

**New York State Olympic Regional Development Authority**

**Procurement Guidelines, Operative Policy and Instructions**

**2006**

NYS OLYMPIC REGIONAL DEVELOPMENT AUTHORITY  
PROCUREMENT CONTRACT GUIDELINES, OPERATIVE POLICY AND  
INSTRUCTIONS

JULY 2006

Article I. Purpose and Applicability

- 1.0 These Procurement Contract Guidelines ("Guidelines"), adopted pursuant to Public Authorities Law Sections 2879, set forth the operative policies of the Authority and instructions to its officers and employees regarding the use, awarding, monitoring, and reporting of Procurement Contracts.
- 1.1 These Guidelines apply to any Procurement Contract entered into after they become effective pursuant to Public Authority Law.

Article II. Definitions

- 2.0 As used in these Guidelines, "Procurement Contract" or "Contracts" means a written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of \$50,000 or more. "Procurement Contract" shall not include: memberships in various industry groups, professional societies, and similar cooperative associations, nor any cooperative projects and procurement activities, conducted or sponsored by such organizations, in which the Authority participates; direct purchase advertising with radio, television or print media; tuition, conferences, seminars and other comparable activities; or transportation or other travel-related expenses.
- 2.1 As used in these Guidelines, "Contractor" means a person or organization that enters into a Procurement Contract with the Authority.
- 2.2 As used in these Guidelines, "Minority Business Enterprise" means any business enterprise, including a sole proprietorship, partnership, or corporation, that is:
- (a) at least 51 percent owned by one or more Minority Group Members<sup>1</sup> or in the case of a publicly-owned business at least 51 percent of the common stock or other voting interests of which is owned by one or more Minority Group Members;
  - (b) an enterprise in which the minority ownership is real, substantial, and continuing;

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<sup>1</sup> As used in these Guidelines, "Minority Group Member" means a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a)Black persons having origins in any of the Black African racial groups not of Hispanic origin;(b)Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c)Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or (d)Native American persons having origins in any of the original peoples of North America.

- (c) an enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
  - (d) an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.
- 2.3 As used in these Guidelines, "Women-Owned Business Enterprise" means a business enterprise, including a sole proprietorship, partnership, or corporation which is:
- (a) at least 51 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 51 percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
  - (b) an enterprise in which the ownership interest of women is real, substantial, and continuing;
  - (c) an enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
  - (d) an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.
- 2.4 As used in these Guidelines, "New York State Business Enterprise" means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange goods which are sought by the Foundation and which are substantially manufactured, produced, or assembled in New York State or services which are sought by the Foundation and which are substantially performed in New York State.
- 2.5 As used in these guidelines, a "New York State Resident" means a natural person who maintains a fixed, permanent, and principal home within New York State and to which such person, whenever temporarily located, always intends to return.

Article III. Description of Goods Purchased; Use of Personal Services Contracts and Program Contracts

- 3.0 All Procurement Contracts entered into by the Authority shall be (i) awarded in accordance with applicable provisions of the Public Authorities and State Finance Laws, as well as operational procurement policies of the Authority.
- 3.1 Goods purchased by the Authority from time to time generally fall within one of the following categories: office supplies, furniture, computer equipment, and other

equipment; other miscellaneous items of physical property are also occasionally purchased on an as-needed basis.

- 3.2 It is the general policy of the Authority to use its own officers and employees in the performance of required personal services insofar as practical. At the same time, the Authority recognizes that it can be preferable to contract for certain personal services for a number of good reasons.
- 3.3 The areas of responsibility and oversight related to the conduct of the Authority's affairs which may require the use of Personal Services Contracts include, without limitation to the following services: performance of legal, accounting, management consulting, investment, banking, planning, training, statistical, printing, dissemination of information, public relations, architectural, engineering, research, graphic arts, construction, surveying or other services of consulting, professional or technical nature, for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of the Authority.
- 3.4 Personal Services Contracts may be entered into the following reasons, but are not limited to: the requirements of special expertise or unusual qualifications; the nature, magnitude or complexity of the services required, a lack of sufficient in-house resources, support staff, specialized facilities or equipment, lower cost, short-term need for the service, infrequent need for the services, the distance of the location or locations where the services must be performed from Authority offices or facilities and performance of a function requiring independence from Authority Management.
- 3.5 Before entering into a Personal Services Contract, the Foundation should consider whether the contemplated services can be performed adequately, cost-effectively, and on a timely basis by staff within the Authority or, if available, through voluntary assistance or assistance from the staff of a State agency or another public corporation.

