

HOMELESS HOUSING AND ASSISTANCE CORPORATION

GUIDELINES ESTABLISHING POLICY AND INSTRUCTIONS FOR THE USE, AWARDING, MONITORING AND REPORTING OF PROCUREMENT CONTRACTS

ARTICLE I

STATEMENT OF PURPOSE

- 101.** These Guidelines are adopted pursuant to the provisions of Section 45-C of the New York Private Housing Finance Law and Section 2879 of the Public Authorities Law and shall be reviewed and approved by the Members at least annually.

ARTICLE II

DEFINITION OF TERMS

- 201.** Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

“Act” shall mean Section 45-c of the New York Private Housing Finance Law.

“Corporation” shall mean the Homeless Housing and Assistance Corporation.

“Corporation Employee” shall mean employees and officers of the Corporation or any governmental agency which has assigned employees to perform services to the Corporation.

“Counsel” shall mean the Corporation Counsel, the Corporation Assistant Counsel or an attorney designated by the Members.

“Department” shall mean the New York State Office of Temporary and Disability Assistance.

“Members” shall mean the Members of the Corporation pursuant to Section 3 of the Act.

“Minority Business Enterprise” shall mean any business enterprise, including a sole proprietorship, partnership or corporation that is:

- a. at least fifty-one percent owned by Blacks, Hispanics, Asians, Pacific Islanders or Native Americans, or in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by Blacks, Hispanics, Asians, Pacific Islanders or Native Americans;
- b. an enterprise in which the minority ownership is real, substantial and continuing;
- c. an enterprise in which the minority ownership has, and exercises, the authority to control independently day-to-day business decisions;

- d. an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

“Officer” shall mean any person so defined in the By-Laws of the Corporation. In the absence of the President, the Vice President shall perform all functions of the President listed herein.

“Other than Personal Services Contract” shall mean any written agreement entered into by the Corporation for the acquisition of goods, materials or non-personal services in the actual or estimated amount of five thousand dollars or more. Goods, materials or non-personal services that the Corporation may require for five thousand dollars or more include, but are not limited to, the following: Computer equipment, telephone equipment and photo-copying equipment, furniture, office supplies, printing and offsetting services and the provision of rental space and insurance.

“Personal Services” shall mean any services performed for fee, commission or other compensation by persons or organizations who are not providing such services as officers or employees of the Corporation or any state agency or public corporation. Personal Services include, but are not limited to, legal, accounting, management consulting, investment banking, planning, training, statistical research, public relations, architectural, engineering, surveying or any other services of a consulting, technical or professional nature. Personal Services the Corporation may require are:

- a. Legal – litigation counsel as necessary or appropriate; legal advisors with respect to all aspects of the HHAP program and functions, employee relations and other corporate matters.
- b. Audit and Accounting – audit for individual programs as required or appropriate and preparation of year-end financial statements.
- c. Appraisal – independent appraisals of properties which secure Corporation loans.
- d. Consulting Engineering – independent monitoring of construction or rehabilitation pursuant to Corporation contracts.
- e. Management Consulting – analysis and recommendations concerning the Corporation’s structure and operation, including but not limited to data processing and telecommunications services, statutory authority and training.
- f. Typographical – design of Corporation’s annual report and any special reports.
- g. Financial Advice – independent advice with regard to investments.
- h. Real property management services.
- i. Such other Personal Services as the President determines to be necessary hereunder.

“Procurement Contracts” shall mean any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of five thousand dollars or more.

“Women-Owned Business Enterprise” shall mean any business enterprise including a sole proprietorship, partnership or corporation that is:

- a. at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women, or, in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
- b. an enterprise in which the ownership of women is real, substantial and continuing;
- c. an enterprise in which the women ownership has, and exercises, the authority to control independently day-to-day business decisions;
- d. an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

ARTICLE III

USE AND SELECTION OF PROCUREMENT CONTRACTS

- 301.** Use of Procurement Contractors. It is the preference of the Members of the Corporation that Corporation responsibilities be performed by Corporation employees and that when Personal Services are used, or when goods, materials and non-personal services are provided, that contractors be selected from as broad a spectrum of providers as is practical, and that contracts be awarded consistent with the quality of service, or goods and materials, required at fair and reasonable prices.

Personal Services contractors shall be used only when it has been determined by the President: (1) that such service is necessary or convenient to the performance of Corporation responsibilities; (2) that such service is not available from an Officer or employee of the Corporation; (3) that the performance of such service requires it be undertaken by someone independent of the Corporation, or (4) that use of Corporation personnel for such service would not be cost effective. Other than Personal Services Contacts shall be entered into when the Corporation requires goods, materials and non-personal services to function effectively and efficiently.

