



PROCUREMENT GUIDELINES 2026

Guidelines Regarding the Use, Awarding,
Monitoring and Reporting of Procurement
Contracts

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1. **DEFINITIONS**

- “Amendment” shall mean any material change to a duly executed Procurement Contract, including construction change orders, and, for the avoidance of doubt, work orders, which are construction change orders that do not impact the value of the underlying contract.
- “Corporation” or “RIOC” shall mean the Roosevelt Island Operating Corporation.
- “Bid” shall mean an offer submitted by a prospective vendor in response to an Invitation to Bid or similar solicitation issued by the Corporation, in which award is primarily determined by low price and becomes a contract by acceptance from the Corporation.
- “Bid Opening” shall mean the opening of sealed or electronic Bids, in the presence of one or more witnesses.
- “Bidder” shall mean any individual, business, Vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a Bid in response to a Solicitation.
- “Board” shall mean the RIOC’s Board of Directors as described in Public Authorities Law, Article 8, Title 35 - Roosevelt Island Operating Corporation.
- “Centralized Contract” shall mean Procurement Contracts let by other public entities pursuant to a competitive process, including those contracts of the State of New York (e.g., New York State Office of General Services (“OGS”) and the United States General Services Administration (“GSA”).
- “Commodity” shall mean a material good, supply, product, construction item or standard article of commerce that is the subject of any purchase or exchange. For the avoidance of doubt, any Commodity that also includes, at no specifically mentioned additional charge, a warranty and technical support for using the Commodity as is shall be considered a Commodity.
- “Competitive Procurement Method” shall mean a formal solicitation detailing the needs and requirements of the Corporation with the intent of receiving Bids or Proposals from interested Respondents within a prescribed time period. Types of Competitive Procurement Methods include, but may not be limited to, requests for proposals (“RFP”) and Invitations for Bids (“IFB”).
- “Contacts” shall mean any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity’s conduct or decision regarding the governmental procurement.
- “Contract Term” shall mean the period of time given for performance under a Procurement Contract, as may be amended from time to time with the approval of the Corporation.
- “Contractor” shall mean a person or organization that enters into a Procurement Contract with the Corporation.
- “Cost Proposal” shall mean the part of any Bid or Proposal that sets forth the price for which the Respondent is offering to provide the Corporation with the Services/Commodities described in a Solicitation.
- “Department Head” shall mean the President and Chief Executive Officer, General Counsel, Chief Financial Officer, Chief Operating Officer, Human Resources Director, Assistant Vice President of Communications and Government Affairs, Chief of the Public Safety Department and such other individuals as designated by the President and Chief Executive Officer.

- “Designated Contact” shall mean the person or persons designated to receive Bids or Proposals, and, if necessary, to communicate with Respondents during the Restricted Period.
- “Discretionary Procurement” shall mean a purchase to the extent permitted by law, either i) in an amount not to exceed \$50,000, or ii) awarded to New York State Small Business Concerns or for recycled or remanufactured Commodities or technology, in an amount not exceeding \$500,000, or awarded to a certified New York State SDVOB, or MWBE in an amount not exceeding \$1,500,000, provided however, that discretionary procurements for Construction Services shall not exceed \$500,000 regardless of vendor certification status.
- “Emergency Circumstances” exist when an urgent and unexpected condition arises that threatens to significantly disrupt the RIOC’s operations, disrupt or delay a project, or create or perpetuate an unsafe condition or environment. Poor or late planning does not constitute an Emergency Circumstance.
- “Final Award” shall mean the full execution of a Procurement Contract with a selected Vendor.
- “Foreign Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods which are sought by the corporation and which are substantially produced outside New York State, or services, other than construction services, sought by the corporation which are substantially performed outside New York State. For purposes of construction services, Foreign Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
- “Form, Function and Utility” shall mean the minimum essential requirements that will meet the RIOC’s needs. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.
- “Guidelines” shall mean RIOC’s Procurement guidelines as delineated herein.
- “Invitation for Bid” (“IFB”) shall mean a competitive Solicitation seeking Bids for a specified Commodity or Service, pursuant to which award is made to the responsible Bidder(s) submitting the lowest price.
- “Minority and/or Women Owned Business Enterprise” shall mean any business enterprise, including a sole proprietorship, partnership or corporation that has been certified as a Minority and/or Women Owned Business Enterprise (“MWBE”) by the Minority and Women Owned Business Division of the New York State Department of Economic Development/Empire State Development (the “Division”) pursuant to §314 of New York State Executive Law Article 15-A (“Article 15A”) and related regulations.
- “New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods that are sought by the Corporation and that are substantially manufactured, produced or assembled in New York State, or Services that are sought by the Corporation and that are substantially performed within New York State.
- “Original Value” shall mean the value of a Procurement Contract at the time of its execution, exclusive of any subsequent Amendment(s).
- “President” shall mean the President and Chief Executive Officer of RIOC.
- “Procurement” shall mean the purchase or acquisition of Commodities or Services that, actually or by

estimation, total \$5,000 or more. Any purchase under \$5,000 shall constitute a Procurement, however, where the Corporation has purchased or intends to purchase substantially similar Commodities or Services from the same Vendor within the same fiscal year and the aggregate value of such purchases exceeds \$5,000. Procurements shall not include: payments required by law; Revenue Contracts; compliance obligations (e.g. services provided by utility companies and their subcontractors); insurance or utility payments; payments required by existing Contracts or other agreements (e.g. payment to City, State, or Federal governmental entities); payments to credit rating agencies; memberships in industry groups, professional societies and similar cooperative associations; any cooperative projects or Procurement activities conducted or sponsored by such organizations in which the Corporation participates; Sponsorships of Eligible Organizations (governed by standalone policy); tuition, fees for employees' attendance at conferences, seminars, and other comparable activities; employee transportation or other travel related expenses; rent and leases for facilities, equipment or other real property.

- “Procurement Contract” shall mean any written agreement for the acquisition of Commodities or Services of any kind, including for construction services (each, a Construction Contract”) in the actual or estimated amount of five thousand dollars (\$5,000) or more.
- “Proposal” shall mean an offer to provide goods or services in response to an RFP (as defined below) issued by the Corporation where an award is made based on the best overall value to the Corporation.
- “Proposer” shall mean any individual, business, Vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a Proposal in response to an RFP issued by the Corporation.
- “Purchase Order” shall mean an agreement for the purchase of a Commodity or Service, as deemed appropriate by RIOC.
- “Reasonable” price means a fair market price based on normal competitive conditions and not necessarily the lowest possible price. Reasonableness of price can be documented in several different ways, including but not limited to: (i) Obtaining informal quotes (e.g., telephone or written), from at least three vendors if possible; (ii) Comparing costs of the same goods or services provided to other governmental entities; or (iii) Making historical cost or price comparisons.
- “Respondent” shall mean a prospective vendor, inclusive of a Bidder or Proposer, that submits a response to a Solicitation.
- “Restricted Period” shall mean the period from the date of the earliest notice of intent to solicit Bids or Proposals through the date of the Final Award, and, if applicable, approval of the contract by the Office of the State Comptroller.
- “Revenue Contract” shall mean a binding agreement between a governmental entity and another party that defines the terms under which revenue will be received by RIOC.
- “Requests for Expression of Interest” or “RFEI” shall mean requests generally submitted to the contracting community in order to gauge the interest and capabilities of prospective Vendors for a particular project in order to help inform the development of an RFP or IFB.
- “Request for Information” or “RFI” shall mean a request released by the Corporation in order to gather information about types of Commodities or Services that may be available to address a particular need and to assist the Corporation in drafting specifications to provide the best solution to meet that need.