#### Article IV Waiver of Selection Criteria & Selection of Contractors

##### 4.0 Waiver of Selection Criteria

- (a) Procurement Contracts may be awarded to Contractors on a non-competitive basis only where the Chief Executive Officer or his designee makes a written determination that:
  - (i) the timely procurement of the goods or services involved precludes selection of a Contractor pursuant of a competitive procedure; or
  - (ii) the good or services involved requires a contractor with unique or exceptionally scarce qualifications or experience, specialized equipment or facilities not readily available from other sources, or patents, copyrights or proprietary data.

#### 4.1 Selection of Contractors

- (a) Procurement Contracts are to be awarded to Contractors on a competitive basis to the maximum extent possible.
- (b) Such awards are to be made after notice is published in the “New York State Contract Reporter” and after the evaluation of proposals obtained from prospective Contractors responding to the Authority’s request forwarded to at least three qualified prospective Contractors.
- (c) Foundation shall document the processes by which a Contractor is selected, by making a record summarizing the nature and scope of the goods, personal services, or Authority program work sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the Contractor.

4.2 In any instance, the Chief Executive Officer may waive the use of the procedure for selecting Contractors outlined in Section 4.0 if he determines such waiver to be in the best interest of the Authority.

4.3 The Chief Executive Officer can, upon adoption of these Guidelines, hereby waive use of the procedures for selecting Contractors outlined in section 4.0 in those instances when:

- (a) the goods, personal services, or Authority program work involved are expected to cost \$50,000 or less, though the Authority staff will maintain procedures, approvals, and documentation for purchases less than \$50,000;
- (b) the goods and personal services are available from a centralized contract maintained by OGS or would be available for a amount higher then \$50,000 through an OGS procurement vehicle;
- (c) the Chief Executive Officer or his designee may determine that:
  - (i) the interest of the Authority for timely procurement of the goods, personal services, or Authority program work involved precludes election of a Contractor pursuant to such procedure;
  - (ii) even though two or more Contractors could supply the required goods, personal services or Authority program work, one particular Contractor has unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data; or
  - (iii) there is only one source for a required good, personal service, or Authority

program work; provided, that in those instances the Authority shall nonetheless make a record summarizing the nature and scope of the goods, personal services, or Authority program work involved, the name of the Contractor, the contract price or fee, and the basis for waiver and selection of the Contractor.

- 4.4 For contracts in excess of one year:
- a) Entering into any Procurement Contract which provides for a period of performance by the Contractor in excess of one year shall require approval of the Authority Board, either by prior action, where time permits, or by ratification at the next meeting of the Authority.
- 4.5 The Independent auditor for the Authority shall be retained by the members of the ORDA Board Audit Committee.
- 4.6 The Authority may use its Competitive Procurement Methods to select multiple Contractors to provide goods, personal services, and Authority program work. Individual task work orders may be awarded to these Contractors on an as-needed basis.

#### Article V. Implementation of Guidelines

- 5.0 The Authority's Director of Finance shall be responsible for:
- (i) Preparing for approval by the Chief Executive Officer such supplemental procedures as may be required effectively to implement the approved Guidelines;
  - (ii) Preparing proposed amendments to the Guidelines for approval by the Chief Executive Officer and the ORDA Board as required; and
  - (iii) Monitoring Foundation compliance with the approved Guidelines.

#### Article VII. Minority and Women-Owned Business Enterprises

- 7.0 It is the policy of the ORDA to foster and promote participation of Minority Business Enterprises and Women-Owned Business Enterprises in its procurements and the development of such enterprises and to facilitate a fair share of the awarding of Procurement Contracts to such enterprises. In contracting, the Authority shall use its best efforts to give Minority Business Enterprises and Women-Owned Business Enterprises an opportunity to compete for ORDA business, by soliciting or requesting offers from minority and women-owned businesses known to have experience in the type of goods, personal services, and ORDA program work involved. Written solicitations or requests for bids or proposals for Procurement Contracts should include a statement of the Authority's affirmative action policy. The Authority will consult with the Division of Minority and Women's Business Development and the Authority's manager of human resources for assistance in identifying such enterprises, and refer to any known list

maintained by any other State department or agency that identifies Minority Business Enterprises or Women-Owned Business Enterprises by area of expertise.

