



ALL AGENCY SERVICE CONTRACT PROCUREMENT GUIDELINES

Adopted by the Board on March 27, 2024

These guidelines (the “**Service Contract Guidelines**”) apply to the Metropolitan Transportation Authority (“**MTA**”), the New York City Transit Authority (“**NYCT**”), the Long Island Rail Road Company (“**LIRR**”), The Metro-North Commuter Railroad Company (“**MNR**”), the Staten Island Rapid Transit Operating Authority (“**SIRTOA**”), the Manhattan and Bronx Surface Transit Operating Authority (“**MaBSTOA**”), MTA Construction and Development (“**MTAC&D**”), MTA Bus Company (“**MTA Bus**”), First Mutual Transportation Assurance Co. (“**FMTAC**”), Grand Central Madison Concourse Operating Company (“**GCMC**”), and the Triborough Bridge and Tunnel Authority (“**Bridges and Tunnels**”) insofar as they are consistent with the provisions of law applicable to Bridges and Tunnels (each of the MTA, NYCT, LIRR, MNR, SIRTOA, MaBSTOA, MTAC&D, MTA Bus, FMTAC, GCMC, and Bridges and Tunnels is referred to jointly and severally as the “**Authority**”).

Article I - Applicability of Service Contract Guidelines

It is the policy of the Authority to contract for services that because of factors such as timing, costs, qualifications, availability of Authority staff, or the nature of the services to be rendered, it is more beneficial for such services to be contracted for than performed by employees of the Authority. Contractors shall be selected on a competitive basis, except when competition is not required pursuant to applicable law, is not required pursuant to these Service Contract Guidelines or is waived as impractical or inappropriate due to an emergency, critical need or as a consequence of unforeseen circumstances.

These **Service Contract Guidelines** apply to personal service contracts (“**Personal Service Contracts**”) and miscellaneous service contracts (“**Miscellaneous Service Contracts**”, and collectively with Personal Service Contracts, “**Service Contracts**”).

- A. Personal Services Contracts involve contracts for the provision of personal services (“**Personal Services**”), which generally involve retaining a consultant who specializes in one of the following:
- (1) Accounting and auditing
 - (2) Advertising
 - (3) Analysis
 - (4) Appraisal
 - (5) Architecture and design
 - (6) Bonds and financial management
 - (7) Commissioning of original art
 - (8) Dispute resolution
 - (9) Engineering
 - (10) Finances
 - (11) Human resources
 - (12) Information technology (but not software licenses or software maintenance)
 - (13) Investments
 - (14) Labor relations
 - (15) Legal
 - (16) Legislation

- (17) Management
- (18) Marketing
- (19) Office services requiring specialized skills
- (20) Other consulting, professional or technical services
- (21) Planning
- (22) Printing where editorial services predominate
- (23) Public affairs and corporate relations
- (24) Real estate
- (25) Records management, including electronic data storage, retrieval and discovery
- (26) Research
- (27) Risk management and related services
- (28) Security, including cybersecurity
- (29) Statistics
- (20) Surveying
- (31) Training

B. A Miscellaneous Service Contract is any contract for services which is not:

- (1) a Personal Service Contract; or
- (2) a General Contract (capitalized terms not defined in these Service Contract Guidelines shall have the meaning ascribed thereto in the All Agency General Contract Procurement Guidelines (the “**General Contract Guidelines**” and collectively with these Service Contract Guidelines, the “**Guidelines**”).

Examples of miscellaneous services (“**Miscellaneous Services**”) include, but are not limited to, human services (such as homeless services), guard service, custodial service and maintenance work performed by laborers, workers or mechanics that does not result in a substantial improvement to a building or other fixed asset.

C. In the event a proposed contract contains elements of more than one type of contract under these Service Contract Guidelines or the General Contract Guidelines, the elements which predominate shall determine the type of contract for purposes of the Guidelines.

