

March 2011

ALL AGENCY GUIDELINES FOR
PROCUREMENT OF SERVICES

These guidelines apply to the Metropolitan Transportation Authority ("MTA"), the New York City Transit Authority ("Transit"), the Long Island Rail Road Company ("LIRR"), the Metro-North Commuter Railroad Company ("MNCRR"), Staten Island Rapid Transit Operating Authority ("SIRTOA"), Metropolitan Suburban Bus Authority ("LI Bus") Manhattan and Bronx Surface Transit Operating Authority ("MaBSTOA"), MTA Capital Construction ("MTACC"), MTA Bus Company ("MTA Bus") and to 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 which is referred to as the "Authority").

Article 1-Applicability of guidelines

This policy applies to contracts for services. A contract for services is either a personal service contract or a miscellaneous service contract.

- A. Personal services contracts generally involve retaining a consultant who specializes in one of the following:
- (1) Legal
 - (2) Financial
 - (3) Accounting
 - (4) Auditing
 - (5) Management
 - (6) Human Resources
 - (7) Investment
 - (8) Bonds
 - (9) Planning
 - (10) Analysis
 - (11) Training
 - (12) Data Processing
 - (13) Computer Systems
 - (14) Statistics
 - (15) Research
 - (16) Public and corporate relations
 - (17) Architecture
 - (18) Engineering
 - (19) Surveying
 - (20) Labor Relations

- (21) Real Estate
- (22) Legislation
- (23) Public Affairs
- (24) Marketing
- (25) Advertising
- (26) Records Management
- (27) Office services requiring specialized skills
- (28) Printing where editorial services predominate
- (29) Other Consulting, Professional or Technical Services

- B. A miscellaneous service contract is any contract for service which is not a:
 - i) personal service contract; ii) public work contract; or iii) a miscellaneous procurement contract. Examples include but are not limited to contracts for guard service, custodial service and maintenance work performed by laborers, workers or mechanics which 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 guidelines or the All Agency Procurement Guidelines, the elements which predominate shall determine the type of contract for purposes of both Guidelines.

Article II - Delegation of Authority

The Chairman, the presidents of the Authorities or the designated representative or representatives thereof (each defined for purposes of these guidelines as an "Authorized Officer") are hereby empowered with respect to service contracts to be entered into by his/her respective Authority acting on its own behalf or as agent for the MTA, as follows:

- A. to implement these guidelines.
- B. to establish procedures which shall be in accordance with these guidelines to the extent deemed practicable by the Authorized Officer, for the award of: (i) a miscellaneous service contract estimated to involve the expenditure of \$15,000 or less; and (ii) a personal service contract estimated to involve the expenditure of \$25,000 or less, provided that the contract shall be advertised, Board approval of the award obtained and reported if otherwise required under these guidelines.
- C. to determine whether a miscellaneous service contract shall be awarded pursuant to the provisions of these guidelines or the provisions of the All Agency Procurement Guidelines, provided that, notwithstanding the vote otherwise required by the All Agency Procurement Guidelines, the vote of approval of a majority of the members of the Board present at a meeting at

which a quorum is present shall in any event be required for the award of the following miscellaneous service contracts:

- i) Without regard to whether or not the contract was awarded pursuant to sealed competitive bidding, the actual or estimated amount of the contract is \$15,000 or more and the services will be rendered over a period in excess of one year.
- ii) Without regard to the period of performance of the services, the miscellaneous service contract provides for the expenditure of more than \$25,000 and was not awarded pursuant to sealed competitive bidding.

Article III - Policy

It is the policy of the Authority to contract for personal and miscellaneous services when, because of factors such as timing, costs, qualifications 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 these Guidelines or is waived as impractical or inappropriate.

Article IV - Advertising

- A. Regardless of the selection process used, notice of a contract for the acquisition of services of any kind in the actual or estimated amount of \$15,000 or more shall be published at least one time in New York State Contract Reporter, except as provided in paragraph C of this Article. The publication shall be no less than fifteen business days prior to the planned date on which a bid or proposal is due, provided that if the contract is to be awarded without bids or 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: i) the name of the contracting Authority; ii) the contract identification number; iii) a brief description of the services sought, the location where services are to be provided and the contract term; iv) the address where bids or proposals are to be submitted; v) the date when bids or proposals are due; vi) a description of any eligibility or qualification requirement or preference; vii) a statement as to whether the contract may be fulfilled by a subcontracting, joint venture or co-production arrangement; viii) any other information which the Authority deems useful to potential contractors; ix) the name, address and the telephone number of the person to be contacted for additional information; and x) 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.