- “Request for Proposal” or “RFP” shall mean a Competitive Procurement Method by which the Corporation solicits and evaluates proposals against stated selection criteria based on characteristic such as quality of proposal, cost and delivery schedule, where a Final Award is determined based on the determination that a proposal provides the best overall value to the Corporation.
- “Services” shall mean duty or labor to be rendered by a person or entity.
- Service-disabled Veteran Owned Business Enterprise” or “SDVOB” shall mean a business enterprise, including a sole proprietorship, limited liability company or corporation that has been certified as a Service Disabled Veteran Owned Business by the Division of Service-Disabled Veterans’ Business Development at OGS pursuant to Article 3 of the New York Veterans’ Services Law and related regulations.
- “Single Source” shall mean the required goods or services are available from two or more vendors, but a compelling reason exists to make the award to particular vendor. Some reasons include, but are not limited to: (i) one particular Vendor has unique knowledge or expertise with respect to the required service, good or material rendering the use of competitive procedures impractical; (ii) there is a continuing need for existing Services to provide continuity to the orderly development and fiscal management of a project; or (iii) other material or substantial reasons exist for awarding the contract on other than a competitive basis. For the avoidance of doubt, Vendors procured for live musical or artistic performances and trainings shall be considered Single Source. Any justification of a Single Source Procurement must include information about the alternatives considered and justification that price is reasonable. In general, RIOC’s policy is to minimize the use of Single Source Procurements and to maximize the use of Competitive Procurement Methods.
- “Small Business Concern” shall mean a business enterprise which is resident in the state of New York, independently owned and operated, not dominant in its field and employs one hundred people or fewer
- “Sole Source” shall mean only one Vendor is capable of supplying the required Commodities or Services. Three examples of Sole Source procurements are: (i) proprietary software compatible with RIOC’s operating systems that no one else offers; (ii) a printer’s warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty; (iii) a Vendor has developed a proprietary system for providing a service that is unavailable from anyone else.
- “Solicitation” shall mean an oral or written invitation, issued by the Corporation, for vendors to submit Bids or Proposals to provide the Commodities or Services described in such invitation.
- “Subject Matter Expert” shall mean an individual who possesses a high level of expertise in the area that is subject to a particular Procurement, including but not limited to a software engineer, a helpdesk support operative, an accounts manager, a roads engineer, a scientific researcher.
- “Vendor” shall mean a person or organization that enters into a Procurement Contract with RIOC.

2. PROCUREMENT: OVERVIEW AND REQUIREMENTS

The purpose of these Guidelines is to facilitate the procurement needs of RIOC while protecting the interest of the State and City of New York and their taxpayers. Procurement Contracts should be used to procure Commodities and Services needed to proceed with Corporation projects and to support the administrative needs of the Corporation RIOC is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law. The same law requires annual review and updating of the guidelines by the Board.

The Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the “SPC Guidelines”). The SPC Guidelines apply to all New York state agencies. While RIOC is not a state agency, as that term is defined in the SPC Guidelines, as best practices, RIOC used the SPC Guidelines as a model because they provide useful guidance for procurement for public authorities as well.

The SPC Guidelines cover some issues and procedures rarely encountered by RIOC, but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained.

2.1. PROCUREMENT CONTRACTS COVERED, AND NOT COVERED, BY THE GUIDELINES

Pursuant to Public Authorities Law § 2879 (2), "Procurement Contracts" are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more. For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (See Section 8.1), Procurement Contracts also include the purchase, lease or grant of any other interest in real property which involves an estimated annualized expenditure in excess of fifteen thousand dollars (\$15,000).

Disposition of property (real or personal) by RIOC is not a procurement covered by these Guidelines, but is instead subject to RIOC's Property Disposition Guidelines. However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines.

A *contract or memorandum of understanding* ("MOU") with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) may apply to such agreements.

Procurement Contracts for commodities *below \$175,000* may be handled by Purchase Order.

2.2. TYPES OF PROCUREMENT CONTRACTS

Procurement Contracts for personal services include legal, accounting, management consulting, investment banking, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of RIOC. The reasons for the use of personal services include:

- a) Requirements of special expertise or unusual qualifications;
- b) Nature, magnitude or complexity of services required;
- c) Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d) Lower cost;
- e) Short-term or infrequent need for the services; and
- f) Distance of the location(s) where the services must be performed from RIOC offices or facilities.

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with a RIOC project, or to support the administrative needs of RIOC. The types of goods that may be procured cover the entire spectrum, ranging from paper and pens to motor vehicles.

2.3. GENERAL PROCUREMENT PRINCIPLES

RIOC's procurement process is designed to:

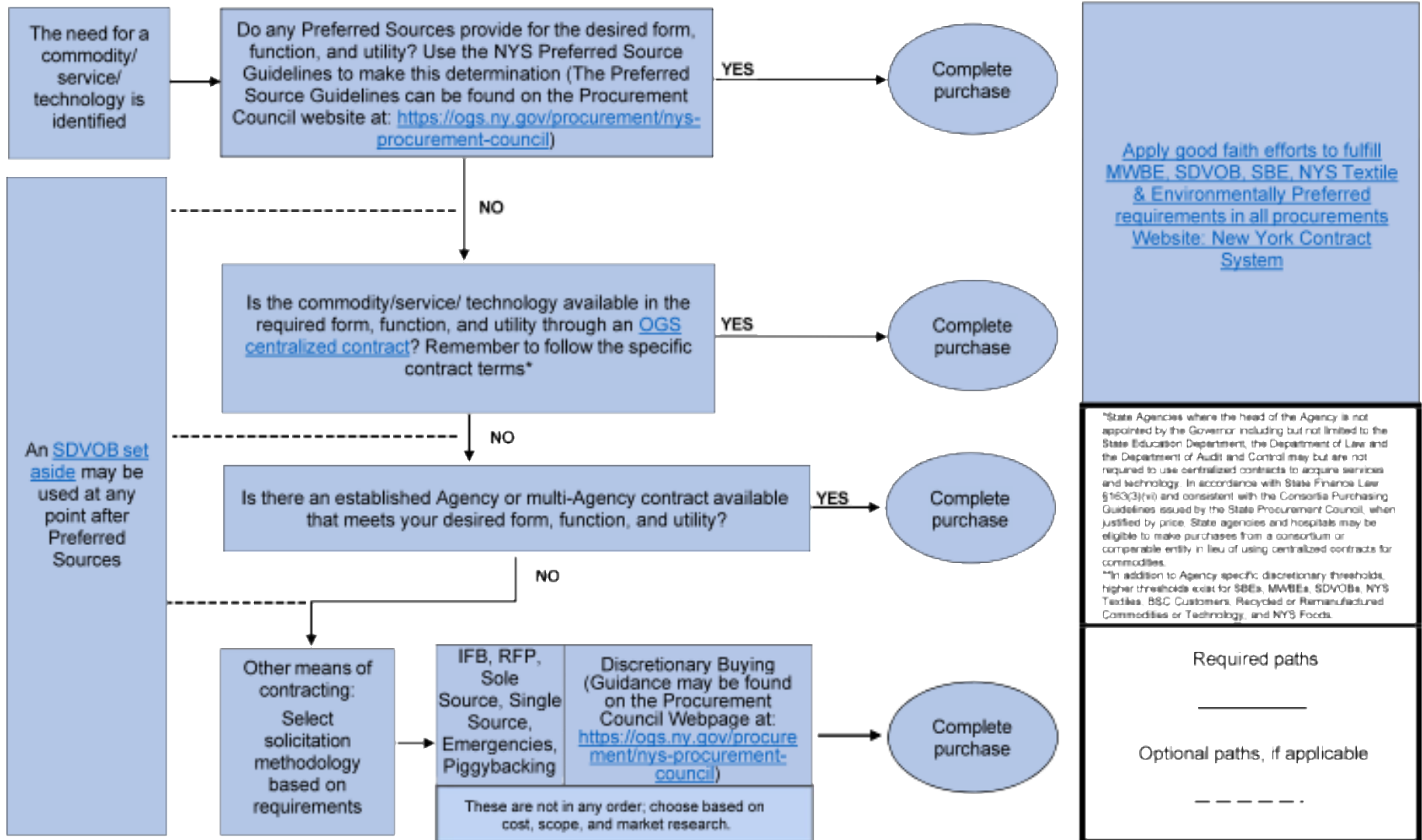
- a) Ensure fair and open competition.
- b) Guard against favoritism, improvidence, extravagance, fraud, and corruption.
- c) Ensure compliance with statutory requirements pertaining to Preferred Sources, State-certified MWBE, SDVOB, and NYS small businesses, promotion of local food growers, protection of human health and the environment, and NYS Textiles.
- d) Ensure that the results meet RIOC's needs effectively, efficiently, and with integrity.
- e) Provide checks and balances to regulate and oversee Agency procurement activities.
- f) Protect the interests of the State and its taxpayers.

