

**MINUTES OF THE MEETING
OF
THE GOVERNANCE COMMITTEE**

February 23, 2010

A meeting of the Governance Committee was held via videoconference at the Authority's offices at 501 Seventh Avenue, New York, New York, 123 Main Street, White Plains, New York and 95 Perry Street, Buffalo, New York at approximately 8:39 a.m.

The following Members of the Governance Committee were present:

Trustee Eugene L. Nicandri, Chairperson
Trustee Elise M. Cusack

Also in attendance were:

<i>Gil Quiniones</i>	<i>Chief Operating Officer</i>
<i>Terryl Brown</i>	<i>Executive Vice President and General Counsel</i>
<i>Joan Tursi</i>	<i>Senior Vice President – Enterprise Shared Services</i>
<i>Joseph Gryzlo</i>	<i>Vice President of Labor Relations and Chief Ethics and Compliance Officer</i>
<i>Patricia Leto</i>	<i>Vice President - Procurement</i>
<i>Lesly Pardo</i>	<i>Vice President – Internal Audit</i>
<i>Karen Delince</i>	<i>Corporate Secretary</i>
<i>Angela Graves</i>	<i>Deputy Corporate Secretary</i>
<i>Dennis Eccleston</i>	<i>Chief Information Officer</i>
<i>Rob Mullin</i>	<i>Director – Fuel Planning and Operations</i>
<i>Mark O'Connor</i>	<i>Director – Real Estate</i>
<i>Shannon Sramek</i>	<i>Senior Treasury Analyst</i>
<i>Mary Jean Frank</i>	<i>Associate Corporate Secretary</i>

1. **Minutes of the Regular Meeting of November 12, 2009**

The minutes of the Committee's meeting of November 12, 2009 were adopted.

2. Review and Recommendation of Guidelines and Procedures

Pursuant to the Authority's implementation of the Public Authorities Accountability Act of 2005 ("PAAA"), the Authority's Governance Committee reviews the Guidelines for Procurement Contracts, the Guidelines and Procedures for Disposal of Personal Property, the Guidelines and Procedures for Disposal of Real Property and the Guidelines and Procedures for Acquisition of Real Property annually, and approves any changes to such Guidelines. In addition, Annual Reports of Procurement Contracts with a value of \$5,000 or greater; Disposal of Personal Property with a value of \$5,000 or greater and Disposal of Real Property with a value of \$15,000 or greater are required to be reviewed by the Authority's Trustees.

The Authorities Budget Office ("ABO") and the Office of the State Comptroller ("OSC") have an online electronic data entry, collection and reporting system, known as the Public Authorities Reporting Information System ("PARIS"). They have designed electronic templates to capture the additional information. By their own admission, "The ABO and OSC recognize that PARIS may necessitate changes in the current business and reporting practices of some public authorities and may initially require additional effort on the part of the public authority."

The Authority's PARIS reports for the Authority's Guidelines for Procurement Contracts, Guidelines and Procedures for the Disposal of Personal Property, Guidelines and Procedures for the Disposal of Real Property and Guidelines and Procedures for the Acquisition of Real Property were completed and submitted by the March 31, 2009 deadline and were certified by the Authority's Chief Financial Officer.

Chapter 506 of the Laws of 2009 ("Chapter 506") made substantial amendments to the Public Authorities Law ("PAL"), with two changes in the procurement area, effective as of March 1, 2010. First, Section 14 of Chapter 506 adds a new PAL §2879-a, making certain public authority contracts *potentially* subject to the review and approval of the State Comptroller. It also directs the State Comptroller to promulgate rules and regulations in connection with this review. Staff anticipates further revisions to the Guidelines once those regulations are published.

In addition, Section 21-a of Chapter 506 amends Executive Law §313(13) to clarify that contracts for legal, financial and other professional services, as well as banking relationships, the issuance of insurance policies or contracts and contracts with a contracting agency for the sale of bonds, notes or other securities come within Executive Law § 310(13)'s definition of "state contracts," and therefore are subject to the provisions of Executive Law Article 15-A relating to participation by minority group members and women with respect to State contracts.

2.1 Guidelines for Procurement Contracts

In compliance with the applicable provisions of Section 2879 of the Public Authorities Law, as amended, the Authority has established comprehensive guidelines detailing its operative policy and instructions concerning the use, awarding, monitoring and reporting of procurement contracts.

The Guidelines describe the Authority's process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Minority/Women Business Enterprise (“M/WBE”) requirements, employment of former officers and reporting requirements. The Guidelines have been designed to be self-explanatory.

These Guidelines, approved by the Authority's Trustees, were initially implemented on January 1, 1990, and have been reviewed and amended annually as deemed advisable and necessary since then.

The previous revised Guidelines for Procurement Contracts, as presented to the Governance Committee on February 22, 2009, were reviewed and approved by the Trustees at their meeting of March 31, 2009.

Chapter 506 of the Laws of 2009 made substantial amendments to the Public Authorities Law (“PAL”), with several changes governing procurement contracts. In order to make the Procurement Guidelines compliant with the law, staff recommended a number of changes, the most significant of which is highlighted below:

- **Establishes new requirements for goods or services purchased on a sole-source basis whose price exceeds Fair Market Value** (i.e., when a procurement is made on a sole-source basis, and the price for goods or services purchased exceeds Fair Market Value, a detailed explanation of the justification for making the purchase must be prepared and a certification must be signed by the Chief Executive Officer and the Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and have determined that it complies with applicable law and these Guidelines.

Additionally, the more significant changes not related to Chapter 506 are highlighted below:

- **The definition of Non-Procurement contracts is expanded** to also include periodicals, subscriptions, reference materials or professional research tools, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums.
- **The following three new Contract Attachments were added:**
 - 11. Appendix “I” (NYPA NERC CIP Cyber Security Training Requirements)

- 13. Appendix “K” (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (“ARRA”)-funded Projects)
- 14. Appendix “L” (DOE Federal Contract Provisions)

These Guidelines will become effective as of March 1, 2010 and will be posted on the Authority’s website. On or before the 31st day of March, as approved by the Trustees, these Guidelines will be filed with the Division of the Budget, the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee, the Assembly Ways and Means Committee and the Authorities Budget Office.

GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts ("Guidelines") comply with the applicable provisions of Article 4-C of the Economic Development Law, the Public Authorities Accountability Act, §2879 of the Public Authorities Law and §§139-j and 139-k of the State Finance Law, and establish the basis for the Authority to solicit and evaluate proposals from individuals and/or firms providing goods and/or services as defined in Article 2 below. Consistent with these Guidelines, individual facilities, White Plains office or departments may establish specific supplementary guidelines based on their own needs.

2. DEFINITIONS

- A. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, Operations and Maintenance ("O&M") and capital projects, including but not limited to: goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2. C below.
- B. "Non-Procurement Contracts" include contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) and credit rating services. In addition, Non-Procurement Contracts include direct placement of advertisements with radio, television and print media, periodicals, subscriptions, reference materials or professional research tools, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, nor any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- C. "Services Contracts" are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by consultant for the Authority.) and construction management. Non-Personal

Services include, but are not limited to: skilled or unskilled temporary personnel, including clerical office staff, technicians or engineers working under Authority supervision; maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

- D. “Goods” include equipment, material and supplies of any kind.
- E. “Contact” means any oral, written or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.
- F. “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines.
- G. “Minority and Women-Owned Business” (“M/WBE) is defined as any New York State certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans , Asians, Pacific Islanders and/or women, and as further described in the Authority’s Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A.

3. SOLICITATION REQUIREMENTS

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Procurement Department, or the facilities’ Procurement Departments and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$25,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$25,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance. Whenever possible and practicable, notification of the availability of an RFP’s and RFQ’s on our web site should be sent to more than five providers.

- B. Prospective bidders on Procurement Contracts may be prequalified by invitation. In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence to supply the particular goods and/or perform the particular services required.
- C. The Authority may withdraw any pending solicitation (including but not limited to RFP's and RFQ's) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Authority does so at its own cost or expense and will not be reimbursed by the Authority for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Authority representative.
- D. In order to promote the use of Minority and Women-owned Business Enterprises "M/WBE's", the Authority will solicit offers from M/WBE's known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definition of a NYS certified M/WBE is in Section 2.G.

To foster increased use of M/WBE's, a single proposal may be sought, negotiated and accepted for purchases of goods and/or services not exceeding \$5,000 from a NYS-certified M/WBE that offers a reasonable price for such goods and/or services.

- E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Authority will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of the Public Authorities Law §2879, the following definitions shall apply:
 - 1. "New York State Business Enterprise" is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Authority that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Authority that are substantially performed within New York State as further described in Public Authorities Law §2879.
 - 2. "New York State resident" is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law §2879.

3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Authority that are substantially produced outside New York State, or services other than construction services, sought by the Authority that are substantially performed outside New York State as further described in Public Authorities Law §2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
- F. Pursuant to the Public Authorities Law §2879, the Authority will, where feasible, make use of the stock item specification of New York State manufacturers, producers and/or assemblers for any Procurement Contract for the purchase of goods when preparing an RFP, RFQ, purchase order, price inquiry, technical specifications or similar document.
 - G. Goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State or Federal government or any city or municipality where the White Plains Procurement Department, or facility Procurement Departments, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.
 - H. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; the Authority’s Supplier Diversity Program requirements, if applicable; all other applicable Authority requirements and any special methods or limitations that the Authority chooses to govern the work. Telephone solicitation, usually for procurements valued at \$25,000 or less, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification.
 - I. For all Procurement Contracts with a value equal to or greater than \$15,000 (except for those contracts noted below), the Authority will, prior to soliciting proposals, submit the following information to the Commissioner of the New York State Department of Economic Development (“DED”) to be included on the New York State Contract Reporter website, (www.nyscr.com) (unless such posting would serve no useful purpose): (1) the Authority’s name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for

bids or proposals; (6) a description of any eligibility or qualification requirements or preferences; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction arrangement; (8) any other information deemed useful to potential contractors; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 21 calendar days (including holidays) after the date of publication of such notice on the Contract Reporter website.

This provision does not apply to Procurement Contracts awarded on an emergency basis as described below in Section 3.M; Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date; and/or Procurement Contracts awarded to not-for-profit human services providers.

Certain Procurement Contracts may require purchases: (1) on the spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. In accordance with paragraph 3(h) of §2879 of the Public Authorities Law, such purchases, including, but not limited to, oil or gas purchases on the spot market, are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President of Procurement or equivalent(s) or designee and the head of the initiating department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Authority.

- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an Authority representative, a “competitive search” will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The White Plains Procurement Department or the appropriate facility Procurement Department will work with the initiating department to gather information from potential sources, that will include a

description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a sole source basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
 2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
 3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
 4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
 5. The contract is awarded to a NYS certified M/WBE firm for purchases not exceeding \$5,000, pursuant to Section 3.D.
- L. Subject to the Authority's Expenditure Authorization Procedures ("EAP's"), a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or Authority employees or workers.
 2. Proper functioning of the Authority facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- M. Whenever an initiating department determines that a Procurement Contract should be awarded on either a sole source or an emergency basis, the head of the department will provide a written statement explaining the reasons therefor to the White Plains Procurement Department or the appropriate facility Procurement Department. When a procurement is made on a sole source basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. In furtherance of Chapter 506 of the Laws of 2009 regarding the Public Authorities Law ("PAL"), the following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate

marketplace and under similar circumstances. Fair market value may be determined by industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the Vice President of Procurement or authorized designee.

N. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Authority will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§139-j and 139-k, the following definitions shall apply:

1. Pursuant to Article 11-B of the State Finance Law a “Procurement Contract” is any contract or other agreement for a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property that is the subject of a governmental procurement. Grants, contracts between the Authority and non-profit organizations pursuant to Article 11-B of the State Finance Law, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions are not Procurement Contracts.
2. The “Restricted Period” is the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from bidders/contractors intending to result in a procurement contract with the Authority and ending with the final contract award.
3. The Authority shall designate a person or persons who may be contacted, with respect to each Authority procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Authority’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder, the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided, on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the White Plains Procurement Department and/or the appropriate facility Procurement Department and appropriate managers as stipulated in the EAP's. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award; and (3) negotiating with the low bidder(s), as determined by the Vice President of Procurement or equivalent(s) or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited: to the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work and the ability to provide any needed advanced techniques such as simulation and modeling. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

- C. For Services Contracts, (as defined in Section 2.C of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2. of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents.
- E. Pursuant to §139-j of the State Finance Law, the Authority shall not award a Procurement Contract (as defined in Subsection 3.N.1. of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Authority's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law §139-j in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAP's, and should be based on such a proposal providing a clear advantage to the Authority over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited: to improved delivery schedules that will reduce outages, longer warranty periods, improved efficiency over the usable life of the equipment, reduced maintenance costs, the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program goals.

- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Authority may diverge from the specifications of any solicitation if after review of the proposals responsive to such solicitation; the Authority deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings. Such divergence from the specifications should be immaterial, for example only, as to qualifications, quantity, quality, term, services and/or price.

5. RECOMMENDATION OF AWARD

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
 - 1. Lump sum and/or unit prices for equipment and construction work.
 - 2. Hourly or daily rates for personnel.
 - 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 - 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 - 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any.

6. AWARD OF CONTRACT

- A. Services Contracts to be performed for a period of more than 12 months are approved and reviewed annually by the Trustees. Services Contracts for a period of less than 12-months are approved by authorized designees in accordance with existing EAP's. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Trustees at the request of the initiating department and

will be reviewed by the Trustees annually. Extending a contract for services that has previously been approved by the Trustees for a cumulative term of more than 12 months requires further Trustees' approval. Extending a contract previously approved by the Trustees for 12 months or less requires approval by an authorized designee in accordance with existing EAP's.

- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next scheduled Trustees' meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total value, such contract must be approved by the appropriate management as set forth in the EAP's. Such contract is subject to the Trustees' approval, at the next quarterly Trustees' meeting. If such approval is not granted, the contract will be terminated immediately.
- C. A contract or contract task is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Trustee-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAP's.
- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAP's, the Business Unit Head, with the prior concurrence of the Vice President of Procurement or equivalent(s) or designee, may authorize extending such contract, subject to the Trustees ratifying such action as soon as practicable.
- F. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAP's, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Trustees' ratifying such action as soon as practicable.

- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAP's, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the Vice President of Procurement or equivalent(s) or designee, may authorize the commencement of such services. The initial compensation limitation may not exceed the authorization level for the President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAP's. Such contracts will be subject to the Trustees' approval, which will be solicited at their next scheduled Trustee meeting.

- H. The White Plains Procurement Department or the facilities' Procurement Departments prepare the contract for execution by the Authority and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Authority signatories of such letters must be authorized to approve contract awards pursuant to the EAP's.

- I. Pursuant to Public Authorities Law §2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneous with notifying the successful bidder therefor. The Authority shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the White Plains Procurement Department: purchase order format for standard procurements of goods and/or services; furnish-and-deliver format for major equipment purchases; letter agreements and agreement formats for consulting work and contract work orders (for construction work of small magnitude), construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services. Authority departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the Procurement Department, which, along with the facilities' Procurement Departments, is solely responsible for requesting proposals.
- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.
1. Schedule of Services or Specifications
 2. Time of Completion
 3. Compensation or Itemized Proposals
 4. Relationship of Parties
 5. Delays
 6. Termination
 7. Changes in the Work
 8. Claims and Disputes
 9. Warranty
 10. Insurance
 11. Records, Accounts, Inspection and Audit
 12. Assignment
 13. Notices
 14. Indemnification
 15. Governing Law
 16. Proprietary Nature of Work
 17. Testimony
 18. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority and Women-Owned Business Enterprises Provisions)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Drawing Requirements For New York Power Authority)
9. Appendix "G" (Equal Employment Opportunity Requirements)
10. Appendix "H" (Tax Law Requirements)
11. Appendix "I" (NEW YORK POWER AUTHORITY (NYPA)NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION CRITICAL INFRASTRUCTURE PROTECTION (NERC CIP) Cyber Security Training Requirements)
12. Appendix "J" (Bidder/Contractor Compliance with State Finance Law §§139-j and 139-k Providing for Certain Procurement Disclosures)
13. Appendix "K" (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub.L. No. 111-5 Stat. 2009) ("ARRA") Funded Projects)
14. Appendix "L" (DOE) Federal Contract Provisions

- C. Any firm, person or entity retained by the Authority to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work. If there is no qualified response to the solicitation for future phases of work, including implementation, the approval of the Vice President of Procurement or equivalent(s) or designee, applicable Business Unit Head or equivalent(s), Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) is required to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;

3. To accommodate emergency conditions, defined in Section 3.L herein, that require the immediate performance of work by a firm already under contract;
 4. When rebidding would not be practical or in the best interests of the Authority's customers; and
 5. To meet the Authority's Supplier Diversity Program goals in accordance with Executive Law Article 15-A.
- B. All Change Orders must be approved in accordance with the Authority's EAP's, and should include specific schedules for completion of work at the earliest possible time.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Authority officers and employees are eligible to be considered for employment as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their employment is not barred by New York Public Officers Law §73(8);, they obtain an opinion by the New York State Commission on Public Integrity that such employment is permissible; and upon approval of the President and Chief Executive Officer.
- B. Pursuant to the provisions of New York Public Officers Law §73(8):
1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
 2. No Authority officer or employee is eligible, at any time after the termination of Authority service, to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.

- C. No Authority employee who is involved in the award of Authority grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which the Authority employee or a Relative of such Authority employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
 - 1. For purposes of Section 9.E, the term "Relative" is defined in Definitions, Section,2.F. of these Guidelines.

10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS

The Authority strives to continue to foster the development of business opportunities on Authority contracts for M/WBE's. Article 15-A of the Executive Law established the NYS Office of Minority/Women Owned Business and Community Relations that is responsible for developing rules and regulations for implementation of this statute, certifying M/WBE's and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an M/WBE is included in Section 2.G of these Guidelines. The Authority aims to solicit proposals from NYS certified M/WBE's that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS certified M/WBE's as required by law. Bidders' proposals will include Preliminary Subcontracting Plans for M/WBE's, where required, and such bidders failure to meet these requirements may be grounds for rejection of the proposal, or

cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award.

11. REPORTING AND PROCUREMENT RECORD

- A. The White Plains Procurement Department maintains records of Procurement Contracts, including bidders' names, the selection processes used and the status of existing contracts, including goods provided and/or services performed and fees earned, billed and paid. At the facilities, such records will be kept by the facilities' Procurement Departments. After the end of each calendar year, the Vice President Procurement or equivalent(s) will prepare and submit an annual report to the Trustees for their approval that will include:
1. A copy of the Guidelines;
 2. An explanation of the Guidelines and any amendments thereto since the last annual report;
 3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
 4. A list of fees, commissions or other charges paid;
 5. A description of work performed, the contract number the date of the contract and its duration, the name, address and M/WBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
 6. The type of contract (equipment, services, personal services or construction),
 7. The method of awarding the contract (e.g., competitive bidding, sole source or competitive search);
 8. The reasons why any procurements with a value greater than \$15,000 were not noticed in the Contract Reporter and
 9. The number of bids received..
- B. Such annual report, as approved by the Trustees, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, with copies and shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual

procurement report is posted on the Authority's website and copies shall be made available to the public upon reasonable written request therefor.

- C. State Finance Law §§139-j and 139-k.
 - 1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§139-j and 139-k only) and the Authority's decision not to award a bidder/contractor the Procurement Contract must be included in the procurement contract record.
 - 2. The Authority shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§139-j and 139-k only) or debarred due to violations of §139-j of the State Finance Law.
 - 3. All forms entitled "Record of Contact" shall be included in the respective procurement contract record.
 - 4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement contract record.
- D. The Authority may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as the Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").

12. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts ("Guidelines") comply with the applicable provisions of Article 4-C of the Economic Development Law, the Public Authorities Accountability Act, §2879 of the Public Authorities Law and §§139-j and 139-k of the State Finance Law, and establish the basis for the Authority to solicit and evaluate proposals from individuals and/or firms providing goods and/or services as defined in Article 2 below. Consistent with these Guidelines, individual facilities, White Plains office or departments may establish specific supplementary guidelines based on their own needs.