Article II - Delegation of Authority

The Chairman, the Managing Director, the President, or chief procurement officer (“**CPO**”) of the relevant Authority thereof, and any further delegations that the Chairman or relevant Authority President may make for those specifically delegated purposes only (each defined for purposes of these Service Contract Guidelines as an “**Authorized Officer**”) are hereby empowered with respect to Service Contracts to be entered into by the relevant Authority acting on its own behalf or as agent for the MTA, as follows:

- A. to implement these Service Contract Guidelines:
- B. to establish procedures for the award of Service Contracts estimated to involve the expenditure of \$1.0 million or less and including contracts for a small business concern (“**SBC**”), a certified minority or women-owned business enterprise (“**MWBE**”) or a certified service disabled veteran owned business (“**SDVOB**”) involving an expenditure of \$1.5 million or less, which procedures shall be competitive to the extent deemed practicable by the Authorized Officer;

- C. to establish procedures for the award of Service Contracts regardless of the estimated expenditure, which procedures shall provide for Board approval of the award if the Services Contract provides for the estimated expenditure in excess of \$1 million if not awarded pursuant to competitive sealed bidding. A majority of the members of the Board in attendance at a meeting at which a quorum is present shall be required to approve the resolution authorizing such award;
- D. to do the following for the award of Service Contracts estimated to involve the expenditure in excess of \$1 million:
 - (1) to determine the criteria for the evaluation of bids/proposals;
 - (2) to determine whether a Services Contract required to be advertised in the New York State Contract Reporter (“**NYSCR**”) is exempt from such requirement due to the need to award such contract on an emergency or other critical basis;
 - (3) to advertise for, solicit and open bids/proposals;
 - (4) to record the name of each bidder/proposer and the amounts of the bid/proposal;
 - (5) to determine the lowest responsive and responsible bidder, including, in the event two or more responsible bidders submit identical bids which are the lowest bids, to award the Service Contract to any of such bidders or obtain new bids from such bidders;
 - (6) to reject all bids/proposers when it is determined to be in the public interest to do so; and
 - (7) to award the Service Contract; and
- E. to determine whether a bidder/proposer is responsible pursuant to the All-Agency Responsibility Guidelines.

Article III - Selection of Personal and Miscellaneous Service Contractors

A. Requirements for Selection of Personal Service Contractors by RFP

The following are the requirements to be followed for selection of contractors for Personal Services, except for:

- (1) Service Contracts for architectural, engineering, and survey services, which are subject to Article III.B.;
- (2) Service Contracts in the amount of \$1 million or less, which may be entered into pursuant to the provisions of Article II.B. (or pursuant to procedures established by an Authorized Officer which shall be competitive to the extent deemed practicable by the Authorized Officer); and
- (3) Service Contracts for which a competitive selection process is inappropriate pursuant to the provisions of Article III.C.

(a) The Division/Department of the Authority requiring the services shall prepare a written statement containing a description of the services, the reasons why they are required, and the required or estimated schedule or duration of the services.

(b) A request for proposals (“RFP”) to perform the required services shall be sent by mail or electronically to three or more firms to invite competition, including any certified disadvantaged business enterprise (“DBE”), MWBE or SDVOB selected to receive the RFP pursuant to applicable Authority or New York State DBE, MWBE or SDVOB programs, unless there are only two qualified firms or unless competition is waived as hereinafter provided. The RFP or notice thereof shall also be provided by mail or electronically to professional and other organizations, if any, that represent or regularly notify MWBEs and SDVOBs of the type of procurement opportunity that is the subject of the RFP notice.

(c) The RFP shall describe the services to be performed, any completion dates or time requirements, DBE/WBE/MBE/SDVOB requirements, if applicable, and the criteria to be utilized by the Authority in evaluating proposals and shall contain a requirement for technical and cost proposals and the date, time and place when proposals must be received.

(d) The Authority may select one or more proposers with which to negotiate after evaluation of the proposals received. The award shall be made to the proposer or proposers whose proposals will be the most advantageous to the Authority after considering price, qualifications and other relevant factors identified as evaluation criteria in the RFP.

B. Architectural, Engineering and Survey Services

(1) In the procurement of architectural, engineering and surveying services, the Authority shall determine whether to comply with the RFP procedures set forth in Article III.A. or the “Brooks” method set forth in this Article III.B., provided that, if federal funds will be utilized for such contract, the decision shall take into account applicable federal requirements.

