

## STATE UNIVERSITY CONSTRUCTION FUND

### GUIDELINES FOR AWARD OF PROCUREMENT CONTRACTS

#### Section I. Purpose

The purpose of these Guidelines is to describe the methods and procedures governing the use, awarding, monitoring, and reporting of procurement contracts by the State University Construction Fund (hereinafter called the "Fund"), pursuant to the provisions of Section 2879 of the Public Authorities Law.

#### Section II. Definitions

For the purposes of these Guidelines:

- A. The term "procurement contract" means any contract or agreement entered into by the Fund involving an estimated annual expenditure in excess of \$5,000 for the purchase of goods or services, including public works and the purchase, sale, lease, acquisition or granting of interests in real property.
- B. The term "procurement contractor" means any individual, sole proprietorship, partnership, association, joint venture, corporation or other legal entity, other than a government agency or entity, licensed or permitted under the laws of the State of New York to enter into and perform procurement contracts.
- C. The term "consultant" means a procurement contractor that can provide architectural, engineering and/or surveying services.
- D. The terms "minority business enterprises" or "women-owned business enterprises" shall have the same meaning as under Section 2879 of the Public Authorities Law, as the same may from time to time be amended.



- E. The term "Service-Disabled Veteran-Owned Business Enterprise" shall have the same meaning as under Section 369-h of the Executive Law, as the same may from time to time be amended.
- F. The term "New York State business enterprise" 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 Fund and which are substantially manufactured, produced or assembled in New York State, or services which are sought by the Fund and which are substantially performed within New York State.
- G. The term "New York resident" means 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.

### Section III. Use of Procurement Contracts

In connection with the discharge of its mandate under Article 8-A of the Education Law, the Fund may enter into procurement contracts when the General Manager determines that:

- A. The services are of such a nature or magnitude as to make it impracticable to exclusively employ the services of the Fund's officers and employees for the performance thereof; or
- B. The services can be performed more economically, in a better manner and/or more timely by a procurement contractor than by the officers and employees of the Fund.

### Section IV. Solicitation and Selection of Consultants

- A. Any consultant desiring to be considered for an award of a contract for consultant services shall be required to submit to the Fund detailed information about the firm, including, but not limited to, training, experience, personnel, Minority and/or Women-owned Business Enterprises (MWBE) firm utilization, Service-Disabled Veteran-Owned

Business Enterprise (SDVOB) utilization, etc. and such other information as may be requested by the Fund.

- B. The General Manager or designee shall appoint such Fund employees as is deemed necessary to selection committees. Such selection committees shall recommend which consultants shall be awarded contracts to perform services for the Fund. Each selection committee shall consist of three Fund employees and may also include a representative from the campus where the project is to be performed.
- C. The General Manager or designee may appoint an alternate member of a selection committee to take the place of a selection committee member who is absent or otherwise unable to participate in the work of the selection committee. If in the judgment of the General Manager or designee it is impractical to appoint such an alternate selection committee member, the selection shall proceed with the remaining members of the selection committee.
- D. The recommendation of the selection committee shall be made only after it has reviewed the proposed nature and scope of the project and the aforesaid responses, submittals and proposals by consultants, as well as such other information that the Fund may have or that may be obtained from interviews or otherwise. For each consultant contract, selection committees shall, for contracts involving an estimated fee, excluding reimbursable expenses, of \$300,000 or less, select for further consideration at least three (3) consultants, that it believes are qualified and competent to perform the work and, for contracts involving an estimated fee of more than \$300,000, excluding reimbursable expenses, at least five (5) consultants, that it believes are qualified and competent to perform the work. In making such selection, the committee shall consider the factors hereafter set forth. If, in the judgment of the committee, it is not feasible to select the minimum number of firms referenced above, the committee shall submit a request and justification to the General Manager or designee to select a fewer number of consultants.