#### Article VIII. Contracts with Former Officers or Employees

8.0 Procurement with former officers or employees of the Authority shall be permitted where the goods, personal services or Authority program work are to the best advantage of the Authority and the contractual relationship is not otherwise prohibited by law or ORDA Policy. In particular, any former officer or employee of the Authority shall be held to the restrictions set forth in Public Authorities Law Section 73(8) on receiving compensation for any services rendered with respect to specified types of cases, proceedings, applications, matters, and transactions.

#### Article IX. New York State Business Enterprises and New York State Residents

9.0 It is the Policy of the Authority to promote participation in Procurement Contracts by New York State Business Enterprises and New York State Residents, by encouraging them to compete through measures including, but not limited to:

- (a) Collecting and consulting the specifications of New York State Business Enterprises in developing any specifications for any Procurement Contract for the purchase of goods where possible, practicable, feasible, and consistent with open bidding, except for Procurement Contracts for which the Authority would be expending funds received from another state. The Authority will, where feasible, make use of the stock order specification forms prepared by the Commissioner of General Services and, where necessary, consult with the Commissioner of General Services in developing such specifications and making such determinations; and
- (b) Promulgating procedures that will assure compliance with the federal Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), as amended, by Contractors.

#### Article X. Publication of Notice of Procurement Contracts

10.0 Except as provided in Section 10.1 below, prior to awarding any Procurement Contract, the Authority shall submit to the Commissioner of the Department of Economic Development information on: (i) the contract identification number; (ii) a brief description of the goods or services sought, the location where goods are to be delivered or services provided and the contract term; (iii) the address where bids or proposals are to be submitted; (iv) the date when bids or proposals are due; (v) a description of any eligibility or qualification requirement or preference; (vi) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (vii) any other information deemed useful to potential Contractors; and (viii) the name, address, and telephone number of the person to be contacted for additional information. Such information shall be submitted in sufficient time to allow a minimum of fifteen business days between publication of such notice and the date on which a bid or proposal is due, except where a shorter period is specifically authorized by law.

10.1 The provisions of Section 10.0 shall not apply to Procurement Contracts: (i) awarded on an emergency or critical basis, or on the basis that publication is otherwise not feasible, such as those described in Sections 4.2 and 2.9 (ii) - (vi) of these Guidelines; (ii) being re-bid or re-solicited for substantially the same goods or services, within forty-five business days after the date bids or proposals were originally due; or (iii) any other procurements the Commissioner of the Department of Economic Development has determined do not require publication.

#### Article XI. Reports

11.0 The Authority shall prepare and submit to the ORDA Board members quarterly reports of new Procurement Contracts.

(i) Quarterly Reports

- For each Procurement Contract, the report shall include the Contract amount, reason for award, summary of scope of services and the selection process used. Such reports shall include information related to amendments approved for Contracts during the reporting period. Any Procurement Contract(s) anticipated to exceed one year shall be noted each quarter.

(ii) Annual Reports

- The Director of Finance shall prepare for approval by the Board members at the annual meeting of the Authority an annual report on Procurement Contracts which shall include its Procurement Contract, Guidelines, an explanation of such Guidelines, and any amendments thereto since the last annual report, a list of all Contracts entered into since the last annual report, the selection process used to select such Contracts, the status of the existing Procurement Contracts, and a list of fees, commissions, or other charges paid to the Contracts. The annual report on Procurement Contracts may be part of any other report that the Authority is required to make.
- Upon approval by the members of the ORDA Board, the Authority shall submit the annual report on Procurement Contracts to the Division of the Budget, with copies to the Senate Finance Committee, the Assembly Ways and Means Committee, and the Department of Audit and Control.

11.1 The Authority shall make copies of its reports on Procurement Contracts available to the public upon reasonable request.

#### Article XII. Miscellaneous Provisions

12.0 No violation of or failure to comply with the provisions of these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any Procurement Contract; nor shall any provision of these Guidelines or any violation of or failure to comply with such provisions be the basis for any claim against the Authority or any

member, officer, or employee of the Authority.

- 12.1 The members of the Authority may, from time to time, amend these Guidelines, provided that no such amendment shall be deemed to alter, affect the validity of, modify the terms of, or impair any Procurement Contract.