

Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Personal Procurement Contracts

As required by Section 2879 of the Public Authorities Law of the State of New York, the following guidelines (the “Guidelines”) are applicable with respect to the use, awarding, monitoring and reporting of Procurement Contracts of the Roosevelt Island Operating Corporation (referred to herein as the “Corporation”). These Guidelines, as approved by the Board of Directors of the Corporation, shall supersede any previous guidelines, statements or other policies in connection with procurement contracts, and shall be annually reviewed and approved by the Board of Directors of the Corporation.

A. PROCUREMENT CONTRACTS

1. **Definition.** A procurement contract is defined in Section 2879(2) of the Public Authorities Law as any written agreement for the acquisition of goods and services of any kind, in the actual or estimated amount of \$5,000 or more, or such other amount as may be set forth in amendments to Section 2879(2) (hereinafter referred to as “Procurement Contracts”). Additionally, pursuant to Article 15-A of the Executive Law, solely for the purpose of providing the opportunity for meaningful participation for certified Minority and Women-owned Business Enterprises (“MWBES”) in the performance of Procurement Contracts, Procurement Contracts shall include leases of real property by the Corporation to a Lessee, as defined below, where: (a) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee; and (b) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of \$100,000.

2. **Competitive Basis.** Procurement Contracts are to be awarded to persons/firms on a competitive basis to the maximum extent possible. Such awards are to be made upon receipt and evaluation of proposals obtained from persons/firms responding to a Corporation request for proposals or invitations for bids forwarded, where practicable, to at least three qualified persons/firms. Where appropriate, persons/firms may be pre-qualified before proposals are solicited. The firms shall be ranked according to criteria appropriate for each project, including, where applicable, special or technical expertise, current workload capacity, past performance for the Corporation on other projects, responsibility and proposed fees, price, charges or billing rates. In addition, the Corporation may determine not to select a person/firm where information is obtained which indicates that the person/firm is not qualified, responsive or responsible based upon appropriate criteria for the project.

3. **Notices of Procurement Contract Opportunities**

- (i) *New York State Contract Reporter.* As required by, and in accordance with, Article four-c of the Economic Development Law, prior to awarding any Procurement Contract in the actual or estimated amount of \$15,000 or more, or such other amount as may be set forth in amendments to Article four-c of the Economic Development Law, the Corporation shall submit sufficient information to enable publication of the notices of procurement contract opportunities in the New York State Contract Reporter.
 - (ii) *Notice to MWBEs.* In an effort to award Procurement Contracts to MWBEs in compliance with the Corporation's MWBE Procurement Goals, the Corporation shall provide notice of procurements, along with any other notice required by law, to professional and other organizations serving MWBEs that provide the types of services procured by the Corporation. Professional and other organizations can include, but is not limited to, social networking websites, magazines, and/or newspapers catering to a majority of MBE and/or WBE clientele. For the purposes of these procurement efforts and for other Corporation procurement efforts, the Corporation shall establish procedures for maintaining list(s) of qualified MWBEs. In addition, the Corporation shall establish procedures for maintaining lists to include media outlets and other organizations serving MWBEs. The Corporation will provide such list(s) to Contractors in the procurement process, requiring that potential Contractors consult and contact appropriate MWBEs to solicit their bids.
4. Services. Procurement Contracts for services are written agreements to provide a service including, but not limited to, the performance of legal, accounting, management consulting, investment, banking, planning, training, statistical, research, public relations, architectural, engineering, surveying, or other personal services of a consulting, professional or technical nature for a fee, commission or other such compensation by a person or persons who are not providing such services as officers or employees of the Corporation.
5. Goods. Procurement Contracts for goods are written agreements for the provision of goods including, but not limited to, purchases of office supplies, furniture, and equipment.

