



PROCUREMENT

NYS Governor's Office of Storm Recovery Policies

Andrew M. Cuomo, Governor of New York State

Governor's Office of Storm Recovery

March 8, 2018

Prepared by

New York State Homes and Community Renewal

Housing Trust Fund Corporation

Governor's Office of Storm Recovery

The policies manual is current as of March 2018. This manual represents the current version of the Governor's Office of Storm Recovery (GOSR) procurement policy, which shall provide general guidance for the operation of the GOSR Procurement Department. All policy and procedure manuals will be reviewed periodically and will be updated to reflect the current needs and operation of the GOSR program. GOSR will use its best efforts to keep all of its policy and procedure manuals current. There may be times, however, when a policy or procedure will change before the manual can be revised. Therefore, you are strongly urged to contact the GOSR Procurement Department to ensure that you have the latest version of the Procurement Policies and Procedures.

Governor’s Office of Storm Recovery

POLICY MANUAL

Version Control

Version Number	Date Revised	Description of Revisions
1.0	July 9, 2014	Housing Trust Fund Corporation (HTFC) Board approved for release and publication
1.0	July 28, 2014	Released to GOSR staff and posted on website
2.0	July 31, 2014	Combined Policy & Procedures for release to GOSR staff and posting on GOSR website
3.0	October 6, 2014	No changes to Policy Manual
4.0	December 12, 2014	No changes to Policy Manual – Break out of Policy & Procedures to two stand-alone documents
5.0	January 15, 2015	Inserted Protest Guidelines into the Policy Manual for Board approval
5.0	January 29, 2015	HTFC Board approved for release and publication
5.0	March 19, 2015	Corrected incorrect citation references on pages 6 and 39
6.0	April 28, 2015	Revised language to more closely align GOSR’s policies with federal requirements and improve GOSR’s procurement practices and its ability to efficiently perform its duties. Changes address use of intergovernmental agreements, referrals of violations to authorities, waivers concerning “Invitation for Bid” procedures, relief from documenting justification for non-material contract amendments, and provisions related to vendor responsibility and performance evaluation.
6.0	May 14, 2015	HTFC Board approved for release and publication
6.0	August 19, 2015	Updated cover page - “prepared by;” new Executive Director; and contact information.
7.0	June 7, 2016	Removed “interim” designation of the Executive Director on cover page. Removed “This page intentionally left blank” on page 2. Documented decision to invoke the two-year delay in implementation of the new standards governing procurement

		as set forth in 2 CFR 200.
7.0	June 22, 2016	HTFC Board approved for release and publication
8.0	January 17, 2017	Revised to: 1) replace Procurement sections 24 CFR Part 85 with Procurement Standards 2 CFR Part 200 sections 200.317 through 200.326 and including Appendix II to Part 200 (which replaces the mandatory Contract Provisions of 24 CFR Part 85 section 85.36(i)), 2) remove the election to invoke the two-year delay in implementation of the new standards as it will expire on March 31, 2017, and 3) amend and clarify existing provisions as appropriate.
8.0	January 26, 2017	HTFC Board approved for release and publication
9.0	January 31, 2018	Streamlined Article I, Section 1 on applicability. Updated record retention policy. Added GOSR Counsel's designee(s) for approval and execution of procurement contracts. Removed "Executive Director" references and replaced with "Executive Team" or "GOSR Counsel," as applicable.
9.0	March 8, 2018	HTFC Board approved for release and publication

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**PROCUREMENT AND CONTRACT GUIDELINES FOR THE
GOVERNOR’S OFFICE OF STORM RECOVERY OF THE
HOUSING TRUST FUND CORPORATION
FOR CONTRACTS FUNDED BY THE U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT’S COMMUNITY DEVELOPMENT BLOCK
GRANT-DISASTER RECOVERY (“CDBG-DR”) PROGRAM**

**ESTABLISHING STANDARDS
FOR THE USE, AWARD, MONITORING AND REPORTING
OF PROCUREMENT CONTRACTS
UNDER THE NEW YORK STATE CDBG-DR PROGRAM**

ARTICLE I

1) STATEMENT OF PURPOSE AND APPLICABILITY

- a) Statement of Purpose. These Guidelines are adopted pursuant to the provisions of the Act and § 2879 of the Public Authorities Law, as guidelines of the Governor’s Office of Storm Recovery of the Housing Trust Fund Corporation, hereinafter referred to as “GOSR,” and such guidelines are independent of, but intended to be in alignment to the extent possible with, the guidelines of the New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (collectively hereinafter referred to as “Agencies”) and are to be reviewed and approved by the GOSR Counsel at least annually.
- b) Applicability. These Guidelines apply only to the Procurement by GOSR of goods and/or services funded, in whole or in part, with the U.S. Department of Housing and Urban Development’s (“HUD”) Community Development Block Grant-Disaster Recovery (“CDBG-DR”) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2).

These Guidelines are subject to the Code of Federal Regulations provisions of 2 CFR Part 200 which provides:

“When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §200.318 General procurement standards through 200.326 Contract provisions.” [2 CFR §200.317]

The requirements for procurement of recovered materials are set forth within Article IV of these Guidelines. The required Contract Clauses/Provisions are referenced in Article IX of these Guidelines and specifically set forth as “Appendix II to Part 200” which is reproduced in its entirety and annexed to these Guidelines.

- c) Title. Outside of this document, these Guidelines may be referred to as the “CDBG-DR Procurement and Contract Guidelines” and herein may be referred to as “Guidelines.”

ARTICLE II

2) DEFINITION OF TERMS

- a) Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:
- i) "Act" shall mean Section 45-a of the New York Private Housing Finance Law.
 - ii) "Affiliated Agencies" or "Affiliated Agency" shall mean, either individually or collectively, the affiliated agencies, each being the Governor's Office of Storm Recovery, Housing Trust Fund Corporation, New York State Housing Finance Agency, State of New York Mortgage Agency, New York State Affordable Housing Corporation, State of New York Municipal Bond Bank Agency, and Tobacco Settlement Financing Corporation.
 - iii) "Affiliate Contract" shall mean any Procurement Contract entered into by an Affiliated Agency.
 - iv) "Agency Contract" shall mean any Procurement Contract entered into by a State Agency.
 - v) "Authority Contract" shall mean any Procurement Contract entered into by a State Authority.
 - vi) "Annual Procurement Report" shall mean the annual report required by Article XIII of these Guidelines.
 - vii) "Article 15-A of the Executive Law" or "Article 15-A" shall mean the statute that governs the participation by Minority Group Members and women with respect to Corporation Contracts.
 - viii) "By-Laws" shall mean the By-Laws adopted by the Members of the Corporation.
 - ix) "Chief Executive Officer" or "CEO" shall mean the Officer having such title according to the Corporation's By-Laws.
 - x) "Contact" shall mean, for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, any oral, written or electronic communication from a Contractor or Vendor, or its representatives, with GOSR, under circumstances where a reasonable person would infer that the communication was intended to influence GOSR's conduct or decision regarding a GOSR

Governmental Procurement.

- xi) "Contract" shall mean a written agreement whereby the Corporation undertakes Procurement and shall include, but not be limited to, accepted Purchase Orders and Procurement Contracts. Contracts in excess of \$25,000 for goods and/or services and Contracts in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon, are subject to the Corporation's MWBE Directives. Additionally, pursuant to Article 15-A, solely for the purpose of providing the opportunity for meaningful participation by certified MWBEs in the performance of Corporation Contracts, Corporation Contracts shall include leases of real property by the Corporation to a Lessee where: (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee; and (b) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of \$100,000.
- xii) "Contractor" shall mean a supplier of goods and/or services to the Corporation pursuant to a Contract.
- xiii) "Corporation" shall mean the Housing Trust Fund Corporation. Except where otherwise specifically provided, "Corporation" shall refer to HTFC acting on behalf of GOSR under these Guidelines.
- xiv) "Cost Analysis" shall mean the evaluation of the separate elements (e.g., labor, material, overhead, markup, etc.) that make up a Vendor's or Contractor's total cost proposal.
- xv) "Counsel" shall mean the Chief Legal Officer as so defined in the By-Laws of the Corporation.
- xvi) "Critical Contract" shall mean a Contract which must be awarded within a set time period because delay of the award would have a serious adverse effect on the Corporation that outweighs the benefits of advertisement in the "New York State Contract Reporter," as determined by the Executive Team of GOSR. All Emergency Selection Contracts shall be Critical Contracts. Emergency Foreign Business Enterprise Contracts are not Critical Contracts unless GOSR independently determines those Contracts to be Critical Contracts.
- xvii) "Designated Contact" shall mean, for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated

annualized expenditures in excess of \$15,000, a Contact made between an Offerer and GOSR's Designated Contact Officer(s), as set forth in Article VII of these Guidelines.

- xviii) "Designated Contact Officer(s)" shall mean, for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, the person(s) GOSR appoints to such position, in accordance with the provisions of the Lobbying Law, who may be the recipient of Designated Contacts, as set forth in Articles VII and XI of these Guidelines. The Designated Contact Officer shall be the person so designated in each solicitation.
- xix) "Designated MWBE Officer(s)" shall mean the senior staff who GOSR appoints to such position to oversee GOSR's MWBE Program, as set forth in Articles VI and XI of these Guidelines.
- xx) "Determination of Responsibility" shall mean, in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, a final determination required to be made by GOSR of the proposed Contractor or Vendor to whom the Contract is to be awarded in accordance with Section 2879 of the Public Authorities Law. For Determinations of Responsibility hereunder, the Lobbying Law requires that proposed Contractors and Vendors disclose findings of non-responsibility against them within the previous four years by any other governmental agency.
- xxi) "Discriminatory Jurisdiction" shall mean any other county, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the Procurement of goods and/or services by the same, or a non-governmental entity influenced by the same.
- xxii) "Disparity Study of 2010" or "Disparity Study" shall refer to the disparity study commissioned by the Empire State Development Corporation ("ESDC"), pursuant to Article 15-A, and published on April 29, 2010.
- xxiii) "Emergency Foreign Business Enterprise Contract" shall mean any Contract awarded on an emergency or critical basis or where the New York State Commissioner of the Department of Economic Development (hereinafter referred to as the "DED Commissioner") waives provisions otherwise applying to Contracts with Foreign Business Enterprises which are equal to or greater than \$1,000,000, pursuant to Article VIII of these Guidelines.

- xxiv) "Emergency Selection Contract" shall mean any Contract exempt from competitive selection due to GOSR's determination of an emergency justifying such exemption.
- xxv) "Employee" shall mean an employee of GOSR, whether full or part time.
- xxvi) "Ethics Officer" shall mean the person who GOSR appoints to such position for purposes of administering matters in connection with the State Ethics laws, or any other State law which requires the existence of such an officer to review, monitor and impose sanctions related to Procurement matters including, but not limited to, Lobbying Law Directives.
- xxvii) "Executive Team" shall mean that/those GOSR individual(s) who are part of the said team.
- xxviii) "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 sought by GOSR and which are substantially produced outside the State, and/or services sought by GOSR and which are substantially performed outside the State.
- xxix) "GOSR" shall mean the Governor's Office of Storm Recovery, a division of the Housing Trust Fund Corporation.
- xxx) "GOSR Counsel" shall mean the Chief Legal Officer for GOSR. The Chief Legal Officer for GOSR is the General Counsel.
- xxxi) "GOSR Staff" or "Staff" shall mean Employees and Officers of GOSR or any governmental agency which has assigned employees to perform services to GOSR.
- xxxii) "Governmental Procurement" shall mean the (a) public announcement, public notice, or public communication to any potential Vendor or Contractor of a determination of a need for a Procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, Request for Proposals ("RFP"), Request for Qualifications ("RFQ"), or evaluation criteria for a Procurement Contract, (b) solicitation for a Procurement Contract, (c) evaluation of a Procurement Contract, (d) award, approval, denial or disapproval of a Procurement Contract, or (e) approval or denial of an assignment, amendment, renewal or extension of a Procurement Contract, or any other material change in a Procurement Contract resulting in a financial benefit to the Offerer.
- xxxiii) "Guidelines" shall mean these Guidelines, as they may be amended from time to time.