(2) The Authority shall encourage architectural, engineering and surveying firms to submit an annual statement of qualifications and performance data. For each proposed project identified in accordance with Article III.A(1), the Authority shall evaluate current statements of qualifications and performance data on file with the Authority. If desired and to the extent appropriate if federal assistance is involved, the Authority may conduct discussions with professional firms regarding anticipated design concepts and proposed methods of approach to the proposed project.

(3) The Authority shall then evaluate whether a modification to the RFP documents is appropriate, and shall then solicit the RFP in compliance with the provisions of subparagraphs (b) and (c) of Article III.A(3).

- (4) Based upon the criteria established by the Authority, the Authority shall select no less than three professional firms deemed to be the most highly qualified to provide the services required from the proposals submitted, in order of preference.
 - (5) The Authority shall negotiate a contract with the best qualified professional firm for architectural, engineering or surveying services at compensation which the Authority determines in writing to be fair and reasonable. In making this decision, the Authority shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof. Should the Authority be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee it determines to be fair and reasonable, negotiations with that professional firm shall be formally terminated. The Authority shall then undertake negotiations with the second most qualified professional firm. Failing to come to accord with the second most qualified professional firm, the Authority shall formally terminate negotiations. The Authority shall then undertake negotiations with the third most qualified professional firm. Should the Authority be unable to negotiate a satisfactory contract with any of the three selected professional firms it shall select additional professional firms, in order of their qualifications and it shall continue negotiations in accordance with this subparagraph until an agreement is reached.
 - (6) The provisions of this Article III.B. must apply to engineering, architectural, or surveying services contracts in excess of \$1 million. Contracts for engineering, architectural or surveying services involving lesser amounts may be entered into pursuant to the provisions of Article III.B. or pursuant to procedures established by an Authorized Officer which shall be competitive to the extent deemed practicable by the Authorized Officer, provided that a qualification based selection procedure is used when required by federal guidance.
- C. It is hereby determined that a competitive selection process is inappropriate and that a competitive process shall not be required in the following instances:
- (1) Single Source. The service to be procured is available only from a single responsible source.
 - (2) No Bids or One Responsive Bid. Competitive bids are solicited and
 - (a) no responsive bid is received; or
 - (b) only a single responsive bid is received, and the Authorized Officer rejects the bid.
 - (3) Emergency, Critical Need or Unforeseen Circumstances. The existence of an emergency involving danger to life, safety or property, or a critical need or unforeseen circumstance which requires immediate action and cannot await competitive bidding; or when the contract is essential to the efficient operation of or the adequate provision of service and, as a consequence of an unforeseen circumstance, such purchase cannot await competitive bidding. Competitive

bidding is hereby declared to be impractical and inappropriate in any of the foregoing situations where an Authorized Officer must take appropriate action and cannot await action by the Board; provided, however, that notice of such action shall be given to the Board in a timely manner, together with a statement of the reasons for such action and a request for ratification by the Board.

- (4) Legal Services. When the services are legal services.
- (5) Unique Source. When the provider of the services has unique or otherwise outstanding qualifications.

D. The Chairman, Managing Director, General Counsel, or President or CPO of the relevant Authority, or such individuals as they may designate, may give verbal authorization to contractors or consultants to commence the performance of contracts entered into pursuant to the provisions of this Article III, where prior written agreement is impracticable, provided, however, that the contract shall be reduced to writing as soon as practicable. Prior to issuing a verbal authorization for a federally assisted contract, consideration should be given to the steps which may be taken to assure that federal assistance is not jeopardized.

Article IV – Notice and Advertising

In those instances where notice in the NYSCR is required under these Service Contract Guidelines:

- A. Regardless of the selection process used, notice of a Service Contract in the actual or estimated amount in excess of \$1 million shall be published at least one time in the NYSCR, except as provided in Article IV.C. Such advertising must be placed at least fifteen (15) business days prior to the planned date on which a bid/proposal is due, provided that if the Services Contract is to be awarded without bids/proposals and advertising is required, the timing of the publication shall be determined by an Authorized Officer.
- B. The notice must contain, as applicable, a statement of: (1) the name of the contracting Authority; (2) the contract identification number; (3) a brief description of the services sought, the location where services are to be provided and the contract term; (4) the address where bids/proposals are to be submitted, if submitted via hard-copy; (5) the date when bids/proposals are due; (6) a description of any eligibility or qualification requirement or preference; (7) a statement as to whether the contract may be fulfilled by a subcontracting, joint venture (“JV”) or co-production arrangement; (8) any other information which the Authority deems useful to potential bidder/proposer; (9) the name, address and the telephone number of the person to be contacted for additional information; and (10) a statement as to whether the services sought had, in the immediately preceding three year period, been supplied by a foreign business enterprise as that term is defined in Article 4-C of the Economic Development Law. Where the work to be performed under a contract to be advertised is substantially the same as the work of a prior contract awarded in the last five years, the NYSCR advertisement must include the name(s) of the incumbent(s) for the prior contract pursuant to Section 142 of the Economic Development Law.

