

22-08-03

**RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S PROCUREMENT POLICY**

**WHEREAS**, Section 2879 of the Public Authority Law requires every public benefit corporation to adopt by resolution comprehensive procurement guidelines that detail the corporation's operative policy and instructions to the Board and management regarding the use, awarding, monitoring and reporting of procurement contracts of the corporation; and

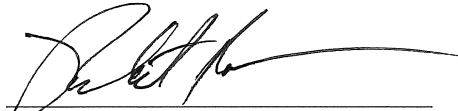
**WHEREAS**, the Hudson River-Black River Regulating District approved resolution 15-38-10 adopting the Regulating District's revised Procurement Policy; and

**WHEREAS**, Section 2879 of the Public Authority Law requires every public benefit corporation to annually review and approve its Procurement guidelines adopted by the corporation; and

**WHEREAS**, the Hudson River-Black River Regulating District is a public benefit corporation organized and operated pursuant to the provisions of the Environmental Conservation Law, and therefore the requirements of Section 2879 of the Public Authorities Law apply to the Hudson River-Black River Regulating District;

**NOW THEREFORE BE IT RESOLVED**, that the Board of the Hudson River-Black River Regulating District has reviewed and approves said Procurement Policy, which is attached hereto and made a part hereof.

Approved as to form:



Robert P. Leslie  
General Counsel

Motion was made by Mr. DeWitt and seconded by Mr. Hayes that the Resolution be approved.

Present and Voting:

<u>MEMBER</u>	<u>AYE</u>	<u>NOE</u>	<u>ABSTAIN</u>
Mr. Finkle .....	<u>  X  </u>	_____	_____
Mr. Hayes.....	<u>  X  </u>	_____	_____

*Approved at the March 8, 2022 Board Meeting*

Mr. DeWitt.....	<u>  X  </u>	_____	_____
Mr. Bird.....	_____	_____	<u>  EXCUSED  </u>
Mr. Candido .....	<u>  X  </u>	_____	_____
Mr. Reagan.....	<u>  X  </u>	_____	_____
Ms. Allen.....	<u>  X  </u>	_____	_____

**Hudson River – Black River Regulating District  
Procurement Policy**

The following guidelines set forth the policy of the Hudson River – Black River Regulating District (the Regulating District) with respect to the corporation’s operative policy and instructions regarding the use, awarding, monitoring, and reporting of procurement contracts. This policy governs all Regulating District procurement transactions and is adopted in accordance with Public Authorities Law Section 2879 and applicable Federal and State laws.

**I. PURPOSE**

It is the policy of the Regulating District to procure goods and services in a manner which assures: (i) compliance with all applicable provisions of law governing procurements by the Regulating District; (ii) the acquisition of quality goods and services which meet the Regulating District’s needs; (iii) fairness and open competition; (iv) the wise and prudent use of the resources of the Regulating District; (v) opportunities for certified Minority and Women-Owned, New York State Small Business Enterprises, and Service-Disabled Veteran Owned Businesses in accordance with law; and (vi) the avoidance of favoritism, extravagance, fraud, and corruption.

The Chief Fiscal Officer will serve as the District’s Procurement Officer. Accordingly, he or she will establish procedures to affect this policy, and will assure that transactions are adequately supported, recorded, and carried out in accordance with this policy and applicable regulations. The Regulating District’s Procurement Officer, in consultation with the Regulating District’s General Counsel, will interpret the intent of this policy to ensure compliance with the State law and regulations governing procurements.

Except as otherwise provided, all Regulating District procurement contracts are subject to this policy. A representative, but not exclusive, list of the types of goods purchased, and a description of those areas of responsibility and oversight requiring the use of personal services (and the reasons for the use of such personal services) is set forth in Attachment 1.

**II. DEFINITION OF TERMS**

The following terms shall, for purposes of this policy, have the following meanings unless the context shall clearly indicate otherwise:

1. “*Act*” shall mean Title 21- RIVER REGULATION BY STORAGE RESERVOIRS found at Title 21, Article 15 of the New York State Environmental Conservation Law.
2. “*Competitive Basis*” shall mean the utilization of any of the competitive procurement methods enumerated in Part IV of this Policy.
3. “*Contract for Professional Services*” shall mean any written agreement for services involving the exercise of discretion, knowledge, or expertise that are performed for fee, commission, or other compensation by persons or organizations, not providing such services in their capacities as an Officer or employee of the Regulating District. Professional Services include, but are not limited to, legal, accounting, management consulting, investment banking, financial services, insurance, planning, training, statistical research, public relations, architectural, engineering, surveying, or any other services of a consulting, technical or professional nature.
4. “*Contractor*” shall mean any contractor, consultant, or vendor who enters into a Procurement Contract to provide goods, materials, equipment, or services to the Regulating District.
5. “*Discriminatory Jurisdiction*” shall mean any other country, nation, province, state, or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State business enterprise in the procurement of goods and services by the same or a non-governmental entity influenced by the same. Such discrimination may include, but is not limited to, any law, regulation, procedure or practice, terms or license, authorization, or funding or bidding rights which requires or encourages any agency or instrumentality of the state or political subdivision thereof or non-governmental entity influenced by the same to discriminate against a New York State business enterprise.
6. “*Exempt Contracts*” shall mean any written agreement, approved by the Board, for goods or services for which a procurement process is impractical and may be awarded on other than a competitive basis. Such exempt contracts may include services provided by legal monopolies, for example utilities.
7. “*Minority-Owned Business Enterprise*” shall have the same meaning ascribed thereto by Article 15-A of the Executive Law, as same may be amended, and shall include any business enterprise, including a sole proprietorship, partnership, or corporation that is:
  - a. At least fifty-one percent owned by United States citizens or permanent resident aliens belonging to one or more of the following minority groups: Blacks, Hispanics, Asians, Pacific Islanders, or Native Americans, or, in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by Blacks, Hispanics, Asians, Pacific Islanders, or Native Americans;
  - b. An enterprise in which the minority ownership is real, substantial, and continuing;