- 302.** Selection and Approval of Procurement Contractors.

1. Source Selection Methods. The Corporation shall select Procurement contractors in accordance with one of the types of selection methods set forth below. The President shall review the available methods of selection and shall choose the most appropriate method based upon consideration of such factors including, but not limited to: the deliverable to be obtained; the time available to select a contractor; and the needs of the Corporation. A final selection method shall be chosen by the President with the concurrence of the Treasurer and Counsel to the Corporation. Procurement contracts shall be awarded with due consideration to the Corporation’s anti-discrimination and affirmative action goals, as stated in Section 303 herein.

- a. Competitive bid. Solicitation of price bids for specified services, or goods, materials or non-personal services, to be awarded to qualifying contractors

primarily on the basis of the lowest price. Competitive bids are to be solicited when the services or goods, materials or non-personal services required are of a standardized nature that may reasonably be made the subject of specifications to which bidders respond with required qualification data and price offers. Notwithstanding the foregoing, the Corporation, at its option, may require competitive bids for personal services.

- b. Request for proposals. Solicitation of specific proposals which indicate an understanding of identified financial, organizational, logistical and technical requirements and/or problems and which detail elements of performance including techniques and procedures as well as prices. Award of a contract within this method is made on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.
- c. Competitive negotiations. Solicitation of qualifying potential contractors who have submitted materials pursuant to a request for proposal to further negotiate their proposals, including process for contract award, on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.
- d. Sole Source. When the Corporation determines, based upon the written recommendation of the President, that there is only one source for a required service, or goods, material or non-personal service, the contract for that service, good, material or non-personal service may be awarded without competitive procedures. Such a determination may be made where there is a known shortage of qualified contractors or where unique scientific, technical, or other qualifications are required of the contractor. Such determination shall be made in writing and filed with the Counsel and the Secretary of the Corporation.
- e. Emergency. In the case of a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting property of the Corporation or life, health or safety require immediate action, the President or an officer designated by the President or the Members may award a contract without competitive procedures. In the event of such award by the President or President's designee, such contract cannot exceed a period of three months, unless at least two Members ratify the contract within three months of its execution. A record setting forth the circumstances under which such contract was let shall be maintained for the period for which contract materials must be maintained by the terms of the contract, or for a period of at least three years following the date of the contract award, whichever period is longer.
- f. Request for Qualifications. For technical or professional services, the Corporation may issue a solicitation for qualifying potential contractors to submit proof of their qualifications, education, necessary certification or licensure, the cost of services, and any other information deemed necessary to evaluate the ability to perform the necessary services. Award of a contract within this method is made on the basis of a formal evaluation of the characteristics, quality, and cost of such proposals.
- g. Pre-qualified Slate. The Corporation may select contractors for any procurement activity from a qualified slate of potential contractors, selected on the basis of qualification and performance data, which data shall be updated and/or recertified

annually. Contract award is based upon a formal evaluation of qualifications and the subsequent negotiation of fair and reasonable compensation for the specific services then required. The Corporation may establish either specific rates of reimbursement or a range of reimbursement which will govern awards to such slates.

- h. Short Form. The Corporation may award Procurement Contracts valued below \$5000 without competitive procedures on an annual fiscal-year basis.
2. Advertisement Requirements for Competitive Source Selection Methods. The solicitation of bids, proposals or submissions of qualification data or offers for Procurement Contracts shall be made by the Corporation in a manner determined by the President to be the most cost effective for providing reasonable competition for the Corporation's contracts. This may include advertisements in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these guidelines, including the minority and women-owned business provisions herein. In addition, in the case of Procurement Contracts in the actual or estimated amount of five thousand dollars or more, and in the establishment of pre-qualified slates, the Corporation will advertise all such opportunities in the "New York State Contract Reporter" published by the New York State Department of Economic Development, subject to the following exemptions:
 - a. Emergency Contracts: Contracts awarded without competitive procedures as a result of an accident or other unforeseen occurrence or condition in which circumstances affecting property of the Corporation or life, health or safety require immediate action as determined by the President or an officer designated by the President or the Members.
 - b. Critical Contracts: Contracts which must be awarded within a set time period because delay of award would have a serious adverse effect on the Corporation that outweighs the benefits of advertisement in the Newsletter as determined by the President. Examples of critical contracts include (1) contracts related to bond issuance; and (2) contracts for which it is determined that there is only one source.
 - c. Contract opportunities being re-bid or re-solicited within forty five business days after proposals were originally due pursuant to publication in the Newsletter are exempt from further publication.
 3. All Procurement Contracts shall be limited to a maximum of one year unless the Members by resolution determine that a longer period for a particular contract is in the best interest of the Corporation. Contracts for period of longer than one year must be approved by resolution of the Members and reviewed annually by the Members.
 4. All Procurement Contracts with costs exceeding \$50,000 must be approved by resolution of the Members.
 5. All Procurement contracts shall be in writing and approved and executed by the President or the President's designee, or as provided in the Corporation Bylaws or an applicable resolution, and approved by the Treasurer or Treasurer's designee, and the

Counsel or Counsel's designee, or as provided in the Corporation Bylaws and/or applicable resolution.