2. DEFINITIONS

- A. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, Operations and Maintenance ("O&M") and capital projects, including but not limited to: goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2. C below.
- B. "Non-Procurement Contracts" include contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) and credit rating services. In addition, Non-Procurement Contracts include direct placement of advertisements with radio, television and print media, [periodicals](#), [subscriptions](#), [reference materials](#) or [professional research tools](#), [fees or tuition associated with continuing education courses](#), [training courses](#), [conferences](#), [seminars and symposiums](#), funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, nor any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- C. "Services Contracts" are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by consultant for the Authority.) and construction management. Non-Personal

Services include, but are not limited to: skilled or unskilled temporary personnel, including clerical office staff, technicians or engineers working under Authority supervision; maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

- D. “Goods” include equipment, material and supplies of any kind.
- E. “Contact” means any oral, written or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.
- F. “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.FE.1 of these Guidelines.
- G. “Minority and Women-Owned Business” (“M/WBE) is defined as any New York State certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans , Asians, Pacific Islanders and/or women, and as further described in the Authority’s Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A.

G. _____

3. SOLICITATION REQUIREMENTS

A. [Preparation of the s](#)Solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Procurement Department, or the facilities' Procurement Departments and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals ("RFP") or Request for Quotations ("RFQ") will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$25,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$25,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance. Whenever possible and practicable, [notification of the availability of an RFP's and RFQ's on our web site](#) should be sent to more than five providers.

B. Prospective bidders on Procurement Contracts may be prequalified by invitation. In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence to supply the particular goods and/or perform the particular services required.

C. The Authority may withdraw any pending solicitation (including but not limited to RFP's and RFQ's) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Authority does so at its own cost or expense and will not be reimbursed by the Authority for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Authority representative.

[C.](#)

~~E.D.~~ In order to promote the use of Minority and Women-owned Business Enterprises "M/WBE's", the Authority will solicit offers from M/WBE's known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definition of a NYS certified M/WBE is in Section 2.G.

To foster increased use of M/WBE's, a single proposal may be sought, negotiated and accepted for purchases of goods and/or services not exceeding \$5,000 from a NYS-certified M/WBE that offers a reasonable price for such goods and/or services.

~~F.E.~~ It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Authority will endeavor to promote such participation and to comply with the applicable statutory provisions. [In furtherance of the Pursuant to Public Authorities Law §2879, the following definitions shall apply:-](#)

1. A “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Authority that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Authority that are substantially performed within New York State as further described in Public Authorities Law §2879.

2. A “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law §2879.

~~3.~~ A “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Authority that are substantially produced outside New York State, or services other than construction services, sought by the Authority that are substantially performed outside New York State as further described in Public Authorities Law §2879.

~~4.~~
~~5-3.~~ For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.

~~G.F.~~ Pursuant to the Public Authorities Law §2879, the Authority will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers for any Procurement Contract for the purchase of goods when preparing an RFP, RFQ, purchase order, price inquiry, technical specifications or similar document.

~~H.G.~~ Goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State or Federal government or any city or municipality where the White Plains Procurement Department, or facility Procurement Departments, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.

~~I.H.~~ Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; the Authority’s Supplier Diversity Program requirements, if applicable; all other applicable Authority requirements and any special methods or limitations that the

Authority chooses to govern the work. Telephone solicitation, usually for procurements valued at \$25,000 or less, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification.

J.I. For all Procurement Contracts with a value equal to or greater than \$15,000 (except for those contracts noted below), the Authority will, prior to soliciting proposals, submit the following information to the Commissioner of the New York State Department of Economic Development (“DED”) to be included on the ~~weekly~~ New York State Contract Reporter website, (www.nyscr.com) (unless such posting would serve no useful purpose): (1) the Authority’s name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for bids or proposals; (6) a description of any eligibility or qualification requirements or preferences; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction arrangement; (8) any other information deemed useful to potential contractors; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 21 calendar days (including holidays) after the date of publication of such notice on the Contract Reporter website.

This provision does not apply to Procurement Contracts awarded on an emergency basis as described below in Section 3.M; Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date; and/or Procurement Contracts awarded to not-for-profit human services providers.

Certain Procurement Contracts may require purchases: (1) on the spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. In accordance with paragraph 3(h) of §2879 of the Public Authorities Law, such purchases, including, but not limited to, oil or gas purchases on the spot market, are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President of Procurement or equivalent(s) or designee and the head of the initiating department. From time to time or Where-where appropriate, generic notices may be published ~~from time to time~~ on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Authority.

K.J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an Authority representative, a “competitive search” will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The White Plains Procurement Department or the appropriate facility Procurement Department will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm’s qualifications, résumés of key personnel, past experience and proposed billing rates.

L.K. A Procurement Contract may be awarded on a sole source basis where:

1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
3. A sole supplier’s item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
5. The contract is awarded to a NYS certified M/WBE firm for purchases not exceeding \$5,000, pursuant to Section 3.D.

5.

M.L. Subject to the Authority's Expenditure Authorization Procedures ("EAP's"), a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:

1. A threat to the health or safety of the public or Authority employees or workers.
2. Proper functioning of the Authority facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.

M. Whenever an initiating department determines that a Procurement Contract should be awarded on either a sole source or an emergency basis, the head of the department will provide a written statement explaining the reasons therefor to the White Plains Procurement Department or the appropriate facility Procurement Department. When a procurement is made on a sole source basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. In furtherance of Chapter 506 of the Laws of 2009 regarding the Public Authorities Law ("PAL"), the following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the Vice President of Procurement or authorized designee.

N.

O.N. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Authority will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the Pursuant to State Finance Law §§139-j and 139-k, the following definitions shall apply:

1. Pursuant to Article 11-B of the State Finance Law A-a “Procurement Contract” is any contract or other agreement for a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property that is the subject of a governmental procurement. Grants, contracts between the Authority and non-profit organizations pursuant to Article 11-B of the State Finance Law, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions are not Procurement Contracts.
2. The “Restricted Period” is the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from bidders/contractors intending to result in a procurement contract with the Authority and ending with the final contract award.
3. The Authority shall designate a person or persons who may be contacted, with respect to each Authority procurement, ~~by~~ The bidders/contractors or persons acting on their behalf, shall only contact the Authority’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

4. **EVALUATION OF PROPOSALS**

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder, the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, [where a cost estimate is provided](#), on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the White Plains Procurement Department and/or the appropriate facility Procurement Department and appropriate managers as stipulated in the EAP's. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award; and (3) negotiating with the low bidder(s), as determined by the Vice President of Procurement or equivalent(s) or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited: to the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work and the ability to provide any needed advanced techniques such as simulation and modeling. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.
- C. For Services Contracts, [\(as defined in Section 2.C of these Guidelines\)](#), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2.B of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents.

- E. Pursuant to §139-j of the State Finance Law, the Authority shall not award a Procurement Contract (as defined in Subsection 3.N.1. of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Authority's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law §139-j in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAP's, and should be based on such a proposal providing a clear advantage to the Authority over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited: to improved delivery schedules that will reduce outages, longer warranty periods, improved efficiency over the usable life of the equipment, reduced maintenance costs, the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program goals.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Authority may diverge from the specifications of any solicitation if after review of the proposals responsive to such ~~solicitation~~, solicitation; the Authority deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings. Such divergence from the specifications should be immaterial, for example only, as to qualifications, quantity, quality, term, services and/or price.

5. RECOMMENDATION OF AWARD

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum [or e-mail](#) by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
1. Lump sum and/or unit prices for equipment and construction work.
 2. Hourly or daily rates for personnel.
 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any.

6. AWARD OF CONTRACT

- A. Services Contracts to be performed for a period of more than 12 months are approved and reviewed annually by the Trustees. Services Contracts for a period of less than 12-months are approved by authorized designees in accordance with existing EAP's. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Trustees at the request of the initiating department and will be reviewed by the Trustees annually. Extending a contract for services that has previously been approved by the Trustees for a cumulative term of more than 12 months requires further Trustees' approval. Extending a contract previously approved by the Trustees for 12 months or less requires approval by an authorized designee in accordance with existing EAP's.
- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next scheduled Trustees' meeting, the initial contract will be issued for the entire intended term of

the contract. Based on its total value, such contract must be approved by the appropriate management as set forth in the EAP's. Such contract is subject to the Trustees' approval, at the next quarterly Trustees' meeting. If such approval is not granted, the contract will be terminated immediately.

- C. A contract or contract task is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Trustee-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAP's.
- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAP's, the Business Unit Head, with the prior concurrence of the Vice President of Procurement or equivalent(s) or designee, may authorize extending such contract, subject to the Trustees ratifying such action as soon as practicable.
- F. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAP's, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Trustees' ratifying such action as soon as practicable.
- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAP's, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the Vice President of Procurement or equivalent(s) or designee, may authorize the commencement of such services. The initial compensation limitation may not exceed the authorization level for the President and Chief Executive Officer or equivalent(s) or Chief Operating

Officer or equivalent(s) as set forth in the EAP's. Such contracts will be subject to the Trustees' approval, which will be solicited at their next scheduled Trustee meeting.

- H. The White Plains Procurement Department or the facilities' Procurement Departments prepare the contract for execution by the Authority and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Authority signatories of such letters must be authorized to approve contract awards pursuant to the EAP's.
- I. Pursuant to Public Authorities Law §2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneous with notifying the successful bidder therefor. The Authority shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the White Plains Procurement Department: purchase order format for standard procurements of goods and/or services; furnish-and-deliver format for major equipment purchases; letter agreements and agreement formats for consulting work and contract work orders (for construction work of small magnitude), construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services. Authority departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the Procurement Department, which, along with the facilities' Procurement Departments, is solely responsible for requesting proposals.

B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority and Women-Owned Business Enterprises Provisions)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Drawing Requirements For New York Power Authority)
9. Appendix "G" (Equal Employment Opportunity Requirements)
10. Appendix "H" (Tax Law Requirements)
- ~~10.~~11. [Appendix "I" \(NEW YORK POWER AUTHORITY \(NYPA\)NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION CRITICAL INFRASTRUCTURE PROTECTION \(NERC CIP\) Cyber Security Training Requirements\)](#)

12. Appendix “J” (Bidder/Contractor Compliance with State Finance Law §§139-j and 139-k Providing for Certain Procurement Disclosures)

13. Appendix “K” (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub.L. No. 111-5 Stat. 2009) (“ARRA”) Funded Projects)

~~11.~~14. Appendix “L” (DOE) Federal Contract Provisions

- C. Any firm, person or entity retained by the Authority to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work. If there is no qualified response to the solicitation for future phases of work, including implementation, the approval of the Vice President of Procurement or equivalent(s) or designee, applicable Business Unit Head or equivalent(s), Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) is required to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
 3. To accommodate emergency conditions, defined in Section 3.L herein, that require the immediate performance of work by a firm already under contract;
 4. When rebidding would not be practical or in the best interests of the Authority’s customers; and
 5. To meet the Authority’s Supplier Diversity Program goals in accordance with Executive Law Article 15-A.
- B. All Change Orders must be approved in accordance with the Authority’s EAP’s, and should include specific schedules for completion of work at the earliest possible time.

9. **CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES**

- A. Former Authority officers and employees are eligible to be considered for employment as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their employment is not barred by New York Public Officers Law §73(8);, they obtain an opinion by the New York State Commission on Public Integrity that such employment is permissible; and upon approval of the President and Chief Executive Officer.
- B. Pursuant to the provisions of New York Public Officers Law §73(8):
 - 1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
 - 2. No Authority officer or employee is eligible, at any time after the termination of Authority service, to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
- C. No Authority employee who is involved in the award of Authority grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

E. No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which the Authority employee or a Relative of such Authority employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

1. For purposes of Section 9.E, the term “Relative” is defined in [Definitions](#), Section 2.F. of these Guidelines.

10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS

The Authority strives to continue to foster the development of business opportunities on Authority contracts for M/WBE's. Article 15-A of the Executive Law established - the NYS Office of- Minority/Women Owned Business and Community Relations that is responsible for developing rules and regulations for implementation of this statute, certifying M/WBE's and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an M/WBE is included in Section 2.G of these Guidelines. The Authority aims to solicit proposals from NYS certified M/WBE's that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS certified M/WBE's as required by law. Bidders' proposals will include Preliminary Subcontracting Plans for M/WBE's, where required, and such bidders failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award.

11. REPORTING AND PROCUREMENT RECORD

- A. The White Plains Procurement Department maintains records of Procurement Contracts, including bidders' names, the selection processes used and the status of existing contracts, including goods provided and/or services performed and fees earned, billed and paid. At the facilities, such records will be kept by the facilities' Procurement Departments. After the end of each calendar year, the Vice President – Procurement or equivalent(s) will prepare and submit an annual report to the Trustees for their approval that will include:
1. A copy of the Guidelines;
 2. An explanation of the Guidelines and any amendments thereto since the last annual report;
 3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
 4. A list of fees, commissions or other charges paid;
 5. A description of work performed, [the contract number](#) the date of the contract and its duration, the name, ~~and~~ address [and M/WBE of designation of](#) the ~~awardee~~ [awardees](#), the total amount of the contract, the amount spent on the contract during the reporting

period and for the term of the contract to date and the status of open Procurement Contracts during the report year;

~~5-6.~~ The type of contract (equipment, services, personal services or construction),

~~6-7.~~ The method of awarding the contract (e.g., competitive bidding, sole source or competitive search); ~~and~~

8. The reasons why any procurements with a value greater than \$15,000 were not noticed in the Contract Reporter and

~~7-9.~~ The number of bids received.

- B. Such annual report, as approved by the Trustees, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, with copies and shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Authority's website and copies shall be made available to the public upon reasonable written request therefor.
- C. State Finance Law §§139-j and 139-k.
1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§139-j and 139-k only) and the Authority's decision not to award a bidder/contractor the Procurement Contract must be included in the procurement contract record.
 2. The Authority shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§139-j and 139-k only) or debarred due to violations of §139-j of the State Finance Law.
 3. All forms entitled "Record of Contact" shall be included in the respective procurement contract record.
 4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement contract record.
- D. The Authority may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as the Authority Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").

12. **THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS**

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

2.2 **Guidelines and Procedures for the Disposal of Personal Property**

In compliance with the Public Authorities Accountability Act (“PAAA”), the Authority established and is required to annually review and approve Guidelines for the Disposal of Personal Property. Personal Property is defined to include, but is not limited to, material, tools, equipment or vehicles. Disposal of such Property will be performed in accordance with these Guidelines. The Guidelines were initially approved by the Trustees in March 2006 and have been reviewed annually and amended as necessary since then. Chapter 506 of the Laws of 2009, effective as of March 1, 2010, made substantial amendments to the Public Authorities Law (“PAL”), including changes to certain procedures governing the disposal of Personal Property. The most significant of the statutory changes are highlighted below:

- **Changes the basis for appraisals that must precede disposals of Personal Property** (i.e., no disposition of any Property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar Property, shall be made unless an appraisal of the value of such Property has been made by an independent appraiser)
- **Changes the criteria for the disposal of Personal Property through negotiation or public auction** (e.g., if the Property involved has qualities [other than its utilitarian purpose], such as artistic quality, antiquity, historical significance, rarity or other similar quality that would tend to increase its value, the disposal may be negotiated or made by public auction without regard to certain public advertising or other requirements.....; and conversely, certain previously-allowed criteria for the disposal of Personal Property by negotiation are no longer permitted)
- **Establishes new statutory requirements for the disposal of Personal Property in circumstances where such disposal is for less than Fair Market Value** (e.g., disposal of Property for less than Fair Market Value will require approval by the Board; before approving such Disposal, the Board shall make a written determination that there is no reasonable alternative to the below-market transfer that would achieve the same purpose of such transfer; in addition, certain such disposals would also require written notification to the Governor, the Speaker of the Assembly and the Temporary President of the Senate, subject to their approval or denial of the individual disposal transaction)
- **Establishes additional reporting and filing requirements for disposals of Personal Property made without competitive bidding and where the contract price for such disposals is less than Fair Market Value** (e.g., in such cases, a detailed explanation of the justification for making the disposal without competitive bidding shall be prepared and a certification shall be signed by the Chief Executive Officer and the Chief Financial Officer of the Authority stating that they have reviewed the terms of such disposal and have determined that it complies with applicable law and these Guidelines).

GUIDELINES

AND

PROCEDURES

FOR THE

DISPOSAL OF NEW YORK POWER AUTHORITY

PERSONAL PROPERTY

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GUIDELINES AND PROCEDURES
FOR THE
DISPOSAL OF NEW YORK POWER AUTHORITY PERSONAL PROPERTY

I. **PURPOSE**

These Guidelines and Procedures for the Disposal of Personal Property (hereinafter "Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority's policy and instructions regarding the use, award, monitoring and reporting of the disposal of personal property. In addition, the Guidelines designate a Contracting Officer who is responsible for the Authority's compliance with, and enforcement of, the Guidelines.

II. **DEFINITIONS**

A. "Contracting Officer" shall mean the officer or employee of a public authority who shall be appointed by resolution of the Authority's Board of Trustees to be responsible for the disposition of personal property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s), or a designee so stated in writing. The Authority's Contracting Officer shall not be responsible for compliance for dispositions of the Authority's personal property conducted by another state entity authorized to dispose of the Authority's personal property under the Public Authorities Accountability Act ("PAAA") or as otherwise authorized by law.

- B. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal property in accordance with these Guidelines.
- C. "Property" shall mean personal property owned by the Authority with a value in excess of \$5,000, and any other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party. For the purposes of these Guidelines, personal property may include, but is not limited to, materials, tools, equipment, or vehicles.
- D. "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair Market Value may be determined by consulting industry-recognized sources, contacting original suppliers, depreciation analysis, appraisals, fair market valuations by public auction or other methods of valuation generally accepted in the industry in which such Property is utilized, as may be approved by the Contracting Officer or authorized designee.
- E. "Relative" is defined in Subsection X.G.1. of these Guidelines.

III. OBJECTIVE

The objective of these Guidelines is to identify those Authority personnel responsible for authorizing the disposal of Property owned by the Authority and to ensure that the Authority receives fair and reasonable value for such Property. The transfer or sale of Property shall be accounted for in accordance with the Authority's

Corporate Accounting Policy No. CAP 4.3 dated 6/30/05, Revision 2 -- "Accounting for Materials and Supplies."

IV. TRANSACTIONS NOT COVERED

These Guidelines do not apply to any of the following transactions:

1. Disposal of real property interests;
2. Exchange of Property with other utilities or power plant owners, where such owners will provide an identical or in-kind replacement;
3. Transfer/re-deployment of Property from one Authority facility to another Authority facility.

V. DESIGNATION OF PROPERTY DISPOSAL COORDINATORS

- A. The Contracting Officer shall be responsible for the Authority's compliance with, and enforcement of, the Guidelines.
- B. The individual responsible for disposal of all Property at the Authority's facilities will be the Facilities Materials Superintendent ("FMS") currently located at the Clark Energy Center. For purposes of Property disposal, the FMS reports directly to the Contracting Officer or authorized designee.
- C. The Purchasing and Warehouse Manager from each facility will be the local Property Disposal Coordinator for his or her facility or location ("Facility PDC"). The Facility PDC reports to the FMS.
- D. The Contracting Officer will designate one or more individuals from the White Plains Office Procurement Division to be the Property Disposal Coordinator(s)

for the White Plains, Albany and New York corporate offices ("WPO PDC").

For purposes of Property disposal, the WPO PDC(s) will confer, interface with and report to the Contracting Officer or authorized designee.

- E. The Director of Fleet Operations ("DFO") or equivalent(s) or designee is responsible for the disposal of vehicles and rolling equipment. The DFO reports directly to the Contracting Officer.
- F. If appropriate, the responsible Facility PDC should confer (by oral or written communication) with the FMS and the WPO PDC(s) should confer (by oral or written communication) with the Contracting Officer to determine if a "centralized" sale of Property, as outlined in Article VII, is appropriate. If agreed, the responsible PDC should arrange for shipment of the Property to be sold from the site to the sale location. If a centralized sale is not appropriate, the responsible PDC should proceed in accordance with the "decentralized" procedures, as outlined in Article VIII.