- xxxiv) "Impermissible Contact" shall mean, for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, any Contact that is not a Designated Contact.
- xxxv) "Invitation for Bids" process or "IFB" shall mean the method for procuring goods and/or services whereby a Contract is awarded to the lowest Responsive and Responsible bidder meeting the specifications of an IFB. The award is made principally on the basis of price and price-related factors. It is usually used in connection with sealed bids.
- xxxvi) "Lessee" shall have the same meaning defined in Article 15-A.
- xxxvii) "Lobbying Law Directives" shall mean, in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, the requirements of the provisions of the Lobbying Law as set forth in Article VII of these Guidelines.
- xxxviii) "Lobbying Law" shall mean the provisions of the Legislative Law and the State Finance Law enacted on August 23, 2005, Chapter 1 of the laws of 2005 and amended on March 20, 2010, Chapter 4 of the laws of 2010.
- xxxix) "Member(s)" shall mean the Members of the Housing Trust Fund Corporation, as defined in the By-Laws of the Corporation, unless the context shall clearly indicate some other meaning, e.g. "Minority Group Members."
- xl) "Minority Owned Business Enterprise" or "MBE" shall mean any business enterprise, including a sole proprietorship, partnership or corporation, that is:
- 1) at least 51% owned by one or more Minority Group Members, or in the case of a publicly-owned business, at least 51% of the common stock or other voting interests of which is owned by one or more Minority Group Members;
 - 2) an enterprise in which the minority ownership is real, substantial and continuing;
 - 3) an enterprise in which the minority ownership has, and exercises, the authority to control independently the day-to-day business decisions of the enterprise;
 - 4) an enterprise authorized to do business in the State, independently owned

and operated, and not dominant in its field;

- 5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a Personal Net Worth that does not exceed \$3.5 million, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
 - 6) an enterprise that is a Small Business.
- xli) "Minority and/or Women-Owned Business Enterprise" or "MWBE" shall mean any business enterprise, including a sole proprietorship, partnership or corporation, that meets the qualifications for an MBE, a WBE, or both an MBE and a WBE.
- xlii) "Minority Group Member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
- 1) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
 - 2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
 - 3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
 - 4) Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian sub-continent or the Pacific Islands.
- xliii) "MWBE Director" shall mean the director of the division of minority and women's business development in the Department of Economic Development.
- xliv) "MWBE Directives" shall mean the requirements of the Corporation's MWBE Program in accordance with the provisions in § 2879 of the Public Authorities Law and Article 15-A, and as set forth in Article VI of these Guidelines.
- xlv) "MWBE Program" shall mean GOSR's Procurement procedures and policies for providing opportunity for meaningful participation of certified businesses in the performance of Corporation Contracts, as more fully described in Article VI of these Guidelines.
- xlvi) "New York State Business Enterprise" or "NYSBE" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers

for sale or lease or other form of exchange, goods which are sought by GOSR and which are substantially manufactured, produced or assembled in the State, and/or services which are sought by GOSR and which are substantially performed within the State.

- xlvi) "Offerer" shall mean, for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts GOSR about a GOSR Governmental Procurement during the Restricted Period of such GOSR Governmental Procurement, whether or not the caller has a financial interest in the outcome of the Governmental Procurement.
- xlviii) "Officer" shall mean those positions so defined in the By-Laws of the Corporation.
- xliv) "Permissible Contact" shall mean, for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, a Designated Contact.
 - l) "Permissible Subject Matter Communication" shall mean, for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, the communications set forth as such in Article VII of these Guidelines.
 - li) "Personal Net Worth" shall have the same meaning as defined in Article 15-A.
 - lii) "Personal Services" shall mean any services performed for a fee, commission, or other compensation by persons or organizations who are not providing such services as Officers, Employees or Staff of GOSR, the Corporation, Affiliated Agency, any State Agency or State Authority.
 - liii) "Preferred Source" shall mean the status afforded to certain Contractors or Vendors for purposes of Procurement under § 162 of the State Finance Law.
 - liv) "President" shall mean an Officer having such title according to the Corporation's By-Laws.
 - lv) "Price Analysis" shall mean the evaluation of a proposed price (e.g., lump sum) without analyzing any of the separate cost elements of which it is composed. Examples of proposed price analysis techniques that may be used to determine whether a proposed price is fair and reasonable include, but are not limited to: 1) comparing proposed prices received in response to a solicitation; 2) comparing

current proposed prices to prior proposed prices and Contract prices; 3) comparing proposed prices with competitive price lists, published market prices of commodities or similar indexes, discounts or rebate arrangements; 4) and comparing proposed prices with independent cost estimates.

- lvi) "Procurement" shall mean the acquisition of goods, materials and services including, but not limited to, Personal Services, by GOSR. The term goods shall include, but not be limited to, personal property, including furniture, fixtures, stationery and supplies. Services shall include, but not be limited to, the performance of legal, accounting, management, consulting, investment banking, planning, training, statistical, research, public relations, architectural, engineering, surveying or other Personal 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, Employees or Staff of GOSR, the Corporation, any Affiliated Agency, any State Agency or State Authority.
- lvii) "Procurement and Contract Guidelines" shall mean the guidelines to Procurement of goods and/or services by GOSR originally adopted by GOSR and revised from time to time, pursuant to the provisions of the Act and § 2879 of the Public Authorities Law.
- lviii) "Procurement Contract(s)" shall mean: (a) (following the definition in § 2879 of the Public Authorities Law) any written agreement for Procurement in the actual or estimated amount of \$5,000 or more, or (b) (following the definition in the Lobbying Law for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000) any Contract, including an amendment, extension, renewal, or change order to an existing Contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the Contract as it was finally awarded), for a Governmental Procurement.
- lix) "Procurement Contract Officer" shall mean the person appointed to such position, as set forth in Article XI of these Guidelines.
- lx) "Procurement Record" shall mean documentation of the decisions made and the approach taken in the Procurement process, together with other documentation with respect to Contracts and Contractors/Vendors, as set forth in these Guidelines.
- lxi) "Purchase Order(s)" shall mean written authorization to a Vendor or Contractor to deliver specified goods and/or services at a stipulated price.

- lxii) "Request for Proposal" or "RFP" shall mean the solicitation, by way of a detailed description of services and/or related work required by GOSR, of a comprehensive response from qualified potential Contractors or Vendors, indicating the manner in which each would perform the tasks involved and the compensation requested, which response would be the basis for a contractual agreement.
- lxiii) "Request for Qualification" or "RFQ" shall mean a request for a statement of qualifications, which shall contain detailed information, so as to enable potential Contractors to determine the desirability of participating in the selection process and to develop a competitive statement. An RFQ may request other information in addition to qualifications.
- lxiv) "Responsible" Contractor or Vendor is one which has the capability in all respects to perform in full the Contract requirements and the business integrity and reliability to perform the required services.
- lxv) "Responsive" bid or proposal is one that complies with all material terms and conditions of the solicitation and all material requirements of the specifications.
- lxvi) "Restricted Period" shall mean, for purposes of applying the Lobbying Law in relation to any GOSR Governmental Procurement with actual or anticipated annualized expenditures in excess of \$15,000, the period of time commencing with the earliest determination of a Procurement need by GOSR, including, but not limited to, any oral or written communication, notice, advertisement or solicitation of an RFP, invitation for bids, or any other method for soliciting a response from Contractors or Vendors intending to result in a Procurement Contract and ending with GOSR's approval of the final Contract award.
- lxvii) "SDVOB Enterprise" shall mean (for purposes of certification), at a minimum, one or more service-disabled veterans, with a service-connected disability rating of 10% or greater, must own at least 51% of the business enterprise. The service-disabled veteran owner(s) must have (and exercise) authority to control independently the day-to-day business decisions the business must qualify as a small business under the New York State program and must have a significant business presence in New York State.
- lxviii) "Section 3 Business concern" shall mean a business that can provide evidence that they meet one of the following criteria: 1) 51 % or more owned by Section 3 residents; or 2) at least 30% of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire; or 3) provides evidence, as required, of a commitment to

subcontract in excess of 25% of the dollar award of all subcontracts to business concerns that meet one of the preceding two qualifications.

- lxix) “Section 3 Resident” shall mean 1) a public housing resident; or 2) a low- or very low- income person residing in the metropolitan area or Non-metropolitan County where the Section 3 covered assistance is expended.
- lxx) "Single Source Contract" shall mean a Contract awarded without competitive procedures, as a result of a determination by GOSR approved in writing by the GOSR Counsel (Executive Team, if over \$1 million), that one firm is uniquely qualified or has a unique advantage with respect to the provision of a particular service or good, such that competitive procedures are rendered futile. Such determination shall become part of the Procurement Record and be filed with GOSR Counsel, the Procurement Department, and the Corporation Secretary.
- lxxi) "Small Business" shall have the same meaning defined in Article 15-A.
- lxxii) "Sole Source Contract" shall mean a Contract awarded without competitive procedures, as a result of a determination by GOSR approved in writing by the GOSR Counsel (Executive Team, if over \$1 million), that there is only one source for a particular service or good, such that competitive procedures are rendered futile. Such determination shall become part of the Procurement Record and be filed with GOSR Counsel, the Procurement Department, and the Corporation Secretary.
- lxxiii) "State" shall mean the State of New York.
- lxxiv) “State Agency” shall mean any State department, State University of New York (“SUNY”), City University of New York (“CUNY”), board, bureau, division, commission, committee, council, office or other governmental entity performing a governmental or proprietary function for the State, or any combination thereof as provided in subdivision two of section nine hundred fifty-one of the Executive Law, except any public authority or public benefit corporation, the Judiciary or the State Legislature.
- lxxv) “State Authority” shall mean a public authority or public benefit corporation created by or existing under the Public Authorities Law or any other law of the State of New York, with one or more of its members appointed by the Governor or who serve as members by virtue of holding a civil office of the State, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority or public benefit corporation.

lxxvi) "Vendor" shall mean a supplier of goods and/or services to the Corporation.

lxxvii) "Women-Owned Business Enterprise ("WBE") shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

- 1) at least 51% 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 51% percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
- 2) an enterprise in which the ownership interest of women is real, substantial and continuing;
- 3) an enterprise in which the women ownership has, and exercises, the authority to control independently the day-to-day business decisions of the enterprise;
- 4) an enterprise authorized to do business in the State, independently owned and operated, and not dominant in its field;
- 5) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a Personal Net Worth that does not exceed \$3.5 million, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
- 6) an enterprise that is a Small Business.

b) Construction of Language. Any other capitalized terms used herein shall have the meaning given by the By-Laws. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa.

ARTICLE III

3) USE OF PROCUREMENT CONTRACTORS AND VENDORS

- a) Threshold Criteria for Use of Procurement Contractors for Personal Services. The general responsibilities of GOSR are performed by its Employees, Officers and Staff. Accordingly, it is the policy of GOSR that before Personal Services Contractors are used, a determination be made as to whether it is more appropriate for its Employees, Officers or Staff to provide such services. Personal Services Contractors may be used when it has been determined that such service is necessary or convenient to the performance of GOSR's responsibilities; AND
- i) such service is not available from Employees, Officers or Staff; or
 - ii) the performance of such service requires that it be undertaken by someone independent of GOSR; or
 - iii) the use of Employees, Officers or Staff of GOSR for such service would not be efficient or cost effective.

Such determination shall be made by an Officer except that, in the case of Personal Services set forth below in this Article, such determination may be made by Officers as they may deem administratively appropriate. Non-Personal Services Contracts shall be entered into when GOSR requires goods, materials and non-Personal Services to function effectively and efficiently.

- b) Permissible Use of Procurement Contracts for Personal Services. Personal Services Contracts have typically been, and are anticipated to be, executed in the following areas, pursuant to a determination of appropriateness in accordance with the requirements of subparagraph a) of this Article:

Types of Services, Responsibilities and Description of Services to be Provided

The examples of Personal Services listed below in clauses (i) through (xiv) reflect anticipated Personal Services for which Procurement Contracts may be utilized and are not meant to be exhaustive; other services, in other areas, may be utilized subject to these Guidelines. These Personal Services are not required to be provided as Personal Service Contracts and may instead be performed by GOSR Officers, Employees and Staff, as appropriate.

- i) Appraisal. Provide appraisals, analyses and reports with respect to properties which are or may be the subject of loans or loans insured by the Corporation.
- ii) Architectural and Engineering. Provide professional architectural and/or

engineering services relative to the construction of properties which are or may be the subject of loans or loans insured by the Corporation.

- iii) Audit and Accounting. Provide audit services pertaining to the year-end preparation of financial statements for GOSR in conformance with generally accepted accounting principles. Perform special audits as requested.
- iv) Custody & Safekeeping Services. Provide custody and safekeeping services to secure investments and receive and evaluate underlying collateral for secured investments.
- v) Equipment Maintenance. Provide maintenance for the routine service or repair of office and data processing equipment.
- vi) Information Technology Consulting. Provide analyses and recommendations on GOSR's data processing structure and operations.
- vii) Information Technology Services. Provide report generating and printing services, computer systems hardware, programming and related services to GOSR.
- viii) Investment Banking. Provide: (a) financial advisory services, and (b) recommendations and analyses with respect to investments.
- ix) Legal. Provide legal services, opinions and analyses related to financings, real estate matters, corporate matters, litigation matters, and labor matters.
- x) Management Consulting. Provide analyses and recommendations concerning GOSR's organizational structure and the management of its operations.
- xi) Minority and Women Business Enterprise Consulting. Provide technical assistance in GOSR's effort to facilitate MWBE participation in GOSR programs.
- xii) Printing. Provide: (a) financial printing services based upon specifications and details developed by GOSR; (b) technical printing services relative to the reproduction of loan and insurance documents; (c) graphic, layout and printing services in connection with production of GOSR report(s); and (d) other printing and offset services.
- xiii) Training. Provide supervisory and other skills training to GOSR Officers, Employees, and Staff.
- xiv) Trustee Banking Services. Provide banking services to monitor the timely receipt of payments, retirement of debt, collateral evaluations, and other services as

required by the various bond resolutions.