B. REASON(S) FOR USE OF PERSONAL SERVICES

When and as approved, Procurement Contracts for personal services may be entered into because of one or more of the following factors or considerations:

- (a) requirement of special expertise or unusual qualifications;
- (b) nature, magnitude or complexity of services required;

- (c) lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- (d) lower cost;
- (e) short term need for services; or
- (f) infrequent need for services.

C. SELECTION CRITERIA

1. Methods.

- (i) *Competitive Bids.* Solicitation of price bids for specified goods or services are to be awarded to persons/firms on a competitive basis to the maximum extent possible. Competitive bids are to be solicited when the goods or services required are of a standardized nature that may reasonably be made the subject of specifications to which bidders respond with required qualification data and price offers; or
- (ii) *Requests for Proposals.* Solicitation of specific proposals responsive to solicitation to indicate an understanding of the financial, organizational and logistical requirements and technical problems identified in the solicitation, which also detail elements of performance including techniques and procedures, together with prices. Award of a contract within this method is made on the basis of a formal evaluation of the characteristics, quality and cost of such proposals; or
- (iii) *Competitive Negotiations.* Solicitation of qualifying potential procurement contractors pursuant to a request-for-proposal method to further negotiate their proposals, including prices for contract awards on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.

2. Minority and Women-Owned Business Enterprises. To promote and assist participation by MWBEs, the applicable provisions of Article 15A of the New York State Executive Law shall apply in the selection and awarding of Procurement Contracts. The Corporation shall identify those areas or types of contracts for which MWBEs may best provide proposals so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises. The Corporation shall work to increase MWBE participation and utilization through certain procurement procedures, as described in these Guidelines. For each Contract, the Corporation shall gauge the appropriateness of the procurement goals by considering the availability of Contractors to perform the contract's anticipated scope of services, weighted by the extent those scope of services represent the total Contract price.

- (i) Definitions. For the purpose of these Guidelines:

- (a) Lessee means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a lease with the Corporation, or a respondent in conjunction with the award of such a lease or a proposed lessee with the Corporation.
- (b) Minority-owned Business Enterprise (“MBE”) means a business enterprise, including a sole proprietorship, partnership or corporation that is:
 - A. at least 51% owned by one or more Minority Group Members, or in the case of a publicly owned business at least 51% 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;
 - 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;
 - D. an enterprise authorized to do business in New York State and independently owned and operated;
 - 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 \$3.5 million, 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.
- (c) 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 subcontinent or the Pacific Island; or
 - D. Native American persons having origins in any of the original peoples of North America.
- (d) Personal Net Worth means the aggregate adjusted net value of the assets of an individual remaining after total liabilities are deducted. Personal Net Worth includes the individual's share of assets held jointly with said individual's spouse and does not include the individual's ownership interest in the certified MWBE, the individual's equity in his or her primary residence, or up to \$500,000 of the present cash value of any qualified retirement savings plan or individual retirement account held by the individual less any penalties for early withdrawal.

- (e) Small Business, as used in these Guidelines, unless otherwise indicated, shall mean a business which has a significant business presence in New York State, is independently owned and operated, not dominant in its field and employs less than a certain number of persons, based on its industry threshold as determined by the Director of the Division of Minority and Women’s Business Development in the Department of Economic Development (“MWBE Director”), but not to exceed three hundred.
- (f) Women-owned Business Enterprise (“WBE”) means a business enterprise, including a sole proprietorship, partnership or corporation which is:
 - A. at least 51% owned by one or more united States citizens or permanent resident aliens who are women, or in the case of publicly-owned business at least 51% 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;
 - D. an enterprise authorized to do business in New York State, independently owned and operated;
 - 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 \$3.5 million, 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.

(ii) MWBE Procurement Goals.

