

**PROCUREMENT POLICY OF THE**  
**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

**Adopted June 13, 2006; as amended through June 23, 2020**

In accordance with relevant requirements of the General Municipal Law, the Public Authorities Accountability Act, and the Lobbying and Procurement Act, all of the foregoing being enactments of the State of New York.

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**Section A. GENERAL**

(1) **Definitions.** The following terms shall have the meanings respectively provided:

*Agency* means the New York City Industrial Development Agency.

*Board of Directors* means the Board of Directors of the Agency.

*City* means The City of New York.

*Competitive Method of Procurement* means the following Methods of Procurement: Section C, Small Purchases (but not with respect to contracts under \$5,000); Section F, Competitive Sealed Bids; Section G, Competitive Sealed Proposals; and Section H, Contractors Recommended by Construction Manager.

*Construction-Related Supplies* means the providing of tangible personalty, whether or not capital in nature, in connection with Construction Services, including but not limited to fixtures, furnishings and equipment.

*Construction Services* means construction and/or renovation activities.

*Consultant Committee* has the meaning provided in subsection 7 of this Section A.

*NYCEDC* means the New York City Economic Development Corporation in its capacity as the contract provider to the Agency for all administrative services.

*Executive Director* means the Executive Director of the Agency, or, upon his or her direction, the Deputy Executive Director of the Agency.

*Investigation* means the then-current investigatory background check used by NYCEDC.

*Method(s) of Procurement* means collectively and individually the following procurement procedures: (i) *Use of NYCEDC* under Section B; (ii) *Small Purchases* under Section C; (iii) *Sole Source Procurement* under Section D; (iv) *Emergency Procurements* under Section E; (v) *Competitive Sealed Bidding* under Section F; (vi) *Competitive Sealed Proposals* under Section G; (vii) *Contactors Recommended by Construction Manager* under Section H; and (viii) *Use of other Governmental Contracts* under Section I.

*Minimum Requirements* has the meaning provided in subsection 8 of this Section A.

*Offeror(s)* has the meaning provided in subsection 5 of this Section A.

*Procurement Officer(s)* has the meaning provided in subsection 5 of this Section A.

*Public Contract* has the meaning provided in subsection 6 of this Section A.

*Record of Procurement* has the meaning provided in subsection 4 of this Section A.

*Response* means a response to a Solicitation.

*Responsible Person* means an individual or entity that does not fall within any of the following categories: (i) an Offeror with regard to which a governmental entity has made, within the preceding four years, a finding of non-responsibility on account of (y) impermissible contacts with such governmental entity during the restricted period for a procurement being performed by such governmental entity, or (x) intentionally providing

to such governmental entity false or incomplete information; or (ii) any subsidiary or related or successor entity of the Offeror described in clause “i” preceding when such subsidiary or related or successor entity has a substantially similar function or management; and (iii) for purposes of any procurement of the Agency, an Offeror that has made an impermissible contact with the Agency during the Restricted Period applicable to such procurement, or an Offeror that has intentionally provided the Agency with false or incomplete information in connection with such procurement.

*Restricted Period* means, with regard to any Competitive Method of Procurement, the period of time commencing with the earliest Solicitation and ending with the final contract award and approval by the Board of Directors.

*Selection Criteria* has the meaning provided in subsection 9 of this Section A.

*Services* means professional and consulting services.

*Solicitation(s)* means any notice, advertisement, bid, request for proposals, or any other request that is published or otherwise disseminated by the Agency as part of one of the Competitive Methods of Procurement.

*State* means the State of New York.

*Supplies* means the providing of tangible and intangible goods, including (without limitation) software and capital items, including (with respect to machinery and equipment) installation and servicing, but not including construction-related personalty.

*Supplies and/or Services* means, depending on the context, all or any one of or any combination of the following: Services, Supplies, Construction Services, and/or Construction-Related Supplies.

(2) **Applicability of this Policy.** Except as provided for Public Contracts, this Policy shall apply to the procurement of contracts for all Supplies and/or Services to be purchased by the Agency for its own use and account. This Policy shall not apply to the review and approval by the Agency of any project or project entity for the purpose of providing to such project or project entity financial assistance in accordance with relevant provisions of Title 1 of Article 18-A of the General Municipal Law Chapter 24 of The Consolidated Laws of New York, as amended.