VI. PROCEDURES FOR DISPOSAL OF AUTHORITY PERSONAL PROPERTY

Except for Disposals pursuant to Article VII, Article XII and Subsection VI.A.4 of these Guidelines, whenever practicable, the responsible PDC shall solicit proposals from at least 3 bidders, to purchase the Property to be disposed of, and will maintain records of such solicitations. The PDC should use "Attachment A" attached hereto or an appropriate substitute for solicitations under this Article VI.

D

A. DISPOSAL METHODS FOR PERSONAL PROPERTY

1. For the purposes of these Guidelines, Disposal methods may include, but are not limited to: sale (directly to the Buyer, through a third party, negotiation, well-advertised public auction that permits full and free competition consistent with the value and nature of the property or on any other centralized basis that achieves the same level of competition); return to the original equipment manufacturer or to the source; trade-ins; or disposal through the New York State Office of General Services ("OGS"). Use of the internet, in conjunction with the foregoing options, may also be utilized, as applicable. Provided, however, that no disposition of any Property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar Property, shall be made unless an appraisal of the value of such Property has been made by an independent appraiser and included in the record of the transaction. The Authority's Environment, Health and Safety Division should be consulted, on a case-by-case basis, regarding disposal of items that may be considered hazardous waste.
2. Solicitation via telephone, e-mail and/or direct mailings may be used where the estimated Fair Market Value of the Property to be disposed of is greater than \$5,000 but does not exceed \$15,000. All bids must be submitted in writing on the forms and in the manner prescribed by this

procedure and by the date and time (the "Bid Due Date") included in the solicitation.

3. All Disposals of Authority Property in excess of \$15,000 shall be made after publicly advertising for bids except as provided in Subsection 4 below, using the following process:
 - a. the appropriate advertisement for bids (Attachment "B" or an appropriate substitute) shall be made at such time prior to the Disposal, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the Property. This may include advertisements in one or more of the following publications, depending on the nature of the Property: local newspapers in the geographic area of the facility where the sale is taking place, trade journals, regional or nationwide publications (if the market for such sale is regional or nationwide), the New York State Contract Reporter, internet services or other communication outlets as appropriate;
 - b. all bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the Bid Due Date included in the solicitation;
 - c. all bids shall be publicly disclosed, at the time and place stated in the solicitation; and

- d. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforms to the bid solicitation and will be most advantageous to the Authority, price and other factors considered; however, any bid may be rejected when in the public interest to do so.
4. Disposals of Property may be negotiated or made by public auction without regard to Subsection 3 of this Section, but subject to obtaining such competition as is feasible under the circumstances, if:
 - a. the Property involved has qualities separate from the utilitarian purpose of such Property, such as artistic quality, antiquity, historical significance, rarity or other quality of similar effect that would tend to increase its value, or if the Property is to be disposed of in such quantity that, if it were Disposed of under Subsection 3 of this Section, would adversely affect the state or local market for such Property, and the estimated Fair Market Value of such Property and other satisfactory terms of disposal may be obtained by negotiation;
 - b. bid prices after advertising therefore are not reasonable, either as to all or part of the Property, or have not been independently determined in open competition;
 - c. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Property and other satisfactory terms of Disposal are obtained by negotiation;
 - d. under those circumstances permitted by Subsection 6 of this Section;

- e. If the estimated or actual fair market value of the property does not exceed \$15,000; or
 - f. such action is otherwise authorized by law.
5. An explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of any Property which has an estimated Fair Market Value in excess of fifteen thousand dollars (\$15,000). In addition, an explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of any Property disposed of by exchange, regardless of value. Each such statement shall be transmitted to the Commissioner of General Services, the State Legislature, the State Comptroller, and the Division of the Budget, not less than ninety days in advance of such Disposal, and a copy thereof shall be preserved in the Authority's files.
6. a. No Property owned or otherwise in the control of the Authority may be disposed or otherwise alienated for less than its Fair Market Value except if:
- (i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Property will remain with the government or any other public entity;
 - (ii) the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
 - (iii) in the event the Authority seeks to transfer Property for less than its Fair Market Value to other than a governmental entity, which

Disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate and Assembly, the Authority may effectuate such transfer provided, however, that with respect to a below-market transfer by the Authority that is not within the purpose, mission or governing statute of the Authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which the Authority resides, and if the transfer is of Property obtained by the Authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

b) In the event a below Fair Market Value Property transfer is proposed, the following information must be provided to the Authority's Board and the public:

(i) a full description of the Property;

(ii) an appraisal of the Fair Market Value of the Property and any other information establishing the Fair Market Value sought by the Board;

(iii) a description of the purpose of the transfer and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Property is situated as are required by the transfer;

(iv) a statement of the value to be received compared to the Fair Market Value;

(v) the names of any private parties participating in the transfer and, if different than the statement required by subparagraph (iv) of this Subsection, a statement of the value to the private party; and

(vi) the names of other private parties who have made an offer for such Property, the value offered and the purpose for which the Property was sought to be used.

c. Before approving the Disposal of any Property for less than Fair Market Value, the Board shall consider the information described in

paragraph b of this Subsection and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

7. In addition, in cases where a Disposal of Property is made without competitive bidding and where the proposed contract price for the Property disposed of is less than Fair Market Value, prior to finalizing the Disposal a detailed explanation of the justification for making the Disposal without competitive bidding shall be prepared, and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such Disposal and have determined that it complies with applicable law and these Guidelines.

B. **DISPOSAL OPTIONS IF NO BIDS ARE RECEIVED**

If solicitation pursuant to Section VI.A. does not produce any proposals to purchase the Property from the Authority, or if all proposals received are less than the Authority's Fair Market Value estimate, the appropriate PDC shall confer with the FMS and the Contracting Officer to decide (i) if re-soliciting is feasible; (ii) if shipment to a third-party contractor for Disposal would result in higher-priced proposals; (iii) if disposal by other methods would be appropriate; and/or (iv) if the Fair Market Value estimate requires review or adjustment.

VII. CENTRALIZED DISPOSAL

A. Subject to the approval of the Contracting Officer and in accordance with Article VI of these Guidelines, in either the initial document authorizing the disposal or through a subsequent communication, Property may be disposed of using any of the following methods:

1. Shipment of the material to a third-party vendor(s), selected by competitive bidding, which, pursuant to these Guidelines, will market the material for sale or dispose of such material in accordance with environmental and any other Authority requirements.
2. Consolidation of such Property at one of the Authority's facilities or an offsite warehouse for the purpose of conducting a sale managed by Authority staff, possibly with the assistance of an outside contractor.
3. Participation in public auctions such as through a private auctioneer or other utility provided the advertisement for bids through such methods permits full and free competition consistent with the value and nature of the property.

VIII. DECENTRALIZED DISPOSAL

A. The Regional Manager, Project Manager, or head of a Department or Division requiring disposal of Property which he or she believes to be surplus, will submit to the responsible PDC a written description of the material, with the original price (if known), and estimate of the Property's

Fair Market Value (if available). If practical, a photograph of the material or equipment in question should be provided. Such submission shall be made to the PDC designated at the location at which the Property is located, the responsible PDC.

- B. If the responsible PDC, in conference with either the FMS or the Contracting Officer, as appropriate, determines that other Authority facilities may have an interest in the Property, a notice should be sent to the other Authority facilities advising of its availability and requesting a response within a specified time frame. A record of the notice will be maintained by the responsible PDC. In the event that the responsible PDC and either the FMS or the Contracting Officer, as appropriate, determine there is no interest in such material at other Authority facilities, a written explanation should be prepared by the PDC to that effect and maintained in the file for that transaction.
- C. If no response to the notice is received, the responsible PDC will solicit bids for the purchase of such Property in accordance with the procedures described in Article VI.

IX. PARTIES PROHIBITED FROM BIDDING

- A. All current and former employees of the Authority and relatives of such employees or third parties acting on behalf of such employees shall not be eligible to bid for the purchase of Authority Property and are prohibited from subsequently acquiring it in any manner. Each bidder will be required, as

part of his or her bid, to certify, by signing Attachment "A," that he or she is not a current or former employee of the Authority, is not related to any current or former employee of the Authority and is not acting on behalf of a current or former employee of the Authority or a relative of any such employee. No bid will be accepted unless accompanied by such certification.

- B. The term "related to" as used in paragraph A above means the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

X. EVALUATION OF PROPOSALS; AWARD OF CONTRACT

- A. Following the receipt of proposals for the Property, the responsible PDC shall evaluate the proposals submitted and determine whether the highest of such proposals is reasonable, given the estimated Fair Market Value of the Property.
- B. If the responsible PDC determines that the highest bid received is reasonable, the responsible PDC shall recommend to the Responsible Officer(s), as hereinafter defined in Article XI, that such bid be accepted, and upon the written approval of the Responsible Officer(s), the sale shall be made to the person offering such proposal. After obtaining all necessary approvals in accordance with Article XI "Authorization Levels," a Sales Agreement appended hereto ("Attachment C") must be executed by the

responsible Authority staff member and by the successful bidder prior to completion of the transaction.

- C. If either (a) the responsible PDC determines that the highest bid is not reasonable or (b) the Responsible Officer(s) decline(s) to authorize the sale, the Property will, except as provided in paragraph D below, be retained for future disposal in accordance with these Guidelines. Factors to be considered in determining whether a bid is reasonable include, but are not limited to: adequacy of the estimate of the Fair Market Value, anticipated improved future market conditions, potential for other means of disposal or redeployment, financial viability of the bidder, and condition of the Property.
- D. Notwithstanding any determination by the responsible PDC, the Responsible Officer(s), with the review and approval of the Contracting Officer, may direct the sale of the Property to the person or firm submitting the highest bid.
- E. No Authority employee who is involved in the award of Authority grants or contracts, may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- F. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current

or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section E above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

G. No Authority employee may take part in any contracting decision involving the payment of \$1,000 or more: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section G, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

1. For purposes of this Section G, the term "Relative" shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant.

XI. AUTHORIZATION LEVELS AND SIGNING AUTHORITY

A. For the purposes of these Guidelines, the Responsible Officer(s) will in each case review the appropriateness of the Fair Market Value estimate and the recommendation for contract award for disposal of the Property. Responsible Officers are designated as follows:

1. The Trustees, if the Fair Market Value of the Property is greater than \$1,000,000; or
 2. The President or the Chief Operating Officer or equivalent(s), if the Fair Market Value of the Property is up to \$1,000,000; or
 3. The Senior Vice President – Enterprise Shared Services or equivalent(s) or the Executive Vice President – Chief Administrative Officer or equivalent(s), if the Fair Market Value of the Property is up to \$500,000; or
 4. The Vice President – Procurement or equivalent(s), if the Fair Market Value of the Property is up to \$250,000; or
 5. The FMS, if the Fair Market Value of the Property is up to \$50,000; or
 6. The responsible PDC, with the prior written approval of either the FMS or the Contracting Officer, as appropriate, if the Fair Market Value of the Property is \$5,000 or less.
- B. For public auctions or similar centralized disposals, such authorization should be obtained prior to submitting Property to auction based on the estimated fair market value of the Property.
1. For purposes of these Guidelines, the Director - Fleet Operations (“DFO”) or equivalent(s) and FMS are authorized to sign Disposal Sales Agreements based upon the provisions of Section XI.A above whereby the DFO is authorized to sign fleet-related sales agreements and the FMS may sign both fleet and non-fleet sales agreements.

- C. For decentralized disposals, such authorization should be obtained prior to signing of Sales Agreement or award of contract, in accordance with the Authorization Levels set forth in Section XI.A. Sales Agreements for individual disposal transactions through a decentralized sale should be signed in accordance with the limits set forth in the Authority's Expenditure Authorization Procedures – Attachment C.

XII. OTHER METHODS FOR DISPOSAL OF PERSONAL PROPERTY

A. Trade-Ins

This procedure is not intended to restrict the trade-in of equipment (i.e., computer or office equipment), materials, and/or vehicles for replacements from dealers furnishing replacement equipment, materials, and/or vehicles, where reasonable value can be obtained for the trade-in. Any such proposed trade-in must be included as part of the solicitation of bids for the replacement equipment, materials and/or vehicles and the trade-in value must be stated in the proposals from solicited bidders. Best efforts shall be utilized to secure a trade-in value that is equal to or exceeds the Fair Market Value.

B. Return to the Original Equipment Manufacturer ("OEM") or to the Source

Return of materials to the OEM or the source is permissible provided that the Authority receives full value for any materials equal to the price paid by the Authority or the estimated Fair Market Value of the Property. In the event a re-stocking fee is charged by the OEM or the source, the FMS or the

Contracting Officer, as appropriate, shall be consulted to determine if such a re-stocking fee is reasonable and if there are other opportunities for sale of such material. Approval of all such returns to the OEM or the source when a re-stocking fee is charged, must be in accordance with the Authorization Levels delineated in Section XI.A.

C. **Disposal through the New York State Office of General Services (OGS)**

When it is determined advantageous to the Authority, the Authority may utilize OGS for Disposal of Authority-owned Property including but not limited to vehicles and rolling equipment, and/or may make use of on-line disposal methods offered by OGS. In addition, in accordance with New York State law, surplus computers and accessories (e.g. monitors and keyboards) and surplus office furniture and other equipment may, with the approval of the Contracting Officer, be transferred to OGS for disposition, in the case of computers and accessories to school districts located near Authority offices or operating facilities, or in the case of office furniture and office equipment, to other state entities. Disposal of these items in this manner represents the best value to New York State in lieu of attempted re-sale of such materials.

XIII. METHODS OF PAYMENT

The proceeds from the sale of Property in the form of cash or a certified check made payable to the Authority must be forwarded to the Authority's Treasurer by the

Facility PDCs and to the Authority's Controller's Office by the FMS and WPO PDC. In certain cases involving a transfer of Property to other state agencies or authorities, the performance of documented services to the Authority equal to or greater in value to the Fair Market Value of the Property, will serve as payment for such Property. The authorization limits of Article XI shall apply to such transactions.

XIV. REPORTING REQUIREMENTS

- A. The Authority shall publish, not less frequently than annually, a report of all Property disposed of during the reporting period, including the full description, price (if any) received and the name of the purchaser for all such Property disposed of by the Authority during such period. Such report shall be prepared in conjunction with the report required by the Authority's "Guidelines and Procedures for the Disposal of Real Property."
- B. Such report, as approved by the Trustees, shall be submitted to the Comptroller, the Director of the Budget, the Commissioner of General Services, the Legislature and the Authorities Budget Office.
- C. These Guidelines, as approved by the Trustees, shall be reviewed and approved annually by the Authority's Board of Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the Comptroller a copy of the Guidelines most recently reviewed and approved by the Trustees, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the

Comptroller, the Authority shall also post such Guidelines on the Authority's internet website and maintain such Guidelines on the website.

- D. For disposal by negotiation or exchange (except when an identical or in-kind replacement is provided to the Authority) an explanatory statement shall be prepared and submitted to the parties described more fully in Subsection VI.B.5.
- E. The Authority's Governance Committee meets at least three times per year and staff from the Enterprise Shared Services Department or the equivalent(s) prepare and present ongoing reports regarding disposals of personal property and real property.
- F. The Authority may be called upon periodically to submit information regarding the Disposal of Personal Property to organizations implementing the PAAA or other statutes regulating the disposal of Property, such as the Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").

BID SHEET

The following personal property is available for sale "AS IS, WHERE IS" and the Power Authority gives no warranty whatsoever as to its condition.

LUMP SUM BID AMOUNT* \$ _____

Subject to all terms and conditions set forth on the reverse hereof, the undersigned offers and agrees to purchase the above-described personal property at the bid amount indicated.

Signature

Company Name

Name (Printed)

Street Address

Date

City, State, Zip Code

FAX number

Telephone number

* All sales are subject to New York State Sales Tax and Compensating Use Tax unless the Purchaser furnishes the Authority with an exemption certificate.

PERSONAL PROPERTY SALE
SALE NO. _____
NEW YORK POWER AUTHORITY
(ADDRESS OF PROJECT)
Telephone: () _____
FAX: () _____

Subject to the terms and conditions stated below, bids will be received on the personal property, either by mail, fax or hand delivery at the (Location) _____ no later than (Date) _____.

The personal property is available for inspection, by appointment, at the (Project) _____
_____. For an appointment, please contact the Property Disposal Coordinator, (Name) _____
_____ at (Telephone no.) _____.

Successful bidders will be required to pay by certified check, on notice from the Authority that the bid has been accepted, and remove the personal property from the Authority's premises within ten (10) calendar days after receipt of notice of award.

Envelopes containing bids submitted by mail should be marked on the outside to indicate that a bid on Sale No. ____ is enclosed.

Current and former employees of the Power Authority or relatives of such employees or third parties acting on behalf of such employees or relatives are ineligible to bid and are prohibited from subsequently acquiring such personal property in any manner.

1. **INSPECTION.** Bidders are invited, urged and cautioned to inspect the personal property being sold prior to submitting a bid. The personal property will be available for inspection at the time and place specified above. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.
2. **CONDITION OF PROPERTY.** All personal property listed is offered for sale "AS IS, WHERE IS". The Authority does not in any way warrant the fitness of the personal property for any particular use or its merchantability and disclaims any other representations or warranties, express or implied, including, but not limited to, quality, character, performance or condition of the personal property or any of its component parts, assemblies, or accessories.
3. **CONSIDERATION OF BIDS.** Bids must be submitted in writing on the form provided by the Authority (see reverse side) and shall be submitted on all items listed. The Authority reserves the right to reject any and all bids, to waive technical defects in bids and to award sale of the items as may be in the best interest of the Authority.
4. **PAYMENT.** The Purchaser agrees to pay for the awarded personal property in accordance with the prices quoted in his/her bid. Payment of the full purchase price must be made within the time allowed for removal, and prior to the release of any personal property to the Purchaser.
5. **NEW YORK STATE SALES AND COMPENSATING USE TAX.** All sales will be subject to New York State Sales and Compensating Use Tax unless the Purchaser furnishes the Authority with an exemption certificate.

ADVERTISEMENT FOR PROPOSALS

The following described personal property, shall be sold "AS IS, WHERE IS" by the New York Power Authority ("the Authority").

1. Sealed bids are invited for the above, which will be available for inspection by inquiry at the (Location/Building) at the (Project and Address) between the hours of _____ a.m. to ___ p.m. on (Date/s). Bids must be submitted on the Authority's bid form, which can be obtained by calling (Telephone no.). No bid will be accepted unless it is on such form. Bids shall be accepted on or before ___ p.m. on (Date).
2. Current and former employees of the Authority or relatives of such employees or third parties seeking to act on behalf of such employees or relatives shall be ineligible to bid.
3. Successful bidders, on notice from the Authority, shall be required to pay by certified check and shall promptly remove the personal property from the Authority's property.
4. The Authority reserves the right to reject any and all bids.

