previously approved by the Board that would cause the Procurement Contract to fall into subsections (1), (2), or (3) above; and
5. An amendment to a Procurement Contract that adds value to or extends or renews the term of a Procurement Contract previously approved by the Board but which previous Board approval did not include the authority to add value or extend/renew the term.

J. Office of the State Comptroller Approval of Contracts

The Corporation shall follow the requirements and procedures of PAL § 2879-a and 2 NYCRR Part 206 with respect to OSC approval of contracts.

In accordance with PAL § 2879-a and 2 NYCRR Part 206, in the event that OSC has determined that contracts or categories of contracts, other than exempt contracts, where the aggregate value, including all reasonably anticipated renewals and amendments, is in excess of one million dollars, and are (a) to be awarded by the Corporation to a Single Source, a Sole Source or pursuant to any other method of procurement that is not competitive, or (b) which are to be paid in whole or in part from monies appropriated directly or indirectly by the State to the Corporation for such contractual

expenditure, require supervision in the form of prior review and approval, then any such contract entered into subsequent to such notification, must be submitted to OSC for approval and shall not be a valid enforceable contract unless and until it is approved by OSC

In the event such determination has been made and notification has been given, the Corporation shall include or cause to be included in each such contract a provision that such contract is subject to OSC's approval. If OSC has not approved or disapproved any contract subject to his or her approval within ninety days of submission to OSC, such contract shall become valid and enforceable without such approval.

The Corporation shall submit to OSC an annual report listing anticipated Eligible Contracts and anticipated Eligible Contract Amendments as required by, and as those terms are defined in, 2 NYCRR Part 206.

V. Promotion of New York State Business Enterprises and New York State Residents in Procurement Contracts

The Corporation shall promote and solicit the participation by New York State Business Enterprises and New York State Residents in Procurement Contracts in compliance with PAL § 2879. Accordingly, the following procedures shall apply:

- A. The Corporation shall collect and 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. The Corporation shall, where feasible, make use of the stock item specification forms prepared by the State Commissioner of General Services, and where necessary, consult with said Commissioner in developing such specifications and making such determinations.
- B. The Corporation shall, 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 by the Corporation in an amount estimated to be equal to or greater than one million dollars. Once awarded, contractors shall 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. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from New York State Business Enterprises including certified MWBEs, or (b) contacted the State Department of Economic Development to obtain listings of New York State Business Enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in the State, or (d) participated in bidder outreach conferences. If the bidder determines that New York State Business Enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.

- C. The Corporation shall include in all bid documents provided to potential bidders a statement that information concerning the availability of State subcontractors and suppliers is available from the Department of Economic Development, and it is the policy of the State to encourage the use of State subcontractors and suppliers, and to promote the participation of certified MWBEs where possible, in the procurement of goods and services.
- D. The Corporation, with the cooperation of the community service division of the State Department of Labor and through cooperative efforts with contractors, shall provide for the notification of New York State Residents of employment opportunities arising in the State out of Procurement Contracts let by the Corporation in an amount estimated to be equal to or greater than one million dollars, and shall require contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community service division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.
- E. The Corporation shall include in each set of documents soliciting bids on Procurement Contracts a statement notifying potential bidders located in foreign countries that the Corporation may assign or otherwise transfer offset credits created by such Procurement Contract to third parties located in the State; providing for the assignment or other form of transfer of offset credits created by such Procurement Contracts, directly or indirectly, to third parties located in the State, in accordance with the written directions of the Commissioner of Economic Development; and providing for the Corporation to otherwise cooperate with the Department of Economic Development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in the State created by such Procurement Contracts.
- F. The Corporation shall require the contractor to attest to compliance with the federal Equal Employment Opportunity Act of 1972 (P.L. 92-261) as amended.

VI. Requirements Regarding Foreign Business Enterprises and Discriminatory Jurisdictions

The Corporation will follow the requirements and procedures of PAL § 2879(5) with respect to Procurement Contracts with Foreign Business Enterprises. Accordingly, the Corporation shall notify the Department of Economic Development of the award of a Procurement Contract for the purchase of goods or services from a Foreign Business Enterprise in an amount greater than or equal to \$1 million simultaneously with notifying the successful bidder. The Corporation will not enter into any such Procurement Contract until at least 15 days have elapsed from notice to the Department of Economic Development, except where the Procurement Contract was awarded on an emergency or critical basis or where the Commissioner of Economic Development waives the notice requirement.