The committee shall then competitively rate each of said selected consultants on a numerical basis using written criteria, approved by the General Manager or designee, for each project, which criteria may include, but not be limited to, the following factors:

- 1) Professional training, including degrees and licenses of the consultant;
- 2) Experience or abilities of the consultant in the type of project or work required;
- 3) Capability of the consultant to accomplish the work in the time required;
- 4) Proposed approach to the specific project scope;
- 5) Past performance, if any, by the consultant, under a contract or contracts with the Fund and other State agencies;
- 6) Size of the consultant, availability of personnel, including required subconsultants, and fiscal responsibility;
- 7) Responsiveness to MWBE goals;
- 8) Responsiveness to SDVOB goals;
- 9) Recommendation of the campus unit on which the project will be undertaken;
- 10) Any other reasonable criteria related to the prospective ability of the consultant to perform the terms of the contract to be awarded.

E. The selection committee shall advise the General Manager or designee of its competitive rating results for each project and the General Manager or designee shall review said results. The General Manager or designee, after such review, shall either disapprove the rating results and advise the selection committee to give its rating further consideration or approve the rating results.

F. Upon the General Manager or designee's approval of the rating results, the consultant receiving the highest rating shall be notified of its selection,

subject to the approval by the Fund's Trustees as hereinafter described, and the Fund will seek to negotiate a proposed contract, including the fee or compensation therefore.

- G. Should the consultant selected in accordance with the above fail, for any reason, to agree with the Fund on the terms and provisions of the proposed contract, the General Manager, or designee, shall contact the next highest rated consultant in an effort to negotiate with it a proposed contract, including the fee or compensation therefore, and, should the latter fail, for any reason, to agree with the Fund on the terms and provisions of the proposed contract, the next highest rated consultant should then be contacted in an effort to negotiate a proposed contract, including the fee or compensation therefore. Should this fail to result in a contract, the General Manager or designee may contact and negotiate the terms and provisions of a proposed contract with the next highest rated consultant or initiate a new procurement for consultant services for the project.

#### Section V. Solicitation and Selection of Other Procurement Contractors

- A. From time to time as may be determined by the General Manager or designee, the Fund may solicit and select procurement contractors for commodities and services other than those referenced in Section IV, herein. Such commodities and services will include, but not be limited to, those required for the operation and administration of the Fund and other professional services required for the successful completion of work undertaken and/or administered by the Fund.
- B. Such procurement contractors will be selected based upon a competitive basis, including, but not limited to, quotes, bids, and/or best-value analysis.
- C. When a selection is to be made using a best-value analysis, the Fund will issue a request for proposals. The General Manager or designee may appoint a selection committee of at least three persons to review the proposals and make a recommendation to the General Manager or designee of a procurement contract award.

- D. The General Manager or designee may appoint an alternate member of a selection committee to take the place of a selection committee member who is absent or otherwise unable to participate in the work of the selection committee. If in the judgment of the General Manager or designee it is impractical to appoint such an alternate selection committee member, the selection shall proceed with the remaining members of the selection committee.
- E. In its evaluation of procurement contractors using a best-value analysis, the committee shall competitively rate the procurement contractors on a numerical basis. In doing so, the committee shall use the rating criteria set forth in the request for proposals. All proposals must conform in all material respects to the request for proposals.
- F. The Fund shall procure construction contracts pursuant to Section 376 of the Education Law.

#### Section VI. General Provisions for Procurement Contracts

- A. No procurement contract is to be entered into by the Fund unless legislation or an appropriation and allocation of funds exists therefore.
- B. All procurement contract solicitations for the acquisition of goods or services in the actual or estimated amount as set forth in Article 4-C of the Economic Development Law, shall be published pursuant to such Law, except:
  - 1) Procurement contracts awarded on an emergency or critical basis or on the basis that publication is not feasible; or
  - 2) Procurements made from centralized contracts let by other governmental entities; or
  - 3) Contracts for goods and services that are obtained from preferred sources, as set forth in Section 162 of the State Finance Law; or
  - 4) Contracts that are re-bid or re-solicited within forty-five business days of the bid or proposal due date of the original contract.