**PERSONAL PROPERTY
SALES AGREEMENT**

_____, the Buyer, and the Power Authority of the State of New York ("the Authority"), agree as follows:

- 1) The personal property identified herein is sold by the Authority and purchased by Buyer "AS IS, WHERE IS" at the price(s) shown, plus any applicable sales tax.
- 2) **THE AUTHORITY DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE PERSONAL PROPERTY FOR ANY PARTICULAR USE OR ITS MERCHANTABILITY AND DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE QUALITY, CHARACTER, PERFORMANCE, OR CONDITION OF THE PERSONAL PROPERTY OR ANY OF ITS COMPONENT PARTS, ASSEMBLIES, OR ACCESSORIES.**
- 3) The Bidder warrants that he/she/it is not a current or former Authority employee, is not related to an Authority employee and did not bid on behalf of an Authority employee. Bidder is aware that Authority employees and their family members are precluded from subsequently receiving, or acquiring, in whole or in part, by any manner including gift, sale, loan or lease, the personal property acquired by the Bidder pursuant to this sale. The term "related to" as used in this paragraph means the relationships of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law. The Authority reserves the right to invoke any available legal or equitable remedy in the event of a breach by the Bidder of his or her warranty under this paragraph, including but not limited to, rescinding the sale and recovering the property sold and all costs associated with the sale and the rescission of said sale.
- 4) The Buyer shall indemnify and hold harmless the Authority and all of its officers, agents and employees from any loss, damage, remedial or response cost, liability or expense, on account of damage or contamination to property and injuries, including death, to all persons, including Buyer's employees, or any third parties, arising or in any manner growing out of the sale of any personal property or the performance of any work under this agreement and shall defend at its own expense any suits or other proceedings brought against the Authority and its officers, agents and employees, or any of them, on account thereof, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith.
- 5) Except for disposals by public auction, the Buyer shall remove the personal property from the Authority's premises by _____ at Buyer's expense. The Buyer shall make payment upon delivery by certified check payable to the New York Power Authority.

Description of Personal Property:

Selling Price: _____

Executed this _____ day of _____, 20 _____.

Buyer (Print or Type):

Seller:

Power Authority of the State of New York
123 Main Street
White Plains, New York 10601

Authorized Signature

Authorized Signature

Full Name (Printed)

Title

Title

PRIVACY LAW NOTIFICATION

SECTION 94(1)(d) OF THE NEW YORK PUBLIC OFFICERS LAW REQUIRES THIS NOTICE TO BE PROVIDED WHEN COLLECTING PERSONAL INFORMATION FROM POTENTIAL PURCHASERS OF AUTHORITY PROPERTY.

This information is requested pursuant to Article 5, Title I of the Public Authorities Law. The principal purpose for which the information is collected is to assist the Power Authority of the State of New York in the sale of Authority personal property in accordance with Section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f).

Failure to provide the requested information may result in ineligibility for participation in a program, sale or benefit provided by the Authority.

This information will be maintained by Fleet Operations, at the Power Authority of the State of New York, Clark Energy Center located at 6520 Glass Factory Road, Marcy, N.Y. 13403, (315) 724-8186 or, when appropriate, by the Procurement Department at the Corporate office or at one of the Authority facilities.

GUIDELINES

AND

PROCEDURES

FOR THE

DISPOSAL OF NEW YORK POWER AUTHORITY

PERSONAL PROPERTY

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GUIDELINES AND PROCEDURES
FOR THE
DISPOSAL OF NEW YORK POWER AUTHORITY PERSONAL PROPERTY

I. **PURPOSE**

These Guidelines and Procedures for the Disposal of Personal Property (hereinafter "Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority's policy and instructions regarding the use, award, monitoring and reporting of the disposal of personal property. In addition, the Guidelines designate a Contracting Officer who is responsible for the Authority's compliance with, and enforcement of, the Guidelines.

II. **DEFINITIONS**

A. "Contracting Officer" shall mean the officer or employee of a public authority who shall be appointed by resolution of the Authority's Board of Trustees to be responsible for the disposition of personal property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s), or a designee so stated in writing. The Authority's Contracting Officer shall not be responsible for compliance for dispositions of the Authority's personal property conducted by another state entity authorized to dispose of the Authority's personal property under the Public Authorities Accountability Act ("PAAA") or as otherwise authorized by law.

- B. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal property in accordance with these Guidelines.
- C. "Property" shall mean personal property owned by the Authority with a value in excess of \$5,000, and any other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party. For the purposes of these Guidelines, personal property may include, but is not limited to, materials, tools, equipment, or vehicles, ~~which are not expected to be of any future use to the Authority, i.e., typically surplus or obsolete materials and supplies.~~
- D. "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the ~~material~~Property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair Market Value may be determined by consulting industry-recognized sources, contacting original suppliers, depreciation analysis, appraisals, fair market valuations by public auction or other methods of valuation generally accepted in the industry in which such Property is utilized, as may be approved by the Contracting Officer or authorized designee.
- E. "Relative" is defined in Subsection X.G.1. of these Guidelines.

III. OBJECTIVE

The objective of these Guidelines is to identify those Authority personnel responsible for authorizing the disposal of Property owned by the Authority and to

ensure that the Authority receives fair and reasonable value for such Property. The transfer or sale of Property shall be accounted for in accordance with the Authority's Corporate Accounting Policy No. CAP 4.3 dated 6/30/05, Revision 2 -- "Accounting for Materials and Supplies."

IV. **TRANSACTIONS NOT COVERED**

These Guidelines do not apply to any of the following transactions:

1. Disposal of real property interests;
2. Exchange of Property with other utilities or power plant owners, where such owners will provide an identical or in-kind replacement;
3. Transfer/re-deployment of Property from one Authority facility to another Authority facility.

V. **DESIGNATION OF PROPERTY DISPOSAL COORDINATORS**

- A. The Contracting Officer shall be responsible for the Authority's compliance with, and enforcement of, the Guidelines.
- B. The individual responsible for disposal of all Property at the Authority's facilities will be the Facilities Materials Superintendent ("FMS") currently located at the Clark Energy Center. For purposes of Property disposal, the FMS reports directly to the Contracting Officer or authorized designee.
- C. The Purchasing and Warehouse Manager from each facility will be the local Property Disposal Coordinator for his or her facility or location ("Facility PDC"). The Facility PDC reports to the FMS.

- D. The Contracting Officer will designate ~~an~~ one or more individuals from the White Plains Office Procurement Division to be the Property Disposal Coordinator(s) for the White Plains, Albany and New York corporate offices ("WPO PDC"). For purposes of Property disposal, the WPO PDC(s) will confer, interface with and report to the Contracting Officer or authorized designee.
- E. The Director of Fleet Operations ("DFO") or equivalent(s) or designee is responsible for the disposal of vehicles and rolling equipment. The DFO reports directly to the Contracting Officer.
- F. If appropriate, the responsible Facility PDC should confer (by oral or written communication) with the FMS and the WPO PDC(s) should confer (by oral or written communication) with the Contracting Officer to determine if a "centralized" sale of Property, as outlined in Article VII, is appropriate. If agreed, the responsible PDC should arrange for shipment of the Property to be sold from the site to the sale location. If a centralized sale is not appropriate, the responsible PDC should proceed in accordance with the "decentralized" procedures, as outlined in Article VIII.

VI. BIDDING PROCEDURES FOR DISPOSAL OF AUTHORITY PERSONAL PROPERTY

Except for Disposals pursuant to Article VII, Article XII and Subsection VI.BA.4 of these Guidelines, whenever practicable, the responsible PDC shall solicit proposals from at least 3 bidders, to purchase the Property to be disposed of, and will maintain

records of such solicitations. The PDC should use "Attachment A" attached hereto or an appropriate substitute for solicitations under this Article VI.

A. SOLICITATIONS FOR PERSONAL PROPERTY VALUED AT \$15,000 OR LESS

~~Telephone notices and/or mailings may be used where the estimated Fair Market Value of the Property to be disposed of is equal to or less than \$15,000. All bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the date and time (the "Bid Due Date") included in the solicitation.~~

BA. DISPOSAL METHODS FOR PERSONAL PROPERTY IN EXCESS OF \$5,000 IN VALUE

1. For the purposes of these Guidelines, ~~d~~Disposal ~~options~~methods may include, but are not limited to: sale (directly to the Buyer, through a third party, negotiation, well-advertised public auction that permits full and free competition consistent with the value and nature of the property or on any other centralized basis that achieves the same level of competition); return to the original equipment manufacturer or to the source; trade-ins; or disposal through the New York State Office of General Services ("OGS"). Use of the internet, in conjunction with the foregoing options, may also be utilized, as applicable. Provided, however, that no disposition of any Property, which because of its unique nature or the unique circumstances of the proposed transaction

is not readily valued by reference to an active market for similar Property, shall be made unless an appraisal of the value of such Property has been made by an independent appraiser and included in the record of the transaction. The Authority's Environment, Health and Safety Division should be consulted, on a case-by-case basis, regarding disposal of items that may be considered hazardous waste.

2. Solicitation via telephone, e-mail and/or direct mailings may be used where the estimated Fair Market Value of the Property to be disposed of is greater than \$5,000 but does not exceed \$15,000. All bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the date and time (the "Bid Due Date") included in the solicitation.

~~2.3.~~ All Disposals of Authority Property in excess of \$15,000 shall~~should~~ be made after publicly advertising for bids except as provided in ~~Paragraph~~Subsection 4 below, using the following process:

~~3. Whenever public advertising for bids is required under paragraph 2:~~

a. the appropriate advertisement for bids (Attachment "B" or an appropriate substitute) shall be made at such time prior to the Disposal, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the Property. ~~Typically,~~ ~~this~~ ~~will~~may include advertisements in one or more of the following publications, depending on the nature of the Property: local newspapers ~~at~~in the

~~March 31~~February 23, 2019

- geographic area of the facility where the sale is taking place, trade journals, regional or nationwide publications (if the market for such sale is regional or nationwide), the New York State Contract Reporter, ~~or~~ internet services or other communication outlets as appropriate;
- b. all bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the Bid Due Date included in the solicitation;
 - c. all bids shall be publicly disclosed, at the time and place stated in the solicitation; and
 - d. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforms to the bid solicitation and will be most advantageous to the Authority, price and other factors considered; however, any bid may be rejected when in the public interest to do so.
4. Disposals of Property may be negotiated or made by public auction without regard to Subsections ~~2 and~~ 3 of this Section, but subject to obtaining such competition as is feasible under the circumstances, if:
- a. the Property involved ~~is of a nature and quantity which,~~ has qualities separate from the utilitarian purpose of such Property, such as artistic quality, antiquity, historical significance, rarity or other quality of similar effect that would tend to increase its value, or if the Property is to be disposed of in such quantity that, if it were Disposed of under

Subsections ~~2 and~~ 3 of this Section, would adversely affect the state or local market for such Property, and the estimated Fair Market Value of such Property and other satisfactory terms of disposal may be obtained by negotiation;

b. bid prices after advertising therefore are not reasonable, either as to all or part of the Property, or have not been independently determined in open competition;

c. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Property and other satisfactory terms of Disposal are obtained by negotiation;

d. ~~the Disposal is for an amount less than the estimated Fair Market Value of the Property, the terms of such Disposal are obtained by public auction or negotiation, the Disposal of the Property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not be limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the Authority's enabling legislation permits), and the purpose and the terms of such Disposal are documented in writing and approved by the Authority's Board of Trustees under those circumstances permitted by Subsection 6 of this Section;~~

- e. If the estimated or actual fair market value of the property does not exceed \$15,000; or
 - f. such action is otherwise authorized by law.
5. An explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of any Property which has an estimated Fair Market Value in excess of fifteen thousand dollars (\$15,000). In addition, an explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of any Property disposed of by exchange, regardless of value. Each such statement shall be transmitted to the Commissioner of General Services, the State Legislature, the State Comptroller, and the Division of the Budget, not less than ninety days in advance of such Disposal, and a copy thereof shall be preserved in the Authority's files.
6. a. No Property owned or otherwise in the control of the Authority may be disposed or otherwise alienated for less than its Fair Market Value except if:
- (i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Property will remain with the government or any other public entity;
 - (ii) the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
 - (iii) in the event the Authority seeks to transfer Property for less than its Fair Market Value to other than a governmental entity, which

Disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate and Assembly, the Authority may effectuate such transfer provided, however, that with respect to a below-market transfer by the Authority that is not within the purpose, mission or governing statute of the Authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which the Authority resides, and if the transfer is of Property obtained by the Authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

b) In the event a below Fair Market Value Property transfer is proposed, the following information must be provided to the Authority's Board and the public:

(i) a full description of the Property;

(ii) an appraisal of the Fair Market Value of the Property and any other information establishing the Fair Market Value sought by the Board;

(iii) a description of the purpose of the transfer and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Property is situated as are required by the transfer;

(iv) a statement of the value to be received compared to the Fair Market Value;

(v) the names of any private parties participating in the transfer and, if different than the statement required by subparagraph (iv) of this Subsection, a statement of the value to the private party; and

(vi) the names of other private parties who have made an offer for such Property, the value offered and the purpose for which the Property was sought to be used.

c. Before approving the Disposal of any Property for less than Fair Market Value, the Board shall consider the information described in

paragraph b of this Subsection and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

7. In addition, in cases where a Disposal of Property is made without competitive bidding and where the proposed contract price for the Property disposed of is less than Fair Market Value, prior to finalizing the Disposal a detailed explanation of the justification for making the Disposal without competitive bidding shall be prepared, and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such Disposal and have determined that it complies with applicable law and these Guidelines.

CB. DISPOSAL OPTIONS IF NO BIDS ARE RECEIVED

If solicitation pursuant to Sections VI.A. ~~and VI.B.~~ does not produce any proposals to purchase the Property from the Authority, or if all proposals received are less than the Authority's Fair Market Value estimate, the appropriate PDC shall confer with the FMS and the Contracting Officer to decide (i) if re-soliciting is feasible; (ii) if shipment to a third-party contractor for Disposal would result in higher-priced proposals; (iii) if disposal by other methods would be appropriate; and/or (iv) if the Fair Market Value estimate requires review or adjustment.

VII. CENTRALIZED DISPOSAL

A. Subject to the approval of the Contracting Officer and in accordance with Article VI of these Guidelines, in either the initial document authorizing the disposal or through a subsequent communication, Property may be disposed of using any of the following methods:

1. Shipment of the material to a third-party vendor(s), selected by competitive bidding, which, pursuant to these Guidelines, will market the material for sale or dispose of such material in accordance with environmental and any other Authority requirements.
2. Consolidation of such Property at one of the Authority's facilities or an offsite warehouse for the purpose of conducting a sale managed by Authority staff, possibly with the assistance of an outside contractor.
3. Participation in public auctions such as through a private auctioneer or other utility provided the advertisement for bids through such methods permits full and free competition consistent with the value and nature of the property.

VIII. DECENTRALIZED DISPOSAL

A. The Regional Manager, Project Manager, or head of a Department or Division requiring disposal of Property which he or she believes to be surplus, will submit to the responsible PDC a written description of the material, with the original price (if known), and estimate of the Property's

Fair Market Value (if available). If practical, a photograph of the material or equipment in question should be provided. Such submission shall be made to the PDC designated at the location at which the Property is located, the responsible PDC.

- B. If the responsible PDC, in conference with either the FMS or the Contracting Officer, as appropriate, determines that other Authority facilities may have an interest in the Property, a notice should be sent to the other Authority facilities advising of its availability and requesting a response within a specified time frame. A record of the notice will be maintained by the responsible PDC. In the event that the responsible PDC and either the FMS or the Contracting Officer, as appropriate, determine there is no interest in such material at other Authority facilities, a written explanation should be prepared by the PDC to that effect and maintained in the file for that transaction.
- C. If no response to the notice is received, the responsible PDC will solicit bids for the purchase of such Property in accordance with the procedures described in Article VI.

IX. PARTIES PROHIBITED FROM BIDDING

- A. All current and former employees of the Authority and relatives of such employees or third parties acting on behalf of such employees shall not be eligible to bid for the purchase of Authority Property and are prohibited from subsequently acquiring it in any manner. Each bidder will be required, as

part of his or her bid, to certify, by signing Attachment "A," that he or she is not a current or former employee of the Authority, is not related to any current or former employee of the Authority and is not acting on behalf of a current or former employee of the Authority or a relative of any such employee. No bid will be accepted unless accompanied by such certification.

- B. The term "related to" as used in paragraph A above means the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

X. EVALUATION OF PROPOSALS; AWARD OF CONTRACT

- A. Following the receipt of proposals for the Property, the responsible PDC shall evaluate the proposals submitted and determine whether the highest of such proposals is reasonable, given the estimated Fair Market Value of the Property.
- B. If the responsible PDC determines that the highest bid received is reasonable, the responsible PDC shall recommend to the Responsible Officer(s), as hereinafter defined in Article XI, that such bid be accepted, and upon the written approval of the Responsible Officer(s), the sale shall be made to the person offering such proposal. After obtaining all necessary approvals in accordance with Article XI "Authorization Levels," a Sales Agreement appended hereto ("Attachment C") must be executed by the

responsible Authority staff member and by the successful bidder prior to completion of the transaction.

- C. If either (a) the responsible PDC determines that the highest bid is not reasonable or (b) the Responsible Officer(s) decline(s) to authorize the sale, the Property will, except as provided in paragraph D below, be retained for future disposal in accordance with these Guidelines. Factors to be considered in determining whether a bid is reasonable include, but are not limited to: adequacy of the estimate of the Fair Market Value, anticipated improved future market conditions, potential for other means of disposal or redeployment, financial viability of the bidder, and condition of the Property.
- D. Notwithstanding any determination by the responsible PDC, the Responsible Officer(s), with the review and approval of the Contracting Officer, may direct the sale of the Property to the person or firm submitting the highest bid.
- E. No Authority employee who is involved in the award of Authority grants or contracts, may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- F. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current

or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section E above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

- G. No Authority employee may take part in any contracting decision involving the payment of \$1,000 or more: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section G, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

1. For purposes of this Section G, the term "Relative" shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant.

XI. AUTHORIZATION LEVELS AND SIGNING AUTHORITY

- A. For the purposes of these Guidelines, the Responsible Officer(s) will in each case review the appropriateness of the Fair Market Value estimate and the recommendation for contract award for disposal of the Property. Responsible Officers are designated as follows:

1. The Trustees, if the Fair Market Value of the Property is greater than \$1,000,000; or
 2. The President or the Chief Operating Officer or equivalent(s), if the Fair Market Value of the Property is up to \$1,000,000; or
 3. The Senior Vice President – Enterprise Shared Services or equivalent(s) or the Executive Vice President – Chief Administrative Officer or equivalent(s), if the Fair Market Value of the Property is up to \$500,000; or
 4. The Vice President – Procurement or equivalent(s), if the Fair Market Value of the Property is up to \$250,000; or
 5. The FMS, if the Fair Market Value of the Property is up to \$50,000; or
 6. The responsible PDC, with the prior written approval of either the FMS or the Contracting Officer, as appropriate, if the Fair Market Value of the Property is \$5,000 or less.
- B. For public auctions or similar centralized disposals, such authorization should be obtained prior to submitting Property to auction based on the estimated fair market value of the Property.
1. For purposes of these Guidelines, the Director - Fleet Operations ("DFO") or equivalent(s) and FMS are authorized to sign Disposal Sales Agreements based upon the provisions of Section XI.A above whereby the DFO is authorized to sign fleet-related sales agreements and the FMS may sign both fleet and non-fleet sales agreements.

- C. For decentralized disposals, such authorization should be obtained prior to signing of Sales Agreement or award of contract, in accordance with the Authorization Levels set forth in Section XI.A. Sales Agreements for individual disposal transactions through a decentralized sale should be signed in accordance with the limits set forth in the Authority's Expenditure Authorization Procedures – Attachment C.

XII. OTHER METHODS FOR DISPOSAL OF PERSONAL PROPERTY

A. Trade-Ins

This procedure is not intended to restrict the trade-in of equipment (i.e., computer or office equipment), materials, and/or vehicles for replacements from dealers furnishing replacement equipment, materials, and/or vehicles, where reasonable value can be obtained for the trade-in. Any such proposed trade-in must be included as part of the solicitation of bids for the replacement equipment, materials and/or vehicles and the trade-in value must be stated in the proposals from solicited bidders. Best efforts shall be utilized to secure a trade-in value that is equal to or exceeds the Fair Market Value.

B. Return to the Original Equipment Manufacturer ("OEM") or to the Source

Return of materials to the OEM or the source is permissible provided that the Authority receives full value for any materials equal to the price paid by the Authority or the estimated Fair Market Value of the Property. In the event a re-stocking fee is charged by the OEM or the source, the FMS or the

Contracting Officer, as appropriate, shall be consulted to determine if such a re-stocking fee is reasonable and if there are other opportunities for sale of such material. Approval of all such returns to the OEM or the source when a re-stocking fee is charged, must be in accordance with the Authorization Levels delineated in Section XI.A.