- c) Avoiding Purchase of Unnecessary or Duplicative Items. Proposed Procurements must be reviewed to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out Procurements to obtain a more economical purchase. [2 CFR § 200.318(d)]
- d) Purchasing versus Leasing. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. [2 CFR § 200.318(d)]
- e) Federal Excess and Surplus Property. GOSR encourages the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. [2 CFR § 200.318(f)]
- f) Value Engineering. The Corporation encourages the use of value engineering clauses in Contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [2 CFR § 200.318(g)]
- g) Responsible Contractors. GOSR will make awards only to responsible Contractors possessing the ability to perform successfully under the terms and conditions of a proposed Procurement. Consideration will be given to such matters as Contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. [2 CFR § 200.318(h)]. GOSR Procurement Department is responsible for assessing vendor responsibility. The Contractors and Vendors must affirmatively demonstrate their responsibility, including the responsibility of their proposed subcontractors.
 - i) Vendor Responsibility Criteria. Criteria include, but are not limited to, financial and organizational capacity, legal authority, integrity, compliance with public policy, and record of past performance. GOSR reserves the right to consider other relevant criteria. GOSR may also emphasize the evaluation of certain criteria it deems critical based upon the nature and scope of the proposed Contract.
 - ii) Obtaining Information. Upon request of GOSR, a Contractor or Vendor shall submit a Vendor Responsibility Questionnaire (“VRQ”) for itself and for each of its subcontractors. If a Contractor or Vendor discloses adverse information, or if a due diligence report reveals such information, the Contractor or Vendor is given a specified time to provide additional information or clarification. Failure to provide

satisfactory supplemental information may be grounds for a determination of non-responsibility. GOSR reserves the right to contract with third-party integrity evaluators to perform research and provide due diligence reports on Contractors or Vendors. GOSR will require any third-party evaluator to certify that it has no actual or potential conflicts of interest with the Contractors or Vendors being evaluated.

- iii) Final Determination of Responsibility. Once the responsibility review is complete and members of the Executive Team make a final responsibility determination, the Contractor or Vendor is either awarded the Contract or informed of non-responsibility. In some cases, as a condition to rendering a Contractor or Vendor responsible, GOSR may require the entity to sign a certification acknowledging facts of concern and allowing GOSR to take reasonable measures (such as more closely monitoring the entity) to ensure the integrity of a project.
- iv) In the event GOSR determines a Contractor or Vendor to be non-responsible and the entity disagrees, appeal procedures will be implemented.

ARTICLE IV

4) SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS

It is the preference of GOSR that Vendors and Contractors shall be selected from as broad a spectrum of providers as is practicable, and that Contracts be awarded and purchases be made consistent with the quality of services, goods, or materials required, at fair and reasonable prices. In addition, it is the preference of GOSR to encourage the participation and utilization of MWBEs in accordance with the MWBE Directives, as well as SDVOBs and Section 3 businesses, all as set forth in Article VI of these Guidelines. Contracts shall be regulated in accordance with MWBE Directives and Lobbying Law Directives, and as set forth in Articles VI and VII, respectively, of these Guidelines.

It is the preference of GOSR that Procurement, unless otherwise prescribed, be by competitive process, and that the process be as competitive as practicable. It is the policy of GOSR that the selection and award of Procurement Contractors and Vendors be exempt from the competitive process only under certain exceptional circumstances as specified herein.

GOSR must use one of the following methods of procurement and/or solicitation:

- a) Procurement by Micro-purchases. Micro-purchase procedures may be used for Procurements of supplies or services that do not exceed the micro-purchase threshold of \$3,000.00, except for construction contracts subject to the Davis-Bacon Act, in which case the monetary threshold is \$2,000.00 [2 CFR §200.67, threshold set at 48 CFR Subpart 2.1 and adjusted annually]. To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if GOSR considers the price to be reasonable. [2 CFR § 200.320(a)]
- b) Procurement by Small Purchase Procedures. Small purchase procedures may be used for Procurements of services, supplies or other property that do not exceed the Simplified Acquisition Threshold (currently set at \$150,000) in the aggregate. Small purchases may be made through the use of purchase orders. Competition is sought through written price quotations. GOSR must document its receipt of price or rate quotations from an adequate number of qualified sources. A Procurement of more than \$150,000 may not be inappropriately broken up into smaller components solely to qualify for small purchase procedures. [2 CFR § 200.320(b)]
- c) Procurement by Sealed Bids (formal advertising). Bids are publicly solicited and a firm fixed price Contract (lump sum or unit price) is awarded to the lowest responsive and responsible bidder whose bid conforms to all of the material terms and conditions of the Invitation for Bids. The sealed bid method is the preferred method for procuring

construction if, i) a complete, adequate, and realistic specification or purchase description is available; ii) two or more responsible bidders are willing and able to compete effectively for the business; and iii) the procurement lends itself to a firm fixed price contract and the selection of a successful bidder can be made principally on the basis of price. [2 CFR § 200.320(c)(1)]. When sealed bids are used, the following requirements apply: i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening of the bids (for local and tribal governments, the Invitations for Bids must be publicly advertised); ii) the Invitation for Bids must define the items or services sufficiently for the bidder to properly respond, including specifications and pertinent attachments; iii) all bids will be opened at the time and place prescribed in the Invitation for Bids (for local and tribal governments, the bids must be opened publicly); iv) a firm fixed price Contract award will be made in writing to the lowest responsive and responsible bidder (where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining the lowest bid except that payment discounts will be considered only when prior experience indicates that such discounts are usually taken advantage of); and v) any or all bids may be rejected if there is a sound documented reason. [2 CFR § 200.320(c)(2)]

- i) Competitive Lowest Price Bid for Goods or Materials including IFB Process. Solicitation of at least three price bids, one of which shall be from a MWBE, if feasible, for specified Procurement, other than Personal Services (goods and materials), to be awarded to qualifying Contractors or Vendors primarily on the basis of the lowest price. Competitive bids are to be solicited when the goods and materials 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. Procurements valued at \$25,000 or more must include MWBE participation goals. Invitations for Bids are used whenever GOSR is acquiring goods or non-professional services. For services, IFB is used when the tasks in the scope of service are well defined/when there are defined units and unit costs, and the best price to deliver the service is being sought.

- d) Procurement by Competitive Proposals. This method is typically used when conditions are not appropriate for the use of sealed bids and is conducted with more than one source submitting an offer and either a fixed price or cost reimbursement type of contract is awarded. When competitive proposals are used, the following requirements apply: 1) Requests for Proposals must be publicized and identify all evaluation factors with their relative importance, and any responses received to these publicized requests must be considered to the maximum extent practicable; 2) Proposals must be solicited from an adequate number of qualified sources; 3) GOSR must have a written method for conducting technical evaluations of the proposals received and for selecting recipients; 4) Contracts

must be awarded to the responsible competitor whose proposal is most advantageous to the Program, with price and other factors considered; and 5) GOSR may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. The method where price is not used as a selection factor can only be used in procurement of A/E professional services; it cannot be used to purchase other types of services that may be performed by A/E firms. [2 CFR§ 200.320(d)]

- i) RFP (without negotiation). 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. Contract award utilizing this method is made on a most advantageous basis with consideration given to, and formal evaluation of, the characteristics, quality and price of such statement of qualifications and proposals.
- ii) RFP with Competitive Negotiations. Solicitation of qualifying potential Contractors or Vendors who have submitted materials pursuant to: (a) an RFP to further negotiate their proposals; (b) an RFP which stated that GOSR might further negotiate proposals; or (c) a determination by GOSR, subsequent to issuing an RFP, that further negotiation is appropriate or that the RFP should be revised to permit further negotiations. Further negotiation may include, but shall not be limited to, prices for Contract award made on a most advantageous basis with consideration given to, and formal evaluation of, the characteristics, quality and price of such statement of qualifications and proposals.
- iii) Mini Bid. Solicitation from a pool of eligible Contractors for specific tasks that are within the Contract scope of services. Mini Bids may be conducted when an RFP results in a multiple award for the same scope of services.
- e) Pre-qualified Panel (aka Pre-qualified List or "PQL"). GOSR may select Contractors or Vendors for any Procurement activity from a qualified panel of potential Contractors, selected on the basis of an RFP or RFQ. Such panel must have been qualified by GOSR, or by an Affiliate, State Agency or State Authority. The purpose of using a Pre-qualified Panel is to allow aspects of the competitive process to be addressed early in a phased selection process so that Vendors and Contractors on the Panel can be subsequently engaged on an accelerated or more efficient basis. Where a PQL has been established for a particular Procurement, the solicitation of bids or proposals to that PQL for such Procurement is not required to be publicly advertised. Contract award is based upon a formal evaluation of qualifications and/or the subsequent negotiation of fair and reasonable

compensation for specific services actually required. In each instance where a Panel is utilized, GOSR shall document for the Procurement Record, with respect to that Panel, which aspects of the competitive process (a) are being addressed prior to the Panel's utilization, and (b) shall be fulfilled subsequent to the establishment of the Panel. Panels shall be identified to GOSR's Procurement Contract Officer, reported in the Annual Procurement Contract Report, and reviewed and re-certified annually to GOSR's Procurement Contract Officer by the GOSR Officer in charge of administering the Panel. GOSR shall ensure that all Panels used include enough qualified sources to ensure maximum open and free competition. GOSR also will not preclude potential bidders from qualifying during the solicitation period. [2 CFR § 200.319(d)]

- i) State Agency or State Authority Contract. The Corporation can enter into Contracts with eligible Vendors, where the State has engaged in a competitive process to create a list of eligible Vendors; and the Corporation can enter into a Contract with those Vendors for such services upon comparable terms, provided the Procurement Contract Officer determines this is appropriate.
 - ii) Affiliated Agency Contract or Affiliated Agency Competitive Selection Process. Whenever an Affiliated Agency has completed a competitive process to create a list of eligible Vendors for the provision of goods and/or services, the Corporation can enter into a Contract with those Vendors for such services, but only if for the same services and upon comparable terms. Whenever an Affiliated Agency has engaged in a competitive process and that process has not yet created a list of eligible Vendors, and GOSR can complete that process to create eligible Vendors, then GOSR may do so in order to facilitate the Corporation entering into a Contract with those Vendors for such services as those Vendors are ultimately determined eligible to provide, provided the Procurement Contract Officer determines this is appropriate.
- f) Intergovernmental Agreements. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, GOSR is encouraged to enter into State and local intergovernmental agreements or inter-entity agreements, where appropriate, for procurement or use of common or shared goods and services. [2 CFR § 200.318(e)]
- i) Existing Centralized State Contracts. GOSR may carry out a Procurement using existing centralized State Contracts pursuant to which GOSR is eligible to procure goods and/or services, according to the State negotiated terms, so long as such contracts have been procured competitively.
 - ii) GSA Contract (contract of the U.S. General Services Administration or "US

GSA”). The Corporation can enter into Contracts with eligible Vendors where the US GSA has engaged in a competitive process to create such list of eligible Vendors for such goods and/or services and upon comparable terms, provided a Procurement Contract Officer determines this is appropriate.

- g) Procurement by Noncompetitive Proposals. This procurement method involves solicitation of a proposal from only one source and may be used only when one or more of the situations listed below apply. The competitive processes established in this Article shall not apply, or are hereby waived, in such situations. [2 CFR § 200.320(f)]
- i) Emergency/Public Exigency. When the public exigency or an emergency for the product and/or service requires that selection of a Contractor or Vendor cannot be delayed long enough for the use of a competitive procedure, the Executive Team of GOSR may award a Contract, as that Executive Team deems appropriate, without competitive procedures or following less than the full complement of competitive procedures which would otherwise be required. [2 CFR § 200.320(f) (2)] Circumstances requiring such immediate action must be significant, such as those affecting property of GOSR, life, health or safety. Emergencies should only arise out of unforeseen occurrence. The circumstances under which such Contract was entered into shall be set forth and maintained in the Procurement Record. Such record should address, among other things, whether such circumstances should have been foreseen. Consideration should always be given to whether a Contract entered into on an emergency basis can be supplanted by a subsequent Contract entered into through a competitive process. If the Emergency Contract exceeds \$100,000 in amount or one year in duration, the Contract must be approved by GOSR Staff authorized by the Corporation Board. The determination to issue a Contract under this method shall become part of the Procurement Record and be filed with GOSR Counsel, GOSR Procurement Department, and the Corporation Secretary.
- ii) Sole Source Contract. Sole Source Contracts may be awarded without competitive procedures, as a result of a determination by GOSR approved in writing by the GOSR Counsel (Executive Team, if over \$1 million), that there is only one source for a particular service or good such that competitive procedures are rendered futile. The determination to issue a Contract under this method shall become part of the Procurement Record and be filed with GOSR Counsel, GOSR Procurement Department, and the Corporation Secretary. [2 CFR § 200.320(f)(1)]
- iii) Single Source Contract. The item is available only from a single source. Single Source Contracts may be awarded without competitive procedures, as a result of a determination by GOSR approved in writing by the GOSR Counsel (Executive

Team, if over \$1 million), or after solicitation of a number of sources, GOSR may conclusively determine that competition is inadequate and that a Vendor is uniquely qualified. In such case, the Corporation may enter into a Contract with those Vendors for such services upon comparable terms. The determination to issue a Contract under this method shall become part of the Procurement Record and be filed with GOSR Counsel, GOSR Procurement Department, and the Corporation Secretary. [2 CFR § 200.320(f) (4)]

- iv) Authorization by HUD. HUD expressly authorizes noncompetitive proposals in response to a written request from GOSR. [2 CFR § 200.320(f)(3)]

- h) Procurement of Recovered Materials. GOSR, and its Contactors and Vendors, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires: 1) procuring only items designated in guidelines of the Environmental Protection Agency (“EPA”) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; 2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and 3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. [2 CFR § 200.322]

- i) HUD Review. Unless exempt from review, and upon request of HUD, GOSR must make available for HUD review: 1) technical specifications on proposed procurements and/or after development of a solicitation; and 2) pre-procurement review of all Procurement documents, Requests for Proposals or Invitations for Bids, technical specifications, independent cost estimates, etc. [2 CFR § 200.324(e)]

ARTICLE V

5) STANDARDS AND PRACTICES FOR COMPETITIVE SELECTION OF CONTRACTORS

It is the policy of GOSR to seek out the maximum practicable number of qualified Vendors interested in offering their goods and/or services to GOSR and to establish certain minimum standards for their selection. The following standards shall apply:

- a) Advertisement Requirements for Competitive Source Selection Methods. The solicitation of bids, proposals, offers or submissions of qualification data from Contractors and Vendors with respect to Contracts shall be made by GOSR in a manner determined by the Procurement Contract Officer, in consultation with the GOSR Counsel, to be the most cost effective method for providing reasonable competition for GOSR's Contracts. This may include advertisement 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 outreach efforts to MWBEs, SDVOBs and Section 3 businesses in accordance with the provisions of Article VI herein and the Corporation's MWBE Goal Plan ("MWBE Goal Plan"), and including providing information with respect thereto via the GOSR and/or Corporation website. In the case of Procurement Contracts in the actual or estimated amount of \$50,000 or more, or such other amount as may be amended in Article 4-C of the State's Economic Development Law, and in the establishment of Pre-qualified Panels, GOSR shall advertise all such opportunities in the "New York State Contract Reporter" or "Reporter," which is the official weekly listing of bidding opportunities for the State published by the New York State Department of Economic Development, and any other publication as required by State law, unless the Contract is determined to be a Critical Contract. Previously advertised Contract opportunities being re-bid or re-solicited within forty five (45) business days after proposals were originally due, pursuant to publication in the "Reporter," are not required to be published again.