- c. An enterprise in which the minority ownership has, and exercises, the authority to control independently the day-to-day business decisions;
  - d. An enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field;
  - e. An enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and;
  - f. An enterprise that is a Small Business.
8. “*New York State Business Enterprise*” shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are substantially manufactured, produced, or assembled in New York State, or services which are substantially performed within New York State. For purposes of construction services, a New York State Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in New York State.
  9. “*New York Resident*” shall mean a natural person who maintains a fixed, permanent, and principal home located within New York State and to which such person, whenever temporarily located elsewhere, always intends to return.
  10. “*Officer*” shall mean any person so defined in the By-Laws of the Regulating District.
  11. “*Procurement Contract*” shall mean any written agreement to which the Regulating District is a party for the acquisition of goods or services of any kind, including construction and public works.
  12. “*Procurement Policy*” shall mean the Procurement Policy developed and authorized by the Board of the Hudson River – Black River Regulating District.
  13. “*Regulating District*” shall mean the Hudson River – Black River Regulating District.
  14. “*Senior Staff Manager*” shall mean the Executive Director, or Chief Fiscal Officer, or General Counsel, or Chief Engineer, or Compliance Officer, or Administrator.
  15. "Service-Disabled Veteran-Owned Business" shall have the same meaning ascribed thereto by Article 17-B of the Executive Law, as same may be amended, and shall include any business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
    - a. At least fifty-one percent owned by one or more service-disabled veterans;
    - b. An enterprise in which such service-disabled ownership is real, substantial, and continuing;
    - c. An enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;

- d. An enterprise authorized to do business in this state and is independently-owned and operated;
  - e. An enterprise that is a small business which has a significant business presence in the state, not dominant in its field and employs, based on its industry, a certain number of employees as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto; and
  - f. Certified by the New York State Office of General Services as a Service-Disabled Veteran-Owned Business.
16. “*Small Business*” shall have the same meaning ascribed thereto by Article 15-A of the Executive Law, as same may be amended, and shall include a business which has a significant business presence in the State of New York, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the Director of the Division of Minority and Women’s Business Development, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto.
17. “*Women-Owned Business Enterprise*” shall have the same meaning ascribed thereto by Article 15-A of the Executive Law as same may be amended, and shall include any business enterprise, including a sole proprietorship, partnership, or corporation that is:
- a. At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women, or, in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
  - b. An enterprise in which the women ownership is real, substantial, and continuing;
  - c. An enterprise in which the women ownership has, and exercises, the authority to control independently day-to-day business decisions;
  - d. An enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field;
  - e. An enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and;
  - f. An enterprise that is a Small Business.

### **III. GENERAL REQUIREMENTS – NEEDS ASSESSMENT**

Needs assessments resulting in procurements over \$250.00, other than those subject to a “formal solicitation process” as prescribed by the NYS Procurement Guidelines, require the completion of a Regulating District “Expenditure Request”. Needs assessments shall consider the following:

1. Successful completion of the Regulating District’s mission;
2. Monetary threshold as specified in Section VI; and
3. Competitive Procurement Methods as specified in Section IV and Non-Competitive Procurement Methods as specified in Section V.

The following purchases are not subject to a needs assessment:

1. Utilities
2. Fuel;
3. Network Support; and
4. Gas Card charges.

Contracts involving services to be rendered over a period in excess of one year shall require approval of the Board by Resolution and an annual review of the contract(s) by the Board.

All procurement solicitations shall make explicit that any contract shall include and comply with “Appendix A – Standard Clauses for NYS Contracts”.

#### **IV. COMPETITIVE PROCUREMENT METHODS**

The Regulating District shall procure all goods and services on a Competitive Basis except as otherwise provided in this Policy. The competitive methods used to make procurements shall include:

1. *Centralized Contracts.* The Regulating District may obtain services, goods, or materials through contracts or other arrangements instituted by the New York State Office of General Services or the United States General Services Administration. In addition, the Regulating District may obtain services, goods, or materials through contracts or other arrangements instituted by local governments provided that the procurement complies with applicable procurement laws, regulations, and guidelines for the use of such contracts.
2. *Comparative Pricing.* The Regulating District may solicit and compile quotes from qualified potential contractors and conduct a comparative analysis of the cost of each good, material, or service required. In considering an award on the basis of best value, the Regulating District shall in accordance with 5 NYCRR §142.3(b) determine in writing whether it is practicable, feasible, and appropriate to evaluate the diversity practices of potential contractors.

3. *Invitations for Bids.* The Regulating District may advertise/solicit/invite sealed price bids for specified services (other than Professional Services), goods, and/or materials to be awarded to the lowest responsible bidder after the submission of a responsive bid.
  - a. For every contract awarded pursuant to sealed competitive bids, the Regulating District shall follow the procedures prescribed by the ***New York State Procurement Guidelines in Section IV. Specific Guidance: Invitation for Bids.***
  - b. The Regulating District shall also document:
    - i. To the extent required by law, there be separate specifications for major categories for work;
    - ii. All advertisements for sealed bids be published in the manner required by law and in such other publications as are appropriate to ensure reasonable competition;
    - iii. The rationale for awarding the contract to other than the apparent low bidder be documented and retained in the procurement file; and
    - iv. Determine in accordance with 5 NYCRR §142.3(b), in writing, whether it is practicable, feasible, and appropriate to evaluate the diversity practices of potential contractors.
  