C. **Disposal through the New York State Office of General Services (OGS)**

When it is determined advantageous to the Authority, the Authority may utilize OGS for Disposal of Authority-owned Property including but not limited to vehicles and rolling equipment, and/or may make use of on-line disposal methods offered by OGS. In addition, in accordance with New York State law, surplus computers and accessories (e.g. monitors and keyboards) and surplus office furniture and other equipment may, with the approval of the Contracting Officer, be transferred to OGS for disposition, in the case of computers and accessories to school districts located near Authority offices or operating facilities, or in the case of office furniture and office equipment, to other state entities. Disposal of these items in this manner represents the best value to New York State in lieu of attempted re-sale of such materials.

XIII. METHODS OF PAYMENT

The proceeds from the sale of Property in the form of cash or a certified check made payable to the Authority must be forwarded to the Authority's Treasurer by the

Facility PDCs and to the Authority's Controller's Office by the FMS and WPO PDC. In certain cases involving a transfer of Property to other state agencies or authorities, the performance of documented services to the Authority equal to or greater in value to the Fair Market Value of the Property, will serve as payment for such Property. The authorization limits of Article XI shall apply to such transactions.

XIV. REPORTING REQUIREMENTS

- A. The Authority shall publish, not less frequently than annually, a report of all Property disposed of during the reporting period, including the full description, price (if any) received and the name of the purchaser for all such Property disposed of by the Authority during such period. Such report shall be prepared in conjunction with the report required by the Authority's "Guidelines and Procedures for the Disposal of Real Property."
- B. Such report, as approved by the Trustees, shall be submitted to the Comptroller, the Director of the Budget, the Commissioner of General Services, ~~and~~ the Legislature and the Authorities Budget Office.
- C. These Guidelines, as approved by the Trustees, shall be reviewed and approved annually by the Authority's Board of Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the Comptroller a copy of the Guidelines most recently reviewed and approved by the Trustees, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the

Comptroller, the Authority shall also post such Guidelines on the Authority's internet website and maintain such Guidelines on the website.

- D. For disposal by negotiation or exchange (except when an identical or in-kind replacement is provided to the Authority) an explanatory statement shall be prepared and submitted to the parties described more fully in Subsection VI.B.5.
- E. The Authority's Governance Committee meets at least three times per year and staff from the Enterprise Shared Services Department or the equivalent(s) prepare and present ongoing reports regarding disposals of personal property and real property.
- F. The Authority may be called upon periodically to submit information regarding the Disposal of Personal Property to organizations implementing the PAAA or other statutes regulating the disposal of Property, such as the Authority's Budget Office through the Public Authorities Reporting Information System ("PARIS").

BID SHEET

The following personal property is available for sale "AS IS, WHERE IS" and the Power Authority gives no warranty whatsoever as to its condition.

LUMP SUM BID AMOUNT* \$ _____

Subject to all terms and conditions set forth on the reverse hereof, the undersigned offers and agrees to purchase the above-described personal property at the bid amount indicated.

Signature

Company Name

Name (Printed)

Street Address

Date

City, State, Zip Code

FAX number

Telephone number

* All sales are subject to New York State Sales Tax and Compensating Use Tax unless the Purchaser furnishes the Authority with an exemption certificate.

PERSONAL PROPERTY SALE
SALE NO. _____
NEW YORK POWER AUTHORITY
(ADDRESS OF PROJECT)
Telephone: () _____
FAX: () _____

Subject to the terms and conditions stated below, bids will be received on the personal property, either by mail, fax or hand delivery at the (Location) _____ no later than (Date) _____.

The personal property is available for inspection, by appointment, at the (Project) _____ . For an appointment, please contact the Property Disposal Coordinator, (Name) _____ at (Telephone no.) _____.

Successful bidders will be required to pay by certified check, on notice from the Authority that the bid has been accepted, and remove the personal property from the Authority's premises within ten (10) calendar days after receipt of notice of award.

Envelopes containing bids submitted by mail should be marked on the outside to indicate that a bid on Sale No. ____ is enclosed.

Current and former employees of the Power Authority or relatives of such employees or third parties acting on behalf of such employees or relatives are ineligible to bid and are prohibited from subsequently acquiring such personal property in any manner.

1. **INSPECTION.** Bidders are invited, urged and cautioned to inspect the personal property being sold prior to submitting a bid. The personal property will be available for inspection at the time and place specified above. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.
2. **CONDITION OF PROPERTY.** All personal property listed is offered for sale "AS IS, WHERE IS". The Authority does not in any way warrant the fitness of the personal property for any particular use or its merchantability and disclaims any other representations or warranties, express or implied, including, but not limited to, quality, character, performance or condition of the personal property or any of its component parts, assemblies, or accessories.
3. **CONSIDERATION OF BIDS.** Bids must be submitted in writing on the form provided by the Authority (see reverse side) and shall be submitted on all items listed. The Authority reserves the right to reject any and all bids, to waive technical defects in bids and to award sale of the items as may be in the best interest of the Authority.
4. **PAYMENT.** The Purchaser agrees to pay for the awarded personal property in accordance with the prices quoted in his/her bid. Payment of the full purchase price must be made within the time allowed for removal, and prior to the release of any personal property to the Purchaser.
5. **NEW YORK STATE SALES AND COMPENSATING USE TAX.** All sales will be subject to New York State Sales and Compensating Use Tax unless the Purchaser furnishes the Authority with an exemption certificate.

ADVERTISEMENT FOR PROPOSALS

The following described personal property, shall be sold "AS IS, WHERE IS" by the New York Power Authority ("the Authority").

1. Sealed bids are invited for the above, which will be available for inspection by inquiry at the (Location/Building) at the (Project and Address) between the hours of _____ a.m. to __ p.m. on (Date/s). Bids must be submitted on the Authority's bid form, which can be obtained by calling (Telephone no.). No bid will be accepted unless it is on such form. Bids shall be accepted on or before ____ p.m. on (Date).
2. Current and former employees of the Authority or relatives of such employees or third parties seeking to act on behalf of such employees or relatives shall be ineligible to bid.
3. Successful bidders, on notice from the Authority, shall be required to pay by certified check and shall promptly remove the personal property from the Authority's property.
4. The Authority reserves the right to reject any and all bids.

**PERSONAL PROPERTY
SALES AGREEMENT**

_____, the Buyer, and the Power Authority of the State of New York ("the Authority"), agree as follows:

- 1) The personal property identified herein is sold by the Authority and purchased by Buyer "AS IS, WHERE IS" at the price(s) shown, plus any applicable sales tax.
- 2) **THE AUTHORITY DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE PERSONAL PROPERTY FOR ANY PARTICULAR USE OR ITS MERCHANTABILITY AND DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE QUALITY, CHARACTER, PERFORMANCE, OR CONDITION OF THE PERSONAL PROPERTY OR ANY OF ITS COMPONENT PARTS, ASSEMBLIES, OR ACCESSORIES.**
- 3) The Bidder warrants that he/she/it is not a current or former Authority employee, is not related to an Authority employee and did not bid on behalf of an Authority employee. Bidder is aware that Authority employees and their family members are precluded from subsequently receiving, or acquiring, in whole or in part, by any manner including gift, sale, loan or lease, the personal property acquired by the Bidder pursuant to this sale. The term "related to" as used in this paragraph means the relationships of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law. The Authority reserves the right to invoke any available legal or equitable remedy in the event of a breach by the Bidder of his or her warranty under this paragraph, including but not limited to, rescinding the sale and recovering the property sold and all costs associated with the sale and the rescission of said sale.
- 4) The Buyer shall indemnify and hold harmless the Authority and all of its officers, agents and employees from any loss, damage, remedial or response cost, liability or expense, on account of damage or contamination to property and injuries, including death, to all persons, including Buyer's employees, or any third parties, arising or in any manner growing out of the sale of any personal property or the performance of any work under this agreement and shall defend at its own expense any suits or other proceedings brought against the Authority and its officers, agents and employees, or any of them, on account thereof, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith.
- 5) Except for disposals by public auction, the Buyer shall remove the personal property from the Authority's premises by _____ at Buyer's expense. The Buyer shall make payment upon delivery by certified check payable to the New York Power Authority.

Description of Personal Property:

Selling Price: _____

Executed this _____ day of _____, 20 _____.

Buyer (Print or Type):

Seller:

Power Authority of the State of New York
123 Main Street
White Plains, New York 10601

Authorized Signature

Authorized Signature

Full Name (Printed)

Title

Title

PRIVACY LAW NOTIFICATION

SECTION 94(1)(d) OF THE NEW YORK PUBLIC OFFICERS LAW REQUIRES THIS NOTICE TO BE PROVIDED WHEN COLLECTING PERSONAL INFORMATION FROM POTENTIAL PURCHASERS OF AUTHORITY PROPERTY.

This information is requested pursuant to Article 5, Title I of the Public Authorities Law. The principal purpose for which the information is collected is to assist the Power Authority of the State of New York in the sale of Authority personal property in accordance with Section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f).

Failure to provide the requested information may result in ineligibility for participation in a program, sale or benefit provided by the Authority.

This information will be maintained by Fleet Operations, at the Power Authority of the State of New York, Clark Energy Center located at 6520 Glass Factory Road, Marcy, N.Y. 13403, (315) 724-8186 or, when appropriate, by the Procurement Department at the Corporate office or at one of the Authority facilities.

2.3 Real Property Disposal Guidelines

In compliance with the PAAA, the Authority established and is required to annually review and approve Real Property Disposal Guidelines. The Real Property Disposal Guidelines set forth the methodology the Authority uses in the following areas:

- Maintaining an inventory of real property interests owned or under the jurisdiction of the Authority;
- Disposal of such interests when they become surplus to the Authority's needs;
- Making annual reports of such transactions; and
- Designating a Contracting Officer responsible for implementing such Guidelines.

Chapter 506 of the Laws of 2009 made substantial amendments to the Public Authorities Law ("PAL"), including changes to certain procedures governing the disposal of Real Property. In order to make the Real Property Disposal Guidelines compliant with the law, staff recommends changes, the most significant of which are highlighted below:

- **Establishes new statutory requirements for the disposal of Real Property in circumstances where such disposal is for less than Fair Market Value** (e.g., disposal of Real Property for less than Fair Market Value will require approval by the Authority's Board of Trustees; before approving such disposals, the Authority Board of Trustees shall make a written determination that there is no reasonable alternative to the below-market transfer that would achieve the same purpose of such transfer; in addition, certain such disposals would also require written notification to the Governor, the Speaker of the Assembly and the Temporary President of the Senate, subject to their approval or denial of the individual disposal transaction).
- **Establishes additional reporting requirements for disposals of Real Property made without competitive bidding and where the sale price for such disposals is less than Fair Market Value** (e.g., in such cases, a detailed explanation of the justification for making the disposal without competitive bidding shall be prepared and a certification shall be signed by the Chief Executive Officer and the Chief Financial Officer of the Authority stating that they have reviewed the terms of such disposal and have determined that it complies with applicable law).

Exhibit "A"
February 23, 2010

GUIDELINES

AND

PROCEDURES

FOR THE

DISPOSAL OF NEW YORK POWER AUTHORITY

REAL PROPERTY

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**GUIDELINES AND PROCEDURES FOR THE DISPOSAL OF
NEW YORK POWER AUTHORITY REAL PROPERTY**

I. PURPOSE

The purpose of these Guidelines and Procedures for the Disposal of Real Property ("Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, is to establish the procedures which detail the Authority's operative policy and instructions regarding the disposal of real property and designate a contracting officer who is responsible for the Authority's compliance with, and enforcement of, such Guidelines.

II. DEFINITIONS

- 2.1 "Contracting Officer" shall mean the officer or employee of the Authority who shall be appointed by resolution of the Authority's Trustees to be responsible for enforcement of the Guidelines for the Disposal of Real Property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s) or designee.
- 2.2 For the purposes of these Guidelines, "Dispose" or "Disposal" shall mean transfer of title or any other beneficial interest in real property in accordance with these Guidelines. Disposal does not include a release of an easement.
- 2.3 For the purposes of these Guidelines, "Real Property" shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

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- 2.4 "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace and under similar circumstances.
- 2.5 The term "Relative" shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant as referred to in Subsection 5.11.1.

III. COMPLIANCE OVERVIEW

The Public Authorities Accountability Act ("PAAA") requires the Authority to establish policy guidelines to accomplish the following:

- 3.1 Maintain inventory controls and accountability systems for all Real Property under the Authority's control.
- 3.2 Periodically inventory Authority Real Property to determine which Real Property shall be Disposed of.
- 3.3 Dispose of Authority Real Property interests in accordance with the PAAA.
- 3.4 Prepare annual reports of Real Property Disposal transactions.

IV. DUTIES OF THE DIRECTOR OF REAL ESTATE

- 4.1 The Director of Real Estate or equivalent(s) or designee shall maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.

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- 4.2 The Director of Real Estate or equivalent(s) or designee shall annually inventory Authority Real Property to determine which Authority Real Property shall be Disposed of and shall prepare a report identifying such Real Property for Disposal.
- 4.3 The Director of Real Estate or equivalent(s) or designee shall produce for publishing written reports of such Real Property as set forth in Article VI of these Guidelines.
- 4.4 The Director of Real Estate or equivalent(s) or designee shall arrange for the Disposal of any Real Property identified for Disposal by the Authority in accordance with these Guidelines and the Authority's Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.

V. PROCEDURES FOR THE DISPOSITION OF AUTHORITY REAL PROPERTY

- 5.1 The Authority may Dispose of Real Property for not less than the Fair Market Value of such Real Property by sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and conditions as the Contracting Officer deems proper under the provisions of the PAAA and as implemented by these Guidelines. Fair Market Value of the Authority Real Property subject to Disposal shall be established by independent appraisal as appropriate and consistent with the intent of the PAAA. Such appraisal documents shall be included in the record of the Real Property Disposal transaction.

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- 5.2 Except as set forth in Section 5.3 of the Guidelines, any Disposal of Real Property shall only be made after publicly advertising for bids in accordance with the following:
- 5.2.1 the advertisement for bids shall be made at such time prior to the Disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the Real Property;
 - 5.2.2 all bids shall be publicly disclosed at the time and place stated in the advertisement; and
 - 5.2.3 the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Authority, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.
- 5.3.a The Disposal of Authority Real Property may be negotiated or made by public auction without regard to Section 5.2 but subject to obtaining such competition as is feasible under the circumstances, if:
- 1. the Fair Market Value of the Real Property does not exceed fifteen thousand dollars (\$15,000.00); or
 - 2. bid prices after advertising therefore are not reasonable, either as to all or some part of the Real Property, or have not been independently arrived at in open competition; or
 - 3. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Real Property and other satisfactory terms of Disposal are obtained by negotiation; or
 - 4. under those circumstances permitted by Section 5.3; or
 - 5. such action is otherwise authorized by law.
- 5.3.b.1 No Real Property owned, leased or otherwise in the control of the Authority may be sold, leased, or otherwise alienated for less than its Fair Market Value except if:

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- a. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Real Property will remain with the government or any other public entity;
- b. the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
- c. in the event the Authority seeks to transfer Real Property for less than its Fair Market Value to other than a governmental entity, which Disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Authority may effectuate such transfer.

5.3.b.2. In the event a below Fair Market Value Real Property transfer is proposed, the following information must be provided to the Authority's Board of Trustees and the public:

- a. a full description of the Real Property;
- b. an appraisal of the Fair Market Value of the Real Property and any other information establishing the Fair Market Value sought by the Authority's Board of Trustees;
- c. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Real Property is situated as are required by the transfer;
- d. a statement of the value to be received compared to the Fair Market Value;

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- e. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
 - f. the names of other private parties who have made an offer for such Real Property, the value offered, and the purpose for which the Real Property was sought to be used.
- 5.3.b.3. Before approving the Disposal of any Real Property for less than Fair Market Value, the Authority's Board of Trustees shall consider the information described in Paragraph 5.3.5b and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.
- 5.4 An explanatory statement detailing the Disposal by negotiation of Authority Real Property subject to the PAAA as set forth in Section 5.3 shall be made for any Disposal of:
- 5.4.1 Real Property with a Fair Market Value in excess of one hundred thousand dollars (\$100,000.00) except that Real Property Disposed of by lease or exchange shall only be subject to 5.4.2 of this Section 5.4;
 - 5.4.2 Real Property Disposed of by lease if the fair annual rent over the term of the lease is in excess of fifteen thousand dollars;; and
 - 5.4.3 Any Real Property or real and related personal property Disposed of by exchange, regardless of value, or any property any part of the consideration is for Real Property:
- 5.5 Each explanatory statement prepared in accordance with Section 5.4 above shall be transmitted to the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office not less than 90 days in advance of such Disposal, and a copy shall be kept by the Authority.
- 5.6 In the Authority's discretion, when it shall be deemed advantageous to the Authority and the State, the Authority may enter into an agreement with the

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Office of the Commissioner of General Services ("OGS") under which OGS may Dispose of the Authority's Real Property under terms and conditions agreed to by the Authority and the OGS. In Disposing of any such Real Property of the Authority, the OGS shall be bound by the relevant provisions of the PAAA.

- 5.7 The Guidelines shall not apply to any transfers of jurisdiction by the Authority pursuant to Public Lands Law §3(4).
- 5.8 The Director of Real Estate or equivalent(s) or designee shall provide all relevant documentation to the Environmental Division for the purposes of determining, if applicable, whether the Disposal of Real Property is in compliance with the State Environmental Quality Review Act, and for whether it adheres to the American Society of Testing and Material's guidelines for Environmental Site Assessments, if applicable.
- 5.9 No Authority employee who is involved in the award of Authority grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.10 No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section

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5.9 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

5.11 No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

5.11.1 For purposes of this Section 5.11, the term "Relative" is defined in Section 2.5 of these Guidelines.

VI. AUTHORITY REAL PROPERTY REPORTS

6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority's annual report which is distributed to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Authority Disposed of during such reporting period and the name of the purchaser of the Real Property and the price paid by the purchaser for the Real Property, and (b) a description of the total amounts of Real Property sold without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property sold is less than Fair Market Value, a detailed explanation of the justification for making the sale without competitive bidding, and a

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certification by the Authority's Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.

- 6.1.2 Pursuant to Public Authorities Law § 2896(3)(a), the Director of Real Estate or equivalent(s) or designee shall prepare for distribution to the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, an annual report which shall include a list and description of all Real Property including such Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Authority and the name of the purchaser of the Real Property.
- 6.2 The Authority may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAAA or other statutes regulating the Disposal of Real Property.
- 6.3 The Authority's Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent(s) may prepare and present ongoing reports regarding the Disposal of Real Property.

VII. APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD

- 7.1 The Guidelines shall be annually reviewed and approved by the Authority's Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the State Comptroller a copy of the most recently reviewed and approved Guidelines, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the State Comptroller, the Authority shall also post such Guidelines on its internet website.

Exhibit ~~"A"~~^{"B"}
~~February 23, 2010~~^{March 31, 2009}

GUIDELINES

AND

PROCEDURES

FOR THE

DISPOSAL OF NEW YORK POWER AUTHORITY

REAL PROPERTY

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**GUIDELINES AND PROCEDURES
FOR THE DISPOSAL OF
NEW YORK POWER AUTHORITY REAL PROPERTY**

I. PURPOSE

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The purpose of these Guidelines and Procedures for the Disposal of Real Property ("Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, is to establish the procedures which detail the Authority's operative policy and instructions regarding the disposal of real property and designate a contracting officer who is responsible for the Authority's compliance with, and enforcement of, such Guidelines.

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II. DEFINITIONS

2.1 "Contracting Officer" shall mean the officer or employee of the Authority who shall be appointed by resolution of the Authority's Trustees to be responsible for enforcement of the Guidelines for the Disposal of Real Property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s) or designee.

2.2 For the purposes of these Guidelines, "Dispose" or "Disposal" shall mean transfer of title or any other beneficial interest in real property in accordance with these Guidelines. Disposal does not include a release of an easement.

2.3 For the purposes of these Guidelines, "Real Property" shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

2.4 "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace and under similar circumstances.