Procurement Contracts are to be awarded on a competitive basis to the maximum extent practicable. Such awards are generally made after notice is published in the New York State Contract Reporter where the amount of the contract is equal to or greater than \$50,000 and, after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents. (See Sections 5 and 6).

Competition in the procurement process serves both RIOC and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain RIOC business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain RIOC business.

The Procurement Process Guide

New York State Procurement Guideline Flow Chart



3. PROCUREMENT SOURCES

When initiating a procurement, RIOC must first evaluate each of the potential sources below as an option, where appropriate, in order of preference before proceeding to Discretionary or Competitive Procurements.

3.1. NYS PREFERRED SOURCES

Goods and services needed by RIOC may be available, without the need for competitive procurement from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by RIOC, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. For information on these Preferred Sources, see State Finance Law § 162 and the Office of General Services' Preferred Sources Guide.

3.2. OGS CENTRALIZED CONTRACTS

Goods and services needed by RIOC may be available, without the need for competitive procurement, through centralized statewide contracts held by the NYS Office of General Services ("OGS"). These centralized contracts are divided into three types: *commodity*, *service*, and *technology contracts*. Information about centralized contract offerings can be obtained from the list of approved state contractors maintained by OGS.

The OGS Procurement Services Group (PSG) establishes centralized contracts in the form, function and utility required by State entities, for a wide range of items commonly acquired by these entities. If commodities or services are available from a centralized contract in form, function and utility consistent with RIOC's need, they may be purchased from the centralized contract. However, RIOC may competitively procure items otherwise available on a centralized contract when the resultant price is less ("OGS or less"). Note that even if a OGS centralized contractor is available, it is recommended that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, unless a compelling justification exists (e.g., experience with a particular project).

In addition, RIOC may conduct a formal mini-bid process by developing a project definition that outlines its specific requirements and solicits bids from qualified backdrop contractors to determine the best value solution. The best value may also be the lowest price. The exact processes to be followed are set forth either in the OGS backdrop contract or the guidelines associated with that contract on the OGS website.

3.3. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND SERVICE-DISABLED VETERAN OWNED BUSINESSES

RIOC may purchase commodities or services from Minority and Women-Owned Business Enterprises ("M/WBE") certified pursuant to Article 15-A of the Executive Law, Service-Disabled Veteran-Owned Businesses ("SDVOB") certified pursuant to Article 3 of the Veterans' Services Law in an amount not exceeding One million, five hundred thousand dollars (\$1,500,000) without a formal competitive process.

In such a case, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits. The award of such a purchase contract should be notified in the Contract Reporter.

3.4. THE PROMOTIONS OF NY STATE BUSINESS ENTERPRISES AND RESIDENTS

In all Procurements, and in accordance with the State Finance Law Section 139(i), the Corporation shall promote the participation by New York State Business Enterprises and New York State Residents in Procurement Contracts as follows:

- When applicable, the Corporation shall, in consultation with OGS, consider the specifications of New York State Business Enterprises in developing Solicitations for the purchase of Commodities and shall utilize stock item specification forms prepared by OGS.
- With the cooperation of the President and CEO of Empire State Development and through

cooperative efforts with Contractors, the Corporation shall notify New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts with a value estimated to be equal or greater than one million dollars (\$1,000,000) and the Corporation shall promulgate procedures which will assure compliance by Contractors with such notification as a condition of awarding Procurement Contracts.

- Contractors shall, as supplementary materials to their Bids or Proposals, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on Procurement Contracts equal to or greater than one million dollars (\$1,000,000) and attest to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.
- The Corporation, with the cooperation of the President and CEO of Empire State Development and through cooperative efforts with Contractors, shall provide for the notification of New York State Residents of employment opportunities arising out of Procurement Contracts with a value estimated to be equal to or greater than one million dollars (\$1,000,000) and shall require Contractors to submit post-award compliance 14 reports documenting their efforts to provide such notification through listing any such positions with the community services division of the Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

The Corporation shall include in all Solicitations a statement that:

- Information concerning the availability of New York State contractors and suppliers is available from Empire State Development, including the directory of certified MWBEs.
- Information concerning the availability of New York State contractors and suppliers is available from the New York State Office of Governmental Services, including the directory of New York State Certified SDVOBs.
- Notifies potential Respondents located in foreign countries that the Corporation may assign or otherwise transfer offset credits created by a Procurement Contract to third parties located in New York State.
- Informs potential Respondents that it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of MWBEs and SDVOBs, where possible, in the Procurement of Commodities and Services.

The Corporation shall notify the President and CEO of Empire State Development of the award of a Procurement Contract for the purchase of Commodities or Services from a Foreign Business Enterprise in an amount equal to or greater than one million dollars (\$1,000,000) simultaneously with notifying the successful Respondent therefore.

4. NON-COMPETITIVE PROCUREMENTS

4.1. DISCRETIONARY

Discretionary Procurements do not require a Competitive Procurement. Before making a Discretionary Procurement, however, the employee initiating the Procurement must:

- Ensure that the Commodities and/or Services to be acquired meet the Corporation's Form, Function and Utility needs;
- Consult with the Director of Diversity Contracting to identify any potential certified MWBE or SDVOB Vendors;
- Make a reasonable attempt to obtain Cost Proposals from at least three different Vendors capable of supplying the required Commodities and/or Services, including MWBE and/or SDVOB Vendors to the extent possible;
- Document the attempt to obtain such quotes and the quotes received, and include such information in the written justification required by Section 5.1, along with facts sufficient to support the selection of the chosen Vendor, the reasonableness of the price to be paid, and the effort of the employee initiating the Procurement to include MWBE and SDVOB firms in the Solicitation; and

- Verify with the Procurement Director that the selected Vendor is responsible.

Discretionary Procurements must be advertised as a Procurement opportunity in the New York State Contract Reporter when the actual or estimated amount of the Discretionary Procurement is \$50,000 or more. In determining whether a purchase meets the required threshold amounts for a Discretionary Procurement, the employee initiating the Discretionary Procurement shall consider (and document such consideration) the reasonably expected aggregate amount of all purchases of the same Commodities or Services to be made within the twelve-month period commencing on the first date of purchase. Purchases of Services or Commodities shall not be artificially divided for the purpose of satisfying the thresholds required for a Discretionary Procurement. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring 20 the reasonably expected aggregate amount of all purchases of the same commodities or services from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount.

4.2. NON-DISCRETIONARY

The following types of Procurements are exempt from the requirement that a Competitive Procurement method be used but must satisfy all other applicable requirements set forth in these Guidelines:

- Sole Source - the Corporation must document in writing the findings demonstrating that the proposed Vendor is a Sole Source.
- Single Source - the Corporation must document in writing the findings demonstrating that the proposed Vendor is a Single Source.
- Emergency - the Department Head, or their designee, initiating the Procurement must first document in writing and receive approval by the President and CEO that Emergency Circumstances exist. After such approval is received, the Department Head, or their designee, shall make a reasonable attempt to obtain quotes from at least three Vendors. Procurement Contracts and Amendments entered into in response to an Emergency are exempt from the requirement that they be fully executed and delivered by both parties prior to the commencement of work. However, all Procurement Contracts and Amendments entered into in response to an Emergency must subsequently be approved in the manner set forth in Section 11. In the event the work necessitated by the Emergency is completed within one week of the date the Emergency is documented and has a value of \$25,000 or less, the President may approve payment for the Vendor upon presentation of an invoice and documentation from the Department Head, or their designee, that the work has been so completed. Except as specifically provided in this paragraph, all contracts and Amendments involving Emergency Circumstances shall be subject to these Guidelines.
- Piggybacking – The Corporation may use a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (this type of procurement referred to as “Piggybacking”) subject to an evaluation of the appropriateness of piggybacking, including: (1) determination of the need for the product or services; (2) consideration of the procurement method by which the contract to be piggybacked was awarded; (3) an analysis of alternative procurement sources including why a competitive procurement or use of a Centralized Contract is not in the Corporation’s best interest; and (4) reasonableness of the cost. The Corporation’s evaluation of these factors and rationale for using piggybacking should be set forth in the procurement record. While an Amendment to the piggybacked contract explicitly providing that piggybacking is permissible is not required, the Corporation should notify the original contracting agency and must obtain the consent of the Vendor it wishes to enter into the Piggyback agreement with. The Corporation may execute an independent contract based upon the equivalency of product or services being procured and pricing contained in the original contract using the original Contract Terms as may be supplemented by the Corporation’s own requirements, as agreed to by the Corporation and the Vendor.