(3) **Methods of Procurement.** Every contract for Supplies and/or Services procured by the Agency shall be procured in accordance with and pursuant to one of the Methods of Procurement. Any contract for Supplies and/or Services procured by the Agency shall be procured in accordance with and pursuant to *Competitive Sealed Bidding* unless one of the other Methods of Procurement is appropriate for such procurement.

(4) **Record of Procurement.** The Executive Director shall cause to be maintained with respect to each contract procured by the Agency for Supplies and/or Services pursuant to one of the Competitive Methods of Procurement, the “**Record of Procurement**” set forth in *Appendix I*, annexed hereto.

(5) **Procurement Officer; Permitted Contacts.** For every Competitive Method of Procurement, the Executive Director or, at the Executive Director's designation, the head of the contract administration unit for NYCEDC, shall name one or more individuals to act on behalf of the Agency for the purpose of receiving questions from, and providing information to, bidders, respondents or other offerors (or if individuals are acting on behalf of entities that are bidders, respondents or other offerors, then, to such individuals) (the "**Offeror(s)**"). The person or persons so named shall be referred to as the "**Procurement Officer(s)**." During any Restricted Period, permitted contacts between the Agency (including but not limited to the Procurement Officer(s)) and Offeror(s) are limited to those described in *Permitted Contacts, Appendix II*, annexed hereto.

(6) **Public Contracts.** When the Agency funds contract payments with monies provided by the federal government and/or the State and/or the City; and where as a condition to using such monies, federal and/or State and/or City law, rules or regulations prescribe procurement requirements that exceed or conflict with those set forth in this Policy, the requirements of such laws, rules or regulations shall govern. Agency contracts that are so funded, whether in whole or in part, shall be referred to as "**Public Contracts.**"

(7) **Board of Directors; Executive Director; Selection Consultant Committee.**

(a) With the exception of contracts for \$5,000 or less, the Board of Directors shall approve all contracts for Supplies and/or Services except that in the case of Emergency Procurements, such approvals may be retroactive.

(b) The Board of Directors may (but shall not be obligated to) appoint a Selection Consultant Committee (the "**Consultant Committee**") to evaluate and recommend Offerors and their Responses for any Supplies and/or Services for which a Competitive Method of Procurement is used. If the Board appoints a Consultant Committee, then the Consultant Committee shall be responsible for recommending Offerors and Responses (as selected pursuant to a Competitive Method of Procurement) to the Board of Directors. If the Board of Directors does not appoint a Consultant Committee, the Executive Director shall make such recommendations.

(8) **Minimum Requirements.** To be considered in a Competitive Method of Procurement, an Offeror must satisfy (and to the extent possible demonstrate in its Response that it satisfies) the "**Minimum Requirements**" set forth in *Appendix III* annexed hereto.

(9) **Selection Criteria.** For all contracts for which a Competitive Method of Procurement is used, the Executive Director (or, where applicable, the Consultant Committee) shall in writing specify criteria by which potential Offerors (and their Responses) are to be evaluated (the "**Selection Criteria**").

(10) **Applicability of Differing NYCEDC Requirements.** If NYCEDC, whether by contract or decision by the Deputy Mayor for Economic Development or by other means, amends its procurement policy and procedures, this Policy shall be similarly and automatically

amended without approval by the Board of Directors except to the extent otherwise required by law.

(11) **Solicitations of the Agency.** Solicitations of the Agency shall contain the provisions set forth in *Appendix IV* annexed hereto.

(12) **MWBEs.** The Agency shall seek to encourage participation by minority and women-owned business enterprises (i.e., “MWBEs”) in providing Supplies and/or Services to the Agency.

**Section B. USE OF NYCEDC**

(1) The Agency may procure NYCEDC as the contractor for providing services for the administration and operation of the Agency, and may do so without competition and without complying with any other Method of Procurement. In adopting this Policy, the Board of Directors hereby finds and determines as follows: (a) Agency has no employees; (b) staff personnel of NYCEDC (or its predecessors) have, since the establishment of the Agency, administered and operated the Agency pursuant to contract between the Agency and NYCEDC; (c) as to staffing, the operational identity between the Agency and NYCEDC has always been and remains integrated; (d) it is in the best interests of the Agency to continue this contractual and operational relationship with NYCEDC; and (e) were the relationship to be discontinued, the resulting inefficiencies would be deleterious to the effective operation of the Agency, and (f) to competitively seek an entity to administer and operate the Agency would not be in the Agency’s best interest.