In addition, pursuant to PAL § 2879(5), EFC will impose restrictions on Foreign Business Enterprises located in Discriminatory Jurisdictions with respect to the solicitation and award of Procurement Contracts.

VII. Participation of Minority and/or Women-Owned Business Enterprises (“MWBEs”).

It is the goal of the Corporation to promote and assist participation by certified MWBEs in competition for Procurement Contracts and to award a percentage of Procurement Contracts to certified MWBEs. It is also the Corporation’s goal to award contracts to those contractors who have evidenced compliance with the laws of the State prohibiting discrimination in employment. Furthermore, if the performance of any Procurement Contracts permits or requires the use of a subcontractor, these contracts shall require the prime contractor to act affirmatively to encourage participation by MWBEs in such subcontract and to report the nature and extent of such efforts to the Corporation.

All Procurement Contracts, where required, shall comply with Executive Law Article 15-A and the PAL. The Corporation shall follow the rules and regulations promulgated by the Division of Minority- and Women-Owned Business Development that provide for the certification and decertification of MWBEs for all State entities through a single process that meets applicable State and federal requirements.

A. In furtherance of the above, and to promote the use of certified MWBEs in Procurement Contracts, the Corporation shall:

1. designate appropriate staff to oversee the Corporation’s programs established to promote and assist: (i) participation by certified MWBEs in the Corporation’s procurement opportunities and facilitation of the award of Procurement Contracts to such enterprises; (ii) the utilization of certified MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Corporation; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having Procurement Contracts with the Corporation. Such staff will be familiar with the procurement utilized by the Corporation, report directly to the Corporation’s President and either directly or through their designees participate in the procurement process.
2. provide notice of any procurement to appropriate professional organizations that serve MWBEs so that members of these organizations are apprised of potential opportunities to contract with the Corporation.
3. include language regarding equal employment opportunity and non-discrimination in all contracts and/or all documents soliciting bids or proposals for contracts, and require the contractor to include this language in all subcontracts with the Corporation.
4. include a provision in the Corporation’s contracts expressly providing that any contractor who willfully and intentionally fails to comply with the MWBE participation requirements as set forth in the contract shall be liable to the Corporation for liquidated or other appropriate damages as may be determined by the Corporation.
5. maintain lists of qualified certified MWBEs that have expressed an interest in doing

business with the Corporation and ensure such entities receive direct notice of any impending procurements. The Corporation shall also consult the lists of certified MWBEs maintained by the Department of Economic Development.

6. make a current version of the Directory of certified MWBE firms available for review by contractors and prospective bidders.
 7. list goals for participation of certified MWBEs in Procurement Contracts in all solicitations and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Corporation.
 8. conduct procurements in a manner that will enable the Corporation to achieve the maximum feasible portion of the goals established pursuant to subparagraph (g) of this subsection and eliminate barriers to participation of MWBEs on Procurement Contracts. The Corporation shall include, without limitation:
 - a. the expected degree of MWBE participation;
 - b. provisions relating to joint ventures, under which a bidder may count toward meeting its MWBE participation goal;
 - c. provisions under which the Corporation may waive obligations of the contractor relating to MWBE participation after a showing of good faith efforts to comply with the requirements of these Guidelines and all applicable laws pursuant to the waiver provisions contained in Executive Law Article 15-A; and
 - d. verification that MWBEs listed in a successful bid are actually participating to the extent listed on the project for which the bid was submitted.
- B. The Corporation will require all contractors, as a precondition to contracting, to submit the following to the Corporation:
1. An MWBE Utilization Plan;
 2. An EEO Policy Statement; and
 3. A Staffing Plan.

VIII. Participation of Service-Disabled Veteran-Owned Business Enterprises ("SDVOBEs")

The Corporation will make a good faith effort to achieve SDVOBE participation to the extent such firms are available, and will use its best effort so that SDVOBE firms are included in Procurement Contracts. All Procurement Contracts, where required, shall comply with Executive Law Article 17-B.