4. *Request for Proposals.* The Regulating District may solicit specific proposals for services and materials to determine the proposer's understanding of identified financial, organizational, logistical, and technical requirements. Request for Proposals may also be used when there are problems detailing elements of performance including techniques, procedures, and prices. The Regulating District will evaluate the bidder's qualifications and characteristics of the proposal including quality and cost before making a formal award.
  - a. For every contract awarded pursuant to a request for proposal process, the Regulating District shall follow the procedures prescribed by the ***New York State Procurement Guidelines in Section V. Specific Guidance: Request for Proposals.*** The Regulating District shall also:
    - i. Determine and document whether the contractor has the ability to perform all work required in a professional and timely manner; and
    - ii. Determine and document, in accordance with 5 NYCRR §142.3(b), in writing, whether it is practicable, feasible and appropriate to evaluate the diversity practices of potential contractors.
  
5. *Request for Qualifications.* The Regulating District shall solicit all contracts for Architectural, Engineering and Surveying (AES) services pursuant to State Finance Law Section 136a.
  - a. Under the provisions of State Finance Law Section 136a, consultant contracts for AES services under \$25,000 are not required to be awarded to the most qualified firm. However, due to the nature of these agreements, oftentimes there are amendments to these contracts made based on unforeseeable circumstances, causing the contract value to exceed \$25,000. Consequently, it is recommended that all contracts for AES services be awarded to the most qualified consultant unless the Regulating District is absolutely certain that the amount of the contract will never exceed \$25,000.

6. *Other Competitive Method.* The Regulating District may employ any other competitive procurement method that is consistent with the purposes of this Policy. Prior to use of any such method, the Regulating District shall maintain written procedures to, among other things:
  - a. Identify the category of procurement to which the procedure relates;
  - b. Ensure reasonable competition given the cost and type of procurement;
  - c. Require written documentation of the rationale for awarding the procurement; and
  - d. Determine in accordance with 5 NYCRR §142.3(b), in writing, whether it is practicable, feasible, and appropriate to evaluate the diversity practices of potential contractors.

After a determination has been made to assess the diversity practices of prime contractors submitting bids or proposals, the Regulating District shall require the submission of diversity practices information as part of a contractor's bid or proposal and establish a quantitative factor for scoring diversity practices. The diversity practices information submitted should include those items listed at 5 NYCRR §142.3(e).

## V. NON-COMPETITIVE PROCUREMENT METHODS

The Regulating District shall not be required to use the competitive procurement methods outlined above in the following instances:

1. *Emergency Purchase.* In the case of an emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting property or other interests of the Regulating District, or the life, health, or safety of persons require immediate action, the Executive Director or his or her designee may authorize the procurement on other than a competitive basis. For each such procurement, the Procurement Officer shall prepare a written record setting forth the basis for concluding that there was an emergency and the methods used to identify the selected contractor. At the Executive Director's discretion, the Regulating District may require the contractor to submit a utilization plan (See 5 NYCRR 142.4) and comply with the post award requirements outlined at PART VII, item 11 herein.
2. *Discretionary Purchases – SB/MWBE/SDVOB.* In accordance with New York State Procurement Guidelines, the Executive Director, or designee, of the Regulating District Board may authorize the purchase of commodities or services from Small Business concerns, certified Minority or Women-Owned Business Enterprises, Service-Disabled Veteran Owned Business, or commodities or technology that are recycled or remanufactured, in an amount not exceeding five hundred thousand dollars (\$500,000) without a formal competitive process.
3. *Discretionary Purchases – Small Purchases.* The Regulating District may purchase commodities or services costing less than fifteen thousand dollars (\$15,000), in the aggregate during the fiscal year, without requiring competitive quotations.



4. *Preferred Sources.* The Regulating District may obtain goods or materials from any provider which has been afforded Preferred Source status in accordance with Section 162 of the State Finance Law. Such providers include: the New York State Department of Correctional Services Division of Industries/Corcraft; Industries of the Blind of New York State; New York State Industries for the Disabled; and New York State Office of Mental Health, all of which are, by law, exempt from competitive bidding or similar requirements.
5. *Single Source:* The Executive Director and his or her designee may authorize award of a procurement contract for commodities or services to one offerer over another pursuant to State Finance Law §163(h). For each such procurement, the Procurement Officer shall prepare a written record setting forth the circumstances leading to the selection of the vendor; the alternatives considered; the rationale for selecting the specific vendor; and the basis upon which the Regulating District determined the cost was reasonable.
6. *Sole Source.* The Executive Director and his or her designee may authorize award of a procurement contract for commodities or services where only one offered is capable of supplying the required commodities or services in accordance with State Finance Law §163(g). For each such procurement, the Procurement Officer shall prepare a written record setting forth the material and substantial reasons supporting such a sole source determination.
7. *Exempt Contracts.* The Board may authorize the solicitation and award of procurement contracts for goods or services for which a competitive procurement process is impractical. Such exempt contacts may include; services provided by legal monopolies, for example utilities.

All procurements made pursuant to this Section shall be done in accordance with law and in furtherance of the purposes enumerated in this Policy. The Regulating District shall seek competition to the maximum extent possible even for procurements made under the non-competitive methods authorized by this Policy.