(2) The Agency may procure contracts for Services through NYCEDC (other than those described in subsection (1) immediately preceding) as contractor whereby NYCEDC obtains the desired services from a third party as subcontractor, and the Agency may select NYCEDC for this purpose on a non-competitive basis without the Agency otherwise complying with any other Method of Procurement; *provided, however,* that NYCEDC shall procure the subcontractor in question in accordance with NYCEDC’s then-current procurement policy and procedures. In adopting this Policy, the Board of Directors hereby finds and determines as follows: (a) for certain Services, procuring a contractor competitively when the contractor is merely acting in an administrative or pass-through capacity, is not in the best interests of the Agency; (b) selecting NYCEDC non-competitively for this administrative and pass-through role, given that NYCEDC staff personnel provide all day-to-day administrative services to the Agency, is by far the most efficient alternative to competitively selecting an entity for this purpose; and (c) by requiring NYCEDC to procure the subcontractor in accordance with NYCEDC’s own procurement policy and procedures, the Agency is fulfilling the intent of this Policy.

**Section C. SMALL PURCHASES**

The procurement of a contract for Supplies and/or Services for an amount greater than \$5,000 but not more than \$100,000, shall consist of using reasonable efforts to obtain Responses from at least three Offerors. With regard to procurements of \$5,000 or less, the Agency shall not

be required to engage in any procurement process. If the Agency only obtains a Response from one Offeror pursuant to this Section C, the procurement will not be considered sole-source under this Policy. In general, procurements shall not be artificially divided so as to constitute a small purchase under this Section C. Procurement under this Section C need not be based exclusively on cost.

#### **Section D. SOLE SOURCE PROCUREMENT**

(1) **For Services.** Subject to review and approval by the Consultant Committee (if one has been appointed by the Board of Directors pursuant to subsection A.7 of this Policy), the Executive Director may award a contract for Services to a consultant on a sole-source basis if either of the following circumstances applies: (a) the consultant has unique capabilities or has exclusive access to unique technical data, either of which is relevant to the progress and/or completion of a project; or (b) a consultant's recent experience with a specialized project or its geographical location, or the consultant's familiarity with local community groups, would add significantly to the overall quality of either the planning, design or construction of the project.

(2) **For Supplies.** Subject to review and approval of the Consultant Committee (if one has been appointed by the Board of Directors pursuant to subsection A.7 of this Policy), the Executive Director may award to a vendor a contract for Supplies on a sole-source basis if either of the following circumstances applies: (a) the vendor is the only vendor that makes or supplies or installs or services a unique item (new or replacement); (in other words, this is a circumstance in which the Agency would have no visible alternative); or (b) the Agency has attempted to procure a vendor through one of the Competitive Methods of Procurement but the effort has failed to produce a Response or the Responses that were received were non-responsive; and, as a consequence, the Agency must procure a vendor on a sole-source basis in order to avoid possible cost overruns or a delay in the project.

#### **Section E. EMERGENCY PROCUREMENTS**

(1) **General.** Upon determination by the Executive Director that one of the emergency circumstances described in subsection (2) following applies, the Executive Director may direct the Agency to enter into a contract for Supplies and/or Services without the benefit of a Competitive Method of Procurement; provided, however, that the Agency shall use such competitive procedures as may be practicable without endangering life, safety, health, welfare or property, and without impairing the success of the project to which the emergency pertains. Should the Agency use competition, the resulting procurement need not be based exclusively on cost.

(2) **Emergencies.** The following are emergencies under which the Executive Director may direct the Agency to enter into a contract without benefit of a Competitive Method of Procurement: (a) procurement must occur immediately in order to avoid threat to life, safety, health, welfare or property; or (b) the failure to procure immediately is likely to threaten or jeopardize the security or value of a project or the property or goods associated with a project; or (c) immediate procurement is necessary in order to avoid cost overruns or substantial delay in project completion. For purposes of clause "c," "substantial delay" in construction projects

includes, but shall not be limited to, delay in a scheduled delivery date when such date is intrinsic to the progress of the construction.