5. COMPETITIVE PROCUREMENT

The competitive solicitation process for \$50,000 and above is described in detail below.

- a) Project Manager prepares solicitation documents, forwards to President and Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer for their information, and to Director of Procurement for review. Following review, Director of Procurement posts to Contract Reporter with a minimum of 15

business days for response with a corresponding posting of the solicitation on RIOC's website.

- b) When established bid due date has arrived, Director of Procurement sets up and conducts a bid opening (See Section 9.6 for additional information on *Bid Openings* and *Public Works* contracts). Director of Procurement distributes package of pertinent materials for staff review and selection.
- c) After a vendor is selected, staff must obtain Board approval, where proposed contract amount is equal to or greater than \$175,000, or will last more than one year.

5.1. TYPES OF COMPETITIVE SOLICITATIONS

5.1.1. GENERAL

Competitive solicitation types include Request for Proposals ("RFP") and Invitation For Bid ("IFB"). When selecting among these various approaches, the determining factors are:

- a) The importance of price or cost as a component in the review of incoming bids or proposals; and
- b) The ability to define specifications for goods or services being acquired, or to obtain those specifications from potential vendors (where the RFEI may be useful).

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible vendors. "Best value" is the basis for awarding service and technology contracts to the vendor that optimizes quality, cost and efficiency, among responsive and responsible vendors. The basis for a "best value" contract award must be, wherever possible, quantifiable. However, all procurement solicitations issued by RIOC are to be guided by the same basic principles:

- a) Clarity: Procurement documents should clearly convey to vendors what it is RIOC wants to buy;
- b) Fairness: No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria;
- c) Openness: All relevant vendors should have an equal opportunity to respond to the offering.
- d) Disclosure of Selection Criteria: The criteria for awards should be developed before bids/proposals are received. Vendors should know generally the basis upon which their offers are being judged.
- e) Efficiency: The process should be efficient, fair and able to withstand public scrutiny.

5.1.2. REQUESTS FOR PROPOSALS ("RFP")

RFP solicitations may range from relatively uncomplicated procurements to highly complex, long-term efforts involving the significant commitment of both RIOC and vendor resources.

RFPs follow a common format, focusing on a description of tasks including, but not limited to:

- Description of program objectives and background;
- Scope of services to be provided;
- Detailed requirements or specifications (required qualifications of vendors, "what" is needed and "how" services should be provided). Note that the terms of the RFP may not be knowingly tailored to favor a particular vendor.

5.1.3. INVITATION FOR BIDS

IFBs are generally used for Solicitations for Commodities where the Corporation desires to purchase a specific item or product from the lowest-priced responsive and responsible Vendor. Solicitation for Commodities should include product specifications in one of the following 22 manners:

- Make and Model or Equal – If the Procurement is not limited to a specific brand, the Solicitation may use a brand name and model as a reference to describe requirements such as functionality, style or capacity.
- Make and Model Specific - If the Procurement is limited to a specific brand, the

Solicitation should state that only Bids for the specified items and brands will be considered, and that no substitutions will be considered where only one product(s) (i.e., specific brand(s)) meets the Corporation's needs.

- Technical Specifications - The Solicitation may describe the product, usually detailing the physical components, method of assembly and, in some cases, chemical composition.
- Performance Specifications - The Solicitation may describe the performance standards required for the product and/or service being procured, and the Bidder must ensure that the product or service offered will meet the performance specifications. Nothing in this section shall preclude the use of an RFP as a Solicitation for Commodities, in which case the above criteria must be included in addition to the criteria set forth in section 5.1.2

6. PRE-PROCUREMENT SOLICITATIONS

6.1. REQUESTS FOR STATEMENTS OF QUALIFICATION ("RFQ")

RFQs are appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by RIOC on a regular or semi-regular basis as the need arises; or to select professional services to be rendered at pre-established rates. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of contractors or property appraisers. If RIOC has established a list of pre-qualified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a preset maximum, three quotes should be obtained from vendors on the list, and/or from vendors known to RIOC outside the list.

6.2. REQUESTS FOR EXPRESSIONS OF INTEREST ("RFEI")

RFEIs are generally appropriate when RIOC does not know the precise scope of services or goods required, and wishes to obtain this information from prospective vendors. An example would be a proposal for adaptive re-use of RIOC property, where the re-use is likely to be dependent on the prospective vendors' needs or ideas.

6.3. REQUEST FOR INFORMATION ("RFI")

The Corporation may use an RFI as a preliminary information-gathering tool in order to assess the market, identify potential suppliers and understand the capabilities and offerings of potential Vendors. The RFI should be used to help inform an overall procurement strategy and identify potential risks before issuing an RFP or IFB. RFIs can be used in situations including, but not limited to:

- The Corporation desires to obtain more information about products, services or suppliers; 23
- The Corporation desires to understand supplier capabilities, experience and product(s); or
- The Corporation desires to explore its available options and possibilities before proceeding to a formal procurement

7. ADVERTISING

RIOC must advertise a Procurement opportunity in the New York State Contract Reporter when the actual or estimated amount of the Procurement is \$50,000 or more, except for Procurement Contracts being (i) awarded on an emergency basis or (ii) re-bid or re-solicited for substantially the same Commodities or Services, within forty-five business days after the date Bids or Proposals were originally due. In addition, as a best practice, RIOC should also advertise its Procurement opportunities in other sources such as trade publications, journals, and newspapers when possible and appropriate, as well as RIOC's website and mailing lists. Advertisements shall provide prospective Respondents with an overview of the proposed Procurement, including a brief description of the Commodities or Services sought, the contract period, the Bid or Proposal due date, the address where Bids or Proposals are to be submitted, a description of any eligibility or qualification requirement or preference and contact information.

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing

reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate M/WBEs and SDVOBs maintained by ESD and OGS.

The Director of Procurement or their designee will review all solicitations and advertise using the various vehicles to publish procurement opportunity, including Requests for Proposals ("RFPs"), Requests for Statements of Qualifications ("RFQs") and Requests For Expression of Interest ("RFEIs") (See Section 5 and 6).

7.1. CONTRACT REPORTER EXEMPTIONS

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption, a Contract Reporter exemption may be granted by the President/Chief Executive Officer or Chief Financial Officer, only if any of the following circumstances can be demonstrated, as defined in these Guidelines:

- Sole Source
- Single Source
- Emergency Circumstances

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract awarded for the amount equal to or greater than \$50,000 should be posted in the Contract Reporter (Economic Development Law, §143 (4)).

7.2. AUTHORIZATION FOR EXEMPTIONS

In order to utilize any of the Contract Reporter exemptions listed in Section 7.1, RIOC must obtain a written Contract Reporter exemption authorization. The process of requesting such exemptions is described in/covered by *RIOC Standard Operating Procedures* pursuant to requirements established in Article 4-C of the Economic Development Law. Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139-k and State Tax Law § 5-a must still be satisfied (See Section 8.1).

At the time RIOC enters into a contract with a single or sole source provider for an amount *equal to or greater than \$50,000*, RIOC shall submit an announcement of the contract for inclusion in the Contract Reporter, and shall specify the recipient of the contract.

If the **proposed contract amount is equal to or greater than \$175,000**, or will last more than one year, the exemption authorization should be obtained before RIOC Board's approval.

8. COMPLIANCE WITH LAWS AND REGULATIONS

8.1. COMPLIANCE WITH STATE FINANCE LAW § 139-J AND 139-K (LOBBYING)

State Finance Law ("SFL") § 139-j and 139-k apply to all Procurement Contracts over \$15,000, regardless of whether the contract was competitively bid.

Among other things, SFL § 139-j and 139-k:

- a) govern permissible communications between potential vendors, and staff of RIOC, its subsidiaries, or other involved governmental entities during the procurement process;
- b) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and
- c) establish sanctions for knowing and willful violations of such provisions, including disqualification from eligibility for an award of any contract.

Specifically, SFL § 139-j and 139-k require that only permitted RIOC and subsidiary contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from the issuance of the earliest written notice of a request for proposal through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL § 139-j (6) (b) also requires potential vendors to complete the Offerer's Affirmation of Understanding and Agreement to comply with RIOC's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by RIOC after an initial affirmation is received with an initial bid.