Before the Corporation issues bid documents, or during the Corporation's bid development phase, the Corporation's procurement staff will consult the Directory of SDVOBEs posted on the OGS website to determine whether the solicitation may be considered for a SDVOBE goal.

Corporation staff will also review the Directory of SDVOBEs prior to making discretionary purchases and choose SDVOBEs when feasible.

All procurements subject to Executive Law Article 17-B will contain standard language in solicitations and contracts regarding participation of SDVOBEs on State contracts.

IX. Procurement Contracts with Former Directors, Officers or Employees of the Corporation

The Corporation shall not enter into Procurement Contracts with former directors, officers or employees of the Corporation where such contracts would be in contravention of law, would create a conflict of interest, or would create the appearance of impropriety.

X. Policy and Procedures on Procurement Lobbying

The Corporation will comply with the procedural controls to prohibit improper lobbying during the Restricted Period for a procurement as set forth in State Finance Law §§ 139-j and 139-k. State Finance Law §§ 139-j and 139-k restrict Contacts between the Corporation and Offerers during the Restricted Period for Procurement Contracts involving an estimated annual amount of \$15,000 or more, to other than Designated Contacts, unless it is a Contact that is included among certain statutory exceptions.

The Corporation has established a Policy and Procedures on Procurement Lobbying, which can be found on the Corporation's website. The President shall appoint a Procurement Integrity Officer ("PIO") who shall be responsible for ensuring the Corporation's compliance with State Finance Law §§ 139-j and 139-k and the Policy and Procedures on Procurement Lobbying.

XI. Prompt Payment Guidelines

The Corporation will comply with standards for the payment of invoices within a specified period of time and for payment of interest penalties when invoices are not paid accordingly, as set forth in Public Authorities Law § 2880 and in accordance with the Corporation's Prompt Payment Guidelines, which can be found on the Corporation's website.

XII. Annual Report on Procurement Contracts

A. The Corporation shall prepare an annual report on Procurement Contracts which shall include:

1. the Guidelines;
2. any amendments to the Guidelines since the last annual report;
3. a list of the Procurement Contracts entered into since the last annual report which

includes the following: all contracts entered into with New York State Business Enterprises and the subject matter and value thereof; all contracts entered into with certified MWBEs and the subject matter and value thereof; all referrals made and penalties imposed pursuant to Executive Law Section 316; all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; the selection process used to select such contractors; all Procurement Contracts which were exempt from the publication requirements of Economic Development Law Article 4-C and the basis for such exemption; and the status of existing Procurement Contracts;

4. a list of the fees, commissions and other charges paid on the Procurement Contracts listed pursuant to clause 3 above;
 5. the results of the PIO's investigation of any allegations of improper lobbying or attempted improper lobbying, or any attempt to influence the procurement process in violation of State Finance Law § 139-j, Public Officers Law §§ 73(5) or 74, or the Corporation's Policy and Procedures on Procurement Lobbying;
 6. a list of those Contacts between Corporation staff and employees, agents or consultants of any Offerer, pursuant to State Finance Law §§ 139-j and 139-k; and
 7. annual reporting requirements pursuant to Executive Law Article 15-A.
- B. The Corporation shall submit its annual report on Procurement Contracts to the Division of the Budget, with copies to the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee, and the Assembly Ways and Means Committee.
- C. The Corporation shall make copies of its annual report on procurement contracts available to the public upon reasonable request.

XIII. Annual Review and Approval of Guidelines

The Board shall review and approve annually the Corporation's Procurement Contract Guidelines.

XIV. Amendment of Guidelines

The Board may, by resolution, amend these Procurement Contract Guidelines.

XV. Effect of Noncompliance with Guidelines

Failure by the Corporation to comply with the provisions of these Guidelines shall not be deemed to alter, or in any way affect the validity of, or modify the terms of, or impair any rights or privileges of the Corporation under, any procurement contract entered into by the Corporation.

