PROCUREMENT

NYS Storm Recovery Policies

Andrew M. Cuomo, Governor of New York State
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Housing Trust Fund Corporation
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The procedures stated in this manual are current as of July 9, 2014. This manual represents the current version of the Governor's Office of Storm Recovery (GOSR) 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, as well as its Human Resources Policy Manual 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 DIRECTOR OF OPERATIONS (COO) and our office of Human Resources to ensure that you have the latest version of GOSR's policies and

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PROCUREMENT
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

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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's Executive Directors** at least annually.

b. Applicability. These Guidelines apply **only** to the Procurement by the Corporation of goods 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)..**

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 Affiliate 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 XII 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 **GOSR** 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 (via the Corporation)**, 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 **(on behalf of GOSR under these guidelines)** undertakes Procurement, and shall include, but not be limited to, accepted Purchase Orders and Procurement Contracts. Contracts in excess of $25,000 for goods 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 **GOSR's** MWBE Directives. Additionally, pursuant to Article 15-A, solely for the purpose of providing the opportunity for meaningful participation for certified MWBEs in the performance of **GOSR** Contracts, **GOSR** Contracts shall include leases of real property by **GOSR (on behalf of The Corporation under these guidelines)** 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 or services to the Corporation pursuant to a Contract **(on behalf of GOSR under these guidelines)**.

xiii. "Corporation" shall mean the Housing Trust Fund Corporation.

xiv. "Counsel" shall mean the chief legal officer as so defined in the By-Laws of the Corporation.

xv. "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 **GOSR** that outweighs the benefits of advertisement in the "New York State Contract Reporter," as determined by the **Executive Director 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 Contacts.

xvi. "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.

xvii. "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.

xviii. "Designated MWBE Officer(s)" shall mean the senior staff **GOSR** appoints to such position to oversee **GOSR's** MWBE Program, as set forth in Articles VI and XI of these Guidelines.

xix. "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.

xx. "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 or services by the same, or a non-governmental entity influenced by the same.

xxi. "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.

xxii. "Emergency Foreign Business Enterprise Contract" shall mean any Contract awarded on an emergency or critical basis or where the New York State Commissioner 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.

xxiii. "Emergency Selection Contract" shall mean any Contract exempt from competitive selection due to **GOSR's** determination of an emergency justifying such exemption.

xxiv. "Employee" shall mean an employee of **GOSR**, whether full or part time.

xxv. "Ethics Officer" shall mean the person **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.

xxvi. "Executive Director(s)" shall mean that GOSR individual(s) given such title.

xxvii. "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, or services sought **GOSR**, and which are substantially performed outside the State.

xxviii. "GOSR" shall mean the Governor's Office of Storm Recovery, a division of the Housing Trust Fund Corporation.

xxix. "GOSR Counsel" shall mean the chief legal officer for GOSR.

xxx. "Governmental Procurement" shall mean the (a) public announcement, public notice, or public communication to any potential Vendor 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"), 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 the Procurement Contract resulting in a financial benefit to the Offerer.

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. "Guidelines" shall mean these Guidelines, as they may be amended from time to time.

xxxiii. "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.

xxxiv. "Invitation for Bid" process or "IFB" shall mean the solicitation, by way of a statement of qualification, proposal and/or, as appropriate, price bid

from at least three prospective Contractors or Vendors, one of which shall be from a MWBE, if possible, for Procurements not expected to exceed $50,000. Procurements anticipated to exceed $25,000 or more must include MWBE participation goals.

xxxv. “Lessee" shall have the same meaning defined in Article 15-A.

xxxvi. "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, and as set forth in Article VII of these Guidelines.

xxxvii. "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.

xxxviii. "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.”

xxxix. "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.

xl. “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.

xli. "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.

xlii. "MWBE Director" shall mean the director of the division of minority and women’s business development in the Department of Economic Development.

xliii. "MWBE Directives" shall mean the requirements of **GOSR’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.

xliv. "MWBE Program" shall mean **GOSR’s** Procurement procedures and policies for providing opportunity for meaningful participation of certified businesses in the performance of **GOSR** Contracts, as more fully described in Article VI of these Guidelines.

xlv. "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, 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.

xlvii. "Officer" shall mean those positions so defined in the By-Laws of the Corporation.

xlviii. "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.

xlix. "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.

l. "Personal Net Worth" shall have the same meaning as defined in Article 15-A.

li. “Personal Services" shall mean any services performed for fee, commission or other compensation by persons or organizations who are not providing such services as Officers, Employees or Staff of **GOSR,** the Corporation, Affiliated Agency, any State Agency or State Authority.

lii. "Preferred Source" shall mean the status afforded to certain contractors or vendors for purposes of Procurement under § 162 of the State Finance Law.

liii. "President" shall mean an Officer having such title according to the Corporation’s By-Laws.

liv. "Procurement" shall mean the acquisition of goods, materials and services including, but not limited to, Personal Services, by the Corporation **(on behalf of GOSR under these guidelines)**. 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 service as Officers, Employees or Staff of **GOSR,** the Corporation, any Affiliated Agency, any State Agency or State Authority.

lv. "Procurement and Contract Guidelines" shall mean the guidelines to Procurement of goods or services by **GOSR (via the Corporation)**, originally adopted by the Corporation's Members, and revised from time to time, pursuant to the provisions of its Act and § 2879 of the Public Authorities Law.

lvi. "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.

lvii. "Procurement Contract Officer" shall mean the person appointed to such position, as set forth in Article XI of these Guidelines.

lviii. "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.

lix. "Purchase Order(s)" shall mean written authorization to a Vendor to deliver specified goods or services at a stipulated price.

lx. "Request for Proposal" or "RFP" shall mean the solicitation, by way of a detailed description of services and/or related work required by **GOSR (via the Corporation)**, 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.

lxi. "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.

lxii. "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 solicitation of proposals, or any other method for soliciting a response from contractors or vendors intending to result in a Procurement Contract with **GOSR** and ending with **GOSR's** approval of the final Contract award.

lxiii. "Single Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the Corporation **(on behalf of GOSR under these guidelines)**, approved in writing by the **Executive Director of GOSR**, 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 the **GOSR's** Counsel and the Procurement Department.

lxiv. "Small Business" shall have the same meaning defined in Article 15-A.

lxv. "Sole Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the Corporation **(on behalf of GOSR under these guidelines)**, approved in writing by the **Executive Director of GOSR**, 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's** Counsel and Secretary.

lxvi. "State" shall mean the State of New York.

lxvii. "State Agency" shall mean any state department, state university of New York, city university of New York, 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.

lxviii. "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.

lxix. "Vendor" shall mean a supplier of goods or services to the Corporation **(on behalf of GOSR under these guidelines)**.

lxx. "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 are used, it first be considered whether it would be more appropriate for its Employees, Officers or Staff to provide such services. Personal Services Contractors may be used when it has been determined:

(l) that such service is necessary or convenient to the performance of **GOSR's** responsibilities; and

(2) that such service is not available from Employees, Officers or Staff; or

(3) that the performance of such service requires it be undertaken by someone independent of **GOSR**; or

(4) that 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.

a.. Areas Requiring 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.

i. Appraisal. Provide appraisals, analyses and reports with respect to properties which are or may be the subject of **GOSR** loans or loans insured by the Corporation **(on behalf of GOSR under these guidelines)**.

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 **GOSR** loans, or loans insured by **GOSR**.

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 **GOSR** investments and receive and evaluate underlying collateral for secured **GOSR** 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 **GOSR** 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.

xv. Others. The examples of Personal Services listed above in clauses (i) through (xiv) reflect anticipated Personal Services 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 Services Contracts, and may sometimes be performed by **GOSR** Officers, Employees and Staff.

a. **Avoiding Purchase of Unnecessary or Duplicative Items. Proposed Procurements shall 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. [24 CFR § 85.36(b)(4)]**

b. 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. [24 CFR § 85.36(b)(4)]

c. 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. [24 CFR § 85.36(b)(6)]

ARTICLE IV

4. SELECTION OF PROCUREMENT VENDORS AND CONTRACTORS

a. Preferred Selection Criteria and Approach. 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, or goods and 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 set forth in Article VI of these Guidelines. Contacts 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.

b. Selection on a Competitive Basis. It is the preference of **GOSR** that Procurement, unless otherwise prescribed, be by competitive process, and that the process be as competitive as is possible. It is the policy of **GOSR** that the selection of Procurement Contractors and Vendors be exempt from the competitive process only under certain exceptional circumstances as specified herein. As appropriate, the following competitive processes may be used in order to select Contractors and Vendors:

i. Small Purchase Procedures. Small purchase procedures may be used for Procurements of $150,000 or less in the aggregate. Small purchases are made through the use of purchase orders. Competition is sought through written price quotations. GOSR shall document its receipt of an adequate number of price or rate quotations from 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. [24 CFR § 85.36(d)(1)]

ii. Competitive Lowest Price Bid for Goods or Materials. 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. **[24 CFR § 85.36(d)(2)]**

iii. Invitation for Bid ("IFB") process for Contracts Not Expected to Exceed $50,000. If the **Executive Director of GOSR** determines it is appropriate, **GOSR** may commence a Procurement process by soliciting statements of qualifications, proposals and, as appropriate, price bids from at least three prospective Contractors or Vendors, one of which shall be from a MWBE, if feasible, for Procurements not expected to exceed $50,000.