**Section F. COMPETITIVE SEALED BIDDING**

(1) **Applicability.** Except as provided in Sections B through E and Sections F through I, all contracts for Supplies and/or Services of the Agency shall be competitively bid under sealed bids in accordance with the provisions of this Section F. (For purposes of this *Section F*, the undefined term “bid(s)” shall be used interchangeably with the term “Response(s)”)

(2) **Invitation for Bids.** The Executive Director shall issue a Solicitation in the form of an “Invitation for Bids.” The Invitation for Bids shall include (whether by attachment or reference) a purchase description, and all contractual terms and conditions applicable to the procurement.

(3) **Public Notice.** Adequate public notice of the Invitation for Bids shall be provided by publication in the City Record a reasonable time prior to the date set forth therein for the opening of bids. In addition, the Agency may publish such notice in a newspaper of general circulation for a reasonable time prior to bid opening.

(4) **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, the name of each bidder and the bid security, if any, shall be recorded. The record and each bid shall be open to public inspection.

(5) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction on the part of the bidder except as authorized in this *Section F*. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used.

(6) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in instances in which the Executive Director finds that it is in the Agency's interest to do so. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Agency or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Executive Director.

(7) **Award.** The contract shall be awarded to the bid that (a) is lowest in cost, and (b) is responsive to the Invitation to Bids, and (c) meets the Minimum Criteria. Notwithstanding the

foregoing, any or all bids may be rejected when the Agency reasonably deems it is in the Agency's interest to do so.

## **Section G. COMPETITIVE SEALED PROPOSALS**

(1) **Applicability.** The Agency may procure contractors through Competitive Sealed Proposals under this Section G for the following: (a) for Services; and (b) when the Executive Director determines (subject to review and approval of the Consultant Committee if one has been appointed by the Board of Directors pursuant to subsection A.7 of this Policy) that one or more of the following circumstances applies, then, under such circumstance, for Supplies, for Construction Services, and for Construction-Related Supplies: (x) Competitive Sealed Bidding is inadequate because of the importance of considerations other than cost; (e.g., the capacity of an Offeror to perform as stated in its Response; experience in the required area of knowledge; experience in the community to be served or studied; experience in the community where the contract work is to be performed); or (y) discussions with Offerors that are potential awardees are necessary in order to insure their full understanding and responsiveness to contract requirements; or (z) in the case of Construction Services, the needed expertise and experience is so specialized as to be outside the expertise and experience of most construction contractors.

(2) **Request for Proposals.** The Agency shall issue a Solicitation in the form of a “Request for Proposals.”

(3) **Public Notice.** The Agency shall provide adequate public notice for the Request for Proposals.

(4) **Receipt of Proposals.** When opening Responses for review, the Agency shall not, for the duration of the Restricted Period, disclose the contents of the Responses to competing Offerors. A “Register of Proposals” shall be prepared and shall be open for public inspection after the Restricted Period. The Register of Proposals shall contain the names of all Offerors and the prices respectively proposed in their Responses.

(5) **Selection Criteria.** For purposes of this Section G, the Selection Criteria shall include but not be limited to the following: cost; whether the Offeror has the capacity to execute the contract in accordance with the Offeror’s Response; whether the Offeror has relevant experience and/or knowledge; and if relevant, whether the Offeror has experience in and knowledge of the community to be served or studied or in which work is to be performed. Procurement under this Section G need not be based exclusively on cost.

(6) **Discussion with Responsible Offerors and Revisions to Proposals.** With respect to those Responses that the Executive Director or the Consultant Committee (as applicable) deem to be (in their sole discretion) candidates for award, the Agency may hold discussions with the relevant Offerors to clarify and fully understand their Responses. The Agency shall treat such Offerors fairly and equably, particularly in connection with providing opportunities to amend Responses so that the Agency may obtain best and final Responses. The Agency shall not divulge information derived from Responses submitted by competing Offerors except as provided in subsection 4 hereinabove

## **Section H. CONTRACTORS RECOMMENDED BY CONSTRUCTION MANAGER**

(1) **Applicability.** When the Agency has retained a construction manager for Construction Services, any contract for Construction Services (other than the contract with the construction manager itself) or Construction-Related Supplies may be procured pursuant to the procedure set forth in this Section H in lieu of other Competitive Methods of Procurement. For purposes of this Section H, “Executive Director” shall mean Executive Director or Consultant Committee as applicable.