6. The form of all contracts shall be approved by Counsel prior to execution.

303. Promotion of Minority and Women-Owned Business Enterprises. It is the goal of the Corporation to (a) promote and assist participation by Minority and Women-Owned Business Enterprises in competition for Procurement Contracts and to (b) award a fair share of Procurement Contracts to Minority and Women-Owned Business Enterprises.

It is also the Corporation's goal to award contracts to those contractors who have evidenced compliance with the laws of the State of New York prohibiting discrimination in employment. The Corporation recognizes that this goal may be achieved by awarding Procurement Contracts to those firms who have demonstrated that they do not discriminate in employment. Accordingly, the following procedures shall be followed:

1. For all Personal Services where compensation is expected to exceed \$25,000, and for all goods and materials contracts expected to exceed \$100,000, the following shall apply:
 - (a) Bidders shall submit to the Corporation data regarding the race and sex of their partners, members and employees by job category.
 - (b) All bidders with fifty or more employees shall submit to the Corporation a copy of their affirmative action plan. Such plan shall be reviewed by the Affirmative Action Officer and bids of bidders whose plans are not found acceptable to the Corporation shall be rejected. Bidders with less than fifty employees shall submit a statement of commitment to equal employment opportunity and affirmative action executed by the bidder.
 - (c) Bidders shall be encouraged to include with their bids proposals to demonstrate that their selection will achieve the goals of this paragraph, such as proposals for joint ventures with Minority or Women-Owned Business Enterprises.
2. The Director of the Department's Office of Minority Program Development shall prepare and maintain a list of Minority and Women-Owned Business Enterprises by area of expertise and each individual responsible for soliciting bids and proposals shall consult the list and contract appropriate Minority and Women-Owned Business Enterprises to solicit their bids. When the Corporation is unable to identify a Minority or Women-Owned Business Enterprise in the area of expertise, the Corporation shall advise the individual soliciting bids and proposals in writing.
3. Due consideration shall be given to the equal employment goals of the Corporation in selecting a bidder.
4. Where a Minority or Women-Owned Business Enterprise has been identified, after determining that bidders are fully qualified and that the services are being offered at fair and reasonable prices and that bids are competitive, the individual awarding the contract shall consider any affirmative action materials submitted by the bidders, and shall give preference to the bidder who best complies with the Corporation goals for minority and women participation and non-discrimination.

- 304.** Contract Provisions. Contracts for Personal Services shall detail the scope of services to be performed and the time frame for performance, the monitoring or reviewing of that performance by Corporation personnel and, where appropriate, and permitted use of Corporation supplies, facilities or personnel. Such contracts shall also state the cost of the goods or compensation for the services, the timing of payment, the pre-conditions for receiving payment from the Corporation, procedures for termination of the contract and any other provisions Counsel deems necessary or appropriate for each particular contract. In addition, if performance of a particular Personal Services Contract will require the use of subcontractors, the contract shall require the contractor to act affirmatively to seek such participation by Minority and Women-Owned Business Enterprises and to report such efforts to the Corporation.
- 305.** Limitations on Contracts with Former Corporation Members, Officers and Employees. A former Member, officer or employee shall not be permitted, for a period of two years following termination of service with the Corporation, to enter into a Procurement Contract with the Corporation, either as an individual or as an officer or employee of a private business entity. No such person shall after the termination of such service or employment, enter into a Procurement Contract either as an individual or as an officer or employee of a private business entity, in relation to any matter or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of service or employment, or which was under his or her active consideration. Nothing contained herein shall prohibit any former Corporation Member, officer or employee, with the prior written approval of Counsel, from being employed by any individual or firm which has been retained by the Corporation to perform consulting, legal, accounting or similar services for the Corporation.

ARTICLE IV

REPORTS ON PROCUREMENT CONTRACTORS

- 401.** Annual Report. Within ninety days after the close of each fiscal year, the Members of the Corporation shall have prepared and shall approve an annual report on Procurement Contracts. Such an annual report shall include:
- These Guidelines and any amendment hereof;
 - An explanation of the Guidelines;
 - A list of all procurement contracts as defined in PAL 2879 entered into;
 - List of all procurement contracts entered into with NYS business enterprises and the subject matter/value thereof;
 - A list of all procurement contracts entered into with certified minority and women-owned business enterprises and subject matter/value thereof;
 - All referrals made and all penalties imposed pursuant to Executive Law 316;
 - All procurement contracts entered into with foreign business enterprises and subject matter/value thereof;
 - Selection process used to select such contractors;
 - All procurement contracts which are exempt from publication requirements of Article 4-c of the Economic Development Law and the basis for such exemption; and
 - Status of existing procurement contracts.