~~2.5~~ 2.4 The term "Relative" shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant as referred to in Subsection 5.11.1.

~~III.~~ III. COMPLIANCE OVERVIEW

~~IV.~~ III. CONTROLLING LEGISLATION

The Public Authorities Accountability Act ~~of 2005~~ ("PAAA") requires the Authority to establish policy guidelines to accomplish the following:

- 3.1 Maintain inventory controls and accountability systems for all Real Property under the Authority's control.
- 3.2 Periodically inventory Authority Real Property to determine which Real Property shall be Disposed of.
- 3.3 Dispose of Authority Real Property interests in accordance with the PAAA.
- 3.4 Prepare annual reports of Real Property Disposal transactions.

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IV. **DUTIES OF THE DIRECTOR OF REAL ESTATE**

- 4.1 The Director of Real Estate or equivalent(s) or designee shall maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.
- 4.2 The Director of Real Estate or equivalent(s) or designee shall annually inventory Authority Real Property to determine which Authority Real Property shall be Disposed of and shall prepare a report identifying such Real Property for Disposal.
- 4.3 The Director of Real Estate or equivalent(s) or designee shall produce for publishing written reports of such Real Property as set forth in Article VI of these Guidelines.
- 4.4 The Director of Real Estate or equivalent(s) or designee shall arrange for the Disposal of any Real Property identified for Disposal by the Authority in accordance with these Guidelines and the Authority's Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.

V. **PROCEDURES FOR THE DISPOSITION OF AUTHORITY REAL PROPERTY**

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- 5.1 The Authority may Dispose of Real Property for not less than the Fair Market Value~~fair market value~~ of such Real Property by sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and

conditions as the Contracting Officer deems proper under the provisions of the PAAA and as implemented by these Guidelines. Fair ~~Market Value~~ market value of the Authority Real Property subject to Disposal shall be established by independent appraisal as appropriate and consistent with the intent of the PAAA. Such appraisal documents shall be included in the record of the Real Property Disposal transaction.

5.2 Except as set forth in Section 5.3 of the Guidelines, any Disposal of Real Property shall only be made after publicly advertising for bids in accordance with the following:

5.2.1 the advertisement for bids shall be made at such time prior to the Disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the Real Property;

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~~5.2.2~~ all bids shall be publicly disclosed at the time and place stated in the advertisement; and

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~~5.2.3~~ the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Authority, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

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5.3.a The Disposal of Authority Real Property may be negotiated or made by public auction without regard to Section 5.2 but subject to obtaining such competition as is feasible under the circumstances, if:

~~5.3.1~~ the ~~Fair Market Value~~ fair market value of the Real Property does not exceed fifteen thousand dollars (\$15,000.00); or

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~~5.3.2~~ bid prices after advertising therefore are not reasonable, either as to all or some part of the Real Property, or have not been independently arrived at in open competition; or

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~~5.3.3~~ the Disposal will be to the state or any political subdivision,

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and the estimated ~~Fair Market Value~~fair market value of the Real Property and other satisfactory terms of Disposal are obtained by negotiation; ~~or~~

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~~4.~~ under those circumstances permitted by Section 5.3; or

~~5.3.4~~ the Disposal is for an amount less than the estimated fair market value of the Real Property, the terms of such Disposal are obtained by public auction or negotiation, the Disposal of the Real Property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the Authority's enabling legislation permits), and the purpose and the terms of such Disposal are documented in writing and approved by the Authority's Trustees; or

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~~5.3.5~~ such action is otherwise authorized by law.

5.3.b.1 No Real Property owned, leased or otherwise in the control of the Authority may be sold, leased, or otherwise alienated for less than its Fair Market Value except if:

- a. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Real Property will remain with the government or any other public entity;
- b. the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
- c. in the event the Authority seeks to transfer Real Property for less than its Fair Market Value to other than a governmental entity, which Disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the Governor, the

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Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Authority may effectuate such transfer.

5.3.b.2. In the event a below Fair Market Value Real Property transfer is proposed, the following information must be provided to the Authority's Board of Trustees and the public:

- a. a full description of the Real Property;
- b. an appraisal of the Fair Market Value of the Real Property and any other information establishing the Fair Market Value sought by the Authority's Board of Trustees;
- c. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Real Property is situated as are required by the transfer;
- d. a statement of the value to be received compared to the Fair Market Value;
- e. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
- f. the names of other private parties who have made an offer for such Real Property, the value offered, and the purpose for which the Real Property was sought to be used.

5.3.b.3. Before approving the Disposal of any Real Property for less than Fair Market Value, the Authority's Board of Trustees shall consider the information described in Paragraph 5.3.5b and make a written determination that there is no reasonable

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alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

5.4 An explanatory statement detailing the Disposal by negotiation of Authority Real Property subject to the PAAA as set forth in Section 5.3 shall be made for any Disposal of:

5.4.1 Real Property with a ~~Fair Market Value~~fair market value in excess of one hundred thousand dollars (\$100,000.00) except that Real Property Disposed of by lease or exchange shall only be subject to 5.4.2 ~~through 5.4.4~~ of this Section 5.4;

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5.4.2 Real Property ~~Disposed of by lease~~leased for a term of five years or less, if the estimated fair annual rent ~~exceeds one hundred thousand dollars (\$100,000.00) for any of such years;~~

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~~5.4.3 Real Property leased for a term of more than five years if total estimated rent over the term of the lease is in excess of fifteen~~one hundred thousand dollars;~~(\$100,000.00); and~~

~~5.4.3~~5.4.4 Any Real Property or real and related personal property Disposed of by exchange, regardless of value, or any property any part of the consideration is for Real Property:

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5.5 Each explanatory statement prepared in accordance with Section 5.4 above shall be transmitted to the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities ~~Budget Office~~ ~~Legislature~~ not less than 90 days in advance of such Disposal, and a copy shall be kept by the Authority.

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5.6 In the Authority's discretion, when it shall be deemed advantageous to the Authority and the State, the Authority may enter into an agreement with the

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Office of the Commissioner of General Services ("OGS") under which OGS may Dispose of the Authority's Real Property under terms and conditions agreed to by the Authority and the OGS. In Disposing of any such Real Property of the Authority, the OGS shall be bound by the relevant provisions of the PAAA.

~~5.7~~

~~5.8~~5.7 The Guidelines shall not apply to any transfers of jurisdiction by the Authority pursuant to Public Lands Law §3(4).

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~~5.10~~5.8 The Director of Real Estate or equivalent(s) or designee shall provide all relevant documentation to the Environmental Division for the purposes of determining, if applicable, whether the Disposal of Real Property is in compliance with the State Environmental Quality Review Act, and for whether it adheres to the American Society of Testing and Material's guidelines for Environmental Site Assessments, if applicable.

~~5.11~~5.9 No Authority employee who is involved in the award of Authority grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

~~5.12~~

~~5.13~~5.10 No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 5.9 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

~~5.14~~—

~~5.15~~5.11 No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

~~5.15.1~~ 5.11.1 For purposes of this Section 5.11, the term "Relative" is defined in Section ~~2.52.4~~ of these Guidelines.

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VI. AUTHORITY REAL PROPERTY REPORTS

6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority's annual report which is distributed to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, ~~and~~ the State Comptroller and the State Authorities Budget Office. This report shall include: (a) a listing of all ~~Authority~~ Real Property

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having an estimated ~~Fair Market Value~~ fair market value greater than fifteen thousand dollars (\$15,000.00) that the Authority ~~intends to Dispose of;~~ (b) ~~a listing of all Real Property having an estimated fair market value greater than fifteen thousand dollars (\$15,000.00) intended for Disposal but still owned by the Authority at the end of the fiscal reporting period; and (c) a listing of all Real Property having an estimated fair market value greater than fifteen thousand dollars (\$15,000.00) Disposed of during such~~ the fiscal reporting period ~~and including~~ the name of the purchaser of the Real Property and the price paid by the purchaser for the Real Property, and (b) a description of the total amounts of Real Property sold without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property sold is less than Fair Market Value, a detailed explanation of the justification for making the sale without competitive bidding, and a certification by the Authority's Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.

6.1.2 Pursuant to Public Authorities Law § 2896(3)(a), the Director of Real Estate or equivalent(s) or designee shall prepare for distribution to the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, Legislature, an annual report which shall ~~include~~ consist of a list and description of all Real Property including such Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Authority and the name of the purchaser of the Real Property.

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6.2 The Authority may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAAA or other statutes regulating the Disposal of Real Property.

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6.3 The Authority's Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent(s) may prepare and present ongoing reports regarding the Disposal of Real Property.

VII. APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD

~~8.1~~ 7.1 The Guidelines shall be annually reviewed and approved by the Authority's Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the State Comptroller a copy of the most recently

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reviewed and approved Guidelines, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the State Comptroller, the Authority shall also post such Guidelines on its internet website.

~~8.2~~

~~8.3~~ ~~VIII.~~ ~~REFERENCES~~

~~8.4~~ ~~Chapter 766 of the Laws of 2005~~

~~8.5~~ ~~Public Lands Law §3 (4)~~

~~8.6~~ ~~Chapter 14 of the Laws of 2007~~

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2.4 Real Property Acquisition Guidelines

In compliance with the PAAA, the Authority established and annually reviews Real Property Acquisition Guidelines. The Real Property Acquisition Guidelines set forth the methodology the Authority will use in the following specific areas:

- Acquisition and evaluation of real property;
- Duties of the Director of Real Estate;
- Environmental compliance;
- Ethical considerations; and
- Annual reporting.

Chapter 506 of the Laws of 2009 made substantial amendments to the Public Authorities Law (“PAL”), including changes to certain procedures governing the acquisition of Real Property. In order to make the Real Property Acquisition Guidelines compliant with the law, staff recommended changes, the most significant of which is highlighted below:

- **Establishes additional reporting requirements for acquisitions of Real Property made without competitive bidding and where the purchase price is for more than the Fair Market Value** (e.g., in such cases, a detailed explanation of the justification for making the purchase without competitive bidding shall be prepared and a certification shall be signed by the Chief Executive Officer and the Chief Financial Officer of the Authority stating that they have reviewed the terms of such acquisition and have determined that it complies with applicable law).

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February 23, 2010

GUIDELINES

AND

PROCEDURES

FOR THE

ACQUISITION OF REAL PROPERTY

BY THE NEW YORK POWER AUTHORITY

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GUIDELINES AND PROCEDURES FOR THE ACQUISITION OF REAL PROPERTY BY THE NEW YORK POWER AUTHORITY

I. PURPOSE

1.1 These Guidelines and Procedures for the Acquisition of Real Property (“Guidelines”), which comply with Title 2, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority’s policy and instructions regarding the acquisition of real property and designate a contracting officer who is responsible for the Authority’s compliance with, and enforcement of, such Guidelines.

II. DEFINITIONS

2.1 “Contracting Officer” shall mean the officer or employee of the Authority who shall be responsible for enforcement of the Guidelines for the acquisition of real property. The “Contracting Officer” is hereby designated to be the Senior Vice President – Enterprise Shared Services, or the equivalent(s), or designee.

2.2 “Acquisition” or “Acquire” shall mean to obtain title to or any other beneficial interest in real property in accordance with applicable statutes and these Guidelines.

2.3 “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in

the appropriate marketplace and under similar circumstances.

2.4 “Real Property” shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

2.5 “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Article 5 of these Guidelines.

III. COMPLIANCE OVERVIEW

3.1 These Guidelines are being adopted consistent with the Public Authorities Accountability Act (“PAAA”).

3.2 The Authority may Acquire Real Property through purchase, eminent domain, state transfers of jurisdiction, lease and by other legal means.

3.3 The Authority’s New York statutory authority for land acquisition includes, without limitation, the Public Authorities Law, the Real Property Law, the Public Lands Law, the Eminent Domain Procedure Law and the Highway Law, as amended.

IV. DUTIES OF THE DIRECTOR OF REAL ESTATE

- 4.1 The Director of Real Estate or the equivalent(s) or designee will maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.
- 4.2 Real Property to be Acquired by the Authority will be in support of existing operating and transmission facilities or in support of new initiatives being pursued by the Authority. The Director of Real Estate or the equivalent(s) or designee will, in consultation with the other appropriate Authority staff (by oral or written communication), determine what Lands are necessary or convenient for Acquisition by the Authority.
- 4.3 The compensation for and the procedure for such Acquisition must be consistent with these Guidelines and the Authority's Real Estate Expenditure Authorization Procedures as amended.
- 4.4 The Director of Real Estate or the equivalent(s) or designee will arrange for the transfer or Acquisition of any Real Property identified for Acquisition by the Authority in accordance with these Guidelines and the Authority's Real Estate Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.
- 4.5 The Director of Real Estate or the equivalent(s) or designee will provide all relevant

documentation to the Authority's Environmental Division to determine whether the Acquisition of Real Property is in compliance with the State Environmental Quality Review Act, and whether it adheres to the American Society of Testing and Material's Guidelines for Environmental Site Assessments, if applicable.

V. ETHICAL CONSIDERATIONS

5.1 No Authority employee who is involved in the Acquisition of Real Property, may ask any purchaser, grantor, lessor or officers, directors or employees of such current or prospective purchaser, grantor or lessor to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

5.2 No Authority employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

- 5.2.1 For purposes of this Section 5.2, the term “Relative” is defined in Section 2.5 of these Guidelines.

VI. ACQUISITION REPORTS BY THE AUTHORITY

- 6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

- 6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority’s annual report which is distributed to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Authority Acquired during such reporting period and the name of the seller of the Real Property and the price paid by the Authority for the Real Property, and (b) a description of the total amounts of Real Property purchased without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property purchased exceeds Fair Market Value, a detailed explanation of the justification for making the purchase without competitive bidding, and a certification by the Authority’s Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such purchase and determined that it complies with applicable law.
- 6.1.2 The Authority may be called upon periodically to submit information regarding the Acquisition of Real Property to organizations implementing the PAAA or other statutes regulating the Acquisition of Real Property, such as the Authority Budget Office through the Public Authorities Reporting System (“PARIS”).
- 6.1.3 The Authority’s Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent may, upon request, prepare and present ongoing reports regarding the Acquisition of Real Property.

Exhibit "BA"
~~March 31~~February 23, 2019

GUIDELINES

AND

PROCEDURES

FOR THE

ACQUISITION OF REAL PROPERTY

BY THE NEW YORK POWER AUTHORITY

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**GUIDELINES AND PROCEDURES FOR THE ACQUISITION OF REAL PROPERTY BY
THE NEW YORK POWER AUTHORITY**

I. PURPOSE

1.1 These Guidelines and Procedures for the Acquisition of Real Property (“Guidelines”), which comply with Title 2, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority’s policy and instructions regarding the acquisition of real property and designate a contracting officer who is responsible for the Authority’s compliance with, and enforcement of, such Guidelines.

II. DEFINITIONS

2.1 “Contracting Officer” shall mean the officer or employee of the Authority who shall be responsible for enforcement of the Guidelines for the acquisition of real property. The “Contracting Officer” is hereby designated to be the Senior Vice President – Enterprise Shared Services, or the equivalent(s), or designee.

2.2 “Acquisition” or “Acquire” shall mean to obtain title to or any other beneficial interest in real property in accordance with applicable statutes and these Guidelines.

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~~2.3~~ “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace and under similar circumstances.

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~~2.3~~~~2.4~~ “Real Property” shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

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~~2.4~~~~2.5~~ “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Article 5 of these Guidelines.

III. CONTROLLING LEGISLATION COMPLIANCE OVERVIEW

3.1 These Guidelines are being adopted consistent with the Public Authorities Accountability Act of 2005 (“PAAA”).

3.2. The Authority may Acquire Real Property through purchase, eminent domain, state transfers of jurisdiction, lease and by other legal means.

3.3 The Authority’s New York statutory authority for land acquisition includes, without limitation, the Public Authorities Law, the Real Property Law, the Public Lands Law, the Eminent Domain Procedure Law and the Highway Law, as amended.

IV. DUTIES OF THE DIRECTOR OF REAL ESTATE

- 4.1 The Director of Real Estate or the equivalent(s) or designee will maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.

- 4.2 Real Property to be Acquired by the Authority will be in support of existing operating and transmission facilities or in support of new initiatives being pursued by the Authority. The Director of Real Estate or the equivalent(s) or designee will, in consultation with the other appropriate Authority staff (by oral or written communication), determine what Lands are necessary or convenient for Acquisition by the Authority.

- 4.3 The compensation for and the procedure for such Acquisition must be consistent with these Guidelines and the Authority's Real Estate Expenditure Authorization Procedures as amended.

- 4.4 The Director of Real Estate or the equivalent(s) or designee will arrange for the transfer or Acquisition of any Real Property identified for Acquisition by the Authority in accordance with these Guidelines and the Authority's Real Estate Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.

- 4.5 The Director of Real Estate or the equivalent(s) or designee will provide all relevant documentation to the Authority's Environmental Division to determine whether the

Acquisition of Real Property is in compliance with the State Environmental Quality Review Act, and whether it adheres to the American Society of Testing and Material's Guidelines for Environmental Site Assessments, if applicable.

V. **ETHICAL CONSIDERATIONS**

5.1 No Authority employee who is involved in the Acquisition of Real Property, may ask any purchaser, grantor, lessor or officers, directors or employees of such current or prospective purchaser, grantor or lessor to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

5.2 No Authority employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

5.2.1 For purposes of this Section 5.2, the term "Relative" is defined in Section 2.54 of these Guidelines.

VI. ACQUISITION REPORTS BY THE AUTHORITY

6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority’s annual report which is distributed to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Authority Acquired during such reporting period and the name of the seller of the Real Property and the price paid by the Authority for the Real Property, and (b) a description of the total amounts of Real Property purchased without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property purchased exceeds Fair Market Value, a detailed explanation of the justification for making the purchase without competitive bidding, and a certification by the Authority’s Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such purchase and determined that it complies with applicable law.

~~6.1~~6.1.2 The Authority may be called upon periodically to submit information regarding the Acquisition of Real Property to organizations implementing the PAAA or other statutes regulating the Acquisition of Real Property, such as the

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Authority Budget Office through the Public Authorities Reporting System
("PARIS").

~~6.26.1.3~~ The Authority's Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent may, upon request, prepare and present ongoing reports regarding the Acquisition of Real Property.

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~~VII. REFERENCES~~

~~7.1 Chapter 766 of the Laws of 2005~~

~~7.2 Public Lands Law §3 (4)~~

3. Procurement, Fleet, Fuels, Real Estate and Corporate Finance Divisions' 2009 Annual Reports

Ms. Patricia Leto presented an overview of the Authority's Procurement activities, with Mr. Rod Mullin, Ms. Shannon Sramek and Mr. Mark O'Connor reporting on fossil fuel purchases, corporate finance activity and acquisition and disposal of real property, respectively.

3.1 Procurement Contracts

- During 2009, 2,159 contracts (excluding fossil fuel) greater than \$5,000 in value were active.
- The overall value of these contracts was more than \$1.3 billion, with \$313 million in contract expenditures for 2009.
- More than 45% of the contracts were for the purchase of equipment and commodities.
- Services such as technician work and contracted personnel accounted for 33% of the contracts.
- More than 13% of the contracts were for consulting services (e.g., engineering, design, and specialized analysis).
- Approximately 9% of the contracts are for construction work.
- Based on the total value of the contracts included in the summary, approximately 94% of the total dollars expended (excluding fuels and corporate finances) were for contracts that were competitively bid
- In terms of the number of contracts processed, approximately 68% of the contracts were competitively bid, while 32% were sole-awards, including the purchase of highly specialized spare parts and services from original equipment manufacturers and procurement of services on an emergency basis and from proprietary sources.

In response to a question from Trustee Cusack, Ms. Leto said that the percentage of sole-source contracts does not vary much from year to year.

3.2 Disposal of Personal Property

In 2009, the Authority received \$852,612 for all reportable personal property disposed of that had a value of more than \$5,000.