Contracts determined to be Single Source or Sole Contracts will not be advertised in the "Reporter," but are required to be published in the "Reporter" as a "notification."

- b) Full and Open Competition. All Procurements must be conducted in a manner providing full and open competition consistent with the standards of 2 CFR § 200.319. In order to ensure objective Contractor performance and eliminate unfair competitive advantage, Contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- i) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - ii) Requiring unnecessary experience and excessive bonding;
 - iii) Noncompetitive pricing practices between firms or between affiliated companies;
 - iv) Noncompetitive Contracts to consultants that are on retainer Contracts;
 - v) Organizational conflicts of interest;
 - vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the Procurement; and
 - vii) Any arbitrary action in the Procurement process. [2 CFR § 200.319 (a)]
- c) Minimum of Three Prospective Vendors for Competitively Bid Procurement Contracts. For all Procurement Contracts required to be selected on a competitive basis, GOSR shall solicit statements of qualifications, proposals and, as appropriate, price bids from at least three prospective Vendors. In the case of Contracts not expected to exceed \$5,000, GOSR shall solicit prices, statements of qualifications, and proposals from at least three prospective Vendors unless GOSR affirmatively determines it is not appropriate. GOSR shall include at least one MWBE, if feasible, in all Procurement processes.
- d) Requirements for GOSR Procurement Transactions.

GOSR must have written procedures for procurement transactions. [2 CFR § 200.319(c)]

GOSR must ensure that all Pre-qualified Lists of persons, firms or products which are used in acquiring goods and/or services are current and include enough qualified sources to ensure maximum open and free competition. Also, GOSR must not preclude potential bidders from qualifying during the solicitation period. [2 CFR § 200.319(d)]

GOSR shall include in all bid documents provided to potential bidders an affirmative statement that it is the policy of GOSR to promote the participation of MWBEs, where possible, in the Procurement of goods and/or services. GOSR shall also require that solicitation documents set forth the expected degree of MWBE participation based, in part, on (1) the potential subcontract opportunities available in the prime Procurement Contract, and (2) the availability of MWBEs to respond competitively to the potential subcontract opportunities.

- i) Required Bid Notices to Professional and other Organizations serving MWBEs. In an effort to award Procurement Contracts to MWBEs in compliance with the Corporation's MWBE Procurement goals, as set forth in the Corporation's MWBE Goal Plan, GOSR shall provide notice of Governmental Procurements, along with any other notice required by law, to professional and other organizations serving

MWBEs that provide the types of services procured by GOSR. Professional and other organizations can include, but is not limited to, social networking websites, and magazines and/or newspapers catering to a majority of MBE and/or WBE clientele. For the purposes of these Procurement efforts and for other GOSR Procurement efforts, GOSR's Designated MWBE Officer shall establish procedures for maintaining list(s) of professional and other organizations serving MWBEs including media outlets. GOSR will make such lists available to Contractors and Vendors during the Procurement process, requiring that potential Contractors and Vendors consult and contact appropriate MWBEs to solicit their bids, in accordance with Article VI of these Guidelines.

- ii) Lobbying Law Directives. All GOSR solicitations for proposals, bid documents, and specifications for Procurement Contracts shall incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law, pursuant to the Lobbying Law Directives as described in Article VII of these Guidelines, and in the Corporation's Policy on Reporting and Maintaining Records on Lobbying Contacts (herein after referred to as the Corporation's "Lobbying Policy").
- iii) Promoted Contracts. All GOSR solicitations shall follow the directives for the participation of promoted Contracts, as is more fully described in Article VIII of these Guidelines.
- iv) Description of Technical Requirements. All GOSR solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such description must not contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product and/or service to be procured, and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a Procurement. The specific features of the named brand which must be met by offers must be clearly stated. [2 CFR § 200.319 (c)(1)]
- v) Identification of Requirements. All GOSR solicitations must identify all requirements which the Offerers must fulfill and all other factors to be used in evaluating bids or proposals. [2 CFR § 200.319 (c)(2)]

- e) Criteria for Selection. Procurement Contracts shall be entered into based on an evaluation of all proposals or bids received, considering all relevant factors, including, but not limited to terms, costs, goods and/or services offered, experience and capabilities, financial security, reputation in the field, staff availability, personnel expected to be involved, and possible conflicts of interest. Where the Procurement Contract Officer determines that there is a suitably neutral and reliable publisher or publicly available industry ratings or evaluations of products or firm qualifications, such ratings or evaluations may be allowed to substitute, in whole or in part, as determined to be appropriate, for required submission of qualifications where it is determined that requiring independent submission of such from Contractors and Vendors would be duplicative. The criteria for selection are not intended to supersede the limitations set forth in Article VIII of these Guidelines as to promoted contracts, prohibited contracts, and contracts subject to limitation.

- f) Cost or Price Analysis. GOSR must perform a cost or price analysis in connection with every Procurement action in excess of the Simplified Acquisition Threshold (currently set at \$150,000), including Contract modifications. Where a cost or price analysis is not performed, GOSR must make a determination of cost reasonableness. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, GOSR must make independent estimates before receiving bids or proposals. [2 CFR § 200.323 (a)]

- g) Profit Negotiated Separately. GOSR must negotiate profit as a separate element of the price for each Contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. [2 CFR § 200.323(b)]

- h) Compliance with Additional Procedures for Requests for Proposals and Requests for Qualifications. GOSR shall also comply with any additional procedures issued by it, from time to time, with respect to the conduct of Requests for Proposals and Requests for Qualifications.

ARTICLE VI

6) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, SERVICE-DISABLED VETERAN-OWNED BUSINESSES, SECTION 3 BUSINESSES, AND LABOR SURPLUS AREA FIRMS

GOSR and the State’s subrecipients must take all necessary affirmative steps to assure that small businesses, minority business enterprises (“MBE”), women’s business enterprises (“WBE”), and labor surplus area firms are used when possible. [2 CFR §200.321]

Affirmative steps must include:

- 1) Placing qualified Small, MBE and WBE businesses on solicitation lists;
- 2) Assuring that Small, MBE and WBE businesses are solicited whenever they are potential sources;
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Small Businesses;
- 4) Establishing delivery schedules, where requirement permit, which encourage participation by Small, MBE and WBE businesses;
- 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- 6) Requiring prime Contractors, if subcontracts are to be let, to take the affirmative steps listed above.

a) MWBE Program Establishing Procedures For MWBE Participation and Utilization In Procurements

The requirements of the Corporation’s MWBE Program, in accordance with the provisions of § 2879 of the Public Authorities Law, Article 15-A, and the directives of the Governor, and as set forth in this Article, shall be referred to as the Corporation’s MWBE Directives. GOSR shall work to increase MWBE participation and utilization through certain Procurement procedures, as described in the Corporation’s Annual MWBE Goal Plan and these Guidelines, and incorporated into GOSR’s MWBE Program. These procedures shall include: 1) the appointment of a Designated MWBE Officer(s) to oversee GOSR’s MWBE Program, as described more fully in Article XI of these Guidelines; 2) the establishment of appropriate goals for participation by MWBEs in Procurement Contracts awarded by the Corporation; and 3) the utilization of MWBEs as subcontractors and suppliers by Contractors having Procurement Contracts with the Corporation.

The Corporation has established numerical participation target goals identified in its

MWBE Goal Plan based on the findings of the Disparity Study and directives from the Governor. For each new Contract, GOSR shall gauge the appropriateness of these goals to such contract by considering the availability of MWBE Contractors to perform the Contract's anticipated scope of services, weighted against the extent those scope of services represent of the total Contract price.

In the event the projected goals cannot be achieved, GOSR will provide adequate documentation of a good faith effort to meet these goals, which will be included in the Corporation's submission of its Annual MWBE Goal Plan.

For purposes of reaching these goals, GOSR's Designated MWBE Officer shall establish procedures for maintaining list(s) of qualified and certified MWBEs that have expressed an interest in doing business with GOSR, and ensuring that such lists are updated periodically but no less than once annually, and include a firm profile that will, if possible, describe the firm's history, key personnel, and core work areas. GOSR shall also consult the list(s) of certified MWBEs maintained by the Department of Economic Development, pursuant to Article 15-A.

GOSR's Designated MWBE Officer shall establish measures and procedures to: (a) ensure that certified MWBEs be given the opportunity for maximum feasible participation in the performance of Corporation Contracts, and (b) assist in GOSR's identification of those Corporation Contracts for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of Corporation Contracts.

The Corporation shall update these MWBE participation goals annually in an effort to: 1) obtain the maximum feasible participation of MWBEs in Corporation Contracts; 2) evaluate each Contract to determine the appropriateness of the goal; and 3) examine Corporation goals to determine if their implementation will duplicate or conflict with any federal law. The Corporation shall waive the applicability of these goals to the extent of any such duplication or conflict. These MWBE goals are subject to change by industry and region pursuant to findings contained within the Disparity Study of 2010, future Disparity Studies by the ESDC, and Corporation findings evidencing relevant industry and region-specific availability or non-availability of certified MWBEs.

- i) Requirements to Conduct Procurements to Ensure Maximum Participation and Utilization by MWBEs. To enable the Corporation to achieve the maximum feasible portion of the Corporation's goals established in its MWBE Goal Plan, and to eliminate barriers to participation by MWBEs in GOSR Procurements, GOSR's MWBE Directives shall include:

- (1) Measures and Procedures. GOSR's measures and procedures shall include the following MWBE Directives:
 - (a) For competitive Procurements requiring a minimum of three bids, quotes must be obtained from at least one MBE or WBE, if feasible. If not feasible, the reasons for not doing so shall be documented in writing and included in the Procurement record. GOSR staff issuing solicitations will comply with this requirement whenever MWBEs are available for the goods and/or services being procured;
 - (b) Contractors and Vendors must be encouraged to consider partnering with MWBEs, if feasible and practicable; and
 - (c) For non-competitive Procurements, GOSR staff issuing the solicitation must strongly consider using a certified MWBE, if feasible, when the MWBE meets the requirements of the solicitation.
- (2) Designation of the Division of Minority and Women-Owned Business Development ("Division of MWBEs"). GOSR shall designate the Division of MWBEs to certify and decertify MWBEs for GOSR.
- (3) Expected Degree of MWBE Participation. GOSR shall require that each Contract solicitation set forth the expected degree of MWBE participation.
- (4) Current List of MWBEs. GOSR shall make available current listings of certified MWBEs to prospective Contractors and Vendors.
- (5) Joint Ventures and MWBE Participation Goals. The MBE portion or the WBE portion of joint ventures shall count toward meeting the Corporation's MWBE participation goals. A firm owned by a Minority Group Member who is also a woman may be certified as a MBE, a WBE, or both, but may only be counted towards either a MBE goal or a WBE goal, in regard to any Contract or any goal, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the MBE goal and the WBE goal.
- (6) Waiver of Obligations of Contractor relating to MWBE Participation. GOSR may waive obligations of the Contractor relating to MWBE participation after a showing of good faith effort to comply with the MWBE participation requirements, pursuant to Chapter 174 and Chapter 175 of the

laws of 2010 that amend § 2879 of the Public Authorities Law and Article 15-A, § 313, subdivision six, respectively, both enacted on July 15, 2010.