- C. Notice in the NYSCR is not required under the following circumstances:
- (1) In the event of an emergency or critical need for the services as determined by an Authorized Officer;
 - (2) The contract is re-solicited for substantially the same services within forty-five business days after the date bids/proposals were originally due;
 - (3) The contract is awarded to a not-for-profit provider of human services;
 - (4) The contract is awarded pursuant to the provisions of Article III.C(1) or (2) or Article V.B. of these Service Contract Guidelines.
- D. In addition to the above NYSCR notice, the Authority shall provide notice to professional and other organizations, if any, that regularly notify MWBEs of the type of procurement opportunity that is the subject of the solicitation.

Article V – MWBEs, SDVOBs, and DBEs

The potential exists for MWBE, SDVOB, and DBE involvement in Service Contracts. The Authority shall use its best efforts to maximize the utilization, as applicable, of DBEs under the Authority's federal program, and MWBEs and SDVOBs under the New York State program set forth in Public Authorities Law §2879, Article 15-A and Article 17-B of the Executive Law and these Service Contract Guidelines.

- A. The MTA's Chief Diversity Officer is responsible for ensuring compliance with all applicable laws and regulations and for overseeing the programs established by the MTA to promote and assist: (1) the participation by MWBEs and SDVOBs in procurement opportunities and facilitation of the award of Service Contracts to such enterprises; (2) the utilization of MWBEs and SDVOBs as subcontractors to Authority prime contractors; and (3) the utilization of partnerships, JVs or other similar arrangements between MWBEs, SDVOBs and prime contractors. The Chief Diversity Officer reports directly to the Chairman in connection with the responsibilities set forth herein, and will participate in the procurement process either directly or through his or her designees.
- B. A Service Contract, not estimated to involve the expenditure in excess of \$1.5 million, that is not federally funded, may be awarded pursuant to Section 1209.7(b) or Section 1265-a.2(b) of the Public Authorities Law without competitive sealed bidding or other formal competitive process, notwithstanding any other provision of law or these Guidelines, where the proposed award is to a SBC, MWBE or SDVOB. The MTA and its agencies will administer set-aside procurements pursuant to the laws, rules and procedures that govern small purchase contracting.

The Authority CPO or his/her designee shall determine which Service Contracts are appropriate for these procurements. The CPO may make a determination that any such Service Contract may only be awarded to an MWBE, or only to an SDVOB, or only to an MWBE or an SDVOB. The basis for such a determination must be to promote participation of MWBEs and SDVOBs in Authority contracts, as mandated by Article 15-A and Article 17-B of the Executive Law, respectively, and to assist the Authorities in achieving their MWBE and SDVOB goals.

Notice of such procurements shall be placed on the Authority website inviting responsive bids/proposals from qualified SBCs, MWBEs and/or SDVOBs. Awards pursuant to this

process shall be made to the bidder/proposer determined to have submitted the bid/proposal that is most advantageous to the Authority after considering price and any other relevant factors. The CPO may reject all offers and withdraw the designation of a contract as one to be awarded pursuant to this process if the CPO determines that an award will result in the payment of an unreasonable price or otherwise not be advantageous to the Authority.

SDVOB set aside contracts made pursuant to Article 17-B of Executive Law require notice in the NYSCR.