There were \$300,171 in non-fleet personal property disposal transactions over \$5,000 in value and \$552,441 (net after commission and transportation costs were deducted) in fleet-related disposal transactions over \$5,000 in 2009, for a total of \$852,612 in reportable personal property disposals. (In addition, an additional \$137,011 was received for the sale of fleet units with a value of less than \$5,000.

Responding to a question from Governance Committee Chairman Nicandri, Ms. Leto said that the selection of fleet auctioneers is subject to the Trustees' approval.

3.2 DISPOSAL OF PERSONAL PROPERTY **January – December 2009**

The 2009 Annual Report of Disposal of Personal Property over \$5,000 in value is attached. The description of the property, purchaser's name and price received by the Authority, as required by New York Public Authorities Law §2896, will be presented in the official 2009 Annual Report of Disposal of Personal Property to be submitted to the full Board of Trustees for review and approval at their meeting of March 23, 2010 and included in the Authority's §2800 Annual Report to be submitted to the State. The sale price and other additional data required by the Authorities Budget Office (such as fair market value, date of transaction, full address of purchaser, etc.) will be included in the 2009 Public Authorities Reporting Information System ("PARIS") Annual Report of Personal Property Disposal to be submitted to the Authorities Budget Office.

Page 1 includes seven (7) Personal Property Disposal transactions over \$5,000 in value conducted by the Property Disposal Coordinators ("PDCs") during this period. Of this number, five were conducted at the Niagara Project for the sale of scrap material, resulting in payment to the Authority of \$177,060.47; one was conducted at the White Plains Office on behalf of the Blenheim-Gilboa Project for disposal of the fourth Generator Step-Up Transformer, resulting in payment to the Authority of \$71,111.00; and one was conducted at the Blenheim-Gilboa Project for the sale of scrap material, resulting in payment to the Authority of \$52,000.00. There were no such other reportable transactions conducted by the PDCs in 2009. The Subtotal Price (Amount) Received by the Authority for these Personal Property Disposal transactions conducted by the PDCs in 2009 was \$300,171.47.

Pages 2 – 4 include 53 disposal transactions with a Sale Price over \$5,000, conducted on behalf of the Authority's Fleet Operations in 2009. The Authority participated in three Fleet-related auctions conducted by the firm JJ Kane Auctioneers on April 25, August 29 and November 21, 2009, respectively. The Authority also participated in an online auction on November 20, 2009 handled by the firm Auctions International (under a contract approved by the Trustees at their meeting of June 30, 2009). Such auctions resulted in the sale of 127 units (including several "lots", e.g. trailer hitches, etc.), comprising light duty vehicles, heavy duty trucks and special equipment, of which 53 were over \$5,000 in value and which are included in the attached Report. The total auction "Sale Price" (Gross) for these 53 units was \$584,550.00, which resulted in a "Price (Amount) Received by the Authority" (Net) of \$552,440.65 (after commission and transportation costs were deducted).

The Grand Total Price (Amount) Received by the Authority for all reportable Personal Property with a value in excess of \$5,000 that was disposed of in 2009 was \$852,612.12. (It should be noted that an additional \$137,011.50 was received for the sale of the 74 Fleet units with a value less than \$5,000, which are not included in the attached Report.)

POWER AUTHORITY OF THE STATE OF NEW YORK

2009 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000

DESCRIPTION	PURCHASER	SALE PRICE	PRICE RECEIVED by the Authority
SCRAP ROTOR POLES AT NIAGARA PROJECT	EDWARD ARNOLD SCRAP PROCESSORS INC	\$ 16,222.95	\$ 16,222.95
SCRAP ROTOR COILS AT NIAGARA PROJECT	NIAGARA METALS LLC	\$ 28,796.00	\$ 28,796.00
SCRAP ALUMINUM CABLES AT NIAGARA PROJECT	EDWARD ARNOLD SCRAP PROCESSORS INC	\$ 7,764.48	\$ 7,764.48
SCRAP IRON LAMINATIONS AT NIAGARA PROJECT	EDWARD ARNOLD SCRAP PROCESSORS INC	\$ 20,528.12	\$ 20,528.12
SCRAP COPPER COILS AT NIAGARA PROJECT	EDWARD ARNOLD SCRAP PROCESSORS INC	\$ 103,748.92	\$ 103,748.92
GENERATOR STEP-UP TRANSFORMER (BG-3) AT BLENHEIM-GILBOA PROJECT	TCI OF NY LLC	\$ 71,111.00	\$ 71,111.00
SCRAP METALS AT BLENHEIM-GILBOA PROJECT	PHOENIX METAL RECYCLING	\$ 52,000.00	\$ 52,000.00
	SUBTOTAL:	\$ 300,171.47	\$ 300,171.47

POWER AUTHORITY OF THE STATE OF NEW YORK
2009 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000
FLEET OPERATIONS

DESCRIPTION	PURCHASER	SALE PRICE	Commission/ Transportation Fees	PRICE RECEIVED* by the Authority
1985 P&H OMEGA CRANE	REBEL AUCTIONS	\$11,000.00	\$810.00	\$10,190.00
1987 P&H ALL TERRAIN CRANE	P AND M LLC	\$36,000.00	\$1,265.00	\$34,735.00
1988 INTERNATIONAL UTILITY TRUCK	APOLLO NORTHEAST SALES & SERVICES INC	\$6,000.00	\$550.00	\$5,450.00
1990 BOMBARDIER GO TRACK	4496213 CANADA INC	\$15,000.00	\$700.00	\$14,300.00
1994 INGERSOLL ROLLER	G STONE COMMERCIAL DIVISION	\$8,100.00	\$410.00	\$7,690.00
1994 JOHN DEERE 621E HYDRO-AX	RIDGE ROAD LEASING LLC	\$48,000.00	\$1,920.00	\$46,080.00
1997 JOHN DEERE 310S	JAMES DICASTRO EXCAVATING	\$26,500.00	\$1,007.50	\$25,492.50
1997 TEREX D85i CRANE	INVERSIONES WILLDEL & ASOCIADOS INC	\$7,500.00	\$420.00	\$7,080.00
1998 CATERPILLAR EXCAVATOR	TOM STALA	\$19,500.00	\$1,450.00	\$18,050.00
1999 MESSER GYRO TRAC	4496213 CANADA INC	\$9,750.00	\$430.50	\$9,319.50
2000 BOBCAT STEER LOADER	NORTHERN SKY FARM INC	\$14,250.00	\$912.50	\$13,337.50
2000 CHEVY K2500	DANNY ROBBINS	\$5,200.00	\$433.50	\$4,766.50
2000 CHEVY K2500	JOE TAVANO ELECTRIC INC	\$5,750.00	\$357.50	\$5,392.50
2000 CHEVY K3500	UPSTATE AUTO SALES INC	\$5,600.00	\$353.00	\$5,247.00
2000 FORD F550	J L PRIOLA HP TRUCK CENTER INC	\$8,400.00	\$447.00	\$7,953.00
2000 FORD F550	J L PRIOLA HP TRUCK CENTER INC	\$9,250.00	\$406.35	\$8,843.65
2000 STERLING PLOW	4496213 CANADA INC	\$23,000.00	\$875.00	\$22,125.00
2001 DODGE D2500	ALL-PHAZE ELECTRIC INC	\$10,250.00	\$762.50	\$9,487.50
2001 FORD F150	JOHN VANDERLAND	\$5,750.00	\$357.50	\$5,392.50
2001 FORD F250	MIRACHI BROTHERS INC	\$8,200.00	\$431.00	\$7,769.00
2001 FORD F250	MIRACHI BROTHERS INC	\$8,200.00	\$431.00	\$7,769.00

* Sale Price less commission / transportation costs

POWER AUTHORITY OF THE STATE OF NEW YORK
2009 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000
FLEET OPERATIONS

DESCRIPTION	PURCHASER	SALE PRICE	Commission/ Transportation Fees	PRICE RECEIVED* by the Authority
2001 FORD F250	MIRACHI BROTHERS INC	\$8,200.00	\$431.00	\$7,769.00
2001 FORD F350	JAMES ATKINS	\$8,100.00	\$428.00	\$7,672.00
2001 FORD F350	JAMES ATKINS	\$8,900.00	\$452.00	\$8,448.00
2001 FORD F350	CHAD FERGUSON	\$15,500.00	\$660.00	\$14,840.00
2002 CHEVY C2500	CCI BUILDING SERVICES INC	\$8,100.00	\$428.00	\$7,672.00
2002 CHEVY K2500	SPRAGUE'S COLLISION SERVICE	\$7,100.00	\$555.00	\$6,545.00
2002 CHEVY K2500	THOMAS LADD SR	\$13,000.00	\$575.00	\$12,425.00
2002 CHEVY TAHOE	RATHBUN'S PLUMBING HEATING AND ELECTRICAL	\$7,750.00	\$561.00	\$7,189.00
2002 CHEVY TAHOE	HERBERT YANCEY	\$6,600.00	\$503.50	\$6,096.50
2002 CHEVY TAHOE	K & M OF ROME INC	\$7,100.00	\$528.50	\$6,571.50
2002 FORD F350	JAMES ATKINS	\$8,200.00	\$431.00	\$7,769.00
2002 FORD F350	SIMMONS CONTRACTING	\$8,300.00	\$461.50	\$7,838.50
2003 CHEVY K2500	UPSTATE AUTO SALES INC	\$5,100.00	\$428.50	\$4,671.50
2003 CHEVY K2500	JAMES BICE	\$5,750.00	\$461.00	\$5,289.00
2003 CHEVY TAHOE	D&G EQUIPMENT	\$6,750.00	\$511.00	\$6,239.00
2003 CHEVY TAHOE	CCI COMPANIES INC	\$7,000.00	\$523.50	\$6,476.50
2003 CHEVY TAHOE	PARKER'S SERVICE INC	\$5,400.00	\$443.50	\$4,956.50
2003 CHEVY TAHOE	MAJDI W HASAN	\$5,400.00	\$443.50	\$4,956.50
2003 CHEVY TAHOE	JENNALEE DENNIS	\$7,300.00	\$538.50	\$6,761.50
2003 CHEVY TAHOE	SUSAN STANTON	\$5,100.00	\$428.50	\$4,671.50
2003 CHEVY TAHOE	GREGG IACOBUCCI	\$7,400.00	\$543.50	\$6,856.50

* Sale Price less commission / transportation costs

POWER AUTHORITY OF THE STATE OF NEW YORK
2009 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000
FLEET OPERATIONS

DESCRIPTION	PURCHASER	SALE PRICE	Commission/ Transportation Fees	PRICE RECEIVED* by the Authority
2003 HONDA CIVIC	JACOBSON MOTOR CORP	\$7,500.00	\$392.00	\$7,108.00
2003 PISTEN BULLY CANYON	G STONE COMMERCIAL DIVISION	\$26,000.00	\$947.00	\$25,053.00
2004 CHEVY K2500	JOHN NOHILLY EQUIPMENT SALES	\$13,000.00	\$575.00	\$12,425.00
2004 CHEVY TAHOE	REBEL AUCTIONS	\$6,400.00	\$493.50	\$5,906.50
2004 CHEVY TAHOE	REBEL AUCTIONS	\$6,400.00	\$493.50	\$5,906.50
2004 JEEP CHEROKEE	NORTHERN EQUIPMENT	\$5,500.00	\$448.50	\$5,051.50
2004 PISTEN BULLY CANYON	G STONE COMMERCIAL DIVISION	\$26,000.00	\$975.00	\$25,025.00
2005 CHEVY K1500	O'CONNELL ELECTRIC INC	\$9,000.00	\$623.50	\$8,376.50
2005 CHEVY SUBURBAN	AFFORDABLE AUTO SERVICE & SALES LLC	\$6,600.00	\$503.50	\$6,096.50
2005 CHEVY TAHOE	REBEL AUCTIONS	\$6,400.00	\$493.50	\$5,906.50
2007 FORD F350	ALL-PHAZE ELECTRIC INC	\$18,500.00	\$1,098.50	\$17,401.50
	FLEET SUBTOTAL:	\$585,550.00	\$32,109.35	\$552,440.65
	+SUBTOTAL Page 1:	\$300,171.47	--	\$300,171.47
	GRAND TOTAL:	\$884,721.47	\$32,109.35	\$852,612.12

* Sale Price less commission / transportation costs

3.3 Acquisition and Disposal of Real Property

- The Authority acquired four danger-tree easements off its existing Niagara-Adirondack Tie Line rights-of-way for vegetation management and removed dangerous vegetation on the land owned by two other individuals through negotiated settlements. In 2008, the Authority acquired 135 danger-tree permits to eliminate dangerous vegetation near the Willis-Plattsburgh, Niagara-Adirondack, Moses-Adirondack, Fitzpatrick-Edic and Moses-Willis-Plattsburgh lines. The Authority also issued 37 land-use permits for the Authority's easement areas. In response to a question from Committee Chairman Nicandri, Mr. O'Connor said that the land-use permits were primarily for roads, driveways and connecting utility distribution lines to houses.
- The available space in the Authority's Clarence D. Rappleyea headquarters office building in White Plains is essentially 100% leased. Three terminable permits to Westchester County Narcotics, Westchester County District Attorney's Office and the New York State Employees' Retirement System were issued in 2008.
- The Authority entered into a lease amendment for its Albany office that cut the amount of space it uses on the 10th floor of 30 South Pearl Street by nearly half (from 169,234 rentable square feet ("rsf") to 8,760 rsf. The amended lease terminates on February 28, 2014.
- The Authority's lease of space at 1633 Broadway, New York City (which it had sublet for the past several years) has now expired. The lease at 501 7th Avenue expires in 2010.
- As part of the St. Lawrence Project relicensing Settlement Agreement in 2003, the Authority agreed to several changes in the Project boundary that would remove approximately 1,340 acres from the Project. The Authority intends to transfer jurisdiction over approximately 741 acres at Galop Island State Park and environmentally sensitive lands in the Towns of Lisbon and Waddington to other State agencies. The remaining 599 acres of removed lands are in the process of being conveyed either to the affected local municipality or to adjoining landowners. Since the inception of this program, the Authority has conveyed a total of 230 parcels totaling 446 acres, 113 of which were conveyed in 2008. To date, the Authority has received nearly \$334,000 from the sales of these properties that will be returned to the affected local municipalities to fund public projects. A total of \$162,610 and \$6,460 have been paid to the Towns of Lisbon and Massena, respectively. In response to a question from Trustee Cusack, Mr. O'Connor said that the Authority expects that it will take another couple of years to complete the remaining conveyances, since all of them must be individually approved by the New York State Office of the Attorney General.
- As part of the Niagara Relicensing Settlement Agreement, the Authority was obligated to convey certain properties to various entities. During 2008, the Authority conveyed approximately 42 acres to the Village of Lewiston to be used for recreation fields and other community activities. Other transactions under way include: 53 acres to be

February 23, 2010

conveyed to the Tuscarora Nation, 24 acres to Niagara University and 47 acres to the City of Niagara Falls.

3.4 Supplier Diversity Program

- In 2009, the Authority awarded \$29.1 million (or 36.4% of its reportable expenditures) on contracts with certified M/WBEs, representing both direct contracts and subcontracts and including construction and energy efficiency-related work.
- The Authority's annual goal for the use of New York State Certified Minority/Women-Owned Businesses ("M/WBEs") is 6% of its non-specialty procurements. The Authority does not include specialty procurements such as turbine runners, transformers, circuit breakers, other large electrical equipment, natural gas and other specialized goods and services since there are no M/WBEs available to provide these goods and services.
- The Authority continues an active outreach program with various M/WBE organizations and trade associations. The Authority hosted its 19th Annual Purchasing Exchange in June 2009 in the White Plains Office and a second (in conjunction with National Grid and Empire State Development Corp.) to support the Authority's Environmental Justice initiatives in October 2009 in Buffalo. Nearly 500 representatives of M/WBEs attended and met with representatives of more than 50 New York State, federal, New York City and local government entities, as well as private companies.
- Recently enacted legislation requires State agencies and authorities to post M/WBE contractor utilization plans on their websites. Staff is developing an implementation system to ensure the Authority's continued compliance with New York State law.

Ms. Leto said that it had been a great year for the Authority's supplier diversity efforts, thanking Ms. Debra White and Mr. Yves Valbrun for their hard work. Governance Committee Chairman Nicandri and Trustee Cusack congratulated staff on a job well done.

3.5 Inventory Statistics

As of December 31, 2009, overall inventory levels at all of the Authority's operating facilities totaled \$86.29 million, compared to a year-end total in 2008 of \$87.87 million. The 2009 year-end total includes a \$1.7 million reduction for field poles issued to the Niagara Rotor Poles Replacement Project in 2009.

An award for the construction of the new Niagara Warehouse and Office Facility has been issued. The Warehouse will be designed to optimize the use of volume with modern racking and storage systems whenever possible. Construction is scheduled for completion by July 2011.

3.5 INVENTORY STATISTICS

As of December 31, 2009

Facility	2009	2008	2007
Niagara	\$18,077,437*	\$20,260,469	\$20,336,254
St. Lawrence	11,401,217	11,860,158	12,956,730
Blenheim-Gilboa	6,232,933	5,708,673	5,475,310
Clark Energy Center	4,363,802	4,230,223	4,152,095
Poletti Project	14,464,417	14,182,027	13,928,396
Flynn Project	12,256,478	12,156,079	12,066,802
500 MW Project	19,498,486	19,475,156**	10,058,813
Total Stock Value	\$86,294,770	\$87,872,785	\$78,974,400

* Includes \$1.7 million reduction for field poles issued to the NIA Rotor Poles Replacement project in 2009.

** Includes \$9.0 million for Wood Group nozzles, buckets and shrouds received in 2008.

Note:

An award for the construction of the new Niagara Warehouse, has been issued to which will be designed to optimize the use of volume with modern racking and storage systems whenever possible. Construction is scheduled for completion for new Niagara Warehouse and Office Facility in July, 2011.

3.6 Fossil Fuels Activity

- In 2009, a total of \$252 million was spent on fuel purchases -- \$243 million for natural gas and related costs and \$9 million for fuel oil. These fuel purchases were carried out through 47 contracts for natural gas and fuel oil, as well as pipeline transportation and related services.
- The price of natural gas is about \$5.50 per dekatherm (the equivalent of 1 million Btus).
- Crude oil is currently trading at \$78 a barrel, with the price of the oil used at Flynn at \$87 a barrel and the jet/kero used at the 500 MW plant at \$94 a barrel.
- A \$4.7 million contract with Allied Energy Resources, a New York State-certified M/WBE, was not included in the report.