Attachment 1

A. Types of Goods Purchased

The following is an illustrative (but not exclusive) list of the types of goods and services purchased by the Corporation in the past and may purchase in the future:

- Computer equipment and supplies such as mainframe components and related equipment, personal computers, software, and peripheral equipment, accessories and supplies; and
- Office equipment, furniture and supplies such as fax machines, copiers, audio/visual equipment, copier toner and paper.

B. Types of Services Purchased

The Corporation purchases services for a variety of reasons including, but not limited to, the need to: augment in-house staff; provide expertise in specialized areas; provide independent review; and handle specialized matters expeditiously. The following is an illustrative (but not exclusive) list of the types of services the Corporation has purchased in the past or may purchase in the future:

- Audit and Accounting
Provide audit services pertaining to the year-end preparation of financial statements of the Corporation in conformance with generally accepted accounting principles. Perform special audits and perform financial advisory services as requested.
- Engineering
Provide engineering services for the Corporation, including but not limited to, design and construction inspection engineering services.
- Equipment Maintenance
Provide routine service and repair of office equipment.
- Financial Advisory
Provide financial advisory services to the Corporation's financing activities, including but not limited to, independent advice on investments and the structure of debt instruments.
- Information Technology
Assist the Corporation with the design, implementation and operation of computer programs and cloud computing services that will enable the Corporation to function more efficiently.
- Legal
Provide legal services to the Corporation in the areas of bond and note financings, underwriting counsel services, litigation and other matters deemed necessary by the Corporation.

- Printing
Provide financial printing services based upon specifications and detail provided by the Corporation. Provide various technical printing services relative to the reproduction of forms and other printed matter. Provide technical, graphic, layout printing services in connection with production of the Corporation's annual report and any other reports, brochures, maps or printed matter that may be necessary or desirable.
- Underwriting
Provide assistance in the preparation, sale, marketing and distribution of Corporation debt issues. Provide liaison with institutional and retail investor communities; enhance visibility of the Corporation as an issuer; sell bonds and notes of the Corporation.
- Other
As deemed necessary in the furtherance of the interests of the Corporation.

Exhibit B
NYS Environmental Facilities Corporation
2017-18 Annual Report on Procurement Contracts