SFL § 139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k (5) requires potential vendors to certify that the information they provide to RIOC for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL §§ 139-j and 139-k as part of their proposals: 1) the Offerer's Affirmation of Understanding and Agreement; and 2) the Offerer's Disclosure of Prior Non-Responsibility Determinations.

When contacted during the Restricted Period, RIOC staff must obtain the following information: the name, address, and telephone number, place of principal employment and occupation of the person or organization making the contact. Further, RIOC staff must inquire whether the person or organization making the contact was the Offerer or retained, employed or designated by the Offerer. All such recorded contacts must be included in the procurement record for the procurement contract.

In addition, RIOC staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL § 139-j and 139-k do not prohibit an Offerer from communicating with a member of the state legislature or legislative staff about a government procurement, provided such member of the state legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

For further guidance, RIOC staff engaged in the procurement process should review RIOC's policy regarding permissible lobbying contacts, and the required language for solicitations by RIOC to ensure compliance with SFL § 139-j and 139-k.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: a RIOC employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported, and asked to communicate directly with the designated contact person in the future.

8.2. COMPLIANCE WITH STATE TAX LAW § 5-A (SALES TAX REGISTRATION)

State Tax Law § 5-a prohibits RIOC from approving any contract valued at more than \$100,000 with any entity

if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

Accordingly, all respondents to a solicitation where the amount of the contract is expected to exceed \$100,000 must include in their responses a properly completed Form ST-220-CA. However, if a vendor is not registered with DTF due to a lack of sales of over \$300,000 within the relevant period, the vendor must submit an affidavit so certifying. Note also that § 5-a does not apply to contracts for architectural, engineering or surveying services. If in doubt, contact the RIOC legal department after having reviewed DTF Publication 223.

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. However, the vendor or respondent should be given an opportunity to cure such failure, because some agencies do not require the form until contract signing, and vendors may not realize that RIOC practice is different. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor's sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the sub-contractors.

Further, in accordance with the requirements of § 5-a, any contract resulting from a solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

8.3. VENDOR RESPONSIBILITY

Per Article XI §163 of State Finance Law, agencies shall make a determination of responsibility of the proposed contractor prior to making an award of contract. All vendors must be found to be "responsible", and remain so through the term of the contract. While not governed by State Finance Law § 163, RIOC adheres to this section provisions as best practices and utilizes Vendors Responsibility Questionnaire. See Section 9.7 below for further guidance on determination of vendor responsibility.

8.4. COMPLIANCE WITH EXECUTIVE LAW ARTICLE 15-A: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS

All Procurement Contracts must comply with the requirements of Executive Law Article 15-A, which promotes employment and business opportunities for minorities and women on State contracts "to encourage and assist State agencies in their efforts to increase participation by minority and women-owned business enterprises ("M/WBEs") on State contracts so as to facilitate the award of a fair share of such contracts to M/WBEs."

Where practical, feasible and appropriate, RIOC shall promote and assist participation by M/WBEs in the selection and award of all contracts. Such M/WBE participation shall be documented by Director of Procurement and included in the quarterly and annual reports made to the Board.

8.5. COMPLIANCE WITH ARTICLE 3 OF THE VETERANS' SERVICES LAW: PARTICIPATION BY SERVICE-DISABLED VETERANS WITH RESPECT TO STATE CONTRACTS

All Procurement Contracts must also comply with the requirements of Article 3 of the Veterans' Services Law, which acknowledges that Service-Disabled Veteran-Owned Businesses ("SDVOBs") strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, respondents for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

-Where practical, feasible and appropriate, RIOC shall promote and assist participation by SDVOBs in the selection and award of all contracts. Such SDVOB participation shall be documented by Director of Procurement and included in the quarterly and annual reports made to the Board.

8.6. COMPLIANCE WITH EXECUTIVE ORDERS

8.6.1. Executive Order 22 (EO22) Sustainable Purchasing

Pursuant to New York EO22, RIOC must refer to the GreenNY Purchasing Specifications (<https://ogs.ny.gov/greenny/approved-greenny-specifications>) in its purchasing and shall endeavor to make purchases that meet these specifications to the greatest extent possible. As such, RIOC shall endeavor to ensure that Procurements for Commodities, Services, technology and all other applicable purchases at a minimum meet the approved green Procurement specifications approved by New York State with the goal to purchase Commodities and Services that minimize adverse environmental impacts. Environmental considerations in the procurement of Commodities and Services shall include but are not limited to sustainable resource management, sustainable manufacturing and production, disposal and waste minimization, and the elimination of single use plastics. RIOC may consider other sustainability measures specific to the Procurement of Commodities or Services to be included in the Solicitation for Services but in all cases shall comply with the GreenNY specifications where practicable.

RIOC shall seek exemptions, when applicable, as stated in Section V. of EO22.

Solicitations for Services shall include a request for a description of the Proposer's environmentally sustainable business practices or activities, to the extent applicable.

8.6.2. Executive Order 32 (EO32) New York State Food Products

Pursuant to EO 32, to the extent RIOC purchases food or food products, including through contracted Services, RIOC shall specify the purchase of New York State Food Products whenever feasible; and schedule to increase the percentage of food they source from New York producers, if applicable.

In addition, New York State Finance Law ("SFL") § 165(4) empowers State agencies purchasing food products to require that some or all of the food products be grown, harvested, produced, or processed in New York State.

Pursuant to EO32, State Agencies that purchase food shall annually report to the New York State Office of General Services ("OGS"), the dollar amount of New York State Food Products purchased by the reporting State Agency, including those by contracted service providers, the dollar value of all food and food products purchased by the State Agency, and the percentage of the New York State Food Products of all agricultural products and food items purchased for the reporting year. By March 31 each year, State Agencies shall submit such information for the previous calendar year to the OGS, for inclusion in the Food Metrics Annual Report.

8.6.3. Executive Order 16 (EO16) Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Pursuant to EO 16, RIOC is prohibited from contracting with businesses that continue operations in Russia.

8.7. COMPLIANCE WITH IRAN DIVESTMENT ACT OF 2012

Every bid or proposal made to RIOC pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent and affirmed as true under penalty of perjury: " By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury,

that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by OGS. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestment Act (contact the Legal Department for guidance in such a case).

8.8. ENCOURAGEMENT OF USE OF NEW YORK BUSINESSES AS CONTRACTORS AND SUPPLIERS.

In accordance with the State Finance Law Section 139(i), RIOC shall promote the participation by New York State Business Enterprises in Procurement Contracts. In addition, all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts, must be encouraged (but not required) to use New York State businesses.

8.9. PROJECT SUNLIGHT

Project Sunlight is an important component of the Public Integrity Reform Act of 2011. Under this law, RIOC is required to cooperate with the Office of General Services (OGS) and identify in a database developed by OGS all individuals, firms or other entities (other than State or local governmental agencies) that appear before such entity on behalf of themselves or in a representative capacity on behalf of a client or customer for any of various specified purposes. Project Sunlight's reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a State contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated. Appearances during the Restricted Period-whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law do not need to be reported. Appearances following the award of the contract do not need to be reported.

8.10. PUBLICATION ON RIOC WEBSITE

Competitive solicitations must be made available on the RIOC website after advertisement in the NYS Contract Reporter. This website is also the appropriate place to post Questions and Answers regarding the procurement.

8.11. STANDARD FORM ATTACHMENTS

Procurement Contracts, which includes amendments to existing contracts, should include, but not limited to, RIOC's standard forms, including as appropriate RIOC's Standard Contract as well as further required contract forms (Reference forms; Sample Addendum Receipt; ST 220 – Contractor Certification; EO 127 and EO 177; Certifications; RIOC's Non-Discrimination and Affirmative Action Provisions and Schedule of Minority/Women Business Participation; Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance; SFL § 139-j and 139-k and State Tax Law § 5-a (or affidavit of non-applicability); satisfactory evidence of insurance requirements having been met; ST 220-CA where applicable; and RIOC's Vendors Responsibility Questionnaire.