(2) **Selection of Contractors.** Procurement under this Section H consists of the following: (a) the construction manager recommends to the Executive Director a minimum of five potential contractors; (b) the Executive Director reviews such list of potential contractors and determines which of them the Agency considers to be appropriate; (c) the selected contractors are invited to submit Responses; (d) the construction manager and the Executive Director review the Responses and in their discretion, negotiate with some or all of the Offerors. Revisions may be permitted to obtain best and final Responses.

(3) **Award.** After consulting with the construction manager, the Executive Director (or the Consultant Committee if one has been appointed pursuant to subsection A(7) of this Policy) shall recommend to the Board of Directors the Response and Offeror deemed to be the most advantageous to the Agency. Procurement under this Section H need not be exclusively based upon cost.

(4) **Procurement of Construction Manager.** Nothing in this Policy may be construed to exempt the procurement of a construction manager by the Agency from the requirements of this Policy.

## **Section I. USE OF OTHER GOVERNMENTAL CONTRACTS**

Notwithstanding any other provision of this Policy, if there is a federal, State or City contract for Supplies and/or Services that permits the Agency to utilize such contract or to obtain Supplies and/or Services from the contractor under substantially similar terms, the Agency may utilize such existing contract (or enter into a new contract on substantially similar terms) without using any Competitive Method of Procurement. Procurement under this Section I need not be exclusively based upon cost.

## APPENDIX I

### Record of Procurement

**The Record of Procurement for each procurement performed by the Agency pursuant to one of the Competitive Methods of Procurement shall consist of the following:**

1. The completed *Record of Procurement* (the form of which is provided in *Exhibit A* to this *Appendix I*); and
2. The completed *Supplemental Record of Procurement* (the form of which is provided in *Exhibit B* to this *Appendix I*); and
3. All of the attachments that are required in the *Record of Procurement*, including but not limited to the following additional documents in completed form:
  - a. *Record(s) of Contact* (the form of which is provided in *Exhibit C* to this *Appendix I*);
  - b. The *Affirmation* (the form of which is provided in *Exhibit A* to *Appendix III* to this Policy);
  - c. The *Certification* (the form of which is provided in *Exhibit B* to *Appendix III* to this Policy); and
  - d. The *Disclosure* (the form of which is provided in *Exhibit C* to *Appendix III* to this Policy.)

EXHIBIT A to APPENDIX I

*Record of Procurement*

**RECORD OF PROCUREMENT**

**Pursuant to the Procurement Policy of the  
New York City Industrial Development Agency**

<b>Name of approved Contractor:</b>	_____
<b>Address of Contractor:</b>	_____
<b>Contract No.:</b>	_____
<b>Purpose of Contract:</b>	_____
<b>Term of Contract:</b>	<b>From:</b> _____ <b>To:</b> _____

**Procurement Officer:** \_\_\_\_\_

**Procurement Officer designated by:**

**Signature:** \_\_\_\_\_

**(Deputy) Executive Director**

**Printed Name:**

\_\_\_\_\_  
**Date:**

***INSTRUCTIONS: Complete this form upon expiration of the Restricted Period, or, if no Restricted Period applies, immediately after execution and delivery of the contract. For the definitions of all defined terms used herein, see subsection A(1) of the Policy.***

**A. FOR ALL CONTRACTS:**

**Check only one of the following:**

- 1. Is NYCEDC the Contractor?**
- 2. Is the contract for \$5,000 or less?**
- 3. Was the contract procured through Small Purchase (i.e., greater than \$5,000 but not more than \$100,000)?**

- 4. Was the Contractor a Sole-Source selection?
- 5. Was the Contractor an Emergency Procurement selection?
- 6. Was Competitive Sealed Bidding used?
- 7. Were Competitive Sealed Proposals used?
- 8. Was the Contractor selected through recommendation by a construction manager?
- 9. Was the contract another government contract?

**B. IF A.4 OR A.5 OR A.7 WAS SELECTED, COMPLETE ONE OF THE FOLLOWING:**

- 1. Sole-Source Procurement

**If applicable, state the relevant justification for Sole-Source Procurement under Section D of the Policy.**

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**Signature:** \_\_\_\_\_

**(Deputy) Executive Director**

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

- 2. Emergency Procurement

**If applicable, state the relevant justification for Emergency Procurement under Section E of the Policy**

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**Signature:** \_\_\_\_\_

**(Deputy) Executive Director**

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**3. Competitive Sealed Proposals for Supplies and/or Construction Services and/or Construction-Related Supplies**