Vendor Name	Contract ID No.	Procurement Description	Contract Status	Begin Date	End Date	Contract Amount	Amount	Amount	NYS or	MWBE	City	State
							Expended	Expended	Foreign			
							FYE 3/31/18	Life to Date	Enterprise			
Academy Securities	EFC-0206	Underwriter	Open	1/12/2017	1/11/2019		157305.52	157305.52	NYS	Y	New York	NY
Banc of America Securities	EFC-0196	Underwriter	Open	1/12/2017	1/11/2019		790932.78	790932.78	NYS	N	New York	NY
Bank of New York	EFC-0026	Trustee	Open	2/5/1993			9900.00	526881.00	NYS	N	New York	NY
Barton & Loguidice DPC	C-201702	Asset Management Pilot Program	Open	5/5/2017	5/5/2020	3000000.00	364754.40	364754.40	NYS	N	Liverpool	NY
Blackbaud Fundware	EFC-0173	Software License & Support	Open	1/28/2015	1/27/2019	37118.23	4116.15	36134.45	Foreign	N	Charleston	SC
Bloomberg LP	EFC-0068	Financial Services	Open	9/8/2006	7/27/2018	336890.00	43920.00	304339.00	NYS	N	New York	NY
Broadridge Financial Solutions	C-201401	Financial Printing Services	Open	3/10/2014	3/10/2019		11773.20	23969.91	NYS	N	New York	NY
Camp Dresser McKee & Smith	C-201306	CWSRF Site Inspection Services	Completed	9/18/2013	9/18/2017	490410.00	49322.50	446055.00	NYS	N	Latham	NY
Capital District Records Mgmt	EFC-0084	File Storage & Retrieval	Open	5/1/2010			1865.16	28011.07	NYS	N	Clifton Park	NY
CheckWise Payroll	C-201801	Payroll Services	Open	1/1/2018	1/1/2019		1994.50	2454.80	NYS	N	Albany	NY
CheckWise Payroll	C-201304	Payroll Services	Completed	1/1/2013	12/31/2017		3899.80	28643.90	NYS	N	Albany	NY
Citigroup Global Markets Inc	EFC-0197	Underwriter	Open	1/12/2017	1/11/2019		353603.92	353603.92	NYS	N	New York	NY
D. Seaton and Associates PA, PC	C-201419	legal services	Completed	9/12/2014	3/11/2017		23648.00	23648.00	NYS	Y	New York	NY
D. Seaton and Associates PA, PC	C-201112	Legal Services	Completed	9/12/2011	9/11/2014		15863.00	36091.35	NYS	Y	New York	NY
Estrada Hinojosa & Company Inc	EFC-0207	Underwriter	Open	1/12/2017	1/11/2019		134659.64	134659.64	Foreign	Y	Dallas	TX
Executive Information Systems, LLC (SAS)	EFC-0097	Software Maintenance	Open	12/15/2004	12/14/2018	151831.00	17522.00	151831.00	Foreign	N	Bethesda	MD
FirstSouthwest (Hilltop Securities Inc)	C-201603	Financial Advisory Services	Open	4/1/2016	3/31/2018		288143.70	486945.58	NYS	N	New York	NY
Fitch Solutions Inc	EFC-0096	Public Finance via Web	Open	8/1/2011	7/31/2018	76717.00	12477.00	76717.00	NYS	N	New York	NY
Fitch Inc	EFC-0021	Bond Rating Services	Open	4/1/2017	3/31/2018		195500.00	195500.00	NYS	N	New York	NY
Goldman Sachs & Co	EFC-0198	Underwriter	Open	1/12/2017	1/11/2019		175423.32	175423.32	NYS	N	New York	NY
Hawkins Delafield & Wood LLP	C-201402	Legal Services	Completed	9/12/2014	3/11/2017		411.86	475581.22	NYS	N	New York	NY
Hawkins Delafield & Wood LLP	C-201703	Legal Services	Open	1/12/2017	7/12/2019		274588.14	274588.14	NYS	N	New York	NY
Hawkins Delafield & Wood LLP	C-201701	Arbitrage Rebate Services	Open	1/1/2017	1/1/2020		40400.00	40400.00	NYS	N	New York	NY
Hodgson Russ LLP	C-201708	Legal Services	Open	1/12/2017	7/12/2019		2049.50	2049.50	NYS	N	Albany	NY
HR Performance Solutions	EFC-0073	Performance Appraisal	Open	3/15/2007	1/31/2019	23277.06	1995.00	21524.31	Foreign	N	Salt Lake City	UT
ICE Data Pricing	EFC-0091	Valuation Services	Open	9/20/2011	9/19/2018	64941.74	11236.32	67860.18	Foreign	N	Bedford	MA
Iron Mountain	EFC-0075	File Storage & Retrieval	Open	3/1/2007			9039.13	161710.80	NYS	N	Cohoes	NY
Jefferies LLC	EFC-0199	Underwriter	Open	1/12/2017	1/11/2019		752498.91	752498.91	NYS	N	New York	NY
JP Morgan Securities Inc	EFC-0200	Underwriter	Open	1/12/2017	1/11/2019		62981.65	62981.65	NYS	N	New York	NY
KeyBanc Capital Markets	EFC-0208	Underwriter	Open	1/12/2017	1/11/2019		100314.31	100314.31	NYS	N	New York	NY
KPMG LLP	C-201604	Audit Services	Open	4/1/2016	3/31/2019	328000.00	100760.00	206590.00	NYS	N	Albany	NY
Kronos	EFC-0031	Software Maintenance	Open	2/23/2001	10/31/2018		1241.28	27721.48	Foreign	N	Chelmsford	MA
Legislative Retrieval System	EFC-0098	Database subscription	Open	10/10/2007	10/8/2018	24750.00	2250.00	24750.00	NYS	N	Albany	NY
Loop Capital Markets	EFC-0201	Underwriter	Open	1/12/2017	1/11/2019		336574.71	336574.71	Foreign	Y	Chicago	IL
Moody's Analytics Inc	EFC-0189	Global Credit Research	Open	8/1/2011	7/31/2018	363680.00	59750.00	363680.00	NYS	N	New York	NY
Moody's Investors Service	EFC-0022	Bond Rating Service	Open	4/1/2017	3/31/2018		203026.88	203026.88	Foreign	N	Atlanta	GA
Morgan Stanley & Co. Incorporated	EFC-0202	Underwriter	Open	1/12/2017	1/11/2019		201271.20	201271.20	NYS	N	New York	NY
Norton Rose Fulbright US LLP	C-201710	Legal Services	Open	1/12/2017	7/12/2019		202044.00	202044.00	NYS	N	New York	NY
Politico LLC	EFC-0193	Politico Pro Services	Open	6/17/2016	6/16/2018	27600.00	13800.00	27600.00	Foreign	N	Arlington	VA
Ramirez & Co. Inc.	EFC-0203	Underwriter	Open	1/12/2017	1/11/2019		430716.12	430716.12	NYS	Y	New York	NY
RBC Capital Markets LLC	EFC-0204	Underwriter	Open	1/12/2017	1/11/2019		572684.74	572684.74	NYS	N	New York	NY
Rice Financial Products Company	EFC-0209	Underwriter	Open	1/12/2017	1/11/2019		148343.39	148343.39	NYS	Y	New York	NY
Siebert Cisneros Shank & Co LLC	EFC-0205	Underwriter	Open	1/12/2017	1/11/2019		355365.25	355365.25	NYS	Y	New York	NY
Squire Patton Boggs (US) LLP	C-201408	Legal Services	Completed	9/12/2014	3/11/2017		169841.50	948833.33	NYS	N	New York	NY
Squire Patton Boggs (US) LLP / D. Seaton and Associates	C-201705	Legal Services	Open	1/12/2017	7/12/2019		208269.00	208269.00	NYS	N	New York	NY
SS & C Technologies, Inc.	EFC-0195	Bond Structuring Software	Open	9/16/2016	9/15/2018	69013.00	35183.00	69013.00	NYS	N	New York	NY
Standard & Poor's Financial Services LLC / RatingsDirect	EFC-0103	Ratings and Research	Open	8/31/2011	8/30/2018	118802.50	23152.50	118802.50	NYS	N	New York	NY
Standard & Poor's Financial Services LLC/ RatingsXpress	EFC-0100	Online Research Access	Open	8/31/2011	8/30/2018	131650.00	27500.00	131650.00	NYS	N	New York	NY
Standard And Poor's	EFC-0025	Bond Rating Services	Open	4/1/2017	3/31/2018		329533.00	329533.00	NYS	N	New York	NY