## **VI. MONETARY THRESHOLD FOR PROCUREMENT APPROVAL**

<i>\$250 or less.</i>	Procurements of \$250 or less are informal and are subject to approval by the Senior Staff Manager of the applicable department.
<i>Over \$250 - \$2,500.</i>	Non-emergency purchases over \$250 and up to \$2,500 are subject to approval by the Procurement Officer. The Procurement Officer shall assure that the procurement need is adequately documented and that budgetary guidelines are met.
<i>Over \$2,500.</i>	Non-emergency purchases over \$2,500 require pre-approval by the Executive Director.

*Over \$5,000.*

Non-emergency purchases of goods and services over \$5,000 not specifically identified in the Regulating District's approved budget, and non-emergency purchases of goods and services for which a budget transfer of \$5,000 or greater is required, are subject to pre-approval by Resolution adopted by the Regulating District Board.

*NYS Procurement Council Guidelines* apply to procurements which exceed \$50,000. Procurements of \$50,000 and less are considered "discretionary" and are subject to these policies.

## **VII. PROMOTION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

It is the goal of the Regulating District to (a) promote and assist participation by Certified Minority and Women-Owned Business Enterprises in competition for Procurement Contracts and to (b) award a fair share of Procurement Contracts to Certified Minority and Women-Owned Business Enterprises. It is also the Regulating District's goal to award contracts to those contractors who have evidenced compliance with the laws of the State of New York prohibiting discrimination in employment. The Regulating District recognizes that this goal may be achieved by awarding Procurement Contracts to those firms who have demonstrated that they do not discriminate in employment. Furthermore, if a Contractor utilizes a subcontractor(s) in the performance of any Procurement Contract, said Procurement Contract, where required pursuant to Article 15-A of the Executive Law, shall require the Contractor to act affirmatively to secure participation by Certified Minority and Women-Owned Business Enterprises in such subcontract and to report the nature and extent of such efforts to the Regulating District. All Procurement Contracts, where required, shall be in compliance with Article 15-A of the Executive Law, as same may be amended.

In furtherance of the above, and to promote the use of Certified Minority and Women-Owned Enterprises in Procurement Contracts, the Regulating District shall:

1. Designate appropriate Senior Staff Manager to oversee the Regulating District's programs established to promote and assist: (i) participation by certified Minority or Women-owned Business Enterprises in the Regulating District's procurement opportunities and facilitation of the award of procurement contracts to such enterprises; (ii) the utilization of certified Minority and Women-Owned Business Enterprises as subcontractors and suppliers by entities having procurement contracts with the Regulating District; and (iii) the utilization of partnerships, joint ventures, or other similar arrangements between certified Minority and Women-Owned Business Enterprises and other entities having procurement contracts with the Regulating District. Such staff shall be familiar with the procurement of the types of construction, financial, legal, or professional services utilized by the Regulating District either directly or through their designees participation in the procurement process, and shall identify those areas or types of contracts for which minority or woman-owned business enterprises may best bid so as to promote or assist participation by such enterprises and facilitate a fair share of the awarding of contract to such enterprises.

2. Establish appropriate goals for participation of minority and women-owned business enterprises on all state contracts. An overall MWBE goal and separate goals for MBE and WBE shall be established where practicable, feasible, and appropriate for the utilization of contractors, subcontractors, and suppliers.

In determining appropriate goals for a particular contract, the Regulating District shall give consideration to the following factors:

- a. The contract and subcontract scope(s) of work;
  - b. The potential subcontract opportunities available in the prime contract;
  - c. The relevant available data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities;
  - d. The number and types of certified minority and women-owned business enterprise found in the directory of certified minority and women-owned businesses available to perform state contract work;
  - e. The geographic location of the contract performance;
  - f. The extent to which geography is material to the performance of the contract;
  - g. The ability of certified minority and women-owned enterprises located outside of the geographic location of contract performance, notwithstanding the regional location of the certified enterprise, to perform on the state contract;
  - h. The total dollar value of the work required by the state contract in relation to the dollar value of the subcontracting opportunities;
  - i. The relationship of the monetary size and term of the state contract to the monetary size and term of the project for which the state contract is awarded; and
  - j. The Regulating District's annual agency-specific MWBE goal.
3. Maintain a list of qualified certified minority and women-owned business enterprises including professional firms that have expressed an interest in doing business with the Regulating District and ensure that such lists are updated regularly. The Regulating District will supply said list to each contractor in the bid packet.
  4. Consider severing/unbundling contracts and/or construction projects to facilitate bidding by, and awarding of contracts to minority and women-owned business enterprises.
  5. Consult any list maintained by any state agency or department known to the Regulating District, including the Department of Economic Development, which identifies Minority and Women-Owned Business Enterprises by area of expertise and shall contact appropriate Certified Minority and Women-Owned Business Enterprises listed therein to solicit their offers.
  6. Solicit offers from Minority and Women-Owned Business Enterprises known to have experience in the area of the goods or service to be provided on Procurement Contracts in accordance with Article 15-A of the Executive Law, as same may be amended.
  7. Provide an electronic link to the list of certified minority-owned and women-owned business enterprises maintained by the commissioner of economic development within all bid documents supplied to potential bidders.