- C. The advertisement is not required under the following circumstances:
- i) In the event of an emergency or critical need for the services as determined by an Authorized Officer;
 - ii) The contract is re-bid or re-solicited for substantially the same services within forty-five business days after the date bids or proposals were originally due;
 - iii) The contract is awarded to a not-for-profit provider of human services;
 - iv) The contract is awarded pursuant to the provisions of Article V(C)(1) or (2) (single or unique source) of these Guidelines.
- D. In addition to the above advertisements, the Authority shall provide notice to professional and other organizations that regularly notify certified minority and women owned business enterprises (“MWBES”) of the type of procurement opportunity that is the subject of the solicitation.

Article V - Selection of Personal Services Contractors

A. Requirements

The following are the requirements to be followed for selection of contractors for personal services, except for: i) contracts for architectural, engineering, and survey services (which are subject to paragraph B); ii) contracts equal to or less than \$25,000 (which may be entered into pursuant to the provisions of this paragraph or pursuant to procedures established by an Authorized Officer which shall be competitive to the extent deemed practicable by the Authorized Officer); and iii) contracts for services for which a competitive selection process is inappropriate pursuant to the provisions of paragraph C.

1. 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.
2. A request for proposals ("RFP") to perform the required services shall be sent to three or more firms to assure competition, including any DBE/WBE/MBE firms selected to receive the RFP pursuant to applicable Authority or New York State DBE/WBE/MBE 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 to professional and other organizations that represent or regularly notify certified

MWBEs of the type of procurement opportunity that is the subject of the RFP notice.

3. The RFP shall describe the services to be performed, any completion dates or time requirements, DBE/WBE/MBE requirements, if applicable, and the criteria to be utilized by the Authority in evaluating proposals and shall contain a requirement for a cost proposal and the date, time and place when proposals must be received.
4. 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 proposal(s) will be the most advantageous to the Authority, price, qualifications and other factors considered, using the evaluation criteria specified in the RFP as the basis for the decision.

B. Architectural- Engineering and Survey Contracts

1. In the procurement of architectural, engineering and surveying services, the Authority shall determine whether to comply with the RFP procedures set forth in paragraph A or the "Brooks" method set forth in this paragraph, provided that if federal assistance is involved, the decision shall take into account applicable federal requirements.
2. The Authority shall encourage professional firms engaged in the lawful practice of the profession to submit an annual statement of qualifications and performance data. For each proposed project identified in accordance with Article V(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 three or more professional firms regarding anticipated design concepts and proposed methods of approach to the assignment.
3. The Authority shall then evaluate whether a modification to the written statement prepared in accordance with subparagraph 1 of Paragraph A is appropriate, and shall then comply with the provisions of subparagraphs 2 and 3 of Paragraph A.
4. The Authority shall select from the proposals submitted, in order of preference, based upon the criteria established by the Authority, no less than three professional firms deemed to be the most highly qualified to provide the services required.

5. The Authority shall negotiate a contract with the highest 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 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 selected professional firms it shall select additional professional firms, in order of their competence and qualification and it shall continue negotiations in accordance with this subparagraph until an agreement is reached.
 6. The provisions of this paragraph B shall apply only to engineering, architectural, or surveying services contracts in excess of \$25,000.00. Contracts for engineering, architectural or surveying services involving lesser amounts may be entered into pursuant to the provisions of this paragraph or pursuant to procedures established by an Authorized Officer which shall be competitive to the extent deemed practicable by the Authorized Officer.
- 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. When the services are obtainable from one source only.
 2. When the provider of the services has unique or otherwise outstanding qualifications.
 3. When an emergency or other circumstances exist which make competition impracticable or inappropriate.
 4. Legal Services.
- D. Pursuant to Section 2879(3)(b)(i) of the Public Authorities Law, a contract in an amount not to exceed \$200,000, that is not federally funded, for personal services or miscellaneous services may be awarded without competitive procedures otherwise required by law or these Guidelines, where the proposed award is to a small business concern or a certified minority or women-owned business enterprise (“MWBE”). Contracts