Procurements valued at $25,000 or more must include MWBE participation goals. Award of a Contract within this method is made on **a most advantageous** basis **considering in the course** of an evaluation the characteristics, quality and **price** of such statements of qualifications and proposals. **[24 CFR § 85.36(d)(1)]**

iv. 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. Award of a Contract within this method is made on **a most advantageous** basis **considering in the course** of a formal evaluation the characteristics, quality and **price** of such **statement of qualifications and** proposals. **[24 CFR § 85.36(d)(3)]**

v. 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 **considering in the course** of a formal evaluation the characteristics, quality and **price** of such **statement of qualifications and** proposals. **[24 CFR § 85.36(d)(3)]**

vi. Pre-qualified Panel. **GOSR** may select Contractors 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. This is so that Vendors and Contractors on the panel can be subsequently engaged on an accelerated or more efficient basis. In accordance therewith, panels shall be administered so that the 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. At such time as 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 recertified 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. [24 CFR § 85.36(c)(4)]

vii. State Contract. The Corporation can enter into Contracts **(on behalf of GOSR under these guidelines)** with eligible Vendors, where the State has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services upon comparable terms, provided the Procurement Contract Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

viii Existing Centralized State Contracts. **GOSR** may carry out a Procurement **(via the Corporation)** using existing centralized State Contracts pursuant to which **GOSR (via the Corporation)** is eligible to procure goods and/or services, according to the State negotiated terms**, so long as such contracts have been procured competitively in a manner that is commensurate with 24 CFR § 85.36**.

ix. GSA Contract (or contract of the U.S. General Services Administration or US GSA). The Corporation can enter into Contracts **(on behalf of GOSR under these guidelines)** with eligible Vendors, where the US GSA has engaged in a competitive process to create eligible Vendors; and the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services upon comparable terms, provided an Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

x. Affiliated Agency Contract or Affiliated Agency Competitive Selection Process. Whenever an Affiliated Agency has completed a competitive process to create a list of Vendors eligible for the provision of goods or services, the Corporation can enter into a Contract **(on behalf of GOSR under these guidelines)** with those Vendors for such services, 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; **GOSR** may do so in order to enter into a Contract with those Vendors **(via the Corporation)** for such services for which Vendors are ultimately determined eligible to provide, provided the Procurement Contract Officer determines this is appropriate. **[24 CFR § 85.36(b)(5)]**

c. Selection on a Non-Competitive Basis. The competitive processes established above in this Article shall not apply or are hereby waived **only** in the following situations:

i. Emergency. When an emergency requires that selection of a Contractor or Vendor cannot be delayed long enough for the use of a competitive procedure because immediate action is required, the **Executive Director of GOSR** may award a Contract **(via the Corporation)**, as that **Executive Director** deems appropriate, without competitive procedures or following less than the full complement of competitive procedures which would otherwise be required. Circumstances requiring such immediate action must be significant, such as those affecting property of **GOSR**, life, health or safety. Emergencies should only arise out unforeseen occurrence. The circumstances under which such Contract was entered into shall be set forth and maintained in the Procurement Record. Such record should, among other things, address 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 presented **to GOSR Staff authorized by the Corporation Board** for approval. The determination to issue a contract under this method shall become part of the Procurement Record and be filed with **GOSR's** Counsel and Secretary. **[24 CFR § 85.36(d)(4)(i)(B)]**

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 **Executive Director of GOSR**. For purposes of determining whether a Contract is a Sole Source Contract, **GOSR** shall identify if 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's** Counsel and Secretary. **[24 CFR § 85.36(d)(4)(i)(A)]**

iii. Single Source Contract. Whenever **GOSR** considers it appropriate, **after solicitation of a number of sources, GOSR** may conclusively determin**e that competition is inadequate and that** by relying upon the determination of the State or an Affiliated Agency that a Vendor is uniquely qualified, if the Corporation **(on behalf of GOSR under these guidelines)** seeks to enter into a Contract or 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's** Counsel and Secretary. **[24 CFR § 85.36(d)(4)(i)(D)]**

iv. <u>Authorization by HUD</u>. HUD authorizes noncompetitive proposals. [24 CFR § 85.36(d)(4)(i)(C)]

For all Procurements that proceed on a non-competitive basis, cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required. [24 CFR § 85.36(d)(4)(ii)]

a. <u>Responsible Contractors</u>. GOSR will make awards (via Corporation) 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. [24 CFR § 85.36(b)(8)]

b. <u>HUD Review</u>. Upon request of HUD, GOSR shall make available for HUD review all Procurement documents, such as requests for proposals or invitations for bids, technical specifications, independent cost estimates, etc. [24 CFR § 85.36(g)(1), (2)]

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 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 Vendors with respect to Contracts shall be made by **GOSR** in a manner determined by the Procurement Contract Officer in consultation with the **Executive Director of GOSR**, to be the most cost effective for providing reasonable competition for **GOSR's** Contracts **(via the Corporation)**. 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 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 Corporation's website. In addition, 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," 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. Already 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 will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR § 85.36. 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 awards 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. [24 CFR § 85.36(c)(1)]

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** Bid Documents. **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 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, 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 qualified MWBEs. In addition, **GOSR** shall establish procedures for maintaining lists to include media outlets and other organizations serving MWBEs.

GOSR will provide such list(s) to Contractors in the Procurement process, requiring that potential Contractors shall 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 Corporation solicitations (on behalf of GOSR under these guidelines) shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive Procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall 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 Offerers shall be clearly stated. [24 CFR § 85.36(c)(3)]**

v. **Identification of Requirements. All Corporation solicitations (on behalf of GOSR under these guidelines) shall identify all requirements which the Offerers must fulfill and all other factors to be used in evaluating bids or proposals. [24 CFR § 85.36(c)(3)]**

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 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 Vendors would be duplicative. The criterion for selection are not intended to supersede the fact that the Corporation has certain promoted Contracts and certain prohibited Contracts and Contracts subject to limitations, as set forth in Article VIII of these Guidelines.

f. **Cost or Price Analysis. GOSR will perform a cost or price analysis in connection with every Procurement action, including Contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular Procurement situation, but as a starting point, GOSR will make independent estimates before receiving bids or proposals. A cost analysis must be performed when the Offerer is required to submit the elements of its estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for Sole Source Procurements, including Contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed Contract price. [24 CFR § 85.36(f)(1)]**

g. **Profit Negotiated Separately. GOSR will 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 will 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. [24 CFR § 85.36(f)(2)]**

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

6.1. MWBE PROGRAM ESTABLISHING PROCEDURES FOR MWBE PARTICIPATION AND UTILIZATION IN CORPORATION PROCUREMENTS **[24 CFR § 85.36(e)]**

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 in **GOSR's** MWBE Program. These procedures shall include (i) the appointment of a Designated MWBE Officer(s) to oversee **GOSR's** MWBE Program, as described more fully in Article XI of these Guidelines, (ii) the establishment of appropriate goals for participation by MWBEs in Procurement Contracts awarded by **the Corporation (on behalf of GOSR under these guidelines)** and (iii) the utilization of MWBEs as subcontractors and suppliers by Contractors having Procurement Contracts with the Corporation **(on behalf of GOSR under these guidelines)**.

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 the Procurement goals by considering the availability of Contractors to perform the Contract's anticipated scope of services, weighted by the extent those scope of services represent 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 **to be included** in **the Corporation's** submission of its Annual MWBE Goal Plan.

GOSR's Designated MWBE Officer, for the purposes of reaching these goals, 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.

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 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 of certified MWBEs.

a. 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, that eliminates barriers to participation by MWBEs in Corporation Procurements, **GOSR's** MWBE Directives shall include:

i. Measures and Procedures. **GOSR's** Designated MWBE Officer shall establish measures and procedures to: (a) ensure that certified MWBEs shall be given the opportunity for maximum feasible participation in the performance of **GOSR's** Contracts **(via the Corporation)**; and (b) to assist in **GOSR's** identification of those **GOSR's** Contracts **(via the Corporation)** for which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of **GOSR's** Contracts **(via the Corporation)** so as to facilitate the Corporation's achievement of the maximum feasible portion of the goals for Corporation Contracts **(inclusive of those procured on behalf of GOSR under these guidelines)** to such businesses. **GOSR's** measures and procedures shall include the following MWBE Directives:

(1) 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 goods or services being procured;

(2) Encouraging Contractors to consider partnering with MWBEs, if feasible and practicable; and

(3) For non-competitive Procurements, **GOSR** staff issuing the solicitation shall strongly consider using a certified MWBE, if feasible, and if the MWBE meets the needs of the Corporation.

ii. 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**.

iii. Expected Degree of MWBE Participation. **GOSR** shall require that each Contract solicitation set forth the expected degree of MWBE participation, as set forth in Article VI of these Guidelines.

iv. Current List of MWBEs. **GOSR** shall provide a current list of certified MWBEs to each prospective Contractor, as set forth in Article VI of these Guidelines.

v. 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, set by the Corporation, 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.

vi. 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.

vii. Verification of MWBE Participation. **GOSR** shall verify that MWBEs listed in a successful bid are actually participating to the extent listed in 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) the provision of the following data, by the Contractor to **GOSR**, for each MWBE subcontract:

(1) name(s) of the MWBE subcontractor;

(2) total dollar amount of the MWBE's participation;

(3) scope of work of the MWBE subcontractor; and

(4) dates of participation.

viii. In the implementation of this section of this Article, **GOSR** shall:

(1) consider, where practicable, the severability 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;

(2) **consider, where practicable, establishing delivery schedules that encourage participation by MWBEs;**

(3) implement its MWBE Program to enable **GOSR** to evaluate each Contract to determine the appropriateness of the goal, as set forth in this Article, which shall include:

(a) increasing MWBE outreach and communication efforts by use of the internet to facilitate access to information and build relationships between MWBEs and potential partners by:

(i) Requiring GOSR staff to include certified MWBEs in the solicitation lists for Procurements expected to exceed $25,000;

(b) consider the number and types of MWBEs located in the region in which the Corporation Contract **(on behalf of GOSR under these guidelines)** is to be performed;

(c) consider the total dollar value of the Corporation Contract **(on behalf of GOSR under these guidelines)**, the scope of work to be performed, and the project size and term;

(d) consider whether the Contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event,

(i) 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

(ii) 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;

(e) consider whether there has been written notification to appropriate certified MWBEs that appear in the directory of certified MWBEs;

(f) consider 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.