8. Provide notice of any procurement to appropriate professional organizations that serve Minority and Women-Owned Business Enterprises so that members of these organizations are apprised of potential opportunities to contract with the Regulating District.
9. Notify contractors in bid documents, requests for proposals, contract announcements, advertisements, or in other written form of the three goals listed above.
10. Conduct procurements in a manner that sets forth the degree of minority and women-owned business enterprise participation expected of the contractor and any subcontractor to enable the Regulating District to achieve the maximum feasible portion of the goals established pursuant to Part VII subsection 2 above and that eliminates barriers to participation by Minority and Women-Owned Business Enterprises on Procurement Contracts.
11. Verify that minority and women-owned business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted by:
  - a. Requiring a contractor to submit a utilization plan after bid documents are opened, but prior to award of the contract for any request for bids, proposals, or qualifications, or for negotiated contracts;
  - b. Posting the utilization plan (and any waivers of compliance issued pursuant to Part VII, Item 12 below) as well as the information required at 5 NYCRR 142.5(a) on the Regulating District's website upon award of the contract;
  - c. After commencement of contract work, posting any waivers of compliance or modification to the utilization plan issued by the Regulating District on the Regulating District's website within ten (10) days of making such a decision;
  - d. Notifying the contractor in writing within ten (10) days of utilization plan submission of any deficiencies contained in the contractor's utilization plan;
  - e. Requiring the remedy of any deficiencies in the contractor's utilization plan within a period specified by the Regulating District's Executive Director;
  - f. Requiring the contractor to submit periodic compliance reports relating to the operation and implementation of the contractor's utilization plan;
  - g. Including within all bid documents supplied to potential bidders that contractors may file a complaint with the director of the Division of Minority and Women's Business Development in the NYS Department of Economic Development in the event that the Regulating District has failed or refused to issue a waiver of the minority and women-owned business enterprise participation requirements or has denied such request for a waiver; and
  - h. Including within all bid documents supplied to potential bidders that contractors may file a complaint with the director of the Division of Minority and Women's Business Development in the NYS Department of Economic Development in the event that a contractor is failing or has failed to comply with the minority and women-owned business enterprise participation requirements set forth in the contract where no waiver has been granted.

12. Where it appears that a contractor cannot, after a good faith effort, comply with the minority and women-owned business enterprise participation requirements set forth in a particular state contract, a contractor may file a written application with the Regulating District requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women-owned business enterprise participation. In implementing the provisions of this section, the Regulating District shall consider:
  - a. The number and types of minority and women-owned business enterprises located in the region in which the state contract is to be performed;
  - b. The most recent disparity study pursuant to Article 15-A of the Executive Law;
  - c. The total dollar value of the state contract;
  - d. The scope of work to be performed; and
  - e. The project size and term.

If, based on such considerations, the Regulating District Board determines there is not a reasonable availability of contractors on the list of certified business to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the Regulating District Board shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of minority and women-owned businesses located outside the region in which the contract is to be performed to perform the state contract.

### **VIII. PROMOTION OF NEW YORK STATE BUSINESS ENTERPRISES AND RESIDENTS**

It is the Regulating District's goal to promote the participation of New York State Business Enterprises and New York State Residents in Procurement Contracts. The Regulating District shall:

1. Collect and consult the specifications of New York State Business Enterprises in developing specifications for any Procurement Contract for the purchase of goods where possible, practicable, feasible, and consistent with open bidding.
2. Include in all bid documents provided to potential bidders a statement that information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development; and that it is the policy of New York State to encourage the use of New York State subcontractors and suppliers.

### **IX. PROMOTION OF SERVICE-DISABLED VETERAN OWNED BUSINESS**

Promotion of Service-Disabled Veteran-Owned Business Enterprises. It is the goal of the Authority to (a) promote and assist participation by Certified Service-Disabled Veteran-Owned Business Enterprises in competition for Procurement Contracts and to (b) award a fair share

of Procurement Contracts to Certified Service-Disabled Veteran-Owned Business Enterprises. All Procurement Contracts, where required, shall be in compliance with Article 17-B of the Executive Law, as same may be amended.

In furtherance of the above, and to promote the use of Certified Service-Disabled Veteran- Owned Business Enterprises in Procurement Contracts, the Authority shall:

1. Establish appropriate goals for participation with Service-Disabled Veteran- Owned Business Enterprises as subcontractors and suppliers by entities having Procurement Contracts with the Authority in accordance with Article 17-B of the Executive Law, as same may be amended.
2. Solicit offers from Service-Disabled Veteran-Owned Business Enterprises known to have experience in the area of goods or service to be provided on Procurement Contracts in accordance with Article 17-B of the Executive Law, as same may be amended.
3. Provide notice of any procurement to appropriate professional organizations that serve Service-Disabled Veteran-Owned Business Enterprises so that members of these organizations are apprised of potential opportunities to contract with the Authority.
4. Consult any list maintained by any State agency or department known to the Authority, including the Office of General Services, which identifies Service- Disabled Veteran-Owned Business Enterprises by area of expertise and shall contact appropriate Certified Service-Disabled Veteran-Owned Business Enterprises listed therein to solicit their offers.
5. Designate appropriate staff to oversee the Authority's programs established to promote and assist: (1) participation by Service-Disabled Veteran-Owned Business Enterprises in the Authority's procurement opportunities and facilitation of the award of procurement contracts to such enterprises; (2) the utilization of certified Service-Disabled Veteran-Owned Business Enterprises as subcontractors and suppliers by entities having procurement contracts with the Authority; and (3) the utilization of partnerships, joint ventures or other similar arrangements between certified Service-Disabled Veteran-Owned Business Enterprises and other entities having procurement contracts with the Authority. Such staff shall be familiar with the procurement of the types of construction, financial, legal or professional services utilized by the Authority either directly or through their designees participation in the procurement process.
6. Establish requirements to conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of the goals established pursuant to subsection Ai above.