may be designated for solicitation and award pursuant to Section 2879(3)(b)(i) by the Chairman or the Chairman's designee in consultation with the Authorized Officer of the appropriate agency. In the case of contracts that are designated pursuant to Section 2879(3)(b)(i) for award to eligible small business concerns or MWBEs, there shall be notice of the proposed contract on the Authority website inviting responsive bids or proposals from qualified small business concerns and MWBEs. Notice of such procurements shall also be provided to identified organizations that represent or regularly notify small business concerns or MWBEs, of the type of procurement opportunity that is the subject of the award. Awards pursuant to Section 2879(3)(b)(i) shall be made to the bidder or proposer determined to have submitted the bid or proposal that is most advantageous to the Authority, price and any other relevant factors considered. An award proposed to be made to a bidder or proposer other than the lowest responsible, responsive bidder or proposer, shall require approval by a majority of the Board at a meeting at which a quorum is present; in addition, the approval of the Board is required in any other instance in which it is required by law. The Chairman or his designee, in consultation with the Authorized Officer of the appropriate agency, may reject all offers and withdraw the designation of a contract as one to be awarded pursuant to Section 2879(3)(b)(i) if the Chairman or his designee determines that an award will result in the payment of an unreasonable price or otherwise not be advantageous to the Authority. The requirements of Article IV and of Article V(B) shall not apply to contracts awarded in accordance with Section 2879(3)(b)(i).

- E. The Chairman, President, General Counsel, or Chief Procurement Officer of the 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 paragraph E, 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 VI – Minority/Women Owned and Disadvantaged Business Enterprises

The potential exists for disadvantaged/minority/women owned business enterprise involvement in personal service and miscellaneous service contracts. The Authority shall use its best efforts to maximize the utilization, as applicable, of DBEs under the Authority's federal program, and MBEs/WBEs under the New York State program set forth in Public Authorities Law §2879, Article 15-A of the Executive Law and these guidelines.

- A. The MTA Chief Diversity Officer ("Chairman's Designee") is responsible for overseeing the programs established by the MTA to promote and

assist: i) the participation by certified MWBEs in procurement opportunities and facilitation of the award of procurement contracts to such enterprises; ii) the utilization of certified MWBEs as subcontractors to Authority prime contractors; and iii) the utilization of partnerships, joint ventures (“JVs”) or other similar arrangements between certified MWBEs 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. For contracts awarded pursuant to these Guidelines, the Authority shall establish appropriate goals for participation by certified MWBEs and for the utilization by prime contractors of MWBEs as subcontractors and suppliers. Statewide numerical participation target goals will be established by the Authority based on the findings of the New York State 2010 Disparity Study, or any subsequent New York State Disparity Study.
- C. 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 VI(B) including taking the following actions: (i) establishing measures and procedures to ensure that certified MWBEs 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 which certified MWBEs may best bid to actively and affirmatively promote and assist their participation in the performance of Authority contracts so as to facilitate the Authority’s achievement of the maximum feasible portion of the MWBE goals; (ii) designating the New York State Division of Minority and Women-owned Business Development (“DMWBD”) to certify and decertify MWBEs for purposes of these guidelines; (iii) setting forth in each contract solicitation the expected degree of MWBE participation based on potential subcontracting opportunities and the availability of certified MWBEs to respond competitively to those opportunities; (iv) providing to prospective contractors in writing or by identifying a link to a specific web site a current list of MWBEs; (v) with regard to JVs, allowing a bidder to count toward meeting its MWBE participation goal, the MWBE portion of the JV; (vi) waiving a contractor’s obligation relating to MWBE participation after a showing of good faith efforts to comply with the participation goal; and (vii) verifying that MWBEs listed in a successful bid or proposal are actually participating to the extent listed in the project for which the bid or proposal was submitted. The Authority will also consider, where practicable: (i) the severability of service requirements and other bundled service contracts; (ii) the implementation of a program that will enable the Authority to evaluate each contract to determine the appropriateness of the goal pursuant to the New York State 2010 Disparity Study, or any

subsequent New York State Disparity Study; (iii) compliance with the requirements of any federal law concerning opportunities for any MWBEs which effectuates the purpose of this section; and (iv) consultation of the most recent disparity study.