**If applicable, state the relevant justification for Competitive Sealed Proposals under subsection G(1)(ii) of the Policy.**

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**Signature:**

\_\_\_\_\_  
**(Deputy) Executive Director**

**Printed Name:**

**Date:** \_\_\_\_\_

**C. COMPLETE ALL OF THE FOLLOWING FOR ALL CONTRACTS OTHER THAN THOSE WITH NYCEDC OR FOR WHICH EMERGENCY PROCUREMENT WAS USED:**

**1. Is the Contractor a Responsible Person?**

Y       N

**2. Did the Contractor complete and submit the required forms for the Investigation?**

Y       N

**3. Were the Investigation results satisfactory?**

Y       N

**4. Is the Investigation report attached?**

Y       N

**5. Is the Contractor's *Affirmation* attached in the form set forth in Appendix III to the Agency's Procurement Policy?**

Y       N

**6. Is the Contractor's *Certification* attached in the form set forth in Appendix III to the Agency's Procurement Policy?**

Y       N

**7. Is the Contractor's *Disclosure* attached in the form set forth in Appendix III to the Agency's Procurement Policy?**

Y       N

**D. COMPLETE ALL OF THE FOLLOWING FOR ALL CONTRACTS PROCURED THROUGH A COMPETITIVE METHOD OF PROCUREMENT:**

**1. Did any Offerors impermissibly contact the Agency during the Restricted Period?**

Y       N

**2. If the answer to No. 7 is “yes”, are completed *Records of Contact* attached?**

Y       N       NA

**3. Are the Selection Criteria for this Contract attached either as a separate list or are they incorporated in the Solicitations (which are also required to be attached – see no. 5)?**

Y       N

**4. Did the Contractor satisfy the Selection Criteria?**

Y       N

**5. Did the Contractor’s Response have the lowest proposed price?**

Y       N

**6. If the answer to No. 5 is “no”:**

**a. Did the Response containing the lowest price come from a Responsible Person?**

Y       N       NA

**b. If the answer to No. 6.a is “yes”, why was that Response/Offeror not selected?**

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**7. Are copies of all Solicitations attached?**

Y       N

**8. Are copies of all Responses attached?**

Y       N

**9. Regarding approval of the Contract, are the relevant minutes of the Board of Directors attached, including the Executive Summary presented to the Board?**

Y       N

**10. Regarding approval of the Contract, are the relevant minutes of any Consultant Committee attached including the Executive Summary presented to any Consultant Committee?**

Y       N       NA

**E. COMPLETE THE FOLLOWING FOR CONTRACTS PROCURED BY  
COMPETITIVE SEALED PROPOSALS:**

**1. Is there a register attached that contains the names of every Offeror and the prices  
proposed in every Offeror's Response?**

Y       N

**Signature:** \_\_\_\_\_

**Title:**      **Procurement Officer**

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

EXHIBIT B to APPENDIX I

*Supplemental Record of Procurement*

**SUPPLEMENTAL RECORD OF PROCUREMENT  
Pursuant to the Procurement Policy of the  
New York City Industrial Development Agency**

<b>Name of approved Contractor:</b>	_____
<b>Address of Contractor:</b>	_____
<b>Contract No.:</b>	_____
<b>Purpose of Contract:</b>	_____
<b>Term of Contract:</b>	<b>From:</b> _____ <b>To:</b> _____

**Procurement Officer:** \_\_\_\_\_

**Procurement Officer designated by:**

**Signature:** \_\_\_\_\_

**(Deputy) Executive Director**

**Printed Name:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

***INSTRUCTIONS: complete this form as necessary until the contract terminates. For the definitions of terms used herein, see Section A(1) of the Policy.***

**A. COMPLETE FOR ALL CONTRACTS OTHER THAN THOSE WITH NYCEDC:**

1. Has this Contract been terminated pursuant to State Finance Law Section 139-k (5)?

Y       N

2. If the answer to no. 1 is “yes” please provide details and/or attachments.

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**B. COMPLETE ALL OF THE FOLLOWING FOR CONTRACTS PROCURED THROUGH A COMPETITIVE METHOD OF PROCUREMENT:**

1. To the extent that the Procurement Officer has been so informed, were written complaints or protests, or appeals filed with the General Counsel of the Agency, the State Comptroller, the State Attorney General, the State Inspector General, the City District Attorney, or either the State or City Department of Investigation, with respect to the procurement process?