(4) consider compliance with the requirements of any federal law concerning opportunities for MWBEs which effectuates the purpose of this Article; and

(5) consult the most recent disparity study, pursuant to Article 15-A.

6.2 <u>SMALL BUSINESS UTILIZATION</u> [24 CFR § 85.36(e)]

GOSR and the State's subrecipients will take all necessary affirmative steps to assure that Small Businesses are used when possible.

Affirmative steps shall include:

a. Placing qualified Small Businesses on solicitation lists;

b. Assuring that Small Businesses are solicited whenever they are potential sources;

c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Small Businesses;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by Small Businesses;

e. Using the services and assistance of the Small Business Administration; and

f. Requiring the prime Contractor, if subcontracts are to be let, to take the affirmative steps listed above.

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 Lobbing 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 (via the Corporation)** from the date of any public announcement, public notice, or public communication by **GOSR** to any potential Vendor of a determination of a need for a Governmental Procurement through final award and approval of the Procurement Contract by **GOSR (via the Corporation)** 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 or persons designated by **GOSR**, pursuant to this section, to respond in a timely manner to authorized Offerer Contacts, made in writing to the **GOSR's 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** conducting the Governmental Procurement 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 entity 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 Corporation Governmental Procurement **(on behalf of GOSR under these guidelines)**.

All Corporation solicitations **(on behalf of GOSR under these guidelines)** 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 Corporation solicitation **(on behalf of GOSR under these guidelines)**, 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 in these Guidelines, the following shall apply or be given weight 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. It is the policy of **GOSR** to promote and encourage the use of MWBEs in competition for Procurement Contracts. Furthermore, for Procurements anticipated to be in the amount of $25,000 or less, 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, 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 will conduct Procurements (via the Corporation) in a manner that prohibits the use of statutorily or administratively imposed in-State or local 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 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. [24 CFR § 85.36(c)(2)]**

iii. Businesses with Anti-discriminatory Employment Practices. It is **GOSR's** policy to have procedures in place that will ensure, to the extent of **GOSR's** ability, 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 type of invitation for bids, included with such response must be a statement disclosing whether the Contractor or Vendor 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"); 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; 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; 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.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, 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, or 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 he or she 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.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, that such Contractor or Vendor shall (1) make and keep such 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 therefrom as the EEOC shall prescribe by

regulation or order.

The Corporation shall state in each Contract **(on behalf of GOSR under these guidelines)** entered into with a Contractor or Vendor with fifteen (15) or more employees, 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. Bidders whose data are not found acceptable to **GOSR** shall be rejected.

b. Prohibited Contracts and Contracts Permitted Subject to Specified Exceptions or Limitations. It is the policy of **GOSR** that certain Contracts **(via the Corporation)** 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 of the Professional Firm exceeds a limitation generally set by **GOSR** in the determination of the reasonableness of the estimated cost of services to be rendered by the Professional Firm, but rather **GOSR** should also consider the reasonableness of cost based on the total estimated cost of the service of the Professional Firm which should include, among other things, all the direct labor costs of the Professional Firm 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" of a Professional Firm 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 or allowability limits.

ii. Contracts with Businesses with Operations in Northern Ireland. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Corporation **(on behalf of GOSR under these guidelines)** shall not enter into Procurement Contracts with Vendors who have operations in Northern Ireland unless the Corporation **(on behalf of GOSR under these guidelines)** 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 Economic Development ("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 **(on behalf of GOSR under these guidelines)** for said goods until at least fifteen (15) days have elapsed, except for Procurement Contracts awarded as Emergency Selection Contracts or where the Commissioner waives the provisions of this section. The notification to the 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 pursuant to the proposed Procurement Contract, the amount of the proposed Procurement Contract, the term of the proposed Procurement Contract, and the name of the individual at the Foreign Business Enterprise or acting on behalf of the same who is principally responsible for the proposed Procurement Contract. *(The purpose of such notification is solely (i) to allow the Commissioner to use the information to provide notification to NYSBEs of opportunities to participate as subcontractors and suppliers on such Procurement Contracts (ii) to promote and encourage the location and development of new business in the State, (iii) to assist NYSBEs in obtaining offset credits from foreign countries; and (iv) to 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 **(on behalf of GOSR under these guidelines)** with Contractors or Vendors when:

(1) proposed Vendor or Contractor has failed to timely disclose accurate and complete information or otherwise cooperate with 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 **(on behalf of GOSR under these guidelines)** in the case of either (1) or (2) of this subparagraph (v), section (b) of this Article, unless **GOSR** determines that the award of the Procurement Contract:

(a) is necessary to protect public property or public health or safety; and

(b) that the Contractor or Vendor is the only source capable of supplying the required goods or services within the necessary time frame.

In order for **GOSR** determinations in (1) and (2) (a) and (b) above to be effective as exceptions, the above required findings, including 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 on or be awarded any Procurement Contract for a period of four years from the date of the second final determination of non-responsibility.

<u>Contracts with Former **GOSR** Officers and Employees</u>. The Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** which contemplate, violate or affirmatively, by their terms, allow former Officers (the term "Officer" as used in this subsection b.vi. of Article XIII of these Guidelines, shall refer to "Officer" as defined in the Corporation's By-Laws) and Employees of **GOSR** to violate §73 (8) (a) of the State Ethics Law. Specifically, and not by way of limitation, (except for employment contracts pursuant to which former Employees resume employee status to again work directly for **GOSR**), the Corporation shall not enter into Contracts **(on behalf of GOSR under these guidelines)** which provide for or permit a former Officer or

Employee of **GOSR**, either as an individual contracting directly with the Corporation **(on behalf of GOSR under these guidelines)** or as an officer or employee of a private business entity, to appear, practice, communicate or otherwise render services before the Corporation **(on behalf of GOSR under these guidelines)** 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 **Executive Director of GOSR** 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 an appearance of impropriety.

The Corporation **(on behalf of GOSR under these guidelines)** shall, as it deems appropriate, include provisions in its Contracts to effect the purposes of this section.

vi. <u>Time and Materials Contracts</u>. The Corporation (on behalf of GOSR under these guidelines) will use time and material type Contracts only

(1) After a determination that no other Contract is suitable; and

(2) If the Contract includes a ceiling price that the Contractor exceeds at its own risk. [24 CFR § 85.36(b)(10)]

vii. <u>Cost Plus Percentage of Cost Contracts Prohibited</u>. The Corporation (on behalf of GOSR under these guidelines) shall not use the cost plus a percentage of cost and percentage of construction cost methods of contracting. [24 CFR § 85.36(f)(4)]

ARTICLE IX

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

a. General Contract Provisions. The Corporation **(on behalf of GOSR under these guidelines)** 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 shall, at a minimum, be 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 and Description. Procurement Contracts shall specifically provide for a scope of services indicating the nature of the work to be performed or goods to be provided, and for the time for performance, if time is a factor, the monitoring or reviewing of that performance by personnel of **GOSR**, any conditions generally applicable to Contracts with the Corporation **(on behalf of GOSR under these guidelines)**, any applicable provisions for insurance, and, where appropriate, any permitted use of supplies, facilities or personnel of **GOSR**.

iii. Compensation and Payment Terms. Such Procurement Contracts shall also state the compensation for the goods or services, and the terms of payment including the conditions for receiving payment from the **GOSR (via the Corporation)**.

iv. Non-collusion. Formal 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 which have been 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 over $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 **(on behalf of GOSR under these guidelines)** to immediately terminate such Contract in the event that any certification in accordance with the provisions of the Lobbying Law Directives is found to be intentionally false or intentionally inaccurate.