- C. Any procurement contract involving services to be rendered over a period in excess of one year or involving an expenditure by the Fund of more than \$75,000 or such other amount as may be established by statute shall be approved by no fewer than two of the Fund's Trustees prior to the award and/or execution of said contract.
- D. Notwithstanding any of the foregoing provisions, the requirement for selecting procurement contractors on a competitive basis shall not apply when:
- 1) The procurement contractor is to perform services in connection with claims and/or litigation by or against the Fund; or
  - 2) The total estimated cost to the Fund under the proposed procurement contract is less than \$50,000; or
  - 3) The services will be performed by another governmental agency or entity; or
  - 4) Procurements are made from centralized contracts let by the Office of General Services or other governmental entities in an amount not to exceed the pricing utilized by said contract; or
  - 5) The total estimated cost to the Fund under the proposed contract does not exceed \$500,000, or other such amount as authorized by statute, and the procurement contractor is a small business concern or is certified as a minority or women-owned business enterprise by New York State; or procurements for goods or technology that are recycled or remanufactured, in an amount not to exceed \$500,000, or other such amount as authorized by statute.
- E. Notwithstanding any of the foregoing provisions, the General Manager or designee may waive the requirement for selecting procurement contractors on a competitive basis when the General Manager or designee determines that:
- 1) An emergency condition exists in connection with the project which makes it impractical and against the public interest to award the procurement contract on a competitive basis; or

- 2) The nature of the work to be performed is uniquely specialized or it is not practical to select a procurement contractor on a competitive basis.
- F. Notwithstanding any of the foregoing provisions, the General Manager or designee may reserve or set aside certain procurement opportunities for the purposes of achieving the goals for participation of Service-Disabled Veteran-Owned Business Enterprises to achieve the objectives of Article 17-B of the Executive Law. Any such reservation or set aside of procurement opportunities shall be conducted in accordance with the Act and rules and regulations promulgated by the director of the Division of Service-Disabled Veterans' Business Development (DSDVBD).
  - G. When the requirement of selecting a procurement contractor on a competitive basis does not apply, the General Manager or designee need not appoint a selection committee and may designate, subject to any required approval of the Trustees, a procurement contractor. The General Manager or designee may utilize the New York State Office of General Services to engage a procurement contractor pursuant to this section.
  - H. The Fund shall additionally provide notice to professional and other organizations that serve minority and women-owned business enterprises providing the types of services procured by the Fund.

## Section VII. Contract Provisions

The procurement contracts to be entered into by the Fund shall contain provisions covering the following:

- A. The nature and monitoring of the work to be performed.
- B. The manner of calculating the fee, compensation or reimbursables to be paid by the Fund and the time or times payment is to be made.
- C. The period in which the services are to be performed.



- D. The right of the Fund to extend, suspend, cancel or terminate the contract.
- E. The use of corporate supplies and facilities.
- F. The ownership by the Fund, unless the contract otherwise expressly provides and the Trustees have approved, of all documents to be prepared and furnished by the procurement contractor.
- G. The requirement that the procurement contractor maintain adequate records in connection with its billings to the Fund and the right of the Fund to audit the same.
- H. The provisions required by law, including, but not limited to, the executory clause, affirmative action provisions, etc.
- I. The approvals of the Attorney General and Comptroller of the State of New York, if required.
- J. Indemnity and Insurance.

#### Section VIII. Responsibilities of Procurement Contractors

It shall be the responsibility of procurement contractors of the Fund to fully, timely, effectively and properly perform the work described in their respective procurement contracts and comply with all other terms of such contract.

#### Section IX. Evaluating and Monitoring of Procurement Contracts

Following the completion of a procurement contract and at such other times during the contract as the General Manager or designee may deem appropriate, an evaluation is to be made by the Fund of the work performed by the procurement contractor. This evaluation is to set forth the facts and the

Fund's evaluation of same relating to the timeliness, effectiveness and completeness of the work performed by the procurement contractor and such other information as may be relevant. These evaluations shall be reviewed by the General Manager or designee, placed in the Fund's files and considered in selecting procurement contractors for future projects of the Fund.