- C. For contracts awarded pursuant to these Service Contract Guidelines, other than those whose award process is described in Article V.B., the Authority shall establish appropriate goals for participation by MWBEs and SDVOBs and for the utilization by prime contractors of MWBEs as subcontractors and suppliers. Statewide MWBE numerical participation target goals will be established by the Authority based on the findings of the most recent New York State Disparity Study.
- D. The Authority will conduct non-federally funded procurements in a manner that enables the Authority to achieve the maximum feasible portion of the goals set pursuant to Article V.C., including by taking the following actions:
 - (1) establishing measures and procedures to ensure that MWBEs and SDVOBs are given the opportunity for maximum feasible participation in the performance of Authority contracts and to assist in the identification of those contracts that are best suited for MWBE and SDVOB participation so as to facilitate the Authority's achievement of the maximum feasible portion of the MWBE and SDVOB goals;
 - (2) designating the New York State Division of Minority and Women-owned Business Development ("**DMWBD**") to certify and decertify MWBEs, and the Office of General Services ("**OGS**") Division of Service-Disabled Veterans' Business Development to certify and decertify SDVOBs, for purposes of these Service Contract Guidelines;
 - (3) setting forth in each contract solicitation the expected degree of MWBE and SDVOB participation based on potential subcontracting opportunities and the availability of MWBEs and SDVOBs to respond competitively to those opportunities;
 - (4) providing to prospective contractors in writing or by identifying a link to a website containing a current list of MWBEs and SDVOBs;
 - (5) with regard to JVs, allowing a bidder/proposer to count toward meeting its MWBE and SDVOB participation goal, the MWBE or SDVOB portion of the JV;
 - (6) waiving a contractor's obligation relating to MWBE or SDVOB participation after a showing of good faith efforts to comply with the participation goal; and
 - (7) verifying that MWBEs and SDVOBs listed in a successful bid/proposal are actually

participating to the extent listed in the project for which the bid/proposal was submitted.

- E. The Authority will also consider, where practicable:
- (1) the severability of service requirements and other bundled service contracts;
 - (2) with respect to MWBEs, the implementation of a program that will enable the Authority to evaluate each contract to determine the appropriateness of the goal pursuant to the most recent New York State Disparity Study; and
 - (3) compliance with the requirements of any federal law or regulations concerning opportunities for any DBEs, MWBEs and SDVOBs that effectuates the purposes of this Article V.
- F. The Chief Diversity Officer or his/her designee is responsible for ensuring compliance with all applicable laws and regulations with regard to the utilization of DBEs on federally funded Service Contracts.

Article VI - Types of Provisions to be Contained in Service Contracts

- A. The following types of provisions shall be contained in all Personal Services Contracts, to the extent applicable due to the specifications of such Personal Service Contract:
- (1) Description of services
 - (2) Compensation
 - (3) Time for performance or date of completion
 - (4) Liability of contractor or consultant; indemnification of Authority
 - (5) Reports of contractor or consultant
 - (6) Ownership of plans, drawings or other deliverables
 - (7) Assignments; subcontracts
 - (8) Maintenance of records, accounts
 - (9) Right of Authority to inspect and/or audit books and records
 - (10) Insurance requirements
 - (11) Termination
 - (12) Monitoring of the performance of services
 - (13) Use of Authority supplies, facilities or property
 - (14) Use of Authority personnel
 - (15) All provisions required to be included in Authority contracts by federal, state or local laws, ordinances, codes, rules or regulations
 - (16) Such modifications and additions as are appropriate in light of the specific circumstances presented
- B. To the extent practicable, a verbal authorization to commence work and a letter of intent/notice to proceed shall be required, which at a minimum shall:
- (1) Describe the services to be performed;
 - (2) Specify the amount of compensation to be paid pursuant to the verbal authorization and letter of intent/notice to proceed or the rates or fees which will

- be utilized to determine such compensation; and
- (3) Specify a date for completion or the anticipated duration of the services (except in instances where the nature of the services makes an estimate of the time required impossible or impracticable or where the contract is a retainer for the performance of services over an extended period of time on an “as-needed” basis and contains provisions allowing termination by the Authority at any time without cause).

For the avoidance of doubt, such letter of intent/notice to proceed shall NOT constitute the final Service Contract.

- C. Miscellaneous Service Contracts shall contain those provisions of Article VI.A. and other standard forms of contract deemed appropriate by an Authorized Officer.