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 **GOSR** for liquidated or other appropriate damages and shall provide for the appropriate remedies on account of such breach. If the Corporation **(on behalf of GOSR under these guidelines)** elects to proceed against a Contractor for breach of Contract, the Corporation **(on behalf of GOSR under these guidelines)** shall be precluded from seeking enforcement pursuant to §316 of Article 15-A, provided however, that the Corporation **(on behalf of GOSR under these guidelines)** 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 XII of these Guidelines.

vii. 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.** **The following terms, at a minimum, must be included in any CDBG-DR funded Contracts:**

(a) 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) [24 CFR § 85.36(i)(1)]

(b) Termination for cause and for convenience by the Corporation (on behalf of GOSR under these guidelines) including the manner by which it will be effected and the basis for settlement. (All Contracts in excess of $10,000) [24 CFR § 85.36(i)(2)]

(c) 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 chapter 60). (All construction Contracts awarded in excess of $10,000 by the Corporation (on behalf of GOSR under these guidelines) and its Contractors or subrecipients) [24 CFR § 85.36(i)(3)]

(d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All Contracts and subgrants for construction or repair) [24 CFR § 85.36(i)(4)]

(e) Compliance with the Davis-Bacon Act (40 U.S.C. § 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction Contracts in excess of $2,000 awarded by the Corporation (on behalf of GOSR under these guidelines) and its subrecipients when required by Federal grant program legislation) [24 CFR § 85.36(i)(5)]

(f) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction Contracts awarded by the Corporation (on behalf of GOSR under these guidelines) and its subrecipients in excess of $2,000, and in excess of $2,500 for other Contracts which involve the employment of mechanics or laborers) [24 CFR § 85.36(i)(6)]

(g) Notice of HUD requirements and regulations pertaining to reporting. [24 CFR § 85.36(i)(7)]

(h) 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. [24 CFR § 85.36(i)(8)]

(i) HUD requirements and regulations pertaining to copyrights and rights in data. [24 CFR § 85.36(i)(9)]

(j) 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. [24 CFR § 85.36(i)(10)]

(k) Retention of all required records for at least three years after the Corporation (on behalf of GOSR under these guidelines) or its subrecipients make final payments and all other pending matters are closed. [24 CFR § 85.36(i)(11)]

(l) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000) [24 CFR § 85.36(i)(12)]

(m) 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). [24 CFR § 85.36(i)(13)]

viii. <u>Value engineering</u>. The Corporation (on behalf of GOSR under these guidelines) 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. [24 CFR § 85.36(b)(7)]

ix. <u>Bonding requirements</u>. If HUD has not made a determination that the Corporation's (on behalf of GOSR under these guidelines) bonding policy and requirements adequately protect HUD's interest, GOSR's construction or facility improvement Contracts or subcontracts exceeding the simplified acquisition threshold of $150,000 shall contain the following minimum requirements:

(1) ***A bid guarantee from each bidder equivalent to five percent of the bid price.*** **The "bid guarantee" shall 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. [24 CFR § 85.36(h)(1)]**

(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. [24 CFR § 85.36(h)(2)]**

(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. [24 CFR § 85.36(h)(3)]**

b. Cost Principles. GOSR (via the Corporation) shall pay only those costs that are allowable and consistent with the Federal cost principles found in OMB Circular A-87 or successor guidance. [24 CFR 85.36(f)(3)]

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

i. Limitation of Contract Terms. In order that the Corporation **(on behalf of GOSR under these guidelines)** may enter into new Procurement Contracts for the Procurement covered as soon as might be desirable, Procurement Contracts should not commit the Corporation to continue to use Contractors for longer than is desirable to achieve the Contract objectives, such as obtaining the Contractor's commitment to perform services at a reasonable price. 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 **(on behalf of GOSR under these guidelines)**, at its option, without cause, within a period that is less than a 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. Such Officer, Employee or Staff shall continually give 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 to **GOSR's** Procurement Contract Officer 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 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 where compensation is expected to be in an amount of $100,000 or more, as well as any Contracts involving services to be provided 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. 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, without cause, within a period that is less than a year into the future. An Officer may submit other Contracts as he or she deems appropriate to the Corporation's Members for their consideration and approval.

b. Members' Annual Review. The Corporation's Members shall, at least annually, review any Contract lasting more than a year, each June, as part of the approval of the Annual Report on Procurement Contracts. Contracts considered as lasting for more than a year for this purpose shall include Contracts where the Contract itself, by virtue of its stated terms, has a period of longer than a year, and in addition, shall include Contracts where, by virtue of renewal or execution of new or subsequent Contracts without an intervening Contractor or Vendor Selection Process, the Corporation's contractual relationship with the Vendor or Contractor continues for more than a year. Annual approval or review by the Corporation's Members shall be as follows:

i. Provided that timely annual review for each Contract is effected, 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 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 in relation to Single Source Contracts, Sole Source Contracts, existing State Agency or Authority Contracts, or existing GSA Contracts. In any case, any Contract in excess of a $100,000 in amount or more than one year in duration must be initially approved by the Corporation's Members, unless they specifically delegate such approval authority by resolution to an agent of the Corporation, and annually

reviewed by the Corporation's Members.

c. Execution of Procurement Contracts. All Procurement Contracts shall be executed by an **Executive Director of GOSR**.

d. Approval of Procurement Contracts by **GOSR** Counsel. Prior to the execution of any Contract, **GOSR** Counsel shall approve, as to legal compliance, all Procurement Contracts. The consideration shall include the legal form and efficacy of the Procurement Contract. **GOSR's** legal department may evidence such approval by **GOSR** Counsel by making such arrangements as are acceptable to **GOSR** Counsel to assure that the form of Contract is legally acceptable and approved by **GOSR's** Counsel.

e. Approval of Procurement Contracts for Fiscal Sufficiency. All Procurement Contracts shall be reviewed by the Treasurer or Assistant Treasurer of the Corporation for fiscal sufficiency prior to execution.

ARTICLE XI

11. ADMINISTRATION OF PROCUREMENT, RECORDS AND RESPONSIBILITIES OF **GOSR** OFFICERS AND EMPLOYEES

a. Procurement Record. A Procurement Record shall be maintained for each Procurement Contract and such other Procurement as the Procurement Contract Officer deems appropriate, or as State law requires, identifying, with supporting documentation, decisions made by **GOSR** during the Procurement process. The Procurement Record shall include, but not be limited to, documentation of: (1) the determination of the method of Procurement from among the available methods permissible under these Guidelines; (2) the process to be used to determine best value, the manner in which the selection of evaluation criteria and the evaluation process shall be conducted, and the evaluation criteria, which, whenever possible, shall be quantifiable; and (3) the basis of award and circumstances leading to the selection of the Vendor, including the alternatives considered, the rationale for selecting the specific Vendor and the basis upon which cost was determined reasonable. To the extent practicable, **GOSR** shall document all aspects of the solicitation process in advance of the initial receipt of offers. Each amendment to an existing Contract, and the justification for each, shall also be 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.

With respect to the Lobbying Law Directives, the Procurement Record shall include complete information related to: (i) written certifications by the Contractors or Vendors with respect to affirmations that the Contractor or Vendor understands the Lobbying Law Directives and that the Corporation has been informed in writing of the Vendor's prior determinations of non-responsibility over the previous four years, and that this information is complete, true and accurate; (ii) Determinations of Responsibility by the Corporation; (iii) findings of non-responsibility, whether by the Corporation or by other governmental entities; (iv) 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**; (v) if applicable, a statement regarding the basis for any required finding 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 (vi) any determination to terminate a Contract pursuant to the Lobbying Law Directives.

The Procurement Record is a place where **GOSR** can clearly document, as considered appropriate, the need for the Contract; required specifications; and the ways in which a competitive field, fair and equal opportunity for Vendors, which shall include, but not be limited to, certified MWBEs, and a fair and balanced method of selection have been ensured.

The Procurement Record shall be maintained at least throughout the period the Contract and any extensions thereof are in effect and for **at least four years after the State submits its final expenditure report to HUD, 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. [24 CFR § 85.36(b)(9)]**

Procurement Contract Officer (s). **GOSR** hereby designates the **GOSR Chief Operating Officer, Chief Financial Officer, and Senior Procurement Officer** as its Procurement Contract Officer.

The Procurement Contract Officer's responsibilities shall include keeping such portions of the Procurement Record as the Procurement Contract Officer deems appropriate, monitoring compliance with proper contracting procedures and adherence to these Guidelines.

Among the Procurement Contract Officer's responsibilities shall be the determination of when certain portions of these Guidelines shall apply to a Contract by virtue 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 **(on behalf of GOSR under these guidelines)** 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 **(on behalf of GOSR under these guidelines)**. 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 Vendors.