#### Section X. Minority and/or Women-Owned Business Enterprises (MWBE)

It is the policy of the Fund to take affirmative action to promote and assist the employment and participation of minority and/or women-owned business enterprises in procurement contracts of the Fund. Accordingly, the Fund shall take any and all actions that may be necessary in order to comply with Article 15-A of the Executive Law and other applicable provisions of State and Federal laws, rules and regulations pertaining to affirmative action and equal employment opportunity. The Fund shall conduct procurements in a manner to enable the Fund to achieve the maximum feasible portion of the Fund's established goals and that eliminates barriers to participation by minority and women-owned business enterprises in the Fund's procurements. Such procurement requirements shall include the following:

- A. The Fund shall undertake measures and procedures to ensure that certified businesses shall be given the opportunity for maximum feasible participation in the performance of state contracts and to assist in the Fund's identification of those state contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of state contracts so as to facilitate the Fund's achievement of the maximum feasible portion of the goals for state contracts to such businesses;
- B. The Division of Minority and Women-Owned Business Development is designated as the entity to certify and decertify minority and women-owned business enterprises for all corporations through a single process that meets applicable state and federal requirements;
- C. Each contract solicitation document shall set forth the expected degree of minority and women-owned business enterprise participation based, in part, on:
  - 1) The potential subcontract opportunities available in the prime procurement contract; and

- 2) The availability of certified minority and women-owned business enterprises to respond competitively to the potential subcontract opportunities.
- D. The Fund will provide access to a current list of certified minority business enterprises to each prospective contractor;
  - E. The Fund shall allow a bidder to count the minority and women-owned business enterprise portion of a joint venture toward meeting its minority business enterprise participation goal;
  - F. The Fund may waive obligations of the contractor relating to minority and women-owned business enterprise participation after a showing of good faith efforts to comply with the requirements of Article 15-A of the Executive Law pursuant to the waiver provisions contained in subdivision six of section three hundred thirteen of the Executive Law;
  - G. The Fund will verify that minority and women-owned business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;
  - H. In the implementation of this section, the Fund shall:
    - 1) Consider, where practicable, the severability of construction projects and other bundled contracts;
    - 2) Implement a program that will enable the Fund to evaluate each contract to determine the appropriateness of the goal pursuant to these guidelines;
    - 3) Consider compliance with the requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of this section; and
    - 4) Consult the most recent disparity study pursuant to Article 15-A of the Executive Law.

The General Manager shall designate one or more senior staff of the Fund to oversee the Fund's programs established to promote and assist: (i)

participation by certified minority or women-owned business enterprises in the Fund's procurement opportunities and facilitation of the award of procurement contracts to such enterprises; (ii) the utilization of certified minority and women-owned business enterprises as subcontractors and suppliers by entities having procurement contracts with the Fund; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified minority and women-owned business enterprises and other entities having procurement contracts with the Fund. Such staff shall be familiar with the procurement of the types of construction, financial, legal or professional services utilized by the Fund, report directly to the General Manager and either directly or through their designees participate in the procurement process.

The Fund shall maintain a list of qualified certified minority and women-owned business enterprises, including professional firms that have expressed an interest in doing business with the Fund and ensure that such list is updated regularly. The Fund shall also consult the lists of certified minority and women-owned business enterprises maintained by the Department of Economic Development pursuant to Article 15-A of the Executive Law.

The Fund shall establish appropriate goals for participation by minority or women-owned business enterprises in procurement contracts awarded by the Fund and for the utilization of minority and women-owned enterprises as subcontractors and suppliers by entities having procurement contracts with the Fund. Statewide numerical participation target goals shall be established by the Fund based on the findings of the 2016 disparity study.

#### Section XI. Promotion of New York State Business Enterprises and New York State Residents

It is the goal of the Fund to promote the participation of New York State Business Enterprises and New York State residents in procurement contracts. Accordingly, the Fund shall:

- A. 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 Fund shall, where feasible, make use of the stock item specification forms prepared by the New York State Commissioner of General Services, and where necessary, consult with

said Commissioner in developing such specifications and making 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 by the Fund in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract, such 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 minority and women-owned business, or
  - (b) contacted the New York 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 New York State, or
  - (d) participated in bidder outreach conferences. If the contractor 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; 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 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 Certified Minority and Women Owned Business Enterprises where possible, in the procurement of goods and services; and
- D. With the cooperation of the community service division of the New York State Department of Labor and through cooperative effort with contractors, shall provide for the notification of New York State residents of employment opportunities arising in New York State out of

procurement contracts let by the Fund 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; and