9. OTHER GENERAL REQUIREMENTS

9.1. CONTENTS OF ANY PROCUREMENT SOLICITATION

Whether the procurement is formal (such as an RFP, RFQ or RFEI) or informal (such as procurement for less than \$50,000, or a Discretionary Purchase from an M/WBE or SDVOB for up to \$1,500,000.00) the same basic information should be included in the solicitation:

- a) What goods are being sought or what scope of services is desired;
- b) What the length ("term") of the resultant contract will be;
- c) What criteria will be used in evaluating bids, and how those criteria are weighted? For example, price, bidders' expertise, past history of government contracts, references/testimonials;

- d) Where known, the maximum price that RIOC is prepared to pay for the goods or services;
- e) A schedule of relevant dates (When bid is due, when questions may be asked or briefing meetings held, etc.);
- f) RIOC's insurance requirements;
- g) Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business participation goals (M/WBE and SDVOB);
- h) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;
- i) A copy of the contract that the successful vendor will be expected to agree to
- j) Vendor Responsibility Questionnaire ("VRQ") (See Sections 9.7);
- k) Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.8).

9.2. RESERVED RIGHTS

Any published Solicitation should state the Corporation's reserved rights in the conduct of such Bid or RFP process, including, where applicable, the right to:

- Reject any or all Bids or Proposals received in response to the Solicitation;
- Withdraw the Solicitation at any time, at the Corporation's sole discretion;
- Make an award under the Solicitation in whole or in part;
- Disqualify any Respondent whose conduct and/or Bid or Proposal fails to conform to the requirements of the Solicitation;
- Seek clarifications and/or revisions of the Bid or Proposal or any part of the Bid or Proposal;
- Use information obtained by the Corporation through site visits; interviews; investigation of a Respondent's qualifications, experience, ability or financial standing; and any other material or information provided by or received from the Respondent during the Solicitation process;
- Prior to the Bid or Proposal Opening, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- Prior to the Bid or Proposal Opening, direct Respondents to submit Bid or Proposal modifications addressing subsequent Amendments to the Solicitation;
- Request that Bidders or Proposers submit best and final offers subsequent to the Bid or Proposal Opening;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Respondents.
- Waive any non-material requirements;
- Accept and consider for contract awards Bids or Proposals with non-material deviations or non-material defects such as errors, technicalities, irregularities, or omissions.
- Negotiate with any one, multiple or all Respondents within the scope of the Solicitation and in the best interests of the Corporation;
- Conduct contract negotiations with another responsible Respondent if the Corporation is unable to finalize contractual terms with the first selected Respondent;
- Utilize any and all ideas submitted in the Bids and Proposals received regardless of whether a Contract is offered; and
- Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bid or Proposal and/or to determine a Respondent's compliance with the requirements of the Solicitation.

9.3. SELECTION CRITERIA

Prior to establishing a method of award and evaluation criteria, RIOC must determine whether the award will be based on lowest price or best value. For commodities, an award shall be made based on lowest price among responsible and responsive offers (State Finance Law § 163(3)(a)(ii)). In the case of services, the award must be based on “best value” (State Finance Law § 163(4)(d)). However, best value can be equated to lowest price.

Written selection criteria shall generally be established for each proposed Procurement Contract and shall be included in any written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP wherever practicable and, in the absence of written weighting, each criterion shall be deemed to have the same weight.

The selection criteria shall generally include price as an important factor to be considered in the selection process; however, many RIOC procurements are based on "Best Value," which allows for factors other than price to be taken into account. Such factors commonly include the quality of goods and services, the experience of the vendor, time for completion, and specific expertise with respect to the goods or services to be supplied (See Sections 5 and 6).

9.4. SOLICITATION REVIEW

Solicitations conducted via Request for Proposals must be reviewed and approved by the Procurement Director, Department Head, Chief Financial Officer, General Counsel's Office, and President & Chief Executive Officer.

9.5. VENDOR CONFLICTS OF INTEREST

Vendors that develop or draft specifications, requirements, statements of work, or requests for bids or proposals for a project or a Procurement must be excluded from competing in any resulting Procurement

9.6. BID OPENING PROCEDURES

All public works proposals should be received at the main office, and immediately should be stamped with the date and time of receipt. DO NOT OPEN ANY BID PACKAGES FOR ANY REASON BEFORE THE FORMAL BID OPENING.

Depending on the type of contract, RIOC staff members representing Procurement, Finance, Legal, Engineering, any RIOC staff member or relevant department should be present at bid openings in person or by teleconference. Bids shall be opened by Director of Procurement or his/her designee, and the time and date of receipt shall be entered into the Bid Received Log, which must be signed by all staff members present. For non-public works contracts, including RFPs, IFBs, discretionary procurements and competitive procurements, bids may be submitted via e-mail or secure file transfer and public bid opening is not required.

9.7. DETERMINATION of Vendor Responsibility -"FLIP Review"

Pursuant to State Finance Law § 163, agencies must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. While not governed by State Finance Law § 163, RIOC adheres to this section provisions as best practices. RIOC conducts an affirmative review of the responsibility of any vendor to whom it proposes to make a contract award. “Responsibility” means the financial ability, legal capacity, integrity, and past performance of a business entity and as such terms have been interpreted relative to public procurements. Director of Procurement should ensure that all vendors are "responsible."

Vendor responsibility is generally accomplished by "FLIP" review. FLIP review involves assessment of four factors: (i) Financial and organizational capacity; (ii) Legal authority to do business in the state; (iii) Integrity of the owners/officers/principals; and (iv) Past performance on prior government contracts.

RIOC uses Vendors Responsibility Questionnaire (“VRQ”), which is based on the Office of the State

Controller VENDREP form intended for state agencies. Note that FLIP review is not needed for procurements from the OGS Centralized Contracts list

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a meeting. The RIOG Legal Department will be consulted by the Procurement Director in such cases. For more information on vendor responsibility, see Best Practices on the OGS website.

9.8. Templates

The Procurement Director shall maintain templates, incorporating all relevant requirements set forth in these Guidelines in coordination with the Legal Department to be used by RIOG for all written Solicitations. Solicitation templates may differ for RFPs, which include weighted evaluation criteria, and IFBs, which will be awarded to the responsive Bidder offering the lowest cost.

9.9. Procurement Record

Director of Procurement or their designee shall be responsible for creating and maintaining a record of the procurement process. Such record shall contain documentation related to the procurement process, any competitive solicitation exemption, proposals and/or bids received, scoring sheets, vendor responsibility documentation and other documents prepared or used by the bid reviewers in their vendor selection process. Note that final scoring sheets must be sent to Director of Procurement before a contract is executed. Director of Procurement must aggregate and summarize the scoring and provide such computation to the Comptroller or Chief Financial Officer for review and approval.

10. AWARD PROCESSES

10.1. Award Based on Lowest Bidder

In the case of an IFB where selection is based on the lowest price, upon Bid Opening, the Corporation shall:

- Ensure that the Bid is complete and accurate, including confirming that the Bidder understood the specifications and can perform/deliver at the Bid price (particularly if there is a large discrepancy between the low Bid and the second low Bid) and ascertaining that all materials are submitted and appendices are signed;
- Verify that the low Bid is responsive by meeting all mandatory requirements and specifications of the IFB and that the Bidder is responsible. In the event the Corporation determines that the low Bid is not responsive or that the Bidder is not responsible, then the Bid should be rejected, and the Corporation should review the next low Bid for responsiveness/responsibility. Notice should be given to any Bidder that is being rejected for non-responsiveness or non-responsibility.
- In the event of tie Bids where all offers are found to be substantially equivalent, including price, the President and Chief Executive Officer shall make the final determination to award the Contract to one or more Bidders. The basis for such determination shall be documented in the Procurement Record.

Upon identification and verification of the lowest responsible and responsive Bidder, the Corporation shall award the Contract in accordance with the method of award in the IFB subject to first obtaining all necessary approvals set forth in Section 5 of these Guidelines. All supporting documentation should be maintained in the Procurement Record.