The Procurement Contract Officer shall encourage and promote good Procurement practices, including but not limited to, proper and coordinated management of Contracts, desirable Vendor selection practices, and informed and careful bill approval procedures. Among other things, it is generally desirable that there be a single individual designated to manage each Procurement Contract, including renewals and amendments thereto, reporting thereon, and bill approvals, *(and excluding receipt of Designated Contacts)*, and that individuals managing different Contracts in the same area or from the same 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 who, with respect to the Lobbying Law, have been the subject of determinations of non-responsibility by 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, other than Formal Contracts, provided that such exceptions appear in the Procurement Contract Record, and that attorneys under the supervision of an **Executive Director** and **GOSR** Counsel determine the exceptions legally appropriate.

c. Designated Contact Officer(s). **GOSR** hereby designates the Treasurer, or in the event the position of Treasurer is vacant, the Assistant Treasurer of **GOSR**, as the Designated Contact Officer for all Governmental Procurement for which such appointment is required. When necessary and appropriate, the Designated Contract Officer may designate one or more Officers, Employees, Staff or Agents of **GOSR** to be an additional Designated Contact Officer. In accordance with the provisions of the Lobbying Law Directives, the Designated Contact Officer, for any given Governmental Procurement or Procurement Contract, is intended to be, by virtue of his or her designation as such, the recipient of any Designated Contacts with respect to the Governmental Procurement for which he or she has been designated. The Designated Contact Officer shall have ready access to, and shall refer to, as appropriate, the Contractors' and Vendors' written affirmations of their understanding of the Corporation's Governmental Procurement lobbying procedures along with all disclosures Contractors or Vendors have provided of any findings of any determinations of non-responsibility against them under the Lobbying Law. Prior to the awarding of a Procurement Contract by **GOSR** to which these provisions apply, it shall be the Designated Contact Officer's responsibility to consult with the Ethics Officer and to likewise consult at any appropriate time thereafter.

d. Designated MWBE Officer(s). **GOSR** shall appoint a Designated MWBE Officer(s) to oversee **GOSR's** MWBE Program established to promote and assist: (i) participation by certified MWBEs in **GOSR** Procurement opportunities and facilitation of the award of Procurement Contracts to such enterprises; (ii) the utilization of certified MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Corporation **(on behalf of GOSR under these**

guidelines); and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having Procurement Contracts with the Corporation **(on behalf of GOSR under these guidelines)**. The Designated MWBE Officer(s) shall be familiar with the Procurement of the types of construction, financial, legal or professional services utilized by the Corporation **(on behalf of GOSR under these guidelines)**, report directly to the President of the Office of Professional Services, either directly or through the designee(s) of such President, and participate 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 the Corporation's MWBE Program. The Designated MWBE Officer shall consult, as necessary, with **GOSR's** Counsel or Deputy Counsel on each Procurement subject to the Corporation'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 Contracts of the Corporation **(on behalf of GOSR under these guidelines)** 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 may 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 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 the Procurement Contract Officer's attention. **GOSR** Officers, Employees and Staff including, but not limited to, the Designated Contact Officer(s), shall report to the Ethics Officer any allegations of impropriety or unethical administration of Procurement or violations of the Lobbying Law Directives that 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) an opportunity to be heard in response to the allegation.

Prior to the awarding of a Procurement Contract by **GOSR** to which the provisions of the Lobbying Law Directives apply, and any time thereafter, it shall be the Ethics Officer's responsibility to consult with the Designated Contact Officer(s) and make other appropriate inquiries so as to make the findings as to whether there were any certifications in relation to the provisions of the Lobbying Law Directives that were intentionally false or intentionally inaccurate so that the Corporation would have the right to terminate such Contract. If the Corporation terminates a Procurement Contract **(on behalf of GOSR under these guidelines)**

under these termination provisions, it shall be the Designated Contact Officer's responsibility to provide the statement describing the basis for such action for inclusion 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 of the Procurement Contract.

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 the President of the Office of Professional Services.

It is expected that the Ethics Officer will confer, as appropriate, with **GOSR's** Counsel with respect to allegations of unethical conduct or violations of the Lobbying Law Directives or other violations of law and nothing in any of the forgoing is to be taken to preclude individuals from also contacting **GOSR's** Counsel directly with respect to any such allegations. **[24 CFR § 85.36(b)(3)]**

<u>Conflicts of Interest</u>. No employee, officer, or agent of GOSR or the State's subrecipients shall participate in selection, or in the 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:

i. The employee, officer or agent,

ii. Any member of his immediate family,

iii. His or her partner, or

iv. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

GOSR's or the State's subrecipients' officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to subagreements. [24 CFR § 85.36(b)(3)]

g. <u>Settlement of Contractual and Administrative Issues</u>. Procurements and Contracts are subject to the Corporation's procedures for the settlement of all contractual and administrative issues arising out of Procurements,

including but not limited to the source evaluation, bid protest, dispute, and claim procedures. [24 CFR § 85.36(b)(11), (12)] In all instances, GOSR shall disclose information regarding a protest to HUD. [24 CFR § 85.36(b)(12)]

ARTICLE XII

12. REPORTS ON PROCUREMENT

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 Procurement Contracts entered into; (b) all Contracts entered into with NYSBEs and the subject matter and value thereof; (c) all Procurement Contracts entered into with certified MWBEs and the subject matter and value thereof, all referrals made and all penalties imposed, pursuant to §316 of Article 15-A; (c) all Contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; (d) the selection process used to select such Contractors; (e) all Procurement Contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, the basis for any such exemption; and (f) the status of existing Procurement Contracts.

Such Annual Report shall list for each Contract the following information:

i. a description of the duties performed by the Contractor;

ii. the date of the Contract and its duration;

iii. the total value of the Contract;

iv. the full name and address of the Contractor;

v. the status of the Contract, including the amount spent or other considerations 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.

The Annual Procurement Report, after being approved by the Corporation's Members, shall be filed to the Division of the Budget and the Department of Audit and Control using the Public Authorities Reporting Information System ("PARIS") on-line Reporting System, 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 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, including but not limited to:

i. the annual goals, identified in the Corporation's Annual MWBE Goal Plan, for Contracts with MWBEs;

ii. providing adequate documentation of a good faith effort to meet the Corporation goals described in the Corporation's Annual MWBE Goal Plan, in the event that the Corporation projected goals cannot be achieved;

iii. the number of actual Contracts issued to MWBEs;

iv. the activities undertaken to promote and encourage Procurement opportunities of Minority Group Members and women and promote and increase participation by certified businesses with respect to Corporation Contracts and subcontracts;

v. Corporation Contracts for 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 (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 by the Corporation 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, defined 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 XIII

13. MISCELLANEOUS PROVISIONS

a. Powers of Amendment. Any modification or amendment of these Guidelines may be made by a Supplemental Resolution adopted at any duly constituted Members' meeting; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Corporation Contracts, the terms of which were established pursuant to these Guidelines; 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 only intended to provide the general framework for Corporation Procurement practices **with respect to the Procurement of goods 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 not intended to preclude supplementation of the Guidelines through the promulgation of more specific procedural handbooks, practice manuals, or other directives and guidance as may be issued from time to time, including as example, and not by way of limitation, more specific procedures for conduct of Requests For Proposals and Requests For Qualifications. It is also not intended that the existence of these Guidelines should prevent or supplant the issuance of additional 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 with third parties 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.

PROCUREMENT

NYS Storm Recovery Procedures

Andrew M. Cuomo, Governor of New York State
James Rubin,
Executive Director, Governor's Office of Storm Recovery

October 06, 2014

Prepared by
New York State Homes and Community Renewal
Housing Trust Fund Corporation
Office of Community Renewal

The procedures stated in this manual are current as of October 06, 2014. This manual represents the current version of the Governor's Office of Storm Recovery (GOSR) procedure, which shall provide general guidance for the operation of the GOSR program. 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, as well as its Human Resources Policy Manual 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 Chief Operations Officer (COO) and our office of Human Resources to ensure that you have the latest version of GOSR's policies and procedures.

Procurement
Governor's Office of Storm Recovery
Procedure Manual

Version Control

Version Number	Date Revised	Description of Revisions
1.0	July 27, 2014	Original version for release to GOSR staff and publication.
2.0	July 31, 2014	Combined Policy & Procedures for release to GOSR staff and posting on GOSR website.
3.0	October 06, 2014	Updated sections on contract posting, OSC approval and panel formation.

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Introduction Note

The Governor's Office of Storm Recovery (GOSR) operates within the New York State Housing Trust Fund Corporation (HTFC). HTFC a division of New York State Homes and Community Renewal (HCR), a unified leadership platform, encompassing New York State agencies and public benefit corporations involved in the provision of housing and community renewal.

GOSR mimics and tracks Personnel Policies and Procedures and has adapted sections of the Personnel Policies and Procedures Manual used by the New York State Division of Housing and Community Renewal (DHCR) (the DHCR handbook), the largest State agency within HCR.

Please note that GOSR employees as per their letters of appointment, serve at the pleasure of their appointing authority and therefore such relationship can be altered or terminated at any time. In the event of any inconsistency between an incorporated provision of the DHCR handbook and the nature of that appointment, the appointment letter controls. Incorporated sections from the DHCR handbook and any other source is not to be considered a contract or contracted term between a GOSR employee and either GOSR, HTFC, DHCR or HCR, but is instead subject to change, at any time, in the discretion of the appointing authority.

1.0 Agency Overview and Mission

1.1 Oversight of Storm Recovery

Governor Cuomo established an entity later named the GOSR (GOSR) in June 2013 to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State. This office was formed under the auspices of New York State's Homes and Community Renewal, which includes the Housing Trust Fund Corporation (HTFC, a subsidiary public benefit corporation of the New York State Housing Finance Agency) to direct the administration of the Federal Community Development Block Grant Disaster Recovery Funds.

GOSR works in close collaboration with local and community leaders to respond to communities' most urgent rebuilding needs while also identifying long-term and innovative solutions to strengthen the State's infrastructure and critical systems. GOSR also administers a variety of programs related to housing recovery, economic development, and community reconstruction following the devastating impact of Super storm Sandy, Hurricane Irene and Tropical Storm Lee.