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

- A. The following types of provisions shall be contained in all personal services contracts, except that it is not necessary to include any provision which is inapplicable or unnecessary because of the nature or duration of the services to be performed, the location or locations where they are to be performed or the type of compensation being paid.
 - 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 Products of the Performance of the Services
 - 7. Assignments; Subcontracts
 - 8. Maintenance of Records, Accounts
 - 9. Right of Authority to Inspect and/or Audit Books and Records of Contractor or Consultant
 - 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 writing which is not intended to constitute the final agreement, at a minimum shall:
 - 1. Describe the services to be performed;
 - 2. Specify the amount of compensation to be paid 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).

- C. Miscellaneous service contracts shall contain those provisions of paragraph A and of other standard forms of contract deemed appropriate by an Authorized Officer.

Article VIII - Responsibilities of Services Contractors

A service contractor shall have the following responsibilities:

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

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

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

Article X - Monitoring, of Service Contracts

The Division/Department of the Authority requiring the services shall be responsible for monitoring the performance of the contract to assure that the contract is performed in accordance with its terms.'

Article XI Reporting of Service and Purchase Contracts

- A. Each Division/Department of an Authority shall maintain records, for each fiscal year, of the following contracts entered into by the Authority at the request of such Division/Department: i) personal service contracts in the actual or estimated amount of \$15,000 or more; ii) miscellaneous service contracts in the actual or estimated amount of \$15,000 or more; and iii) purchase contracts in an actual or estimated amount of \$15,000 or more.
- B. The Authority's 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 New York State Contract Reporter pursuant to Article IV(C) of these Guidelines:
 - i) a statement to that effect; and
 - ii) the basis for such exemption; and
 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 a New York State certified minority or women-owned business enterprise.
 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 XII-Personal Service Contracts Requiring Approval of the Board

The following personal service contracts shall require the approval of the Board of the Authority 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 of all Authorities except for Bridges and Tunnels: All personal service contracts entered into by an Authority in the actual or estimated amount of \$20,000 or more;
- B. Personal Service Contracts of Bridges and Tunnels: All personal services contracts entered into by Bridges and Tunnels in the actual or estimated amount of \$15,000 or more where the services will be rendered over a period in excess of one year; and
- C. Miscellaneous service contracts: See Article II(C) of these guidelines.

Article XIII-Change Orders

An Authority may enter into a change order or amendment to a personal service or miscellaneous 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 contract did not equal or exceed the applicable monetary or durational threshold for board approval set forth in Article XII or Article II of these guidelines and the applicable threshold is equaled or exceeded as a result of the change order or amendment. This provision applies to all contracts subject to these Guidelines, including budget adjustments to estimated quantity contracts previously approved by the Board which exceed the threshold.
- B. The 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.
- C. The miscellaneous service contract was awarded pursuant to the All-Agency Procurement Guidelines and the change order or amendment equals or exceeds the requirements for Board approval under Article VIII of the All Agency Procurement Guidelines.
- D. Notwithstanding the foregoing, an Authorized Officer may enter into a change order or amendment in any of the following situations as determined by an Authorized Officer,
 - 1. The existence of an emergency; or
 - 2. The risk of a substantial increase in cost or delay if prompt action is not taken.
- E. The Chief Operating Officer shall establish policies with respect to the delegation of responsibilities set forth in this Article.

Article XIV – Miscellaneous

- A. Any provision of these 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 procedure or action or Authority policy, other than one approved by the Chairman, shall be inconsistent with these Guidelines.
- C. A contract awarded by an Authority pursuant to the provisions of these Guidelines may provide that the contract includes the requirements of one or more other Authorities.

- D. An Authority may contract for a service available through an existing contract between a contractor and the State of New York or the City of New York or another Authority if: i) the existing contract was awarded pursuant to a process of competitive sealed bids or a competitive request for proposals; ii) the Authority's Authorized Officer determines that the price and other commercial terms specified in the contract are satisfactory; and iii) if board authorization would otherwise be required under these Guidelines, the Board adopts a resolution by a majority vote of the members of the Board present meeting at which a quorum is in attendance which sets forth the reasons why a competitive process is impractical or inappropriate and authorizes the Authority to enter into the contract.
- E. These 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.
- F. Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these Guidelines.
- G. 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 Guidelines, then such requirements shall take precedence over those contained herein.
- H. Nothing in these guidelines shall preclude the Authority from accepting bids or proposals in an electronic format, to the extent permitted by law.