## **X. FOREIGN BUSINESS**

In compliance with the Omnibus Procurement Act of 1992, as amended (the "Omnibus Procurement Act"), the Regulating District shall collect and consult the

specifications of New York State manufacturers in developing specifications for any Procurement Contract for the purchase of goods, where possible, practicable, feasible, and consistent with open bidding requirements. Also, in compliance with the Omnibus Procurement Act, the Regulating District recognizes and observes by its policies and practices, the requirements set forth therein with respect to the restrictions in bidding and contracting with foreign business enterprises with principal places of business in discriminatory jurisdictions.

The Regulating District shall notify the Department of Economic Development of procurement contracts awarded for the purchase of goods from an out-of-state/foreign business enterprise, as defined in the Omnibus Procurement Act, in the amount of \$1 million or more. Such notice shall be sent at least 15 days prior to the award of the contract.

The Regulating District shall, in cooperation with the Department of Economic Development, notify New York State business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts awarded for the purchase of goods or services equal to or greater than one million dollars.

The Regulating District shall include a statement within all bid documents supplied to potential bidders for contracts for the purchase of goods or services providing that information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development.

The Regulating District shall include within all bid documents supplied to potential bidders for contracts for the purchase of goods or services equal to or greater than one million dollars that, once awarded such contract, contractors shall document their efforts to encourage participation of New York State business enterprises as suppliers and subcontractors by showing that:

1. Bids are solicited in a timely and adequate manner from New York State Business enterprises including certified minority and women-owned businesses;
2. The New York State Department of Economic Development was contacted to obtain listings of New York State Business enterprises;
3. Notices were placed for subcontractors and suppliers in newspapers, journals, and other trade publications distributed in New York State;
4. The Regulating District participated in bidder outreach conferences; or
5. A statement was provided detailing the methodology and reasoning behind a determination that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers or a statement that the contractor does not intend to use subcontractors on the contract.

The Regulating District shall not enter into a contract with a foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on a list prepared by the director of the Commissioner of Economic Development unless the Regulating District's Executive Director determines in writing that it is in the best interests of the State and the Regulating District to do so. The Executive Director shall deliver each such waiver to the commissioner of economic development.

## **XI. REVIEW AND REPORTING REQUIREMENTS**

This Procurement Policy shall be reviewed by the Executive Director and the Procurement Officer at least annually, and shall be submitted to the Regulating District's Senior Staff Managers for suggestions as to applicability, adequacy, and practicality. The Procurement Policy, with any changes recommended by the Executive Director and/or the Procurement Officer, shall be submitted to the Board between March 1<sup>st</sup> and September 15<sup>th</sup> of each year for approval by Resolution. The adopted Procurement Policy shall be filed with the Office of the State Comptroller and other regulatory offices by September 30<sup>th</sup> of each year as required by Article 9 of Public Authorities Law.

## **XII. REPORT ON PROCUREMENT CONTRACTS**

Within ninety (90) days after the end of its fiscal year, the Regulating District shall prepare a report on Procurement Contracts. Such a report may be a part of any other annual report that the Regulating District is required to make, such as the Public Authorities Reporting Information System (PARIS) report. The report is to be submitted to the division of budget with copies to: the Office of the State Comptroller; the Department of Economic Development; the Senate Finance Committee; and the Assembly Ways and Means Committee. The report shall include:

1. A copy of the Procurement Policy and an explanation of any amendments made to that policy during the reporting period;
2. A listing of all contracts entered into during the reporting period;
3. A list of all contracts entered into with New York State business enterprises, and the subject matter and value thereof;
4. A list of all contracts entered into with foreign business enterprises, and the subject matter and value thereof;
5. A list of all contracts entered into with certified minority and women-owned enterprises, and the subject matter and value thereof;
6. The selection process used to select the contractors listed in items 3, 4, & 5;
7. All referrals made and all penalties imposed pursuant to section three hundred sixteen of the Executive Law;



8. A list of all procurement contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law (Procurements Opportunities Newsletter), including the basis for any such exemption;
9. The status of existing procurement contracts; and
10. Any other reports required by law.

Copies of the annual report on Procurement Contracts shall also be available to the public on the Regulating District's website or upon reasonable request at the Regulating District's main office; 350 Northern Boulevard, Albany, New York 12204.

Pursuant to Public Authorities Law §2879(8)(a) and 2 NYCRR 206.3, no later than 30 days before the end of its fiscal year, the Regulating District must submit another annual report on procurements to the Office of the State Comptroller. The report will include a description of every eligible contract and eligible contract amendment which the Regulating District reasonably anticipates awarding in the following fiscal year. This requirement relates specifically to Regulating District contracts in excess of one million dollars awarded to a single source, a sole source, or pursuant to any other method of procurement that is not competitive or to contracts which are to be paid in whole or part from monies appropriated by the State of New York.

In addition, the Regulating District shall provide written notice to the Office of the State Comptroller of any eligible contract or contract amendment not previously reported within 30 days of the Board determining the need for such contract or amendment. Such notice must be given at least ten (10) days prior to the release of a solicitation for a competitive procurement or contract execution for a non-competitive procurement.

### **XIII. SALES TAX EXEMPTION**

As a New York State Public Authority, the Regulating District is exempt from sales taxes on all purchases. Regulating District employees shall make a conscientious effort to avoid the payment of sales taxes, including casual purchases from infrequent vendors to whom Sales Tax Exemption forms will be furnished at the time of the transaction, when possible.