Article VII - Responsibilities of Services Contractors

In each Service Contract, a service contractor shall have the following responsibilities:

- A. To perform the contract in accordance with its terms and to remain a responsible contractor;
- B. To perform the services required under the contract competently, efficiently, in a timely manner, at a fair and reasonable cost and in a manner which is satisfactory to the Authority; and
- C. To cooperate with Authority personnel who are directing, supervising or monitoring the performance of the services or who are assisting in their performance.

Article VIII - Contracts Involving Former Officers or Employees of the Authority

The Authority may enter into contracts with any Authority’s former officers, former employees or with firms employing such former officers or former employees only to the extent permitted by Public Officers Law §73.

Article IX - Reporting of Service Contracts

- A. Each Authority shall maintain records, for each fiscal year, of the following contracts entered into by the Authority at the request of such Division/Department: (1) Personal Service Contracts in the actual or estimated amount of \$15,000 or more; and (2) Miscellaneous Service Contracts in the actual or estimated amount of \$15,000 or more.
- B. The Authorized Officer shall designate a Division or Department which shall be responsible for preparing a report at the end of each fiscal year with respect to the foregoing contracts. With respect to each such contract, the report shall contain the following information:
 - (1) Name of contractor;
 - (2) Short description of the services involved;
 - (3) Amounts paid pursuant to the contract as of the end of such fiscal year;

- (4) The selection process used;
- (5) Status of the contract;
- (6) If it was exempt from advertising in the NYSCR pursuant to Article IV.C. of these Service Contract Guidelines, state that and include a basis for such exemption;
- (7) Whether the contract was entered into with a New York State business enterprise or a foreign business enterprise, as those terms are defined in Public Authorities Law §2879;
- (8) Whether the contract was entered into with an MWBE or SDVOB; and
- (9) Referrals to and penalties imposed by the Director of DMWBD pursuant to Executive Law §316.

C. Each Authority shall submit a copy of such report to the Board of the Authority upon its completion.

Article X – Board Approval

The following Service Contracts shall require Board approval by resolution, approved by a majority of the members present at a meeting at which a quorum is in attendance and shall be reviewed by the Board on an annual basis:

- A. Personal Service Contracts: all Personal Service Contracts entered into by an Authority in the actual or estimated amount in excess of \$1 million, except if awarded to the lowest responsible bidder pursuant to competitive sealed bids; and
- B. Miscellaneous Service Contracts: all Miscellaneous Service Contracts entered into by an Authority in the actual or estimated amount in excess of \$1 million, unless awarded pursuant to competitive sealed bids.

Article XI - Change Orders

An Authority may enter into a change order or amendment to a Service Contract provided that approval of the Board of the Authority by a resolution approved by a majority of the members present at a meeting at which a quorum is in attendance shall be required in the following circumstances:

- A. The Service Contract did not initially equal or exceed the applicable monetary threshold for Board approval set forth in Article XI or Article II of these Service Contract Guidelines and the applicable threshold is equaled or exceeded as a result of the change order or amendment. This provision applies to all Service Contracts subject to these Service Contract Guidelines.
- B. The Service Contract was approved by the Board and the change order or amendment, including any change orders or amendments since Board approval was last obtained, results in a substantial change in the contract as determined by an Authorized Officer. Notwithstanding the foregoing, Board approval of change orders shall only be required if the change order is over \$1 million. In order to avoid splitting change orders or amendments to below \$1 million for the purpose of avoiding the Board approval requirements of this Article XI.B., the CPO of the relevant Authority must approve multiple change orders or amendments to the same contract and for the same scope of work, if all such change orders or amendments for any rolling 12-month period would equal to or be

more than \$1 million.

For example only, if change order #1 is issued in March Year 1 for \$600,000, change order #2 is issued in June Year 1 for \$300,000 and change order #3 is issued in January Year 2 for \$200,000 (all for the same scope of work), then the CPO would be required to approve change order #3 because the total amount would be \$1.1 million for the rolling 12-month period from March Year 1 to March Year 2, and further the CPO would need to approve any other change order issued during any rolling 12-month period which would bring that 12-month period total to be equal to or greater than \$1 million.