The annual report on Procurement Contracts, after being approved by the Members, shall be submitted to the Division of the Budget with copies to the Office of State Comptroller, the Senate Finance Committee and the Assembly Ways and Means Committee.

Copies of the annual report on Procurement Contracts shall also be available to the public upon reasonable request at the Corporation's main office.

ARTICLE V

MISCELLANEOUS PROVISIONS

- 501.** Powers of Amendment. Any modification or amendment of these Guidelines may be made by a Supplemental Resolution adopted at any duly constituted Members' meeting; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Corporation contracts, the terms of which were established pursuant to these Guidelines or previously existing guidelines, and further provided that the President may make non-material changes in these Guidelines.
- 502.** No Recourse Under these Guidelines. No provision of these Guidelines shall be the basis for any claim based on these Guidelines against any current or past Member, officer or employee of the Corporation or the Corporation itself.
- 503.** Effect upon Existing Corporation Procurement Contracts. These Guidelines shall not abrogate the rights and duties of Corporation procurement contracts executed prior to the effective date of these Guidelines.

PROCUREMENT GUIDELINES EXPLANATION

Explanation of the Corporations Procurement Guidelines

Article I is a statement of purpose.

Article II defines terms used in the Guidelines.

Article III discusses the use and selection of procurement contractors.

Section 301 establishes the Corporation's preference that Corporation responsibilities be performed by Corporation employees, officers and Members, and that when personal services are used, or when goods, materials and non-personal services are provided, that contractors be selected from as broad a spectrum of providers as possible, consistent with the quality of the services required at fair and reasonable prices. In addition, this section establishes criteria for officers of the Corporation to use in determining when to hire a contractor to accomplish a task.

Section 302 discusses the methods of selecting and approving procurement contractors. These methods include competitive bidding; requests for proposals; competitive negotiations; sole source contracts; emergency awards; and pre-qualified slates. Contracts valued below \$5,000 are exempt from competitive procedures. The section also requires the Corporation to solicit bids under the competitive source methods by the most cost effective means that will provide reasonable competition as well as to advertise procurement opportunities in the actual or estimated amount of \$5,000 in the

“Procurement opportunities Newsletter” subject to certain exemptions. Procurement contracts are limited to one year’s duration unless the Members determine that a longer contract period is in the best interest of the Corporation. Contracts for a period longer than a year must be approved by the Members and reviewed annually thereafter. Procurement contracts where compensation exceeds \$50,000 must be approved by the Members. Personal services contracts must be in writing and approved as to form by the Corporation’s counsel. All contracts for goods, material and non-personal services must be in writing and approved of as provided for in the Corporation Bylaws or resolutions.

Section 303 states that it is a goal of the Corporation to award a fair share of personal services contracts to Minority and Women-Owned Business Enterprises, while recognizing that the Corporation’s goals may also be achieved by awarding contracts to those firms who have taken appropriate actions to provide equal employment opportunity. For personal services contracts over \$25,000 and goods and materials contracts over \$100,000, contractors are required to submit data regarding the race and sex of their partners, members and employees. Firms with over 50 employees are required to submit an affirmative action plan, and those with fewer than fifty employees, a statement of commitment to equal opportunity and affirmative action. The Corporation is directed to designate an office or employee of the Corporation to maintain a list of minority and women-owned business enterprises, which individuals soliciting bids are required to consult. In selecting a bidder, due consideration is to be given to the Corporation’s equal employment goals. In those cases where minority business and women enterprises have not been identified, a preference is given for minority and women participation and non-discrimination.

Section 304 discusses required contractual provisions of personal services contracts.

Section 305 contains limitations upon personal services contracts with former Members, officers or employees.

Article IV states the Corporation shall annually prepare and approve a report on procurement contracts which shall include the Guidelines, an explanation of the Guidelines and certain specified information concerning procurement contracts entered into.

Article V of the Guidelines includes miscellaneous provisions. Section 501 provides procedures for amendment of the Guidelines. Section 502 provides that the Guidelines are not to be the basis of any claims against any Member, officer or employee of the Corporation, or of the Corporation itself. Section 503 states that the Guideline shall not be deemed to abrogate the rights and duties resulting from Corporation contracts executed prior to the effective date of the Guidelines.