Exhibit B
NYS Environmental Facilities Corporation
2017-18 Annual Report on Procurement Contracts

Vendor Name	Contract ID No.	Procurement Description	Contract Status	Begin Date	End Date	Contract Amount	Amount Expended FYE 3/31/18	Amount Expended Life to Date	NYS or Foreign Business Enterprise	MWBE	City	State
State Records Center (NYS Archives)	EFC-0175	Records Management	Open	7/1/2015			5117.58	15611.53	NYS	N	Albany	NY
Thomson Reuters Global Markets Inc.	EFC-0095	Online Research Access	Open	10/1/2011	7/31/2018		7698.00	48968.00	Foreign	N	Boston	MA
Upside Collective (Mehigan, Bellone & Assoc.)	C-201713	Website Development Services	Open	4/18/2017	4/18/2018	200000.00	103645.00	103645.00	NYS	N	Albany	NY
WageWorks	EFC-0159	NYS Flex Spending Account	Completed	1/1/2001	12/31/2018		772.80	7103.80	Foreign	N	Tallahassee	FL
West (Thomson Reuters)	EFC-0191	West Complete Library	Open	5/1/2013	5/10/2019		17266.31	70623.31	Foreign	N	Carol Stream	IL
Williams Capital Group LP	EFC-0210	Underwriter	Open	1/12/2017	1/11/2019		120744.80	120744.80	NYS	Y	New York	NY
Wilmington Trust (M&T Bank)	EFC-0027	Trustee	Open	2/5/1993			307955.05	6687270.60	NYS	N	Buffalo	NY