GOSR programs and the other activities outlined in the Action Plan are based on the foundation of six key principles:

- Building back better and smarter – As New Yorkers work to repair the severe damage caused by Hurricane Sandy, the State will use the opportunity to ensure that damaged buildings are not simply restored to their pre-storm condition or replaced with the same kind of structures. Instead, New York State will invest in additional mitigation measures to prevent similar damage from occurring in the future.
- State-led, community-driven recovery – New York State is collaborating closely with local governments and other organizations to ensure a coordinated and holistic response, while looking to individual communities to develop forward-looking local recovery plans that meet their specific needs.
- Recovery from Irene and Lee – The recovery efforts will include those communities still recovering from Hurricane Irene and Tropical Storm Lee.
- Leveraging private dollars – New York State will undertake programs that will help unlock capital markets and increase the amount of low-interest financing of key projects by reducing the risk for private sector lenders.
- Spending accountability and transparency – New York State will implement rigorous controls and checks to ensure funds are spent responsibly and in compliance with federal and state guidelines.
- Urgency in action – The recovery is a long-term endeavor, and the program aims to collect required documentation as outlined in the program procedures manuals to the maximum extent practicable given the constraints. The projects and programs presented in the Action Plan have been shaped to achieve the fastest delivery and best support possible.

2.0 Subrecipients & Subrecipient Agreements

Policies and procedures outlined in this section are consistent with the procurement and contracting guidelines of the NYS Housing Trust Fund Corporation (HTFC).

2.1 Subrecipients

Subrecipients (sometimes referred to as "subgrantees") are entities that are provided CDBG funds by a grantee for their use in carrying out agreed-upon, eligible activities.

Overall organizational capacity, including previous experience, familiarity with regulatory requirements, compliance "track record," administrative and fiscal capacity, and qualified staff will be considered prior to awarding a subrecipient agreement.

- *Note: Subrecipient Agreements are not contracts and generally do not follow the same competitive selection process as vendors. However, Subrecipients assume the procurement responsibilities of grantees with regard to any procurement to perform their scope of services under the Subrecipient Agreement.*

There are a few basic kinds of subrecipients:

- **Governmental Agencies**
  - Governmental agencies are public agencies, commissions, or authorities that are independent of the grantee's government (for example, a public housing authority or a park district). Grantee public agencies undertaking CDBG assisted activities are subject to the same requirements as are applicable to subrecipients (§570.501(a)).
- **Private Non-Profits**
  - Private non-profits are usually, but not always, corporations, associations, agencies, or faith-based organizations with non-profit status under the Internal Revenue Code (Section 501(c)(3)), usually with a board of directors and an executive director in charge of daily administration. Examples of private non-profits include private social services agencies (such as those providing job training or counseling, or day care providers), community development corporations, faith-based housing development groups, and operators of homeless shelters.
- **Private For-Profits**
  - A limited number of private, for-profit entities can qualify as subrecipients when facilitating economic development by assisting microenterprises under the provisions of 24 CFR S70.201(o).
- **CBDOs**
  - Community Based Development Organizations (CBDOs) authorized under §570.204 to carry out special activities such as economic development or new housing construction are not subrecipients unless so designated by the grantee.

2.2 Subrecipient Agreements, Amendments & Task Orders

2.2.1 Subrecipient Agreement: Initiation of Subrecipient Vendor Relationship

- ☐ The Program along with GOSR Executives determines a need for services and identifies a Subrecipient based on a variety of factors.
- ☐ After a Subrecipient has been identified, the assigned Contract Manager completes a Subrecipient Request Form then forwards to the Procurement Department for a completeness review and circulation for approval.
    - *Note: The purpose of this form is to gather all relevant information. The Contract Manager must to answer all questions completely. Any missing or inadequate information will result in the form being sent back for correction or more detail.*
- ☐ Once the Subrecipient Request Form has been properly edited and tagged by the Procurement Department (Date of Submission, formatting, and clarification) and all required supporting documentation has been received, the Procurement Department circulates for approval.
- ☐ The Contract Manager, Legal, Finance, Operations and the Program Director must approve all Subrecipient Requests. Once approved, the Procurement Department notifies the Contract Manager of approval and agreement negotiations may begin.

2.2.2 Subrecipient Agreement: Negotiation, Execution, and Retention

- ☐ The Contract Manager forwards an electronic copy of the Subrecipient Agreement boilerplate along with the Appendices (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx) and introduces GOSR General Counsel to the Subrecipient.
- ☐ GOSR Legal (along with the CFO and COO as necessary) then works with the Subrecipient's legal counsel to finalize the Subrecipient Agreement.
- ☐ The General Counsel's Office prepares a final version of the negotiated agreement and submits a clean (non-redlined) version to the Procurement Department for distribution and final approval from the Contract Manger, Legal, Operations, GOSR Finance and HTFC Finance.
- ☐ The Procurement Department completes the Contract and Subrecipient Agreement Review Checklist.
- ☐ A copy of the Checklist and the final version of the Agreement is then emailed to the HTFC Treasurer for approval of fiscal sufficiency.
- ☐ Once certification of fiscal sufficiency is received, the Procurement Department drafts the Certificate of Compliance.
- ☐ The Procurement Department mails via UPS Overnight four (4) copies of the final draft of the contract along with Exhibit E: Appendices for Subrecipients, Sub-Subrecipients, Contractors and Subcontractors at All Tiers (as applicable) and any attachments as

required to the vendor for execution.

- ☐ The Subrecipient must complete the following documents prior to contract approval. The Contract Manager, with the Program Head or Designee, is responsible for the distribution, collection, and completion review of the following items:
  - Request for Vendor Information form and EFT form
  - W-9 (found here http://www.irs.gov/pub/irs-pdf/fw9.pdf)
  - Authorized Signature form (original must be sent)
  - HUD 2880 form (found here http://www.in.gov/ocra/files/Contract_Form_1_-_Disclosure_Report(2)12.31.2015.pdf)
  - Financial Management Questionnaire signed by the same person who signs the Agreement
  - Proof of Workers' Compensation and crime insurance if required by the Agreement. This proof must be on an ACORD form produced by the insurance company
  - Municipal/County Council Resolution authorizing entering into the Agreement and accepting federal funds
- ☐ The Subrecipient executes the Agreement, completes the required Appendices, and mails all four (4) original copies back to GOSR Procurement Department.
- ☐ The Procurement Department then submits the signed contract along with the Certificate of Compliance to the appropriate Program Director for final execution of the Agreement.
- ☐ The Procurement Department returns counter-signed original copies to:
  - Vendor
  - HTFC Treasurer
  - GOSR Operations and Finance (shared copy)
  - GOSR General Counsel
- ☐ The Procurement Department then scans a copy of the Certificate of Compliance into a file as well as the executed Agreement along with submitted reports and appendices in a single file for distribution.
- ☐ Both files are uploaded to the Operations network drive and the Procurement Sharepoint site using the naming convention Vendor_Name_Document_Type_Date (YYYYMMDD).
- ☐ The Procurement Department then sends an email notification with both documents to:
  - Contract Manager
  - GOSR Legal (Attorney who is responsible for notifying The HTFC Board of all agreements)
    - Per federal guidelines, GOSR maintains information on all Subrecipient Agreements on its public website. After the Agreements are signed, they are reported to the HTFC Board at the next scheduled meeting following such signing. Once the Board has reviewed the Agreements, GOSR Procurement posts them on its website.
  - HTFC Treasurer

2.2.3 Subrecipient Agreement: Amendments

All amendments are to be requested using the Amendment Memo Form and a DRAFT of the amendment in the most up to date template (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx). The Contract Manager must complete form and be sure to include a copy of the DRAFT amendment and proper supporting documentation and justification. Amendments are extensions of agreements and therefore follow the same approval process of a subrecipient agreement as outlined above. All Amendment Memos must circulate with a draft of the Amendment as part of the review process. The Contract Manager must be sure to include proper supporting documentation and justification of the need for an Amendment versus a new selection.

2.2.4 Subrecipient Agreement: Task Orders

All task orders are to be requested using the Task Order Memo Form and a DRAFT of the task order in the most up to date template (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx). The Contract Manager must complete form and be sure to include a copy of the DRAFT task order and proper supporting documentation and justification. The Program Head and the CFO must approve the memo before the Executive Director executes the task order agreement.

2.3 Payments and Close-Out

2.3.1 Subrecipient Agreement: Payments

The Contract Manager is responsible for day-to-day oversight of terms and for notifying GOSR Finance Department of any lapses.

a) Subrecipient submits invoice to HTFC's finance department via email at HTF_Finance_Unit@nyshcr.org

b) HTFC's Finance Department logs all invoices and saves electronic copies. These are shared with the assigned Contract Manager for review

c) HTFC follows its procedures for processing accounts payables as outlined in section 5.0.

- *Note: Subrecipient Agreements are typically paid out on a scheduled basis upon submission of documentation.*

2.3.2. Subrecipient Agreement: Close-Out

- ☐ If the contract terms have been met, the Contract Manager prepares a closeout memo and submits it to the Procurement Department.

  a) The Procurement Department reviews for completion and submits to COO to begin closeout of contract.

  - *Note: For closeout of Subrecipient Agreements, the Contract Manager along with the Program Head (or designee) shall work with the monitoring team for final monitoring and closeout of the grant.*

3.0 Small Purchases – Non Office of General Services (OGS) Contract Purchases

Small purchase procedures are simplified methods for acquiring goods or supplies that do not exceed GOSR's small purchase threshold of two thousand dollars ($2,000) and requires upfront payment in order to purchase. The following procedures are for small purchases that do not require a purchase order to process for payment.