10.2. Award Based on Best Value

Award of a Contract based on best value pursuant to an RFP shall be made as follows:

- i. Evaluation Team*

For each RFP¹, there shall be an evaluation committee consisting of employees nominated by the Department Head or their designee, (the “Evaluation Committee”) who are responsible for evaluating each Proposal; however, for any RFP, The Designated Contact shall provide the Evaluation Committee with all relevant Proposal materials, in accordance with these Guidelines, including, but not limited to, the Proposals (including the Cost Proposal, when appropriate), the RFP, and any addenda to the RFP. The evaluation process, including any numerical scores, shall be documented by the Designated Contact in reasonable detail.

ii. *Conducting the Evaluation*

The evaluation measures the extent to which a Proposal will meet the Corporation’s needs and assesses the strengths and weaknesses of each Proposal. The main steps for performing the evaluation are discussed below.

iii. *Evaluation Criteria Best Practices*

Criteria for evaluation of Proposals shall be developed on a case-by-case basis based on the needs of the end-user of the Contract and in consultation with the applicable Department Head or their designee. Some areas to be considered in the development of evaluation criteria may include, but are not limited to, the following:

- Work plan and methodology to achieve desired end results;
- Degree to which the Proposal satisfies mandatory, optional, desirable and/or alternative green performance standards;
- Experience of the Proposer in providing the required Services and/or deliverables;
- Management capability of the Proposer;
- Proposer’s overall past performance;
- Quality of responses to Diversity Practices and MWBE/SDVOB Utilization Plans or MWBE/SDVOB certification status of the Proposer;
- Qualifications and experience of the Proposer’s proposed staff;
- Conformance with the schedule of work set forth in the RFP; and
- Proposer references.

iv. *Assignment of Values to Evaluation Criteria*

The methodology for evaluating Proposals must be established before the initial receipt of Proposals. Once the evaluation criteria have been determined, values must be assigned to the criteria and any sub-criteria. The evaluation criteria and the assigned values must be provided in the RFP.

Alternative concepts for assigning value to the technical criteria may be permissible to account for the nature of the Procurement. In such instances, the Director of Procurement shall verify with the General Counsel before issuance of the RFP.

v. *The Evaluation Instrument*

Each member of the Evaluation Committee must use the evaluation instrument to apply the evaluation criteria to the Proposals, including the assigned value for each criterion. The evaluation instrument consists of a series of documents used during the evaluation process, including but not limited to:

- Rating sheet which defines allocation of points for each criterion;
- Completed rating sheets recording each evaluation committee members’ scores;
- Cost Proposal evaluation, when evaluating cost;
- Summary rating sheet tallying the scores of all committee members; and

¹ For convenience, Section 10.2 discuss the evaluation process of an RFP but are applicable to any Solicitation for competitive Proposals requiring an evaluation.

- Reference checks.

A Subject Matter Expert who is not a member of RIOC's staff may be used to assist with evaluations. The Evaluation Committee should consider whether a confidentiality agreement with the subject matter is appropriate.

vi. *Scoring Methodology*

Scores for the pre-determined criteria must be recorded by the Evaluation Committee on the evaluation instrument in accordance with the pre-determined criteria and sub-criteria, if applicable. Provided that prospective Proposers are so advised, information beyond that provided in the written Proposals may be considered in order to determine a score, such as:

- Product or service demonstrations and presentations;
- Reference checks (staff and/or company performance);
- Site visits;
- Interviews of key representatives and proposed staff of the Proposer;
- Consultation with relevant technical advisors;
- Written Proposal clarifications; and
- Rating services (such as Moody's or Dun & Bradstreet).
- Upon written approval of the General Counsel or the Chief Financial Officer, the Corporation may waive mandatory requirements in the RFP that are not material, provided that the waiver neither:
 - Disadvantages RIOC;
 - Uniquely benefits the selected Proposer;
 - Prejudices any non-winning Proposer; nor
 - If known at the time of proposing, could reasonably be assumed to have caused additional potential Proposers to submit Proposals.

After performing an initial evaluation, the Evaluation Committee may determine certain Proposer(s) should be eliminated from consideration based solely on the content of the Technical Proposal(s). The determination to eliminate a Proposer(s) from consideration must be justified and documented, with any initial scoring or other memoranda explaining the determination added to the Procurement Record. After determining which Proposers will be eliminated from further consideration, if any, based on comparative low scoring or other documented reasons justifying such elimination, the Evaluation Committee may open and review the Cost Proposals of the remaining Proposers before conducting interviews. Absent advance approval from the President and Chief Executive Officer or their designee, only Evaluation Committee members, the Subject Matter Expert, and the Designated Contact may be present at such interviews. Upon completion of the evaluation as set forth in the evaluation instrument and the RFP, the initial evaluation scores shall be adjusted and finalized, as necessary.

vii. *Request for Best and Final Offer*

In circumstances where it would be in the best interest of the Corporation, RIOC is authorized to request from all Respondents determined to be eligible for being awarded a contract, prior to award, an Amendment to its Bid or Proposal that would represent its best and final offer if: (1) the project manager provides a written memorandum justifying the request for a best and final offer; (2) such request is approved by the Director of Procurement in consultation with the Department Head, and (3) such request does not materially change the scope of work or evaluation criteria for the Procurement. Respondents receiving a Best and Final Offer request shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers.

viii. *Determining the Best Value Proposer*

For Solicitations in which cost is not the only evaluation criteria, the Corporation should award the Contract to the highest rated Proposer whose Proposal is determined to be responsive and in the best interests of the Corporation, subject to a determination that the Cost Proposal, as amended by any Best and Final Offer response, is fair, reasonable and provides the best value to the Corporation given the requirements of the project. Even if using a Centralized Contract, the reason for selecting a specific Vendor that is not the lowest priced Vendor should be documented.

10.3. Award Based on Single Bid

The Corporation may award a contract to a Respondent if only one Bid or Proposal was submitted, provided that the Project Manager delivers a memorandum to the President and Chief Executive Officer explaining that, based on the documentation contained in the Procurement Record, adequate opportunity was given to ensure competition, including but not limited to proper outreach and advertising and that the sole Bid or Proposal was reasonable in cost, and the President and Chief Executive Officer provides written approval of the Project Manager's memorandum.

11. PROCUREMENT CONTRACT APPROVALS

Further guidance regarding the approval process, including the purpose of each approver's review, may be outlined in Standard Operating Procedures for Procurement, which may be modified from time to time at the discretion of the staff. The award of Procurement Contracts, and any subsequent Amendments, must be approved as follows:

Procurement Contracts in amounts less than \$175,000 that will be completed within one year must ultimately be approved by the President and Chief Executive Officer or their designee.

The Procurement Director may approve a Procurement Contract once the Procurement Director has i) verified that the Respondent is responsible (and, in the case of a Centralized Contract from OGS, that the Respondent's OGS certification is valid) and has submitted certificates of insurance in accordance with the Solicitation requirements; ii) as applicable, that the selection was made pursuant the RIOC Procurement Guidelines, related policies and procedures, and the terms of the Solicitation; and iii) that the correct people have conducted the required approvals in the procurement record.

The General Counsel shall approve to confirm that they have conducted a review of the procurement, based on the representation of the Originating Department Head and prior approvals, and provided any feedback to the Originating Department Head.

The Chief Financial Officer or their designee may approve a Procurement Contract once they have confirmed that the accompanying documentation includes a consistent record of the commitment of funds associated with the Procurement.

The Procurement Director is responsible for ensuring that required reviews and approvals occur.

Procurement Contracts equal to or greater than \$175,000, as well as contracts for any amount involving professional services or construction to be rendered over a period in excess of one year, must be approved by the RIOC Board. However, *warranty and product maintenance/support/lease contracts (including but not limited to auto leases)* are not considered personal services and do not require approval by the Board unless the amount of such contract is over \$200,000 in aggregate through the life of the contract.

In addition, except for those types of contracts listed in Section above, Board approval is required for any extension of an existing Contract that a) for the first time, extends the Contract Term beyond one year; or b) extends the Contract Term by one year or more from the Contract Term last approved by the Board.

11.1. BOARD MATERIALS

The respective Department Head or his/her designee writes a memorandum to the President and Chief Executive Officer/Board, explaining the need for the contract.

The Board materials must set out:

- the need for goods and services;
- a brief description of the goods or services needed;
- the expected maximum cost of the proposed goods or services;
- the selection process used to determine an award based on best value, or where not quantifiable, the justification which demonstrates the best value will be achieved;

11.2. NOTICE TO PROCEED

Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head or Project Manager it is essential that work on the contract be commenced before the formal contract documents have been approved, the RIOC President and Chief Executive Officer or their designee may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents ("Notice to Proceed"), provided that:

- a) The contract is not subject to Office of the State Comptroller ("OSC") approval (See Section 12.4); and
- b) the authorization contained in the Notice to Proceed does not exceed \$175,000; and
- c) the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of two of the following: RIOC's President and Chief Executive Officer, General Counsel, Chief Operating Officer or Chief Financial Officer
- d) all insurance requirements have been met.