Y       N

2. If the answer to no. 3 is “yes” are copies of those complaints or protests or appeals attached?

Y       N       NA

3. To the extent the Procurement Officer has been so informed, is the procurement the subject of litigation?

Y       N

4. If the answer to no. 3 is “yes” please provide details and/or attachments.

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**C. COMPLETE THE FOLLOWING FOR CONTRACTS PROCURED BY COMPETITIVE SEALED BIDDING:**

1. Did the Executive Director permit the correction or withdrawal or cancellation of one or more bids pursuant to subsection F.6 of the Policy?

Y       N

2. If the answer to No. 1 is “yes” are those written permissions attached?

Y       N       NA

Signature: \_\_\_\_\_

Title: Procurement Officer

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT C to APPENDIX I

*Record of Contact*  
*under State Finance Law Section 139-k(4)*

New York City Industrial Development Agency  
Record of Contact  
Under State Finance Law §139-k(4)

Was the person making the Contact informed that the Contact would be documented?

Yes       No

**To: Procurement Record**  
**Regarding** \_\_\_\_\_

**Procurement Contract**  
**Number:** \_\_\_\_\_

**From:** \_\_\_\_\_  
**(Name and Title)**

**Name of Governmental**  
**Entity:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Subject: Record of contact under New York State Finance Law §139-k(4)**

**I had contact with the below named individual regarding the above identified procurement. The term “contact” is defined in New York State Finance Law §139-k(1)(c). In accordance with New York State Finance Law 139-k(4), the following information was obtained.**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Telephone**  
**Number:**

**Place of Principal Employment:** \_\_\_\_\_

**Occupation:** \_\_\_\_\_

**Is the above named person or organization the “Offeror” in this New York City Industrial Development Agency (the “Agency”) procurement:**  
(Please circle)      **yes**                      **no**

**If no, was the above named person or organization retained, employed or designated by the “Offeror to:**

    - **appear before the Agency about the Agency procurement:**  
(Please circle)      **yes**                      **no**

    - **contact the Agency about the Agency procurement?**  
(Please circle)      **yes**                      **no**

**List date(s) of Contact:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(add additional pages as necessary)

*Optional*

**Summarize the form (e.g., email, letter, conversation) and topic of the communication on each**

**date of Contact:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(add additional pages or copies of written communications a necessary)

## APPENDIX II

### Permitted Contacts

**During a Restricted Period the only contacts that an Offeror may have with the Agency in connection with the procurement to which the Restricted Period pertains are the following:**

1. Offerors may submit Responses to the Procurement Officer.
2. When the Solicitation provides that all questions submitted by Offerors, and the answers provided by the Agency to such questions, will be disseminated to all other Offerors, then, in such instance, Offerors may submit questions in respect of the Solicitation to the Procurement Officer.
3. Offerors may participate in conferences with the Agency when the Solicitation provides that conferences will occur as part of the procurement process.
4. Offerors may file written complaints with the General Counsel of the Agency in respect of authorized, written contacts with the Procurement Officer to which the Procurement Officer did not respond in a timely fashion.
5. Offerors who have been conditionally designated as contractors may negotiate with the Agency in connection with the potential contract.
6. Offerors may request the Procurement Officer to review the award of the contract.
7. Offerors (including the apparent successful Offeror) may contact the Agency to protest, appeal or other wise cause the review of the Agency's procurement, and seek final administrative determination and subsequent judicial determination.
8. Offerors may file complaints alleging the improper conduct of procurement by the Agency with the State Attorney General, the State Inspector General, the City District Attorney, or a court of competent jurisdiction.
9. Offerors may file written protests, appeals or complaints to the State Comptroller's Office during the process of contract approval, where the State Comptroller's approval is required by law.
10. Offerors may file complaints of alleged improper conduct during the course of the Agency's procurement to the State Comptroller's Office.

## APPENDIX III

### Minimum Requirements

**An Offeror's Response to a Solicitation, if it is to be considered by the Agency, must satisfy the following Minimum Requirements:**

1. The Offeror must be a Responsible Person.
2. The Offeror must complete and submit to the Procurement Officer the forms required for the Investigation.
3. The results of the Investigation must be satisfactory to the Agency in its sole discretion.
4. The Offeror must execute and deliver to the Procurement Officer the following documents:
  - a. The *Affirmation* the form for which is provided in *Exhibit A* to this *Appendix III*;
  - b. The *Certification* the form for which is provided in *Exhibit B* to this *Appendix III*;  
and
  - c. The *Disclosure* the form for which is provided in *Exhibit C* to this *Appendix III*.