- ☐ Prior to making a small purchase all employees must complete a Procurement Request Form (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx).
- ☐ Once the form is complete, he or she forwards the form along with the required documentation listed below to the Procurement Department for circulation.
  a) A minimum of three (3) separate vendor cost analyses including the Office of General Services (OGS) existing state contracts. .
     - Quotes and estimates for cost analyses may be obtained in the following ways:
       - Electronically (by email or printout from the internet)
       - Fax
       - Catalogs
       - Letter from potential vendor
  b) An explanation as to reason(s) for not utilizing OGS resources for purchase

     - *Note: The purpose of this form is to gather all relevant information. The Contract Manager must to answer all questions completely. Any missing or inadequate information will result in the form being sent back for correction or more detail.*

- ☐ Once the Procurement Request Form has been properly edited and tagged by the Procurement Department (Date of Submission, formatting, and clarification), and all required supporting documentation has been received; the Procurement Department circulates for approval.

  - *Note: For Small Purchases only: the Program Head and the CFO (or designee) approval are required to proceed with purchase.*
  - *Note: Employees may be reimbursed for small purchases given that the purchase received proper prior approval. The employee must submit receipts and an expense report, according to the guidelines outlined in the finance section of the General Administrative Manual.*

4.0 Purchase Orders

4.1 Purchase Orders: The Office of General Services (OGS) Existing State Contracts

The Office of General Services (OGS) was established in 1960 to provide essential support services for the operations of state government. Since then, OGS has grown significantly in scope, and complexity. Today, they are a diversified organization providing a broad spectrum of services to state agencies, local governments, and the public.

The agency provides services through the development and management of efficient, cost-effective, and environmentally sustainable programs and activities. Delivery of critical services is performed in partnering with New York State businesses; significant economic opportunities are presented through their participation in state contracts administered by OGS. Some of these services include:

- Facilitating and administering approximately 2,400 centralized procurement contracts for goods, services, and technology needed by state agencies, municipal governments, and educational institutions.

GOSR is able to utilize these resources for the purchase of goods or services for any amount as needed by the Program. There is currently not a GOSR threshold on OGS contracts. The resource available through OGS is:

- **Existing State Contract:** For specific policies and procedures for utilizing and locating Existing State Contracts visit the OGS website at http://www.ogs.ny.gov.

☐ The Contract Manager drafts Purchase Order Memo (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx) indicating the justification of need and the intent to utilize an Existing State Contract.

- *Note: The purpose of this form is to gather all relevant information. The Contract Manager must to answer all questions completely. Any missing or inadequate information will result in the form being sent back for correction or more detail.*

☐ With every request, the Contract Manager must include:

- Legal name of Vendor
- Vendor Contact Information
- Contract Number
- Copy of Award Notice
- Selected Vendor Quote: A quote must include the following
  - Description
  - Quantity
  - Unit Price

    - Total Price
    - Estimated Total
  - Cost Analysis: A minimum of two additional quotes/estimates (including the above requirements) from a minimum of two additional sources showing cost reasonableness

- ☐ The Contract Manager forwards the completed memo along with all documentation to the Procurement Department
- ☐ Once the Purchase Order Memo has been properly edited and tagged by the Procurement Department (Date of Submission, formatting, and clarification) and all required supporting documentation has been received, the Procurement Department drafts the Purchase Order and circulates to Finance Department for approval.
    - *Note: A Purchase Order Memo and approved Purchase Order are required for processing. A Purchase Order will not be drafted without the Purchase Order Memo.*
- ☐ After Finance approval has been received, the Procurement Department notifies the Contract Manager of approval.
- ☐ The Procurement Department then forwards via email the approved FINAL purchase order to the Vendor along with processing instructions copying the Contract Manager and Finance on the email.

4.2 Purchase Orders: Non OGS Vendor Purchase Orders

- ☐ The Contract Manager drafts Purchase Order Memo (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx) indicating the justification of need
    - *Note: The purpose of this form is to gather all relevant information. The Contract Manager must to answer all questions completely. Any missing or inadequate information will result in the form being sent back for correction or more detail.*

- ☐ With every request, the Contract Manager must include:
    - Selected Vendor Quote: A quote must include the following
        - Description
        - Quantity
        - Unit Price
        - Total Price
        - Estimated Total
    - Cost Analysis: A minimum of two additional quotes/estimates (including the above requirements) from a minimum of two additional sources showing cost reasonableness
- ☐ The Contract Manager forwards the completed Purchase Order Memo along with all documentation to the Procurement Department
- ☐ Once the Purchase Order Memo has been properly edited and tagged by the Procurement Department (Date of Submission, formatting, and clarification) and all required supporting documentation has been received, the Procurement Department drafts the Purchase Order and circulates to Finance Department for approval.
    - *Note: A Purchase Order Memo and approved Purchase Order are required for processing. A Purchase Order will not be drafted without the Purchase Order Memo.*
- ☐ After Finance approval has been received, the Procurement Department notifies the Contract Manager of approval.
- ☐ The Procurement Department then forwards via email the approved FINAL purchase order to the Vendor along with processing instructions copying the Contract Manager and Finance on the email.

5.0 CDBG-DR Medium & Large Procurement and Vendor Contracting Procedures

5.1 Vendor Contract: Medium Procurements – Competitive Mini Bids – Services Only Non OGS

Medium procurement procedures are a simplified yet competitive method for acquiring services that do not exceed GOSR's medium procurement threshold of one hundred and fifty thousand dollars ($150,000) for all potential contractors. The Mini Bid allows for GOSR to properly evaluate several respondents' price proposals to obtain the "Best Value" for the State.
The Contract Manager works closely with the Program Head in determining specific scope of work to be solicited.

- ☐ The Contract Manager completes the Procurement Request Form (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx) as well as draft of the Mini Bid and forwards to the Procurement Department for a completeness review and approval.
    - *Note: The purpose of this form is to gather all relevant information. The Contract Manager must to answer all questions completely. Any missing or inadequate information will result in the form being sent back for correction or more detail.*
- ☐ Once the Procurement Request Form has been properly edited and tagged by the Procurement Department (Date of Submission, formatting, and clarification) and all required supporting documentation has been received, the Procurement Department circulates for approval.
- ☐ After all signatures have been received, the Procurement Department notifies the Contract Manager of approval.
- ☐ The Contract Manager then prepares final Mini Bid to be sent out to potential vendors.
    - When sending out the bids to potential vendors, the Contract Manger must cc the GOSRProcurement@stormrecovery.ny.gov email inbox in order for Procurement to track status and complete procurement records.
- ☐ Once a vendor has been selected, the Contract Manager completes the Procurement Award Form (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx), which captures the procurement process, contract information and justification of selection. The Contract Manager forwards to Procurement Department for a completeness review and approval.
    - *Note: The purpose of this form is to gather all relevant information. The Contract Manager must to answer all questions completely. Any missing or inadequate information will result in the form being sent back for correction or more detail.*
- ☐ After the Procurement Award Form has been approved, the contract initiation phase (as outlined in section 5.2.2) begins.

5.2 Vendor Contract: Large Procurements

Large procurement procedures are a competitive method for acquiring supplies, materials, and services that exceed GOSR's procurement threshold of one hundred-fifty thousand dollars ($150,000). The Program Head, COO, CFO, General Counsel and Executive Director must approve all requests and procurement awards prior to releasing of the Competitive Bid. The purpose of a Competitive Bid is to solicit a comprehensive pool of vendors that can be utilized for a specific scope of services. The Contract Manager works closely with the Program Head in determining specific scope of work to be solicited and method of selection.

- ☐ The Contract Manager drafts Procurement Request Form (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx) indicating the justification of need and the proposed method of selection.
    - *Note: The purpose of this form is to gather all relevant information. The Contract Manager must to answer all questions completely. Any missing or inadequate information will result in the form being sent back for correction or more detail.*

- ☐ Once the Procurement Request Form has been properly edited and tagged by the Procurement Department (Date of Submission, formatting, and clarification) and all required supporting documentation has been received, the Procurement Department circulates for approval.
- ☐ After all signatures have been received, the Procurement Department notifies the Contract Manager that his or her request has been approved.
- ☐ The Contract Manager then initiates the selection process as detailed below depending on the approved method of selection:
    - **Requests for Proposals (RFP) or Request for Qualifications (RFQ):** Before being issued or advertised, an approval of the RFP/RFQ (and if applicable, notice of advertisement) must be obtained from the Program Head, Finance, Operations and Legal. **RFQ (Architectural, Engineering, Legal, or Other Services):** Used to identify and acquire a list of potentially qualified vendors to form a pre-qualified slate. In order to ensure cost reasonableness, mini-bids from the pre-qualified slate may be required when seeking services.

        a) The Program Head (or designee) works with General Counsel and Contract Managers to draft and post the Contract Reporter Advertisement
            - If the actual or estimated contract amount is at least one hundred and fifty thousand dollars ($150,000) or more, or a pre-qualified panel must established, and the notice for the solicitation must be advertised in the New York State Contract Reporter ("Contract Reporter"), which is published daily.
            - Be aware that there is a 15-business day minimum advertising requirement before responses to proposals may be opened.

        b) Generally, procurement with an annualized estimated expenditure of at least $15,000 is subject to the requirements of the Lobbying Law.

c) The Designated Contact Officer is the –
   - Agent permitted to receive Contacts from Contractors, Vendors, or their representatives, during the Restricted Period, i.e., the period of time beginning with the earliest determination of a procurement need by any Agency to any potential Contractor or Vendor.
     - *Please Note: The restrictions on communication includes but is not limited to, any oral, written or electronic communication, notice, advertisement or solicitation of a RFP/RFQ of any method used for soliciting a response from Contractors or Vendors intending to result in a procurement contractual agreement with the Agency and ending with the Agency's approval of the final Contract award.*

d) The Program Head (or designee) works with the Contract Manager, GOSR Legal, Finance, Operations and Procurement to draft and post the RFP/RFQ.

e) Responses to the RFP/RFQs are emailed to GOSRprocurement@stormrecovery.ny.gov according to the instructions outlined in the RFP/RFQ.