- (7) Verification of MWBE Participation. GOSR shall verify that MWBEs listed in a successful bid are actually participating, to the extent listed, on the project for which the bid was submitted, including verification that the procured primary Contractors are truly providing for the participation of MWBEs as described in the Procurement Contract. Participation of MWBEs shall be verified by (i) electronically monitoring and tracking the utilization, prompt payment, and unauthorized substitutions of MWBE subcontractors, and (ii) reviewing and tracking the following data submitted by the Contractor to GOSR, for each MWBE subcontract:
- (a) name(s) of the MWBE subcontractor;
 - (b) total dollar amount of the MWBE's participation;
 - (c) scope of work of the MWBE subcontractor; and
 - (d) dates of participation.
- (8) In the implementation of this section of this Article, GOSR shall:
- (a) consider, where practicable, the severing of construction projects and other bundled Contracts; however, unbundling must be conducted within the constraints of GOSR's need to ensure efficiency and limit costs, and may not cause the bid price to increase;
 - (b) consider, where practicable, establishing delivery schedules which encourage participation by MWBEs;
 - (c) implement its MWBE Program so as to enable GOSR to evaluate each Contract to determine the appropriateness of the goal, which shall include:
 - (i) increasing MWBE outreach and communication efforts, by use of the internet, to facilitate access to information and build relationships between MWBEs and potential partners; this may include requiring GOSR staff to include certified MWBEs in the solicitation lists for Procurements expected to exceed \$25,000;
 - (ii) considering the number and types of MWBEs located in the region in which the Corporation Contract is to be performed;

- (iii) considering the total dollar value of the Corporation Contract, the scope of work to be performed, and the project size and term;
- (iv) considering whether the Contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event,
 1. whether or not certified MWBEs that have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 2. whether certified MWBEs which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to GOSR's bid date;
- (v) considering whether there has been written notification to appropriate certified MWBEs that appear in the directory of certified MWBEs;
- (vi) considering whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified MWBEs.
- (d) consider compliance with the requirements of any federal law concerning opportunities for MWBEs which effectuates the purpose of this Article; and
- (e) consult the most recent disparity study, pursuant to Article 15-A.

b) Business Participation Opportunities For Service-Disabled Veteran-Owned Businesses ("SDVOB")

GOSR is committed to achieving significant SDVOB participation in its contracts and will use good faith efforts to ensure that qualified SDVOB firms are included in the selection process. This is in addition to the MWBE utilization requirements. In accordance with New York State Executive Law Article 17-B, governing NYS contracting requirements, the Corporation has established a utilization goal of 6% for SDVOB participation.

Contractors will be strongly encouraged, and expected, to the maximum extent practical and consistent with the legal requirements of the State Finance Law and the Executive Law, to use responsible and responsive SDVOBs in the fulfillment of the requirements of Procurement Contracts that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Contractors must document their good faith efforts to provide meaningful participation by SDVOBs in the performance of Procurement Contracts and agree that GOSR may withhold payment pending receipt of the required SDVOB documentation.

c) Economic Opportunities For Section 3 Residents And Businesses

In addition to the above requirements, and pursuant to Section 3 of the Housing & Urban Development Act of 1968, GOSR is committed to ensuring that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons. Contractors agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3, with respect to Contracts subject to compliance with Section 3.

Section 3 of the Housing & Urban Development Act of 1968 (as required by applicable thresholds) provides, in pertinent part, that:

- (i) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding a notice advising of the Contractor's commitments under this Section 3. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- (ii) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

- (iii) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted Contracts.
- (iv) For Contracts exceeding \$100,000, the Contractor shall submit Form HUD 60002 (Section 3 Summary Report) to GOSR on a quarterly basis, notwithstanding the annual reporting requirement set forth in that form's instructions. A copy of that form is available at http://www.hud.gov/offices/lead/library/lead/Section3_Form.pdf.

ARTICLE VII

7) REQUIRED DESIGNATIONS AND DISCLOSURES UNDER LOBBYING LAW DIRECTIVES IN THE SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS

Contacts shall be regulated in accordance with Lobbying Law Directives as follows:

For any Governmental Procurement or Contract subject to the Lobbying Law, GOSR shall notify every potential Contractor or Vendor that GOSR has a Designated Contact Officer(s) who is the only GOSR representative(s) permitted to receive Designated Contacts from the Contractors or Vendors, or their representatives, during the Restricted Period with respect to such Governmental Procurement. A Contractor or Vendor is restricted from making Contacts with GOSR, from the date of any public announcement, public notice, or public communication by GOSR to any potential Contractor or Vendor of a determination of a need for a Governmental Procurement through final award and approval of the Procurement Contract by GOSR, to anyone other than the Designated Contact Officer(s) with respect to the Governmental Procurement unless such communication is any one of the following Permissible Subject Matter Communications:

- a) the submission of written proposals in response to a Request for Proposals, invitation for bids, or any other method for soliciting a response from Offerers intending to result in a Procurement Contract;
- b) the submission of written questions, by a method set forth in a solicitation for receiving inquiries from Offerers intending to result in a Procurement Contract, when all written questions and responses are to be disseminated to all Offerers who have expressed an interest in the solicitation;
- c) participation in a demonstration, conference, or other means for exchange of information in a setting open to all potential bidders, provided for in a solicitation intending to result in a Procurement Contract;
- d) complaints by an Offerer regarding the failure of the person(s) designated by GOSR, pursuant to this section, to respond in a timely manner to authorized Offerer Contacts, made in writing to GOSR Counsel, provided that any such written complaints shall become a part of the Procurement Record;
- e) Offerers who have been tentatively awarded a Contract and are engaged in communications with GOSR solely for the purpose of negotiating the terms of the Procurement Contract after being notified of tentative award;

- f) communications between designated staff of GOSR and an Offerer to request the review of a Procurement Contract award;
- g) communications by Offerers in protests, appeals, or other review proceedings (including the apparent successful bidder and his or her representatives) before GOSR seeking a final administrative determination, or in a subsequent judicial proceeding; or
- h) communications between Offerers and governmental entities that solely address the determination of responsibility of an Offerer.

Unless the communication is any one of the above Permissible Subject Matter Communications, the Designated Contact is the only representative(s) of GOSR permitted to receive Contacts from bidders, potential Contractors or Vendors, or their representatives, during the Restricted Period with respect to a Governmental Procurement.

All solicitations for proposals, bid documents, and specifications for Procurement Contracts shall incorporate a summary of the Corporation's policies and prohibitions regarding Contacts under the Lobbying Law. All potential Contractors or Vendors must complete and return to GOSR with their proposal or bid response to a solicitation, the Affirmation of Understanding of and Agreement, and Potential Contractor or Vendor Disclosure of Prior Non-Responsibility Determinations (Lobbying Law Forms 1 and 2, respectively). Form 1 is a written affirmation of a Contractor's or Vendor's understanding of the Governmental Procurement lobbying procedures of the Corporation and Form 2 requires the potential Contractor or Vendor to certify that all information provided to GOSR with respect to the Lobbying Law is complete, true and accurate. Prior to awarding a Procurement Contract to which these provisions apply, GOSR shall make a final Determination of Responsibility. All solicitations for proposals by GOSR shall require that potential Contractors or Vendors disclose to GOSR any findings of non-responsibility against them within the previous four years by any other governmental agency and must contain certifications that the same are complete, true and accurate.

For Contractors or Vendors who fail to comply with the Corporation's Lobbying Law Directives, refer to Article VIII of these Guidelines and the Corporation's Lobbying Policy.

ARTICLE VIII

8) PROMOTED AND PROHIBITED CONTRACTS & CONTRACTS SUBJECT TO OTHER LIMITATIONS

Notwithstanding the general practices of GOSR with respect to selection of Contractors and Vendors and adherence to competitive practices, as set forth in these Guidelines, the following shall apply in order that certain Contracts, or the award thereof, may be promoted, prohibited, or subject to certain limitations.

a) Promoted Contracts. It is the policy of GOSR to promote certain Contracts as follows:

- i) Minority- and Women-owned Business Enterprises, Service-Disabled Veteran-Owned Businesses, and Section 3 Businesses. It is the policy of GOSR to promote and encourage the use of MWBEs in competition for Procurement Contracts as set forth in the Corporation's MWBE Directives, as well as use of SDVOBs and Section 3 businesses (See Article VI). Further, for Procurements anticipated to be in the amount of \$25,000 or less, and/or if the performance of any Contract requires or permits the use of a subcontractor, it is the preference of GOSR to encourage the participation of MWBEs, SDVOBs and Section 3 businesses, as set forth in these Guidelines. GOSR encourages bidders to include demonstrations that their selection promotes the use of MWBEs in bid responses (for example, through proposals for joint ventures with MWBEs). Procurements exceeding \$25,000 must include MWBE participation goals in solicitation documents.

In order to promote and assist participation by, and facilitate the awarding of a fair share of Contracts to, MWBEs, GOSR has identified the following services as those areas or types of Contracts for which MWBEs may best bid: Archival Off-Site Services, Audit/Accounting Services, Appraisal Services, Architectural/Engineering Services, Equipment Maintenance Services, Information Technology Consulting/Services, Investment Banking Services, Legal Services, Management Consulting Services, Printing Services, and Temporary Employee Services.

- ii) No In-State or Local Geographical Preferences. GOSR must conduct Procurements in a manner that prohibits the use of statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an

appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. [2 CFR § 200.319(b)]

- iii) Businesses with Anti-discriminatory Employment Practices. It is GOSR's policy to have procedures in place which will ensure, to the extent feasible, that Contractors and Vendors comply with the federal Equal Employment Opportunity Act of 1972, as amended.

For any Contractor or Vendor with fifteen (15) or more employees responding to an RFP, RFQ, IFB or other procurements or solicitations, included with such response must be a statement disclosing whether the Contractor or Vendor: 1) is currently operating under or negotiating, or has at some time in the last five years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); 2) has been, at some time in the last five years, or is currently the subject of a civil action brought against it by the EEOC; 3) has been, at some time in the last five years, or is currently, the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; and/or 4) has operated, at some time in the last five years, or is currently operating, under an order of a court to take affirmative action as a result of a civil action brought against it by EEOC.

Each Contract entered into with a Contractor or Vendor with fifteen (15) or more employees shall provide that it is an unlawful employment practice for such Contractor or Vendor to fail or refuse to hire, or to discharge, any individual, or otherwise to discriminate against any individual, with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title; and that it shall be an unlawful employment practice to print or publish, or cause to be printed or published, any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

Each Contract entered into with a Contractor or Vendor with fifteen (15) or more employees, shall require that such Contractor or Vendor: 1) make and keep all records relevant to the determinations of whether unlawful employment practices

have been or are being committed; 2) preserve such records for such periods as the EEOC shall prescribe by regulation; and 3) make such reports as the EEOC shall prescribe by regulation or order.

Each Contract entered into with a Contractor or Vendor with fifteen (15) or more employees, shall require that such Contractor or Vendor must post and keep posted in conspicuous places upon its premises, where notices to employees and applicants for employment are customarily posted, a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

GOSR's goal is to award Contracts to those Contractors and Vendors who have evidenced compliance with the laws of the State prohibiting discrimination in employment. GOSR recognizes that this goal may be achieved by awarding Procurement Contracts to those Contractors or Vendors who have demonstrated that they do not discriminate with respect to employment.

For all Personal Services Contracts over \$25,000, and for all Contracts for goods and materials over \$100,000, bidders shall submit to GOSR data regarding the race and gender of their partners, members, and employees by job category. GOSR may reject bidders whose data are not found acceptable.

- b) Prohibited Contracts and Contracts Permitted Subject to Specified Exceptions or Limitations. It is the policy of GOSR that certain Contracts be prohibited or permitted only subject to certain exceptions or limitations as follows:
 - i) Special Criteria Rule for Evaluation of Architects, Engineers and Surveyors. For purposes of this subparagraph, the term "Professional Firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering, or surveying. GOSR shall not refuse to negotiate with a Professional Firm solely because the ratio of the "allowable indirect costs" to direct labor costs, or the hourly rate in any labor category, exceeds a limitation generally set by GOSR in the determination of the reasonableness of the estimated cost of services to be rendered. Rather, GOSR should also consider the reasonableness of cost based on the total estimated cost of all services of the Professional Firm which should include, but not be limited to, all the direct labor costs for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the Professional Firm. For purposes of this subparagraph, "allowable indirect costs" are defined as those costs generally associated with overhead, which cannot be

specifically identified with a single project or Contract, and are considered reasonable and allowable under specific Contract limits or industry standards.

- ii) Contracts with Businesses which have Operations in Northern Ireland. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Corporation shall not enter into Procurement Contracts with Vendors which have operations in Northern Ireland unless the Corporation receives contractual assurance that the Contractor shall take lawful steps, in good faith, to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in §165 of the New York State Finance Law), and agrees to permit independent monitoring of its compliance with such principles.
- iii) Contracts with Foreign Business Enterprise. GOSR shall notify the New York State Commissioner of the Department of Economic Development (“DED Commissioner”) of the award of a Procurement Contract for the purchase of goods from a Foreign Business Enterprise in an amount equal to or greater than \$1,000,000, simultaneously with notifying the successful bidder therefor. The Corporation shall not thereafter enter into a Procurement Contract for said goods until at least fifteen (15) days have elapsed, except for Procurement Contracts awarded as Emergency Selection Contracts or where the DED Commissioner waives the provisions of this section. The notification to the DED Commissioner shall include the name, address, and telephone and facsimile numbers of the Foreign Business Enterprise, a brief description of the goods or services to be obtained, the proposed contract amount, the proposed contract term, and the name of the individual at the Foreign Business Enterprise, or acting on behalf of the same, who is principally responsible for the proposed Procurement Contract. The purposes of such notification is solely to 1) allow the DED Commissioner to use the information to provide notification to NYSBEs of opportunities to participate as subcontractors and suppliers on such Procurement Contracts; 2) promote and encourage the location and development of new business in the State; 3) assist NYSBEs in obtaining offset credits from foreign countries; and 4) otherwise investigate, study and undertake means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of NYSBEs, industry and commerce.
- iv) Vendors Failing to Comply with Lobbying Law Directives. The Corporation shall not enter into Contracts with Contractors or Vendors when:
 - (1) the proposed Vendor or Contractor has failed to timely disclose accurate and complete information, or otherwise cooperate with GOSR and/or the

Corporation in administering the Lobbying Law Directives; or

- (2) there has been a finding that an Offerer has knowingly and willfully violated the provisions set forth in Article VII of these Guidelines and the Corporation's Lobbying Policy. This finding shall also result in a determination of non-responsibility against the Offerer. (Violations of the Lobbying Law are expected to typically involve Contacts made to persons at GOSR other than the Designated Contact Officer(s)).