11.3. CONTRACT AMENDMENT APPROVAL

Amendments to existing contracts follow the same process as new contracts, i.e., the amendment needs to be advertised in the New York State Contract Reporter or exempted. The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated.

If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of State Finance Law §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed \$1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds.

Contract amendments that increase the contract amount to \$175,000 or more must be approved by the RIOC Board. Amendments for less than 25% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the RIOC President and Chief Executive Officer or Chief Financial Officer without further Board approval, unless the amendment increases the contract to an amount above \$175,000 and Board's approval has not been previously obtained and/or lengthens the contract term beyond one year.

If any such proposed amendment will increase the term of the contract to more than one year, Contract Reporter advertising is necessary unless, as discussed in paragraph above, the original contract contained a

clause specifically permitting extension.

In the case of contracts for more than \$1 million, where the initiator or Director of Procurement anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount for less than 10% of the amount approved, such a contract can be executed without further Board approval by the President and Chief Executive Officer and the Chief Financial Officer of RIOC. Note that such an amendment may require OSC review and approval. If in doubt, the initiator or Director of Procurement will consult the Legal Department.

12. STEPS AFTER PROCUREMENT CONTRACT APPROVAL IS OBTAINED

Further guidance regarding steps after the approval is obtained, may be outlined in Standard Operating Procedures for Procurement, which may be modified from time to time at the discretion of the staff.

12.1. CONTRACT PACKAGE

- a) The project manager completes the required information on the Contract Execution Checklist
- b) The project manager completes the Standard Form Contract with the relevant attachments or Modification of Contract.

The provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and RIOC, and the method of payment to the contractor. The more clear and specific the contract, the easier it will be to monitor.

The terms of the contract should include, but not be limited to:

- the scope and purpose of the contract;
 - the description of the services to be performed;
 - the location where the work is to be performed;
 - the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
 - the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
 - the starting date and the contract period;
 - the finished product or the services to be delivered;
 - record-keeping and reporting requirements, including a statement that RIOC and any relevant State agency has the right to audit the contractor's records;
- c) The Department Head should review, and the Procurement Director should confirm completeness.
 - d) The project manager submits the Contract Execution Checklist and Standard Form Contract with relevant attachments and all appropriate insurance certificates, as required by RIOC, to the Legal Department for compliance review and approval. When approved, the Legal Department sends the contract to vendors. After receipt of three (3) signed sets from the vendor, the Legal Department sends all three sets to the President and Chief Executive Officer for signature. The Legal Department sends one original copy of the fully executed contract to the vendor. Copies are distributed to Finance, Procurement, Capital Planning and Projects and other relevant departments.

12.2. CONTRACT REPORTER AWARD NOTIFICATION

If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of Minority/Women Business Participation, must be posted on the Contract Reporter system. A contract is considered awarded when it is executed (signed) by all parties. This posting will be done by the Procurement

Manager.

12.3. EXTENSION/AMENDMENT OF CONTRACTS

If a Procurement Contract is entered into after a Contract Reporter solicitation, the contract and solicitation can provide that there may be an extension of the contract or amendment to the scope of work. If so, then extensions and/or amendments do not need to be advertised in the Contract Reporter again. However, if the contract requires approval by the RIOC Board, the possibility of extension or amendment must be included in the original Board materials and Resolution. When in doubt, provide for extension or amendment to minimize future problems.

12.4. OSC POST-CONTRACT APPROVAL OF \$1,000,000+ CONTRACTS

Under Public Authorities Law § 2879-a (effective March 1, 2010), proposed contracts in excess of one million dollars that either: (i) are to be paid for in whole or in part by state appropriations; or (ii) are not to be awarded after a competitive process (regardless of the funding source), must be approved by the Office of the State Comptroller ("OSC") after the contract is signed. If § 2879-a applies and approval by OSC has not been obtained, the signed contract "shall not be a valid enforceable contract." OSC has issued final regulations implementing this law, and OSC approval shall be deemed part of these Guidelines.

The contracts for the sale of real property for an amount over \$1 million are covered by the Property Disposition Guidelines and are not subject to OSC review and approval under Public Authorities Law § 2879-a.

13. MONITORING OF PROCUREMENT CONTRACTS

Performance of Procurement Contracts must be monitored by Director of Procurement and the Project Manager to ensure that the scope of work or services to be provided are being/have been performed, that use of RIOC personnel, supplies and facilities is documented, and that the established starting and completion dates for major components of the contract are being/have been met.

RIOC employees assigned the responsibility of monitoring the work should be familiar with the type of work being performed and with the specific terms of the contract.

The frequency and manner in which the vendor's performance will be monitored should be clearly stated to the vendor and directly related to the terms of the contract.

Written documentation pertaining to vendor performance, such as progress reports, site visit reports, payment and expenditure data, memoranda of verbal discussions, and written correspondence, should be maintained and reviewed by the initiating Department.

Periodic visits to the work sites should be made where appropriate to review work in progress and work completed. Site visit reports should be completed and include the observations of pertinent matters, such as the number and type of persons employed by the vendor, adequacy of the facilities and equipment, and quality of performance, including any deficiencies in the performance of the work, which may have an impact on satisfactory completion of the project.

The evaluation of the vendor's performance should take into consideration the quantity and quality of the work performed, the timeliness of submission of contract deliverables, the adequacy of cost and performance records and other supporting documentation, and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

Performance that is below expectations or established standards shall be reported to RIOC management immediately. All deficiency reports should be specific and in writing. Management should review deficiency reports and take appropriate action, which may include termination of a contract.

All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head. No payment should be made unless the work is satisfactory and

in accordance with the terms of the contract. Approval on the Payment Authorization form attests to this.

14. PROCUREMENT CONTRACTS INVOLVING FORMER OFFICERS OF RIOC

RIOC shall not enter into Procurement Contracts with its former officers or employees, or with firms employing such officers or employees, except as permitted by applicable provisions of Public Officers Law and by RIOC's Code of Ethics and Conflict of Interest Policy.

15. IMPLEMENTATION OF THESE GUIDELINES

RIOC's Legal Department, in conjunction with the Chief Financial Officer, shall be responsible for:

- a) Preparing for approval by the President and Chief Executive Officer such supplemental procedures as may be required to effectively implement these Guidelines.
- b) Preparing proposed amendments to the Guidelines for approval by the President and Chief Executive Officer and the RIOC Board of Directors when and as required.

Any interim modifications to the Guidelines must be approved by the CFO, the General Counsel, and the President and Chief Operating Officer. Interim modifications may not include changes to the thresholds for Board of Directors approval.

16. REPORTING

16.1. QUARTERLY REPORTS

Director of Procurement shall prepare for presentation to RIOC's Board, quarterly reports of new Procurement Contracts and required Schedules of M/WBE and SDVOB Participation. For each Procurement Contract, the report shall include the contract amount, reason for award, initial scope of services and the selection process used. Such reports shall include information related to amendments approved on contracts during the reporting period.

16.2. ANNUAL REPORTS

Annually, Director of Procurement shall prepare for RIOC's Board review a report on Procurement Contracts as of the end of each fiscal year, summarizing procurement activity by RIOC for the period of the report, including a listing of all contracts entered into, the selection process used to select vendors, the status of existing Procurement Contracts and required Schedules of M/WBE and SDVOB Participation. Director of Procurement shall also prepare, on an annual basis, a report for submission to:

- a) The Division of Budget;
- b) The Office of State Comptroller;
- c) The Senate Finance Committee;
- d) The Assembly Ways and Means Committee;
- e) Members of the public (upon receipt of reasonable requests therefore); and

The reports shall include these Guidelines, any amendments thereto, and an explanation of the amendments.

17. EFFECT ON AWARDED CONTRACTS

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. These Guidelines reflect best and customary practice, but are not intended to be rules of law. Note, however, that certain contracts may not be "valid or enforceable" without OSC approval.

Approved and Adopted by the RIOC Board of Directors on June 23, 2026