   - *Note: Proposal submission instructions may vary slightly depending on the proposal submission requirements as outlined in the RFP/RFQ.*

f) Before opening the RFP/RFQ responses the following must be verified:
   - Submission Deadline - Responses may only be opened after the deadline date for submission of responses has passed.
   - The formation of a panel to review RFP and/or RFQ responses.

g) The Panel should comprise at least three (3) members, who must be appointed by any of the following:

   - Executive Director
   - COO
   - CFO
   - General Counsel

h) If at any time a panel member finds that it may be a potential conflict of interest for him or her to participate in a procurement evaluation process, the panel member must immediately notify the COO and all panel members in writing.

i) If recusal of a panel member's participation is necessary, the panel member will need to be replaced.

j) The COO must approve of any change in panel members in writing.

k) Each Panel member signs the Panel Selection Form acknowledging his or her participation on the panel and certifying that he or she will treat all vendor proposals fairly.

l) Panel members participate in an initial "Kickoff Meeting" where they discuss scoring methodology, timeline and procedures.

m) Panel members are given vendor proposals to score based on categories outlined in the RFP including Experience and Capacity, Approach and Methodology,

Price, M/WBE Requirement, and any other criteria set forth by the Program.

n) Panel members are to deliberate and decide whether to provide vendor interviews.

o) Selection shall be based on completion of all required documentation and evaluation of all Responses received, considering the criteria as specified in the RFP/RFQ along with all relevant factors.

p) If decided on, after the optional interviews, panel members choose their top choice(s) and complete the Recommendation of Selection Form. This form is submitted to Finance, as well as to the Executive Director of the program for final approval.

q) Once the panel has completed a Recommendation of Selection Form detailing the procurement and deliberations process, the Recommendation of Selection Process begins.

r) Recommendation of Selection Process includes the following:

- *Lexis/Nexis Background Check*. A Panel member must forward potential awardee information to the General Counsel's Office for a Lexis/Nexis background check for those Responses, which the panel has selected as potential awardee(s).
- *Final Determination of Responsibility*. If the Lobbying Law is applicable, a final Determination of Responsibility must be made for each potential awardee, by the unit soliciting the procurement.
- *State Comptroller Approval.* Eligible contracts which are awarded on a single source basis, sole source basis or pursuant to any other method of procurement that is not a competitive procurement, where the aggregate consideration under the contract may be valued in excess of one million dollars ($1,000,000), and eligible amendments to contracts previously approved by the State Comptroller where the value of the amendment is ten (10) percent or more of the contract amount as originally approved, are subject to the prior review and approval of the State Comptroller.
- *Submission of Awardee(s) information in the Contract Reporter.* After the final award of a procurement contract, the Procurement Department will forward award information for publication in the Contract Reporter.
- *Procurement Record.* Prior to the execution of any agreement, the entire Procurement Record must be complete.

☐ Once a vendor has been selected, the Contract Manager completes the Procurement Award Form, (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx) which captures the procurement process, contract information and justification of selection. The Contract Manager forwards to the Procurement Department for a completion review and approval circulation.

- *Note: The purpose of this form is to gather all relevant information. The Contract Manager must to answer all questions completely. Any missing or inadequate information will result in the form being sent back for correction or more detail.*

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- ☐ After the Procurement Award Form has been approved, the contract negotiation phase (as outlined in section 5.2.2) begins.

5.2.1 Vendor Contract: Alternate Methods of Selection

The following methods of selection are not commonly used unless there is an emergency or extenuating circumstance. All procurements that utilize any of the following require COO, CFO and Executive Director approval prior to initiation.

- **Sole/Single Source:** Used when the Division Head determines there is only one source for the required good or service.
- **Emergency:** Used for goods or services needed in cases of public emergency or unforeseen occurrence determined by the Division Head.

5.2.2 Vendor Contract: Negotiation, Execution, and Retention

- ☐ The Contract Manager forwards an electronic copy via email of the Vendor contract boilerplate, Exhibit A (Scope of Services), Exhibit B (Budget), Exhibit C (Designation of Depository) along with the Contract Appendices (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx) and introduces GOSR General Counsel to the Vendor.
- ☐ GOSR Legal (along with the CFO and COO as necessary) then works with the Vendor's legal counsel to finalize the Contract.
- ☐ The General Counsel's Office prepares final version of the negotiated Contract and submits a clean, non-redlined version to the Procurement Department for distribution and final approval from the Contract Manger, Legal, Operations, GOSR Finance and HTFC Finance.
- ☐ The Procurement Department completes the Contract and Subrecipient Agreement Review Checklist.
- ☐ A copy of the Checklist and the final version of the Contract are then emailed to the HTFC Treasurer for approval of fiscal sufficiency.
- ☐ Once certification of fiscal sufficiency is received, the Procurement Department drafts the Certificate of Compliance.
- ☐ The Procurement Department mails via UPS Overnight four (4) copies of the final draft of the Contract along with all exhibits, Contract Appendices (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx) and any attachments as required to the Vendor for execution.
- ☐ The Vendor must complete the all procurement related documents, contract appendices (Proc 1, Proc 2, Proc 4 and Proc 8) and required contract documents prior to execution by GOSR. The Contract Manager, with the Program Head (or designee) is responsible for the distribution, collection, and completion review of these items.

- ☐ After the Vendor has executed the Contract and completed the appendices, the Vendor forwards all four (4) original copies along with the appendices to the Procurement Department.
- ☐ The Procurement Department receives the signed copies from the Vendor and drafts the Certificate of Compliance.
- ☐ The Procurement Department forwards the four (4) original copies of the Vendor executed Contract along with three (3) copies of a Certificate of Compliance to the Program Director for counter execution.
- ☐ Once fully executed, the Procurement Department returns the counter-signed original copies to:
  - Entity
  - HTFC Treasurer
  - GOSR Operations and Finance (shared copy)
  - GOSR General Counsel
- ☐ The Procurement Department then:
  a) Scans a copy of the executed Contract, exhibits and appendices in a single file. The Certificate of Compliance is scanned into its own file.
  b) Both files are uploaded to the Operations network drive and the Procurement Sharepoint site using the naming convention Vendor_Name_Document_Type_Date (YYYYMMDD).
  c) Sends an email with the all-relevant executed documentation attached to the following:
     - Contract Manager
     - GOSR Legal (Attorney who is responsible for notifying The HTFC Board of all contracts)
       - Per federal guidelines, GOSR maintains information on all Contracts on its public website. After the Contracts are signed, they are reported to the HTFC Board at the next scheduled meeting following such signing. Once the Board has reviewed the Contracts, GOSR Procurement posts them on its website.
     - HTFC Treasurer
     - Vendor *(If requested)*

5.2.3 Vendor Contract: Amendments

All amendments are to be requested using the Amendment Memo Form and a DRAFT of the amendment in the most up to date template (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx). The Contract Manager must complete form and be sure to include a copy of the DRAFT amendment and proper supporting documentation and justification. Amendments are extensions of agreements and therefore follow the same approval process of a vendor contract as outlined above. All Amendment Memos must circulate with a draft of the Amendment as part of the review process. The Contract Manager

must be sure to include proper supporting documentation and justification of the need for an Amendment versus a new selection.

5.2.4 Vendor Contract: Task Orders

All task orders are to be requested using the Task Order Memo Form and a DRAFT of the task order in the most up to date template (found on the intranet here: http://intranet.dhcrnet.local/officesites/rmo/SitePages/Home.aspx). The Contract Manager must complete form and be sure to include a copy of the DRAFT task order and proper supporting documentation and justification. The Program Head and the CFO must approve the memo before the Executive Director executes the task order agreement.

5.3 Payments and Close-Out

5.3.1 Vendor Contract: Payments

The Program Head (or designee contract manager) is responsible for day-to-day oversight of contract terms, and for notifying GOSR Finance Department of any lapses.

a) Vendor submits invoice to HTFC's finance department via email at HTF_Finance_Unit@nyshcr.org

b) HTFC's Finance Department logs all invoices and saves electronic copies. These are shared with the assigned contract manager for review.

c) HTFC follows its procedures for processing accounts payables as outlined in section 5.0.

5.3.2 Vendor Contract: Close-Out

If the contract terms have been met, the Program Head (or designee) must prepare a closeout memo and submit to the Procurement Department. The Procurement Department submits the closeout memo to GOSR and maintains a copy in the file.