POWER AUTHORITY OF THE STATE OF NEW YORK
PROCUREMENT CONTRACTS
JANUARY THROUGH DECEMBER, 2009

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M O A	R A	O A	P A	B E	M B I D S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2009	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
FD-2008-10	UNITED ENERGY TRADING, LLC 215 Union Blvd. Suite 425 Lakewood CO 80228	Natural Gas Purchase	E	B			F		24	\$5,498,237	\$5,498,237	\$5,498,237	\$0	11/19/2008	O	*	
FD-2008-11	ALLIED ENERGY RESOURCES CORPORATION 1330 Post Oak Blvd Suite 2200 Houston, TX 77056	Natural Gas Purchase	E	B			F	X	24	\$4,765,439	\$4,765,439	\$4,765,439	\$0	12/01/08	O	*	
FD-2007-09	ENJET, INC 5373 West Alabama- Suite 502 Houston, TX 77056	Natural Gas Purchase	E	B			F		24	\$111,156,148	\$111,156,148	\$23,767,221	\$0	3/21/2007	O	*	
FD-2001-23	SEMPRA 58 Commerce Road Stamford, CT 06902	Natural Gas Purchase	E	B			F		24	\$168,290,671	\$168,290,671	\$2,265,273	\$0	12/01/01	O	*	
FD-2001-28	nationalgrid One Metrotech Center Brooklyn, NY 11201 100 E Old County Rd Hicksville, NY 11801	Transport & Balancing Service	E	B			F			\$22,608,536	\$22,608,536	\$126,295	\$0	07/13/01	C	02/28/09	
FD-2009-03	nationalgrid -LI (Flynn) 100 E Old County Rd Hicksville, NY 11801	Balancing Service	E	S			O	F		\$1,100,000	\$1,100,000	\$1,100,000	\$0	01/01/09	O	12/31/14	
FD-2009-04	nationalgrid -LI (Flynn) 100 E Old County Rd Hicksville, NY 11801	Transport Service	E	S			O	F		\$2,538,788	\$2,538,788	\$2,538,788	\$0	01/01/09	O	12/31/14	
FD-2009-05	nationalgrid-NY(GKP) One Metrotech Center Brooklyn, NY 11201	Transport Service	E	S			O	F		\$750,655	\$750,655	\$750,655	\$0	03/01/09	O	03/31/14	
FD-2009-06	nationalgrid -LI(Brentwood) 100 E Old County Rd Hicksville, NY 11801	Transport Service	E	S			O	F		\$41,019	\$41,019	\$41,019	\$0	03/01/09	O	03/31/14	
FD-2002-11	PSEG ENERGY RESOURCES 80 Park Plaza Fl T19 Newark, NJ 07102	Natural Gas Purchase	E	B			F		24	\$11,017,721	\$11,017,721	\$0	\$0	11/01/02	O	*	
FD-2003-09	J. ARON 85 Broad Street New York, NY 10004	Natural Gas Purchase	E	B			F		24	\$83,241,402	\$83,241,402	\$0	\$0	04/22/03	O	*	

POWER AUTHORITY OF THE STATE OF NEW YORK
PROCUREMENT CONTRACTS
JANUARY THROUGH DECEMBER, 2009

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T P E	Y A	M A	R A	O A	P A	M E	B S	D	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2009	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
FD-2003-10	BP ENERGY COMPANY 501 WestLake Park Houston, TX 77253	Natural Gas Purchase	E	B				F			24	\$151,517,024	\$151,517,024	\$1,435,520	\$0	10/01/04	O	*	
FD-2003-12	CONSTELLATION POWER SOURCE 111 MARKET Place BALTIMORE, MD 21202	Natural Gas Purchase	E	B				F			24	\$55,860,651	\$55,860,651	\$0	\$0	06/09/03	O	*	
FD-2003-15	VIRGINIA POWER ENERGY MARKETING P. O. Box 25773 Richmond, VA 23360	Natural Gas Purchase	E	B				F			24	\$456,404,121	\$456,404,121	\$38,527,285	\$0	07/11/03	O	*	
FD-2004-08	SHELL ENERGY NA (formerly) CORAL ENERGY 909 Fannin Plaza Houston, TX 77010	Natural Gas Purchase	E	B				F			24	\$46,021,958	\$46,021,958	\$9,942,891	\$0	04/01/04	O	*	
FD-2004-09	SOUTHWEST ENERGY LP Two Greenway Plaza Houston, TX 77046	Natural Gas Purchase	E	B				F			24	\$179,461,649	\$179,461,649	\$0	\$0	06/01/04	O	*	
FD-2004-14	ONEOK ENERGY SERVICES CO. 100 West Fifth Street Tulsa, OK 74103	Natural Gas Purchase	E	B				F			24	\$82,831,909	\$82,831,909	\$15,081,436	\$0	11/01/04	O	*	
FD-2005-02	BOSS ENERGY LTD 20445 State Hwy 249 Houston, TX 77070	Natural Gas Purchase	E	B				F			24	\$72,920,555	\$72,920,555	\$3,037,185	\$0	01/25/05	O	*	
FD-2005-12	NJR ENERGY SERVICES CO. 1415 Wyckoff Road Wall, NJ 07719	Natural Gas Purchase	E	B				F			24	\$100,870,770	\$100,870,770	\$17,582,227	\$0	09/01/05	O	*	
FD-2006-03	UBS AG / UBS ENERGY LLC 677 Washington Blvd Stamford, CT 06901	Natural Gas Purchase	E	B				F			24	\$126,500,213	\$126,500,213	\$18,364,820	\$0	07/28/06	O	*	
FD-2006-05	PETROCOM VENTURES LTD 1616 S Voss Suite 945 Houston, TX 77057	Natural Gas Purchase	E	B				F			24	\$44,715,916	\$44,715,916	\$0	\$0	07/21/06	O	*	
FD-2006-07	TEXAS GAS TRANSMISSION 3800 Frederica Street Owensboro, KY 42301	Firm Gas Transport/Demand Agreement	S	S				F				\$13,110,755	\$13,110,755	\$3,367,980	\$0	07/01/06	O	10/31/17	
FD-2006-08	DOMINION TRANSMISSION 120 Tredegar Street Richmond, VA 23219	Firm Gas Transport/Demand Agreement	S	S				F				\$9,229,115	\$9,229,115	\$2,656,464	\$0	07/01/06	O	10/31/17	
FD-2006-09	TRANSCONTINENTAL GAS PIPELINE (TGPL. 5316) 2800 Post Oak Blvd Houston, TX 77056	Firm Gas Transport/Demand Agreement	S	S				F				\$5,148,187	\$5,148,187	\$1,440,701	\$0	08/04/06	O	03/31/17	

POWER AUTHORITY OF THE STATE OF NEW YORK
PROCUREMENT CONTRACTS
JANUARY THROUGH DECEMBER, 2009

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M O A	R A	O A	P A	M B I D S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2009	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
FD-2006-12	TENASKA MARKETING VENTURES 11718 Nicholas Street Omaha, NE 68154	Natural Gas Purchase	E	B		F		24	\$8,554,167	\$8,554,167	\$563,925	\$0	10/01/06	O	*	
FD-2007-08	SPARK ENERGY GAS, LP (Formerly Utility Resources Solutions) 3010 Briorpark Dr. Suite 550 Houston, TX 77042	Natural Gas Purchase	E	B		F		24	\$76,046,871	\$76,046,871	\$10,077,740	\$0	02/14/07	O	*	
FD-2007-10	ASTORIA GENERATING COMPANY, LP 18-01 20th Avenue Astoria, New York 11105	Oil Delivery Labor Fees	S	S		F			\$34,302	\$34,302	\$3,780	\$0	7/17/2006	O	*	
FD-2008-01	eCORP ENERGY MARKETING TEN THOUSAND MEMORIAL Houston, TX 77024-3410	Natural Gas Purchase	E	B		F		24	\$72,450	\$72,450	\$0	\$0	02/01/08	O	*	
FD-2008-02	CIMA-ENERGY LTD. 1221 McKinney Houston, Tx 77010	Natural Gas Purchase	E	B		F		24	\$12,476,972	\$12,476,972	\$2,589,488	\$0	03/01/08	O	*	
FD-2008-05	SEQUENT ENERGY MGT 1200 Smith Street Houston, TX 77010	Natural Gas Purchase	E	B		F		24	\$33,158,991	\$33,158,991	\$12,457,140	\$0	03/01/08	O	*	
FD-1990-33	NORTHVILLE INDUSTRIES CORP (Formerly TOSCO PIPELINE COMPANY) 25 Melville Park Rd Melville, NY 11747	Oil Storage Agmt (SETAUKET)	E	S		F			\$10,937,273	\$10,937,273	\$583,076	\$0	04/01/94	O	09/30/13	
FD-1990-34	NORTHVILLE INDUSTRIES CORP (Formerly TOSCO PIPELINE COMPANY) 25 Melville Park Rd Melville, NY 11747	Oil Storage Agmt. (HOLTSVILLE)	E	S		F			\$3,557,083	\$3,557,083	\$143,089	\$0	10/01/93	O	09/30/13	
FS-1994-17	MERRILL LYNCH (Formerly ENTERGY-KOCH TRADING (FORMERLY KOCH)) 20 E Greenway Plaza Houston, TX 77046	Natural Gas Purchase	E	B		F		24	\$253,536,016	\$253,536,016	\$4,127,176	\$0	07/01/94	O	*	
FS-1997-22	COLONIAL ENERGY 2 Riverway Suite 2000 Houston, TX 77056	Natural Gas Purchase	E	B		F		24	\$394,038,628	\$394,038,628	\$42,942,032	\$0	05/01/97	O	*	

POWER AUTHORITY OF THE STATE OF NEW YORK
PROCUREMENT CONTRACTS
JANUARY THROUGH DECEMBER, 2009

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T Y E	M O A	R A A	O P A	M B E	B I S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2009	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
FD-2008-09	CON EDISON, INC. (Balancing & Demand) 4 Irving Place New York, NY 10003	Transport & Balancing Service	E	S		F			\$9,089,040	\$9,089,040	\$5,580,618	\$0	08/01/08	O	01/31/10	
FD-2008-06	MACQUARIE COOK ENERGY 10100 Santa Monica Blvd los Angeles, CA 90067	Natural Gas Purchase	E	B		F		24	\$12,631,958	\$12,631,958	\$11,914,995	\$0	07/01/08	O	*	
FD-2008-12	eSERVICES, LLC 4461 Cox Road, Suite 113, Glenn Allen, Virginia 23060	Natural Gas Purchase	E	B		F		24	\$520,725	\$520,725	\$490,225	\$0	12/01/08	O	*	
FD-2007-14	AMSPEC SERVICES LLC 360 East Elisabeth Avenue Linden,NJ 07036	Oil Inspectors	S	B		F			\$3,419	\$3,419	\$1,875	\$0	01/01/08	O	12/31/10	
FD-2007-15	SAYBOLT LP Core Laboratories 6316 Windfern Rd, Houston Texas 77040	Oil Inspectors	S	B		F			\$9,828	\$9,828	\$6,738	\$0	01/01/08	O	12/31/10	
FD-2009-01	VITOL, INC 1100 Louisiana, Suite 5500 Houston, TX 77002	OIL PURCHASE	E	B		F		24	\$5,340,241	\$5,340,241	\$5,340,241	\$0	01/21/09	C		01/27/09
FD-2009-02	GEORGE E WARREN CO 3001 Ocean Drive Vero Beach, FL 32963	OIL PURCHASE	E	B		F		23	\$3,053,394	\$3,053,394	\$3,053,394	\$0	01/20/09	C		01/00/00

FUELS TOTALS **\$2,578,662,795** **\$2,578,662,795** **\$252,164,966**

NOTE:

* Contract continues until terminated by NYPA or Counterparty upon specified notice

(1) Natural gas purchase transactions are effected, as needed, based on current prices and requirements, using the previously agreed upon general terms and conditions.

G:/EXCEL/Procurement
Contracts/2009

POWER AUTHORITY OF THE STATE OF NEW YORK
 PROCUREMENT CONTRACTS
 JANUARY THROUGH DECEMBER, 2009

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M A	R A	O A	N A	P A	B E	M S	B S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2009	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
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3.7 Corporate Finance Activity

The “Corporate Finance Addendum” for the Annual Report of Procurement Contracts identifies non-procurement items paid during the year for unique and specialized services requiring a broad depth of knowledge and expertise that are provided by a limited group of firms. In 2009, the total amount for these items was \$2.8 million. The non-procurement items include trustees and paying agent services, commercial paper remarketing services, escrow agent services and fees paid for revolving credit agreements supporting the Authority’s Commercial Paper Programs and Adjustable Rate Tender (“ART”) Notes. The fees associated with the revolving credit agreements for the Commercial Paper Programs accounted for \$2.1 million of the total spent in 2009

In response to a question from Governance Committee Chairman Nicandri, Ms. Leto said that the Authority is waiting for guidance from the Office of the State Comptroller (“OSC”) about whether these contracts will be subject to OSC review in accordance with the recently enacted amendments to the Public Authorities Law.

6/15/2010

POWER AUTHORITY OF THE STATE OF NEW YORK
 REPORT OF PROCUREMENT CONTRACTS AS OF 12/31/09
 REQUIRED BY N.Y. PUBLIC AUTHORITIES LAW, SECTION 2879
 CORPORATE FINANCE ADDENDUM

2

CORPORATE FINANCE: WPO

PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M R A	R O A	O W A	M B D	I S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 12/31/2009	DATE OF CONTRACT	O C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee/Paying Agent Services on Bonds	S	C	9	N			304,911	304,911	34,844	2/24/1998	O	*	
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee- ARTN	S	C	9	N			147,957	147,957	21,147	9/2/2003	O	3/1/2020	
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee- Commercial Paper	S	S	9	N	1		44,877	44,877	28,183	10/2/2006	O	*	
Bank of Nova Scotia One Liberty Plaze, 26th Fl. New York, NY 10006	Revolving Line of Credit for ARTN	S	C	9	N	6		1,300,901	461,740	182,645	9/4/2007	O	9/1/2015	
Barclays Capital (assigned from Lehman Bros.) ** 745 Seventh Avenue New York, NY 10019	Re-marketing Agent CP-1	S	C	9	N			788,199	788,199	184,022	7/14/1994	O	*	
Barclays Capital (assigned from Lehman Bros.) 745 Seventh Avenue New York, NY 10019	Re-marketing Agent CP-3	S	S	9	N	1		10,775	10,775	2,775	6/26/2008	O	*	
Citigroup 390 Greenwich Street New York, NY 10013	Re-marketing Agent CP-2	S	C	9	N			400,256	400,256	33,586	12/4/1997	O	*	
Fiduciary Communications / Source Media One Whitehall, 9th Floor New York, NY 10004	Bond Calls Printed in Wall St. Journal and Bond Buyer	S	C	9	N			298,913	298,913	46,778	11/24/2003	O	*	
Goldman, Sachs & Co. 85 Broad Street New York, NY 10004-2456	Re-marketing Agent CP-2 and 3	S	C	9	N			855,242	855,242	84,650	12/4/1997	O	*	
Goldman, Sachs & Co. 85 Broad Street New York, NY 10004-2456	Re-marketing EMCP	S	C	9	N			342,556	342,556	66,326	3/4/2003	O	*	
Goldman, Sachs & Co. ** 85 Broad Street New York, NY 10004-2456	ART Notes Remarketing	S	C	9	N			1,566,075	1,566,075	35,940	5/15/1985	O	3/1/2020	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Re-marketing Agent CP-2	S	C	9	N			132,434	132,434	35,148	6/28/2001	O	*	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Re-marketing Agent CP-3	S	C	9	N			523,346	523,346	24,969	12/4/1997	O	*	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Escrow Agent POCR/CASP & LMEI Funds	S	C	9	N			438,481	438,481	25,010	5/30/1996	O	*	

6/15/2010

CORPORATE FINANCE: WPO

POWER AUTHORITY OF THE STATE OF NEW YORK
 REPORT OF PROCUREMENT CONTRACTS AS OF 12/31/09
 REQUIRED BY N.Y. PUBLIC AUTHORITIES LAW, SECTION 2879
 CORPORATE FINANCE ADDENDUM

PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M R A	R O A	W I A	M B D	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 12/31/2009	DATE OF CONTRACT	O C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Revolving Line of Credit 2008	S	C	9	N	2	4,867,222	3,097,778	1,928,889	1/7/2008	O	1/31/2011	
King & Spalding 1185 Avenue of the Americas New York, NY 10036	Attorney - Legal Services 2008 RCA	P	S	9	N	1	27,027	27,027	27,027	1/7/2008	O	1/31/2011	
Morgan Stanley 1221 Avenue of the Americas New York, NY 10020	Re-marketing Agent CP-1	S	C	9	N	7	5,151	5,151	5,151	3/31/2009	O	*	
RBC Capital Markets ** 1211 Avenue of the Americas New York, NY 10036	Re-marketing Agent CP-1	S	C	9	N		63,570	63,570	11,726	7/14/1994	O	*	
US Bank 60 Livingston Avenue St. Paul, MN 55107	Bond Trustee Fee	S	C	9	N		290,956	290,956	14,795	1/1/1999	O	*	
	Total Financial Service Agreements						12,408,848	9,800,243	2,793,610				
	Total Number of Agreements						19						

NOTES:

* Contract continues until terminated by NYPA or Counterparty upon specified notice

** Expense History only available from 1997

4. Recent Developments and Status of NYPA's Ethics Programs

Mr. Joseph Gryzlo provided an overview of the Ethics Office's key initiatives. There were 101 ethics inquiries in 2009, up from 80 in 2008. He said that the principal substantive issues arising under the ethics laws and/or the Authority's Code of Conduct since his last report to the Governance Committee in November 2009 fall into the following categories:

Appearance of impropriety	3
Gifts	15
Outside activities	2
Outside employment	5
Post-employment	4
Research projects	2
Unwarranted privilege	5

Mr. Gryzlo said that these categories are consistent with those in previous reports, characterizing the volume and depth of inquiries as a good thing. He said that while the bulk of inquiries still come from the White Plains Office, more inquiries were coming from the operating facilities, and attributed this to the training that had been provided on the revised Code of Conduct, which now covers bargaining unit employees for the first time. He said the Code of Conduct had been revamped to make it more efficient and user friendly. The objective is to have employees use the Code and raise ethics questions or concerns relating to their work responsibilities. Gift inquiries typically rise during the holiday season, but gifts also include such intangibles as travel, lodging and meals, which are generally off limits for employees. He said the Ethics Office strives for consistency in the way it handles each inquiry. Ms. Louise Nestler, the Assistant Ethics Officer, does an excellent job as the gatekeeper for inquiries coming into the Ethics Office.

The Ethics Office will submit the required annual Financial Disclosure report to the Commission on Public Integrity by this year's deadline of February 28. The report will contain the Authority's list of employees holding designated "policy-making" positions. All such employees, as well as those whose annual salaries exceed \$88,256 as of April 1, 2010 are required to file an annual Financial Disclosure Form with the Commission by May 17, 2010. The Authority will apply for title exemptions for several positions filled by employees represented by the UWUA Local 1-2 in the Southeastern New York region.

The Ethics Office is working with Information Technology to customize software to track both ethics casework and compliance-related requirements in conjunction with the Enterprise Wide Risk workgroup.

In response to a question from Governance Committee Chairman Nicandri, Mr. Gryzlo said that this year's Financial Disclosure form can be filed online by simply modifying last year's online form.

5. Amendments to Charter

Ms. Terryl Brown presented the highlights of staff's recommendations to the members of the Governance Committee.

Article V(3) of the NYPA By-Laws as amended on January 26, 2010 requires the Governance Committee to consist of three eligible Trustees who are independent members and who possess the necessary skills to understand the duties and functions of the Governance Committee. It charges the Committee with the responsibility of the keeping the Trustees informed of current best governance practices; reviewing corporate governance trends; recommending updates to the Authority's corporate governance principles; advising appointing authorities on the skills and experiences required of potential Trustees; examining ethical and conflict of interest issues; performing Trustee self-evaluations; recommending by-laws which include rules and procedures for conduct of Trustee business; and performing such other responsibilities as the Trustees shall from time to time assign to it.

Accordingly, amendments to the Governance Committee Charter would implement the following changes:

- A section delineating the roles and responsibilities of board members of public authorities has been added.
- Committee membership is determined by the Board of Trustees.
- Committee member terms have been changed from 4 to 5 years to coincide with the Trustee term of office.
- The Committee must review the Code of Conduct at least annually. (The interval for this responsibility was previously unspecified.)
- Committee members are required to possess the necessary skills to understand the duties of and functions of the Committee.
- The Committee must examine ethical and conflict of interest issues.
- The Committee must perform board self-evaluations.
- The Committee may recommend by-laws which include rules and procedures for conduct of board business.
- The Committee is now responsible for the review and approval of non-statutory officers hiring.

Responding to a question from Governance Committee Chairman Nicandri, Ms. Brown said that the Governance Committee Charter was being revised in order to ensure that the

Authority is functioning according to best governance practices. She said that the revisions incorporate some of what Navigant recommended, but that much of what Navigant recommended was not workable for the Authority.

In response to another question from Governance Committee Chairman Nicandri, Ms. Brown said that the newly created Finance Committee would not be responsible for any of the areas now covered by the Audit and Governance Committees. Ms. Delince said that the Finance Committee was responsible for the issuance of Authority debt and Ms. Brown added that the Finance Committee would meet once a year.

On motion made and seconded, the members of the Governance Committee voted to recommend that the revised Charter be approved by the Authority's full Board of Trustees.

6. Next Meeting

The next regular meeting of the Governance Committee will be held on a date to be determined.