### **XIV. VENDOR RELATIONS**

Vendors shall be held responsible to fulfill their obligations fully and in a timely manner. It shall be the Regulating District's policy to maintain fair and honest dealing with all vendors, including the avoidance of unreasonable demands and claims.

### **XV. STANDARDIZATION**

Where the Regulating District has determined that it is in its best interests to standardize on a particular make, manufacturer, model, or licensed product for the efficient operation of its business, the Board may resolve to standardize on the specified make, manufacturer, model, or

licensed product for purchase. In that event any competitive procurement will identify in the bid or proposal's specifications the standardized items that must be provided by the vendor, or source.

#### **XVI. BIDDER DEBRIEFING**

In the event that an unsuccessful bidder or proposer requests the Regulating District to review the award of a Contract, the Regulating District shall afford the unsuccessful bidder or proposer the opportunity to review its bid or proposal with the Regulating District and provide the unsuccessful bidder or proposer with the basis for decision and award of the Procurement Contract. In the process of reviewing the bid or proposal of an unsuccessful bidder or proposer the Regulating District shall treat each bidder or proposer in a fair and equitable manner.

#### **XVII. APPROVAL AND ANNUAL REVIEW OF CERTAIN CONTRACTS**

The Regulating District may enter into procurement contracts for professional services for periods of longer than one year in accordance with this policy provided such contracts are presented to the Regulating District Board for approval and reviewed annually as part of the approval of the Annual Report on Procurement Contracts. Such procurement contracts may be terminated by the Regulating District Board in conjunction with such review.

#### **XVIII. BUDGET**

The Regulating District Board of Directors shall approve budgets on a tri-annual basis. The Regulating District shall not enter into a procurement contract where budgeted funds are not available.

#### **XIX. LIMITATION ON CONTRACTS WITH FORMER OFFICERS AND EMPLOYEES**

The Regulating District shall not enter into a procurement contract with a former Regulating District officer or employee or any entity in which such officer or employee has an interest (including a position of employment with such entity) unless there has been compliance with the applicable provisions of the Public Officers Law.

#### **XX. APPROVAL OF INVOICES**

Every purchase transaction must be billed on the vendor's own printed form or on the State Voucher form for that purpose. The Senior Staff Manager that initiated the transaction shall deny or approve invoices and sign the certifications required by the Regulating District's Chief Fiscal Officer and/or OSC. The Senior Staff Manager's approval of invoices for payment shall constitute the Senior Staff Manager's certification that the terms of the transaction have been fulfilled, including receipt and deployment of said products and/or services. The Senior Staff Manager shall ensure that products and/or services have been provided in accordance with the Regulating District's purchase authorizations (written or verbal) before approving invoices for payment. The Executive Director may designate another Senior Staff Manager to deny or

approve invoices and sign required certifications. Any such designation must be made in writing and received by the Regulating District's Chief Fiscal Officer for it to be valid.

The Chief Fiscal Officer shall establish procedures to assure that purchases and payments are properly documented and executed.

## **XXI. PROMPT PAYMENT**

The Regulating District shall make every effort to pay all invoices for products and services in accordance with the agreed upon terms of the transaction. In accordance with Public Authorities Law Section 2880(11)(b), invoices for approved construction and rehabilitation contracts, purchase contracts, service contracts, and consulting contracts shall be made within 30 days after submission of voucher. All valid invoices shall be processed, approved, and paid in timely manner to avoid incurring late charges, service charges, or interest.

## **XXII. ABUSE OF REGULATING DISTRICT PURCHASING POWER IS STRICTLY PROHIBITED**

Use of the Regulating District's purchasing power for personal benefit is strictly prohibited. Employees must not use the Regulating District's purchasing power to secure advantages with respect to price, service, credit, or sales tax exemption or to secure any other advantage to which he or she is not otherwise entitled.

## **XXIII. TRADE CREDIT**

Designated Regulating District personnel shall purchase goods, services, and materials with trade credit whenever possible. Trade credit is defined as credit issued by an individual vendor who does not require payment at the time of purchase, but provides a receipt at the time of the transaction and then delivers a statement directly to the applicable Regulating District office seeking payment.

## **XXIV. CREDIT CARDS**

Applications for credit will be initiated only by the Executive Director or the Chief Fiscal Officer upon request by a member of management. Credit card use is authorized in the following instances:

1. Regulating District owned/leased vehicle operating expenses (fuel and related service expenses) - Upon authorization by the Executive Director, credit cards may be obtained from fuel-brand companies. These cards are to be used only for fuel and other routine expenses associated with the operation of Regulating District owned/leased vehicles.
2. The Executive Director and his or her designees, including members of the exempt/management staff, are authorized to use general purpose credit cards (Visa, MasterCard, Novus, American Express) for meeting and travel related expenses such as lodging and meals. When there is no practical alternative, the card may also be used for

business purchases, as budgeted and not exceeding \$1,000 which cannot be accomplished via trade credit or petty cash.

3. The Executive Director and his or her designees may obtain vendor specific credit cards to facilitate purchases from local vendors which issue cards to identifying purchasers and record trade-credit transactions. This is a common practice among national and regional vendors such as: Lowes, Home Depot, Staples, and many others. Senior Staff Managers will be responsible for the possession and use of the cards.

Employees who utilize credit cards must submit credit card receipts to the Regulating District's accounting office for comparison to the applicable credit card statement.