EXHIBIT A to APPENDIX III

*AFFIRMATION  
of Understanding of and Agreement pursuant to State Finance  
Law Sections 139-j(3) and 139-j(6)(b)*

**Offeror affirms that it understands and agrees to comply with the procedures of the New York City Industrial Development Agency relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Contractor  
Name:** \_\_\_\_\_

**Contractor  
Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT B to APPENDIX III

*CERTIFICATION  
of Compliance with State Finance Law Section 139-k(5)*

**Offeror Certification:**

**I certify that all information provided to the New York City Industrial Development Agency with respect to New York State Finance Law §139-k is complete, true and accurate.**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name**  
:

 \_\_\_\_\_

**Title:** \_\_\_\_\_

**Contractor Name:** \_\_\_\_\_

**Contractor Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT C to APPENDIX III

*DISCLOSURE  
of Prior Non-Responsibility Determinations*

**Offeror Disclosure of Prior Non-Responsibility Determinations**

**Name of Individual or Entity Seeking to Enter into the Procurement Contract:**

\_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Name and Title of Person Submitting this Form:** \_\_\_\_\_

\_\_\_\_\_

**Contract Procurement Number:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**1. Has any governmental entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):**

No Yes

**If yes, please answer the next questions:**

**2. Was the basis for the finding of non-responsibility due to a violation of New York State Finance Law §139-j (Please Circle):**

No Yes

**3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? (Please circle):**

No Yes

**4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.**

**Governmental Entity:** \_\_\_\_\_

**Date of Finding of Non-responsibility:** \_\_\_\_\_

**Basis of Finding of Non-responsibility:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

**5. Has any governmental entity terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):**

No Yes

**6. If yes, please provide details below.**

**Governmental Entity:** \_\_\_\_\_

**Date of Termination or Withholding of Contract:** \_\_\_\_\_

**Basis of Termination or Withholding :** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

**Offeror certifies that all information provided to the New York City Industrial Development Agency with respect to New York State Finance Law §139-k is complete, true and accurate.**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Signature

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_



## APPENDIX IV

### Requirements to be inserted in Solicitations

- I. **Every Solicitation will have annexed to it a copy of this Policy (including all attachments).**
- II. **The following language, summarizing requirements of the State Finance Law pertinent to governmental procurement, must be substantially inserted in every Solicitation of the Agency.**

“Pursuant to New York State Finance Law Sections 139-j and 139-K, this [Invitation for Bid]/[Request for Proposals] includes and imposes certain restrictions on communications between the Agency and a [bidder]/[respondent] during the procurement process. A [bidder]/[respondent] is restricted from making contacts from the earliest notice of intent to solicit [an invitation for bid]/[a request for proposals] through final award and approval of the contract by the Agency and, if applicable, the Office of the State Comptroller (the “Restricted Period”), to other than designated staff of the Agency unless it is a contract that included among certain statutory exceptions set forth in New York State Finance Law Section 139-j(3)(a). Designated staff, as of the date hereof, is identified in this [Invitation for Bid]/[Request for Proposals]. Members of contract staffing, acting on behalf of the Agency, are also required to obtain certain information when contracted during the Restricted Period and make a determination of the responsibility of the [bidder]/[respondent] pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the [bidder]/[respondent] is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found in the *Procurement Policy of the New York City Industrial Development Agency*, a copy of which is annexed to this [Invitation for Bid]/[Request for Proposals].”

- III. **Every Solicitation must notify Offerors that the resulting contract will provide the Agency with a right of termination to be exercised in accordance with provisions of the State Finance Law that are pertinent to governmental procurement. Accordingly, every Solicitation will contain substantially the notice provided below.**

“The Agency will require that the contract that the Agency enters into with the [awarded bidder]/[selected respondent] contain the following right of termination in the Agency:

The Agency reserves the right to terminate this contract in the event it is found that the certification filed by the [bidder]/[respondent] in accordance with New York State Finance Law, Section 139-k, was intentionally false or intentionally incomplete. Upon such finding, the Agency may exercise its termination right by providing written notification to the [bidder]/[respondent] in accordance with the written notification terms of this contract.”