- E. Include in all bid documents on procurement contracts to be let by the Fund, a statement notifying potential bidders located in foreign countries that the Fund may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York State; provide for the assignment or other form of transfer of offset credits created by such procurement contracts, directly or indirectly, to third parties located in New York State, in accordance with the written directions of the Commissioner of Economic Development; and provide for the Fund 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 New York State created by such procurement contracts; and
- F. Promulgate procedures which will assure compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92- 261), as amended, by contractors of the Fund; and
- G. Notify the New York State 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 simultaneously with notifying the successful bidder therefore. The Fund shall not thereafter enter into a procurement contract for said goods until at least fifteen (15) 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 and 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.

## Section XII. Service-Disabled Veteran-Owned Business Act (SDVOB)

Article 17-B of the Executive Law, the Service-Disabled Veteran-Owned Business Act (Act), established a program to increase participation of service-disabled veterans in New York State's contracting opportunities. The Service-Disabled Veteran-Owned Business (SDVOB) Program provides for eligible Veteran business owners to become certified as a New York State SDVOB. The Act created the new Division of Service Disabled Veterans' Business Development (DSDVBD) within the New York State Office of General Services. SDVBD is responsible for certifying eligible SDVOBs, assisting state entities in complying with the law and promoting SDVOB participation in the state's procurement activities. Accordingly, the Fund shall conduct procurements in a manner that complies with the Act and DSDVBD promulgated regulations.

## Section XIII. Procurement Contracts with Former Officers and Employees

Unless the Trustees otherwise expressly approve, procurement contracts are not to be Entered into by the Fund with the Fund with its former officers, employees or with a firm or corporation in which former officers or employees of the Fund are members or owners, unless, in the judgment of the General Manager, either the services of a former officer or employee are essential to the successful defense or prosecution of ongoing claims and/or litigation involving the Fund or a period of two years has elapsed since the date of termination from the employment by the Fund of such officer or employee.

## Section XIV. Special Projects

Upon the request of a campus, the General Manager may authorize the selection of a consultant for a special project through a different process such as a design competition, charrette or other such process. Special projects may include, but are not limited to those authorized under the NY-SUNY 2020 Challenge Grant Program.

If the General Manager agrees to authorize a different selection process for a special project, the General Manager shall appoint an ad hoc selection committee whose size and composition shall be determined after consultation with the campus requiring the different selection process for the special project.

## Section XV. Reports

- A. The Fund shall annually prepare and make publicly available, reports on executed procurement contracts, and shall include:

- 1) A listing of all procurement contracts entered into;
  - 2) A listing of all contracts entered into with New York State business enterprises, subject matter and value thereof;
  - 3) A listing of all contracts entered into with certified minority or women-owned business enterprises, subject matter and value thereof;
  - 4) All referrals made and penalties imposed pursuant to Section 316 of Executive Law;
  - 5) All contracts entered into with foreign business enterprises, subject matter and value thereof;
  - 6) Selection process used to select firms;
  - 7) All procurement contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, and the basis for any such exemptions; and
  - 8) The status of existing procurement contracts.
- B. The Fund shall annually prepare and approve a report on procurement contracts which shall include the subject Guidelines, an explanation of the Guidelines and any amendments thereto since the last annual report. Such report on procurement contracts may be a part of the Fund's annual report.
- C. The Fund shall annually submit its report on procurement contracts to the Division of the Budget, with copies thereof to the Office of the State Comptroller, Department of Economic Development, the Senate Finance Committee and the Assembly Ways and Means Committee.
- D. The Fund shall make available to the public copies of its report on procurement contracts upon reasonable request therefore.

*December 13, 1983  
Rev. 1 - Sept. 1990  
Rev. 2 - June 2004  
Rev. 3 - April 2006  
Rev. 4 - June 2007  
Rev. 5 - May 2008  
Rev. 6 - March 2009  
Rev. 7 - December 2010  
Rev. 8 - April 2011  
Rev. 9-September 2011  
Rev. 10-May 2012  
Rev. 11-May 2015  
Rev. 12-April 2016  
Rev. 13 - May 2019  
Rev. 14 - March 2020*