## **XXV. PETTY CASH**

The Regulating District is authorized to use two forms of Petty Cash payment:

1. Each regional or remote office location may possess a petty cash fund adequate for its routine needs, not to exceed \$250. The petty cash fund is to be used for authorized small immediate-need purchases which cannot be accomplished via trade credit. The Chief Fiscal Officer will approve the location and amount of petty cash funds. Employees who utilize petty cash must submit a receipt for the amount disbursed. The Senior Staff Manager in charge of each Regulating District office with a petty cash fund must reconcile the disbursements and receipts from that fund at least monthly.
2. Individual payments of less than \$250 to vendors for authorized purchases may be made from a Petty Cash checking account in accordance with Office of the State Comptroller guidelines and procedures established by the Regulating District's Chief Fiscal Officer. Checks or ACH payments may exceed \$250 as long as separate and distinct charges do not exceed \$250.

## **XXVI. DISBURSEMENT REVIEW AND APPROVAL**

Regulating District disbursements are processed from two (2) separate disbursement funds utilizing different check stock:

1. Petty Cash Fund
  - a. For separate and distinct purchases under \$250.
  - b. Single approval of the Executive Director, Treasurer (Chief Fiscal Officer), or Assistant Treasurer (in the absence of the Executive Director and Treasurer) is required.
2. General Fund
  - a. For any purchase or expenditure.
  - b. Dual signatures from District Management are required. The Executive Director signs as approver and the Treasurer (Chief Fiscal Officer), or Assistant Secretary-

- Treasurer in the absence of the Treasurer, signs as reviewer.
- c. A Countersignature from the Office of the State Comptroller is required pursuant to ECL 15-2129(8).
3. Delegation of Authority
    - a. The Executive Director or Chair of the Finance Committee may delegate General Fund approval authority to the Treasurer (Chief Fiscal Officer). Delegation must be made in writing and/or via email. Delegation communication must specify the items to be approved. Delegation shall also specify that the Assistant Treasurer is authorized to sign as reviewer.

## **XXVII. CONTRACT REVIEW BY THE OFFICE OF THE STATE COMPTROLLER**

The Regulating District shall:

1. In voluntary compliance with State Finance Law §112(2) & (3), submit to the Comptroller any contract in excess of fifty thousand dollars awarded to a single source, a sole source, or pursuant to any other method of procurement that is not competitive. Such submission shall not be required for those contracts listed at PAL §2879-a(3) to include: emergencies or repair to critical infrastructure; energy purchases from a recognized market on standard terms; energy, fuel, or financial product contracts with terms less than five years; and certain energy or power costs utilized for economic development.
2. Within 60 days of execution, file with the Comptroller:
  - a. A copy of any eligible contract for which the Comptroller has not provided notice pursuant to 2 NYCRR §206.4(a);
  - b. A copy of any eligible contract amendment for which the Comptroller has not provided notice pursuant to 2 NYCRR §206.4(a);
  - c. A copy of any exempt contract;
  - d. A copy of exempt contract amendment; and
  - e. An explanation:
    - i. why such contract or contract amendment is exempt from Comptroller approval; or
    - ii. concerning the nature of the emergency giving rise to the procurement,

## ATTACHMENT 1

*Types of Goods Purchased.*

The following is an illustrative (but not exclusive) list of types of goods purchased by the Regulating District in the past and which may be purchased in the future:

- Office supplies, letterhead, business cards
- Computers: equipment, accessories, supplies
- Telephones and accessories
- Photocopiers and accessories
- Publications - Engineering, Legal, Finance, Government and Professional Directories
- Mail-related supplies - Overnight delivery service supplies
- Personal Services.

Type of Personal Service	Description of Service	Reason for Use
a. Legal	Legal services to the Regulating District in the areas of bond and note financings, real estate matters, litigation, and other matters deemed necessary by the Regulating District Board.	Augment in- house staff; provide expertise in specialized areas (e.g., Energy law, litigation).
b. Audit and Accounting	Independent audit services pertaining to the year-end preparation of financial statements of the Regulating District in conformance with generally accepted accounting principles. Special audits as required. Financial advisory services as required.	Augment in-house staff; provide independent review as required by law.
c. Investment Banking: Negotiated Sales	Fiscal advisor and Underwriter services to assistance in the	Augment in-house staff; provide liaison with institutional and retail
d. Architectural	Professional architectural services.	Augment in-house staff; provide additional expertise in special areas.
e. Engineering	Professional engineering services.	As above.

f. Surveying	Surveying services of Regulating District-owned properties to establish boundaries, utility locations, etc.	As above.
g. Consultant	Services as required to ensure mission compliance.	Augment in-house professional staff.
h. Management Information Services	Computer/enterprise systems and programming services as may be required.	Augment in-house staff; update existing systems to accommodate new programs and to take advantage of new technologies.
i. Equipment Maintenance	Maintenance services for the routine repair of office equipment, including but not limited to computers, photocopiers, and telecopiers.	Augment in-house staff; ability to respond as needed; special skills to maintain product warranties.
j. Printing	Printing services in connection with the Regulating District's annual report and any special reports and brochures that may be necessary or desirable.	Ability to handle large volume jobs on rush basis; ability to handle color printing and graphics.
k. Mechanical Testing	Mechanical testing services.	Augment in-house staff; provide additional expertise in special areas.
l. Test Borings	Boring services.	As above.
m. Construction	Construction Management services to the Regulating District including on-site inspection and overall coordination of all prime construction contracts.	As above.
n. Other Services	As deemed necessary in the furtherance of the interests of the Regulating District.	