The Corporation shall not enter into Contracts in the case of either (1) or (2) of this subparagraph (iv) unless GOSR determines that the award of the Procurement Contract:

- (a) is necessary to protect public property or public health or safety; and
- (b) the Contractor or Vendor is the only source capable of supplying the required goods and/or services within the necessary time frame.

A statement describing the basis of such determination by GOSR must be made a part of the Procurement Record.

Any subsequent determination of non-responsibility due to violations of the requirements of the Lobbying Law, if such determination is separated by less than four years, shall result in the proposed Vendor or Contractor being rendered ineligible to submit a proposal, or be awarded any Procurement Contract, for a period of four years from the date of the second final determination of non-responsibility.

- v) Contracts with Former GOSR Officers and Employees. The Corporation shall not enter into Contracts which contemplate, violate, or affirmatively by their terms allow, former Officers (the term "Officer" shall refer to the term as defined in the Corporation's By-Laws) and/or Employees of GOSR to violate §73 (8) (a) of the State Ethics Law. Specifically, and not by way of limitation, the Corporation shall not enter into Contracts (except for employment contracts pursuant to which former Employees resume employee status to again work for GOSR) which provide for or permit a former Officer or Employee of GOSR, either as an individual contracting directly with the Corporation or as an officer or employee of a private business entity, to appear, practice, communicate, or otherwise render services before GOSR and/or the Corporation, or receive compensation for any such services rendered by such former Officer or Employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction:

- (1) with respect to which such Officer or Employee was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration, or over which that Employee or Officer exercised decision-making power during the performance of his or her official duties at GOSR; or
- (2) in connection with any matter before GOSR or its business for a period of two years after termination of such service or employment.

If the GOSR Counsel deems it appropriate, the preceding prohibitions may be temporarily waived provided that, prior thereto, the State Ethics Commission grants an exception in accordance with the requirements of New York Public Officers Law Section 73[8][b]. Notwithstanding the foregoing, the preceding prohibitions shall not apply when a former Officer or Employee carries out official duties as an elected official or employee of a federal, state or local government, or any agency of such government. Thus, a former Employee may appear, practice, communicate or render compensated services before GOSR if he or she is acting as an elected official or employee of a federal, state or local government or one of its agencies. This exception applies only to government officials and employees; it does not apply to paid consultants of government entities.

In addition, in determining whether or not to enter into Contracts with respect to which any former Officer or Employee of GOSR plays a role, and with respect to the ethical administration thereof, GOSR shall give due consideration to whether the execution or administration of the Contract raises the appearance of impropriety.

The Corporation shall, as it deems appropriate, include provisions in its Contracts to effect the purposes of this section.

- vi) Time and Materials Contracts. GOSR may use a time and materials type Contract only after a determination that no other Contract is suitable and if the Contract includes a ceiling price that the Contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to GOSR is the sum of: 1) the actual cost of materials; and 2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. [2 CFR § 200.318(j)(1)]

Since this formula generates an open-ended contract price, a time-and materials contract provides no positive profit incentive to the Contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the

Contractor exceeds at its own risk. Further, in awarding such a contract, GOSR must assert a high degree of oversight in order to obtain reasonable assurance that the Contractor is using efficient methods and effective cost controls. [2 CFR § 200.318 (j) (2)]

- vii) Cost Plus Percentage of Cost Contracts Prohibited. GOSR must not use the cost plus a percentage of cost and percentage of construction cost methods of contracting. [2 CFR § 200.323(d)]
- viii) Costs or Prices Based on Estimated Costs. Costs or prices based on estimated costs for Contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under 2 CFR Part 200 Subpart E-Cost Principles. GOSR may reference its own cost principles so long as they comply with the Federal cost principles. [2 CFR § 200.323 (c)]

ARTICLE IX

9) GENERAL CONTRACT PROVISIONS AND CONTINUING EVALUATION OF PROCUREMENT CONTRACTS IN EFFECT FOR LIMITED TERMS

a) General Contract Provisions. The Corporation shall include general Contract provisions in its Procurement Contracts as follows:

i) In Writing and Duly Executed. All Procurement Contracts shall be in writing and duly executed by an individual empowered to do so in accordance with the Corporation's By-Laws and, as the case may be, the provision for delegation of signing authority thereunder.

ii) Scope, Period of Performance, and Description. Procurement Contracts shall specifically provide for: 1) a scope of services indicating the nature of the work to be performed or goods to be provided; 2) a period of performance and, if time is a factor, the monitoring or reviewing of that performance by GOSR personnel; 3) any conditions generally applicable to Contracts with the Corporation; 4) any applicable provisions for insurance; and 5) where appropriate, any permitted use of supplies, facilities or personnel of GOSR. Specific scopes of work may, in addition, be assigned via use of Task Orders which are applicable to, and derive from, a specific Contract. In addition, multiple Contracts to multiple Contractors may be awarded from a single Procurement upon a determination by the Procurement Contract Officer that it is in the best interest of the Corporation or GOSR to make such awards and to thereafter allocate work among such Contractors via use of Task Orders. Acceptable methods of assigning task orders include, but are not limited to:

- (1) Assignment to, or competition via Mini Bid among, particular Contractor(s) with technical expertise particularly suited to the task order;
- (2) Assignment to a particular Contractor based on the Contractor's experience, knowledge, capacity, or past performance, provided that GOSR makes a determination of cost reasonableness for the task order;
- (3) Assignment to a particular Contractor based on GOSR's need to distribute task orders among vendors, provided that GOSR makes a determination of cost reasonableness for the task order; and
- (4) Any other method approved by the Procurement Contract Officer or as may be set forth in the RFP, provided that GOSR makes a determination of cost reasonableness for the task order.

- iii) Compensation and Payment Terms. Procurement Contracts shall also state the compensation for the goods and/or services, and the terms of payment, including the conditions for receiving payment from GOSR.
- iv) Non-collusion. Contracts shall, whenever appropriate, include Contractor Certifications that:
 - (1) The prices in the bid(s) or proposal(s) were arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition, or as to any matter relating to such prices, with any other Contractor or with any competitor;
 - (2) Unless otherwise required by law, the prices quoted in the bid(s) or proposal(s) were not knowingly disclosed by a Contractor prior to the opening of bid submissions, directly or indirectly, to any other Contractor or to any competitor; and
 - (3) No attempt was made or will be made by the Contractor to induce any other person, partnership, or corporation to submit or not submit bid(s) or proposal(s) for the purpose of restricting competition.
- v) False or Inaccurate Lobbying Law Directives Certifications. Every Governmental Procurement with an estimated annual expenditure in excess of \$15,000 shall contain:
 - (1) certifications that the representations required by the Lobbying Law Directives, if applicable, are complete, true and accurate; and
 - (2) a provision authorizing the Corporation to immediately terminate such Contract in the event that any certification made in accordance with the provisions of the Lobbying Law Directives is found to be intentionally false or intentionally inaccurate or intentionally incomplete.
- vi) Prohibitions and Violations in Contracts. In accordance with § 316-a of Article 15-A, Contracts shall include a provision expressly providing that any Contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements, as set forth in such Contract, shall be liable to the Corporation for liquidated or other appropriate damages and remedies on account of such breach. If the Corporation elects to proceed against a Contractor for breach of Contract, the Corporation shall be precluded from seeking enforcement pursuant to §316 of Article 15-A provided however, that the Corporation shall include a summary of all enforcement actions undertaken in its Annual MWBE Goal Plan, in

accordance with subdivision three of §315 of Article 15-A and Article XIII of these Guidelines. In addition, Contracts subject to compliance with HUD's regulations in 24 CFR Part 135 shall include a provision that noncompliance with these regulations related to Section 3 participation requirements may result in sanctions, termination of the Procurement Contract for default, and debarment or suspension from future HUD assisted activities. Further, Contracts will include a provision that failure to provide documentation of good faith efforts to provide meaningful participation by SDVOBs may result in the withholding of payment pending receipt of such documentation.

- vii) Bonding requirements. If HUD has not made a determination that GOSR's bonding policy and requirements adequately protect HUD's interest, then the Corporation's construction or facility improvement Contracts or subcontracts exceeding the Simplified Acquisition Threshold of \$150,000 must contain the following minimum requirements:
 - (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment, such as a bid bond, certified check, or other negotiable instrument, accompanying a bid as assurance that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within the time specified. [2 CFR § 200.325 (a)]
 - (2) A performance bond on the part of the Contractor for 100 percent of the Contract price. A "performance bond" is one executed in connection with a Contract to secure fulfillment of all the Contractor's obligations under such Contract. [2 CFR § 200.325 (b)]
 - (3) A payment bond on the part of the Contractor for 100 percent of the Contract price. A "payment bond" is one executed in connection with a Contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the Contract. [2 CFR § 200.325 (c)]
- viii) HUD requirements and regulations pertaining to copyrights and rights in data.
- ix) Notice of HUD requirements and regulations pertaining to reporting.
- x) Notice of HUD requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such Contract.

xi) Access by the Corporation, GOSR, its subrecipient(s), HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific Contract for the purpose of making audit, examination, excerpts, and transcriptions.

xii) Notice of GOSR's Record Retention policy:

The State has determined that it will apply a more stringent policy relative to the retention of documents. This more stringent requirement also ensures the State's compliance with the requirements noted in the CPD Notice issued February 11, 2014. State grantees shall be required to retain all financial records, supporting documents, statistical records, and all other pertinent records and documents (collectively, the "Records") (i) for three (3) years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) six (6) years after the closeout of a CDBG-funded project pursuant to 42 USC 12707(a) (4) and New York Civil Practice Law and Rules §213, whichever may be longer. Notwithstanding the latter, in the event that litigation, claims, audits, negotiations, or other actions that involve any of the records cited commences prior to the retention period, then all such records must be retained until completion of the actions and resolution of all issues, or for the retention period, whichever occurs later.

xiii) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

b) Required Language in Contracts Supported by Federal Funds.

(1) Generally. In all Contracts supported by, or paid with, federal funds, all terms required by any applicable federal statute, regulation, Federal Register notice, or policy shall be specifically set forth or incorporated by reference to such statute, regulation, Federal Register notice or policy.

(2) CDBG-DR Funded Contracts. All CDBG-DR funded Contracts must contain the applicable provisions described in Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is reproduced in its entirety and annexed to these Guidelines. [2 CFR § 200.326]

Below is an outline of these provisions:

- (1) Administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts greater than the simplified acquisition threshold of \$150,000)
- (2) Termination for cause and for convenience including the manner by which it will be effected and the basis for settlement. (All Contracts in excess of \$10,000)
- (3) Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). (All “federally assisted construction Contracts”)
- (4) Compliance with the Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) and as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction Contracts in excess of \$2,000). Also, Compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR Part 3)
- (5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction Contracts in excess of \$100,000 which involve the employment of mechanics or laborers)
- (6) Rights to Inventions Made Under a Contract or Agreement (37 CFR Part 401)
- (7) Compliance with Clean Air Act (42 U.S.C. 7401-7671q) and Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended. (Contracts and subgrants in excess of \$150,000)
- (8) Debarment and Suspension (Executive Orders 12549 and 12689) (Contract award must not be made to parties on the SAM exclusion list)
- (9) Compliance with Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (Contracts in excess of \$100,000)
- (10) Compliance with 2 CFR §200.322 Procurement of Recovered Materials (Purchase price exceeds \$10,000)

c) Continuing Evaluation of Procurement Contracts in Effect for Limited Terms.

- i) Limitation of Contract Terms. In order that the Corporation may enter into new Procurement Contracts as soon as might be desirable, Procurement Contracts should not commit the Corporation to continue to use Contractors for longer than needed to achieve the Contract objectives. Unless specifically permitted by a resolution of the Corporation's Members, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation, at its option, with or without cause, within a period that is less than one year into the future.
- ii) Continuing Evaluation of Procurement Contracts and Panels. Every Procurement Contract under which services are currently being performed, or goods or materials provided, shall be continually evaluated by a designated GOSR Officer, Employee or Staff. Such Officer, Employee or Staff shall review and approve all bills to be paid and continually evaluate the Contractor's performance, giving consideration to whether the further use of the Contractor's services and continuation of the Procurement Contract is desirable. Such consideration shall extend to making a determination, at least annually, of when it would be most appropriate and effective to award the Procurement Contract again through a new competitive selection process, such as a new Request for Proposals. A determination not to enter into a new competitive award process immediately can be supported, in part, by verification that services are still being provided at competitive rates, but such verification shall not be determinative of whether a new competitive process should commence. Part of the required annual review and recertification of GOSR Panels shall be a consideration of whether it would be appropriate and effective to renew the competitive selection process for Procurement Contracts with firms on the Panels, including, but not limited to, doing so through the issuance of a new Request for Qualifications to reestablish the Panel. Any determination not to enter into a new competitive award process, as a result of which a Contract would exceed a projected five (5) years without a new competitive award process being conducted, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members, as required by Article X of these Guidelines. Such affirmative concurrence shall not be required in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts, or existing GSA Contracts.