- C. Notwithstanding the foregoing, an Authorized Officer may enter into a change order or amendment without Board approval in any of the following situations as determined by an Authorized Officer,
 - (1) The existence of an emergency, other critical need or unforeseen circumstance;
 - (2) The risk of a substantial increase in cost or delay if prompt action is not taken; or
 - (3) The change order does not change the total contract price to exceed the contract budgeted cost, including contingency.
- D. The Chairman shall establish policies with respect to the delegation of responsibilities set forth in this Article.

Article XII – Miscellaneous

- A. Any provision of these Service Contract Guidelines may be waived by the Chairman, an Authority President or the Board, or such individuals as they may designate, except to the extent prohibited by law. A waiver may also be in the form of a ratification. If a contract is federally assisted, prior to issuing a waiver, consideration should be given to the steps which may be taken to assure that federal assistance is not jeopardized.
- B. No Board Committee action or Authority policy, other than one approved by the Chairman, shall be inconsistent with these Service Contract Guidelines.
- C. An Authority may not divide or split any contract or series of contracts for the purpose of avoiding the requirements of these Service Contract Guidelines, provided that with regard to discretionary contracts awarded under Article V.B., an Authority may divide requirements for the purpose of unbundling contracts to create discretionary contracting opportunities.
- D. Nothing in these Service Contract Guidelines shall preclude the Authority from accepting bids/proposals utilizing an electronic bidding system that may inform bidders whether their bid is the current low bid, and allow bidders to submit new bids before the date and time assigned for the opening of bids. Such procedure shall not constitute disclosure in violation of Section 2878 of the Public Authorities Law.
- E. A Service Contract awarded by an Authority pursuant to the provisions of these Service Contract Guidelines may provide that the Service Contract includes the requirements of one or more other Authorities.

- F. The Authority shall prepare a publicly available report no less frequently than annually, summarizing procurement activity by the Authority for the period of the report, in accordance with the reporting requirements of Section 2879(6) of the Public Authorities Law.
- G. These Service Contract Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under or by reason, of any requirement or provision thereof.
- H. An Authority may contract for a service available through an existing contract between a contractor and any of the governmental entities listed below:

Another public authority (not New York State) or United States general services administration (“GSA”) if: (1) the existing contract was awarded pursuant to a process of competitive sealed bids or a competitive RFP; (2) the Authority’s Authorized Officer determines that the price and other commercial terms specified in the contract are satisfactory; and (3) if Board authorization would otherwise be required under these Service Contract Guidelines, the Board adopts a resolution by a majority vote of the members of the Board present at a meeting at which a quorum is in attendance, which sets forth the reasons why obtaining such service is in the public interest and authorizes the Authority to enter into the Service Contract.

A New York State agency or authority (including OGS), the City of New York or Nassau County if: the Authority’s Authorized Officer determines that the price and other commercial terms specified in the contract are satisfactory; and (2) if Board authorization would otherwise be required under these Service Contract Guidelines, the Board adopts a resolution by a majority vote of the members of the Board present at a meeting at which a quorum is in attendance, which sets forth the reasons why obtaining such service is in the public interest and authorizes the Authority to enter into the Service Contract.

Such rationale shall include a determination of need, a consideration of the procurement method by which the contract was awarded, an analysis of alternative procurement sources including an explanation why a competitive procurement or the use of a centralized contract let by the commissioner of the office of general services is not in the best interest of the authority, and the reasonableness of cost. Such a determination shall be documented in writing by the Authorized Officer and included in the contract file.

- I. If an Authority enters into a Service Contract pursuant to these Service Contract Guidelines, and such Service Contract allows all other Authorities to utilize the same Service Contract, then no further action is required. For the avoidance of doubt, the provisions of Article II.C. and Article XI shall apply to change orders to all such Service Contracts.
- J. Nothing contained in these Service Contract Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these Service Contract Guidelines.

- K. Where applicable federal, state or local laws, ordinances, codes, rules or regulations contain requirements which are in conflict with or which impose greater obligations upon the Authority than these Service Contract Guidelines, then such requirements shall take precedence over those contained herein.

- L. For those Service Contracts for which the Office of the State Comptroller (“**OSC**”) has requested review and approval pursuant to Public Authorities Law §2879-a, if the Authority has not received OSC approval or disapproval within thirty days of submission to the OSC, the Authority may enter into such Service Contract without further waiting for such review and approval.