ARTICLE X

10) REQUIRED CORPORATION APPROVALS

- a) Members' Approval. All Contracts in which the compensation is expected to be in an amount of \$100,000 or more, and/or Contracts involving the performance of services in excess of one year, shall require initial approval of the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation or of GOSR. Unless specifically permitted by such resolution, Procurement Contracts shall be for a term not exceeding one year and shall be terminable by the Corporation, at its option, with or without cause, at any time.

- b) Members' Annual Review. The Corporation's Members shall, at least annually each June, review any Contract lasting more than one year as part of the approval of the Annual Report on Procurement Contracts. Contracts considered as lasting more than one year for this purpose shall include: 1) Contracts which, by their terms, provide for a period in excess of one year; and 2) Contracts where, by virtue of renewal or execution of new or subsequent Contracts without an intervening Contractor or Vendor Selection Process, continue for more than one year. Annual approval or review by the Corporation's Members shall be as follows:
 - i) Firms on Corporation panels can be brought for annual review:
 - (1) collectively, or in such combinations as are deemed appropriate, on a single annual review anniversary, or
 - (2) individually, based on the dates that Procurement Contracts first required the Corporation's Members' approval.

 - ii) Any determination not to enter into a new competitive award process, pursuant to which a Contract would exceed a projected five (5) years without a new competitive award process, shall require the affirmative concurrence of the Corporation's Members included in a resolution adopted by the Corporation's Members. Such affirmative concurrence shall not be required with respect to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts, or existing GSA Contracts.

- c) Execution of Procurement Contracts. All Procurement Contracts shall be executed by the GOSR Counsel or designee(s).

- d) Approval of Procurement Contracts by GOSR Counsel. Prior to execution, all Procurement Contracts shall be reviewed and approved by GOSR Counsel or designee(s)

as to legal sufficiency and compliance. The consideration shall include the legal form and efficacy of the Procurement Contract.

- e) Approval of Procurement Contracts for Fiscal Sufficiency. Prior to execution, all Procurement Contracts shall be reviewed and approved as to fiscal sufficiency by the Treasurer of the Corporation.

ARTICLE XI

11) ADMINISTRATION OF PROCUREMENT, RECORDS, AND RESPONSIBILITIES OF GOSR OFFICERS AND EMPLOYEES

- a) Procurement Record. The Procurement Record shall be maintained at least throughout the period of performance of the Contract and any extensions thereof, and for the time periods set forth in Article IX(a)(xii) of this Procurement Policy Manual, or until the completion of any litigation, claim, negotiation, audit, or other action involving the Procurement Record and the resolution of all issues arising from it, whichever is later. The Procurement Record shall include, but not be limited to, documentation of: 1) the determination and rationale for selecting the method of Procurement from among the available methods permissible under these Guidelines; 2) the process used to determine best value, the manner in which the selection of evaluation criteria and the evaluation process was conducted, and the evaluation criteria which, whenever possible, shall be quantifiable; and 3) Contractor or Vendor selection or rejection, the basis of award and circumstances leading to the selection of the Contractor or Vendor, including the alternatives considered, the rationale for selecting the specific Contractor or Vendor, and the basis upon which cost was determined to be reasonable. [2 CFR § 200.318(i)]. To the extent practicable, GOSR shall document all aspects of the solicitation process in advance of the initial receipt of offers. For each amendment to an existing Contract, and especially respecting those amendments which contain material changes to the contract (e.g., changes in scope, performance period, price, price ceiling, etc.), a written justification shall be created and included in the Procurement Record. Determinations of emergency with respect to Emergency Selection Contracts and Emergency Foreign Business Enterprise Contracts shall be included in the Procurement Record, as well as the determination to enter into a Sole Source or Single Source Contract.

Annual certifications of panels should be made a part of the Procurement Record.

For all Contracts in effect during the fiscal year, appropriate GOSR personnel shall complete a Performance Evaluation Questionnaire. The completed questionnaire shall be submitted to the Procurement Department after the close of the fiscal year. In the event there are negative comments regarding the performance of a Contractor, the Performance Evaluation Questionnaire will be provided to the Contractor in order to obtain a one-time written response to such comments, including any relevant information or circumstances that may have contributed to the activity that resulted in the negative comment(s). The Contractor shall respond within a specified time from the receipt of the questionnaire.

With respect to the Lobbying Law Directives, the Procurement Record shall include complete information related to: 1) written certifications by the Contractors or Vendors

affirming that the Contractor or Vendor understands the Lobbying Law Directives and has informed GOSR (on behalf of the Corporation) in writing of any prior determinations of non-responsibility over the previous four years, and that this information is complete, true and accurate; 2) Determinations of Responsibility by GOSR (on behalf of the Corporation); 3) findings of non-responsibility, whether by GOSR (on behalf of the Corporation) or by other governmental entities; 4) a record of all Contacts during the Restricted Period, including the name of the person making the Contact, as well as that person's organization, address, telephone number, place of principal employment, occupation, and whether the person/organization making the Contact was the Offerer or was retained, employed or designated by, or on behalf of, the Offerer to appear before or communicate with GOSR; 5) if applicable, a statement regarding the basis and justification for the determination by GOSR (on behalf of the Corporation) that the Corporation may enter into a Contract with a Contractor or Vendor who has previously been the subject of any determinations of non-responsibility; and 6) any determination to terminate a Contract pursuant to the Lobbying Law Directives.

The Procurement Record will document, as considered appropriate: 1) the need for the Contract; 2) required specifications; and 3) the manner in which a competitive field, with fair and equal opportunity for Contractors and Vendors (including, but not be limited to, certified MWBs) and a fair and balanced method of selection, have been ensured.

The Procurement Record shall be maintained at least throughout the period of performance of the Contract and any extensions thereof, and for at least six (6) years after the closeout of the grant with the State (see Article IX(a)(xii) for the full record of retention policy), or until the completion of any litigation, claim, negotiation, audit, or other action involving the Procurement Record and the resolution of all issues arising from it, whichever is later.

- b) Procurement Contract Officer(s). GOSR hereby designates the Chief Procurement Officer, Chief Financial Officer, and GOSR Counsel as its Procurement Contract Officers.

The Procurement Contract Officer is responsible for maintaining such portions of the Procurement Record as the Procurement Contract Officer deems appropriate, monitoring compliance with proper contracting procedures, and adherence to these Guidelines.

The Procurement Contract Officer's responsibilities shall include making determinations as to the applicability of specific Guideline provisions to a Contract as a result of Contract expenditures in the aggregate, or sequential periods of time, reaching applicable thresholds stated herein. In addition, for Contracts of less than \$500 per year, which are terminable at any time by the Corporation with less than ninety (90) days notice, the Procurement Contract Officer may determine that such Contracts shall be

considered Contracts not exceeding one year for purposes of these Guidelines.

The Procurement Contract Officer may provide guidance and counsel about proper administration of the Procurement process and Contracts but shall not be a principal directly responsible for administering any Corporation Contract. The Procurement Contract Officer should be available for counsel and guidance respecting the Procurement selection process but should not be directly involved as an actual selector of Contractors or Vendors.

The Procurement Contract Officer shall encourage and promote best Procurement practices, including but not limited to, proper and coordinated management of Contracts, proper Contractor and Vendor selection practices, and informed and careful bill approval procedures. It is generally preferable that there be a single individual designated to manage each Procurement Contract, including renewals and amendments thereto, and reporting thereon, and bill approvals (but excluding receipt of Designated Contracts), and that individuals managing different Contracts in the same area or from the same Contractors and Vendors coordinate their work.

The Procurement Contract Officer shall, from time to time, issue such reports on Procurement as shall be appropriate or required, including the Annual Procurement Report required under these Guidelines.

The Procurement Contract Officer shall notify the Office of General Services of all Contractors and Vendors who, with respect to the Lobbying Law, have been the subject of determinations of non-responsibility by GOSR (on behalf of the Corporation) or who have been debarred.

The Procurement Contract Officer should periodically review and assess the adequacy of these Guidelines and, as appropriate, recommend changes for approval.

The Procurement Contract Officer may grant temporary technical exceptions to these Guidelines for Contracts, provided that such exceptions appear in the Procurement Contract Record, and that attorneys under the supervision of the GOSR Counsel determine that the exceptions are legally appropriate.

- c) Designated Contact Officer(s). GOSR hereby designates the Chief Procurement Officer as the Designated Contact Officer for all Governmental Procurement for which such appointment is required. When necessary and appropriate, the Designated Contact Officer may designate one or more Officers, Employees, Staff or Agents of GOSR to be additional Designated Contact Officers. In accordance with the provisions of the Lobbying Law Directives, the Designated Contact Officer is intended to be the recipient of any Designated

Contacts with respect to the Governmental Procurement or Procurement Contract for which he or she has been designated. The Designated Contact Officer shall access and refer to, as appropriate, the written affirmations by Contractors and Vendors of their understanding of the Corporation's Governmental Procurement lobbying procedures, together with all disclosures provided by such Contractors or Vendors of any findings or determinations of non-responsibility against them under the Lobbying Law. Prior to the awarding of a Procurement Contract to which these provisions apply, and at any appropriate time thereafter, it shall be the Designated Contact Officer's responsibility to consult with the Ethics Officer.

- d) Designated MWBE Officer(s). GOSR shall appoint a Designated MWBE Officer(s) to oversee GOSR's MWBE Program established to promote and assist: 1) participation by certified MWBEs in GOSR Procurement opportunities and facilitation of the award of Procurement Contracts to such enterprises; 2) the utilization of certified MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Corporation; and 3) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having Procurement Contracts with the Corporation. At GOSR, the Designated MWBE Officer is the Chief Diversity Officer. The Designated MWBE Officer(s) shall be familiar with the Procurement of the types of construction, financial, legal or professional services utilized by GOSR, reports noncompliance with the MWBE goals to GOSR Counsel (who reports to HTFC senior management including HCR General Counsel), and participates in the Procurement process. The Procurement Contract Officer and the Designated Contact Officer shall consult with the Designated MBWE Officer on each Procurement subject to GOSR's MWBE Program. The Designated MWBE Officer shall consult, as necessary, with GOSR Counsel or Deputy Counsel on each Procurement subject to GOSR's MWBE Program.

- e) Ethical Administration of Contracts, Compliance with the Lobbying Law Directives: Responsibility of Officers and Employees. It shall be the responsibility of the Procurement Contract Officer, the Ethics Officer, the Designated Contact Officer(s), the MWBE Officer(s), and all GOSR Officers, Employees and Staff to ensure that Corporation Contracts are administered ethically with due regard for all State ethics laws and Lobbying Law Directives. Determinations respecting ethical contract administration shall be made by the Ethics Officer, to whom any allegations of impropriety or unethical administration shall be reported. The Ethics Officer shall also be responsible for reviewing, investigating, monitoring and imposing sanctions relating to any noncompliance with Lobbying Law Directives. The Procurement Contract Officer, Designated Contact Officer(s), and all GOSR Officers, Employees and Staff shall report to the Ethics Officer such allegations of impropriety or unethical administration of Procurement, or violations of the Lobbying Law Directives, as may come to their attention. If the Ethics Officer determines that sufficient

cause exists to believe that an allegation concerning a violation of the Lobbying Law Directives is true, the Ethics Officer shall give the respective Contractor or Vendor reasonable notice (i) that an investigation is ongoing and (ii) that an opportunity to be heard in response to the allegation exists.

Prior to the awarding of a Procurement Contract to which the provisions of the Lobbying Law Directives apply, and any time thereafter, the Ethics Officer's shall consult with the Designated Contact Officer(s) and make other appropriate inquiries to determine whether any certifications made in relation to the provisions of the Lobbying Law Directives were intentionally false or intentionally inaccurate or intentionally incomplete such that the Corporation has the right to terminate such Contract. If the Corporation terminates a Procurement Contract under these termination provisions, the Designated Contact Officer will document the basis for such action in the Procurement Record.

In order to comply with the Lobbying Law Directives, all Staff must cooperate and participate in the recording of Contacts with respect to which the Lobbying Law Directives apply. The record of a Contact shall include the name, address, telephone number, place of principal employment, and occupation of the person or organization. Staff must also inquire about, and record, whether the person or organization making the Contact was the Offerer, or was retained by the Offerer, to contact GOSR about the Procurement. Staff must report all recorded Contacts to the Procurement Contract Officer for inclusion in the Procurement Record.

If the Ethics Officer finds a knowing and willful violation of the Lobbying Law Directives by any Staff, the Ethics Officer shall report the violation to GOSR Counsel (who reports to HTFC senior management including HCR General Counsel).

It is expected that the Ethics Officer will confer, as appropriate, with GOSR Counsel with respect to allegations of unethical conduct or violations of the Lobbying Law Directives, or other violations of law. Nothing in any of the forgoing shall be construed to preclude individuals from also contacting GOSR Counsel directly with respect to any such allegations.

- f) Conflicts of Interest. GOSR must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of Contracts. Such standards of conduct must provide for disciplinary actions to be applied for violations of the standards by GOSR employees, officers or agents. [2 CFR § 200.318(c) (1)]

No employee, officer, or agent of GOSR or the State's subrecipients shall participate in the selection, award, or administration of a Contract supported by Federal funds if a conflict

of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in, or derives a tangible personal benefit from, a firm selected for award and considered for a Contract:

- i) An employee, officer or agent (collectively, “party” or “parties”),
- ii) Any member of a party’s immediate family,
- iii) A party’s partner, or
- iv) An organization which employs, or is about to employ, any of the parties above.

Neither GOSR’s, nor the State’s subrecipients’, nor the officers, employees, or agents of either GOSR or subrecipients, will solicit or accept gratuities, favors, or anything of monetary value from Contractors and Vendors, or parties to subcontracts or subagreements. However, GOSR may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. [2 CFR § 200.318 (c) (1)]

- g) Oversight of Contractor Performance. GOSR must maintain oversight to ensure that Contractors perform in accordance with the terms, conditions, and specifications of their Contracts or purchase orders. [2 CFR § 200.318(b)]
- h) Settlement of Contractual and Administrative Issues. GOSR must be responsible, and has established procedures, for the settlement of all contractual and administrative issues arising out of procurements including, but not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve GOSR of any contractual responsibilities under its Contracts. HUD will not substitute its judgment for that of GOSR unless the matter is primarily a Federal concern. GOSR will refer violations of law to the local, State, or Federal authority having proper jurisdiction. [2 CFR § 200.318(k)]

ARTICLE XII

12) PROTEST GUIDELINES

- a) Applicability. The intent and purpose of these guidelines is to set forth the procedure to be utilized when an Interested Party Protests the awarding of a Contract for which any portion of the Contract Award is funded by United States Housing and Urban Development (“HUD”) Community Development Block Grant-Disaster Recovery (“CDBG-DR”) grant funds, or is associated with the Corporation’s CDBG-DR funded programs and activities. These guidelines shall apply to all such Contracts in excess of \$150,000. There shall be no challenges to Contracts of \$150,000 or less.

All Protests must be in writing and must be filed only after a Contract Award has been made.

b) Definitions.

- i) "Appeal" refers to a review by GOSR Counsel of the written determination of the Protest.
- ii) “Contract Award” is a written determination to an Offerer indicating that its bid or offer with respect to the procurement at issue in the Protest has been accepted, and that such Contract Award is being funded in whole or in part with HUD CDBG-DR funds.
- iii) “GOSR” means the Governor’s Office of Storm Recovery, a division of HTFC (the Corporation) through which the Corporation administers HUD CDBG-DR funds.
- iv) “Interested Party” means a participant in the procurement process and those whose participation in the procurement process has been foreclosed.
- v) “Protest” means a written challenge by an Interested Party to a Contract Award.
- vi) “Protester” means an Interested Party that files a Protest with GOSR.
- vii) “Successful Bidder” means the bidder or Offerer whose bid or offer GOSR proposes to accept.

- c) No Protest of Solicitation Terms. Any concerns regarding the terms of a solicitation must be raised during the solicitation’s question-and-answer period. Protests regarding the terms of a solicitation shall not be permitted.

d) Protests Filed with GOSR for Contract Awards.

- (i) An Interested Party may file a Protest under these procedures only if the Contract at issue is in excess of \$150,000, and such Contract Award is being funded in whole or in part with HUD CDBG-DR funds, or is associated with the Corporation's CDBG-DR funded programs and activities.
- (ii) The Protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the Interested Party challenges the Contract Award. The Protest must be timely filed with GOSR's Chief Procurement Officer via electronic mail ("email") at gorsprocurement@stormrecovery.ny.gov.
- (iii) The Protest must be filed with GOSR within five (5) business days (observing all New York State holidays) of being notified of the Contract Award. Any filing deadlines may be waived by GOSR as provided in subsection (x) below.
- (iv) The Protest shall be concise and logically presented to facilitate review.
- (v) The Protest shall contain the following information:
 - (1) Name, address, telephone number(s) and email address(es) of the Protester.
 - (2) Solicitation and Contract number.
 - (3) Detailed statement of the legal and factual grounds for the Protest, to include a description of resulting prejudice to the Protester.
 - (4) Copies of relevant documents.
 - (5) Request for a ruling.
 - (6) Statement as to the form of relief requested.
 - (7) All information establishing that the Protester is an Interested Party.
 - (8) All information establishing the timeliness of the Protest.
- (vi) GOSR shall make its best efforts to resolve the Protest within thirty (30) business days after the Protest is filed.
- (vii) The Chief Procurement Officer shall review the Protest and, in consultation with legal counsel, issue a written determination addressing all issues raised by the Protest, as well as any relevant issues raised by its review of the Contract. The determination shall include findings of fact and conclusions of law on any issues in dispute. GOSR shall provide a copy of its written determination to the Protester via email. The determination shall be made part of the Procurement Record.
- (viii) GOSR may summarily deny a Protest that fails to contain specific factual or legal allegations, or where the protest raises only issues of law that have already been decided by the courts or by the Corporation or by GOSR.

- (ix) GOSR shall conduct a fact-finding hearing, if it deems necessary and appropriate, and shall determine the level of formality for any such hearing conducted.
- (x) GOSR may, in its sole discretion, waive any deadline or requirements set forth in these Guidelines or consider any written materials which are submitted in writing beyond the time periods set forth in these Guidelines.
- (xi) Nothing herein shall preclude GOSR from obtaining information relevant to the procurement from any outside source, as it deems appropriate.
- (xii) Upon receipt of a Protest, GOSR shall promptly suspend commencement and/or performance on such Contract Award until resolution of the Protest, unless commencement and/or performance is justified, in writing, for urgent and compelling reasons or is in the best interest of the Corporation or GOSR, as determined in the sole discretion of GOSR. Any determination to commence or continue performance shall not be reviewable or made the subject of appeal.

e) Appeal of Written Determination.

- i) A Protester may request an Appeal of GOSR's written determination on the Protest by GOSR Counsel.
- ii) The Appeal must be in writing, setting forth the basis on which the Protester challenges GOSR's prior written determination, and must contain: 1) specific factual and/or legal allegations that the prior written determination contains clear errors of either fact or law; or 2) must present information not previously considered that warrants reversal or modification of GOSR's prior written determination. GOSR Counsel will not consider a request for review based on repetition of arguments previously raised or new information that could have been raised at the time of the filing of the Protest. The Appeal must be timely filed with GOSR Counsel via electronic mail ("email") at gosrprocurement@stormrecovery.ny.gov.
- iii) The Appeal must be filed within five (5) business days (observing all New York State holidays) after receipt of GOSR's email containing the written determination from GOSR's Chief Procurement Officer.
- iv) The Appeal shall contain the following information:
 - (1) Name, address, telephone number(s) and email address(es) of the Protester.
 - (2) Solicitation and Contract number.
 - (3) Detailed statement of the legal and factual grounds for Appeal.

- (4) If new information is being raised, evidence that such information was not available or could not have been reasonably known or uncovered at the time the Protest was filed.
 - (5) Copies of relevant documents, including a copy of GOSR's decision on the initial Protest.
 - (6) Request for a ruling by GOSR Counsel.
 - (7) Statement as to the form of relief requested.
 - (8) All information establishing the timeliness of the Appeal.
- v) GOSR Counsel will summarily dismiss any Appeal that fails to state a valid basis for review or is untimely.
- vi) GOSR Counsel shall make his/her best efforts to resolve the Appeal within thirty (30) business days after the Appeal is filed.
- vii) GOSR Counsel shall review the Appeal and issue a written decision addressing all issues raised by the Appeal. GOSR Counsel shall provide a copy of his/her written decision to the Protester. The decision shall be made part of the Procurement Record.
- f) Miscellaneous.
- i) Notice and Filing. Any "notice" or "filing" required under these Guidelines shall be in writing and shall be effective when actually received by the party for which it was intended.
 - ii) Protest and/or Appeal Costs. Irrespective of the outcome of a Protest or Appeal, the Protester shall not be entitled to any associated costs.

ARTICLE XIII

13) PROCUREMENT REPORTS

- a) Annual Procurement Report (“Annual Report”). Within 90 days after the conclusion of the Corporation’s fiscal year, the Members of the Corporation shall approve an Annual Report summarizing Procurement activity for the period of the Annual Report. Such Annual Report will include these Guidelines, an explanation of these Guidelines, and any amendments thereto since the last Annual Report. The Annual Report describing Procurement activity shall include: (a) a listing of all executed Procurement Contracts ; (b) all Contracts entered into with NYSBEs and the subject matter and value thereof; (c) all Procurement Contracts entered into with certified MWBEs, the subject matter and value thereof, and all referrals made and all penalties imposed pursuant to §316 of Article 15-A; (d) all Contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; (e) the selection process used to select Contractors; (f) all Procurement Contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, and the basis for any such exemption; and (g) the status of existing Procurement Contracts.

For each Contract, the Annual Report shall list the following information:

- i) A description of the duties performed by the Contractor;
- ii) Contract Term dates;
- iii) Total value of the Contract;
- iv) Full name and address of the Contractor;
- v) Status of the Contract, including the amount spent or other consideration given pursuant to the Contract, during the reporting period and for the life of the Contract to date;
- vi) Whether the Contractor is a certified Minority or Women-Owned Business Enterprise; and
- vii) The total number of bids or proposals received prior to the award of the Contract.

After being approved by the Corporation’s Members, the Annual Procurement Report shall be filed with the Division of the Budget and the Department of Audit and Control, using the on-line Public Authorities Reporting Information System (“PARIS”), with copies of this report to the Department of Economic Development, the Senate Finance Committee and the Assembly Ways and Means Committee.

Copies of the Annual Procurement Report shall also be available to the public upon reasonable request, at the Corporation’s main office, and shall be available on the Corporation’s website.

- b) Annual MWBE Goal Plan (“MWBE Goal Plan”). The Corporation shall report annually to the Governor, Legislature, and the MWBE Director on various issues pertaining to Procurements relating to MWBE, in accordance with Article VI of these Guidelines and Article 15-A. Such report shall include, but not be limited to:
- i) the annual goals, identified in the Corporation’s Annual MWBE Goal Plan, for Contracts subject to the MWBE requirements;
 - ii) adequate documentation of good faith efforts to meet the Corporation goals described in the Corporation’s Annual MWBE Goal Plan, in the event that the Corporation’s projected goals cannot be achieved;
 - iii) the number of actual Contracts issued to MWBEs;
 - iv) the activities undertaken to promote and encourage Procurement opportunities for Minority Group Members and women, and increase participation by certified businesses with respect to Corporation Contracts and subcontracts;
 - v) Corporation Contracts for leases of real property to a Lessee where (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee, and (ii) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon exceeds the sum of \$100,000;
 - vi) a summary of all enforcement actions undertaken against a Contractor for breach of Contract pursuant to §316-a of Article 15-A and Article IX of these Guidelines; and
 - vii) a summary of all waivers, addressed in Article VI of these Guidelines, permitted by the Corporation during the period covered by the MWBE Report, including:
 - (1) a description of the basis of the waiver request; and
 - (2) the rationale for granting any such waiver.

ARTICLE XIV

14) MISCELLANEOUS PROVISIONS

- a) Powers of Amendment. These Guidelines may be modified or amended 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, and further provided that the Procurement Contract Officer, or his or her designee, may make non-material changes in these Guidelines. Any such changes shall be reported at the next regularly scheduled meeting of the Members of the Corporation.

- b) Supplementation with Procedural Handbooks, Practice Manuals and Other Directives. These Guidelines are intended to provide the general framework for Procurement practices with respect to the Procurement of goods and/or services funded, in whole or in part, with the U.S. Department of Housing and Urban Development's ("HUD") Community Development Block Grant-Disaster Recovery ("CDBG-DR") funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2). These Guidelines establish minimum standards only and are not intended to preclude supplementation with more specific procedural handbooks, practice manuals, or other directives and guidance as may be issued from time to time, including, but not limited to, SOP's (Standard Operating Procedure) for RFP and RFQ procedures. Further, the existence of these Guidelines does not prevent or supplant the issuance of additional GOSR or Corporation guidelines or regulations to deal specifically with Lobbying Law Directives and/or MWBE Directives, if appropriate.

- c) No Recourse under these Guidelines. No provision of these Guidelines shall be the basis for any claim, based upon these Guidelines, against any Member, Officer, Employee or Staff of the Corporation or GOSR, or any agent of the Corporation or GOSR, when acting pursuant to these Guidelines or pursuant to an authorization to execute Contracts on behalf of the Corporation or GOSR, or the Corporation or GOSR itself.

- d) Effect upon Existing Contracts of the Corporation. These Guidelines shall not abrogate the rights and duties of Corporation Contracts executed prior to the effective date of these Guidelines.

- e) Provisions Required by Law. These Guidelines are hereby deemed to include any provision required by law to be included herein.

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of December 30, 2016

[Title 2](#) → [Subtitle A](#) → [Chapter II](#) → [Part 200](#) → [Subpart F](#) → Appendix

Title 2: Grants and Agreements

[PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES,
AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS](#)
[Subpart F—Audit Requirements](#)

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal

program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of

experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.
[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]