- (a) The Corporation shall attempt to achieve the following results with regard to total annual statewide Procurement made directly or indirectly to MWBEs:
 - A. construction industry for certified MBEs: 14.34%
 - B. construction industry for certified WBEs: 8.41%
 - C. construction related professional services industry for certified MBEs: 13.21%
 - D. construction related professional services industry for certified WBEs: 11.32%
 - E. non-construction related service industry for certified MBEs: 19.6%
 - F. non-construction related service industry for certified WBEs: 17.44%
 - G. commodities industry for certified MBEs: 16.11%
 - H. commodities industry for certified WBEs: 10.93%

- I. overall total dollar value of procurement for certified MBEs: 16.53%
 - J. overall total dollar value of procurement for certified MBEs: 12.39%
 - K. overall total dollar value of procurement for certified MWBEs: 8.92%
- (b) In the event that the above projected goals cannot be achieved, the Corporation shall provide adequate documentation of a good faith effort to meet these goals in its submission of its Annual MWBE Report.
 - (c) For the purposes of reaching these goals, the Corporation shall establish procedures for maintaining list(s) of qualified and certified MWBEs, that have expressed an interest in doing business with the Corporation, and ensuring that such list(s) are updated periodically, but no less than once annually, and include(s) a firm profile that will, if possible, describe the firm's history, key personnel and core work areas. The Corporation shall also consult the list(s) of certified MWBEs maintained by the Department of Economic Development, pursuant to Article 15-A of the Executive Law.
 - (d) The Corporation shall update these MWBE participation goals annually in an effort to: (1) obtain the maximum feasible participation of MWBEs in Corporation's Contracts, (2) evaluate each Contract to determine the appropriateness of the goal, and (3) examine Corporation's goals to determine if their implementation will duplicate or conflict with any federal law. The Corporation shall waive the applicability of these goals to the extent of such duplication or conflict. These MWBE goals are subject to change by industry and region pursuant to findings contained within the Disparity Study of 2010, future Disparity Studies by the Empire State Development Corporation, and Corporation findings evidencing relevant industry and region-specific availability of certified MWBEs.
- (iii) Requirements to Conduct Procurements to Ensure Maximum Participation and Utilization by MWBEs. To enable the Corporation to achieve the maximum feasible portion of the Corporation's goals established in these Guidelines, the Corporation's measures and procedures shall include the following:
- (a) For competitive procurements requiring a minimum of three bids, quotes must be obtained from at least one MBE or WBE. If not feasible, the reasons for not doing so shall be documented in writing and included in the Procurement record. Corporation staff issuing solicitations will comply with this requirement whenever MWBEs are available for goods or services being procured;
 - (b) Encouraging contractors to consider partnering with MWBEs, if feasible; and practicable; and
 - (c) For non-competitive procurements, Corporation staff issuing the solicitation shall strongly consider using a certified MWBE, if available, and if the MWBE meets the needs of the Corporation.

- (iv) Designation of the Division of Minority and Women-Owned Business Development (“Division of MWBEs”). Division of MWBEs is designated to certify and decertify MWBEs for the Corporation.
- (v) Expected Degree of MWBE Participation. Each contract solicitation shall set forth the expected degree of MWBE participation.
- (vi) Current List of MWBEs. The Corporation shall provide a current list of certified MWBEs to each prospective Contractor.
- (vii) Joint Ventures and MWBE Participation Goals. The MBE portion or the WBE portion of joint ventures shall count toward meeting the Corporation’s MWBE participation goals. A firm owned by a Minority Group Member who is also a woman may be certified as a MBE, a WBE, or both, and may be counted towards either a MBE goal or a WBE goal, in regard to any Contract or any goal, set by the Corporation, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the MBE goal and the WBE goal.
- (viii) Waiver of Obligations of Contractor Relating to MWBE Participation. The Corporation may waive obligations of the Contractor relating to MWBE participation after a showing of good faith effort to comply with the MWBE participation requirements, pursuant Chapter 174 and Chapter 175 of the laws of 2010 that amend §2879 of the Public Authorities Law and Article 15-A, §313, subdivision six, respectively, both enacted on July 15, 2010.
- (ix) Verification of MWBE Participation. The Corporation shall verify that MWBEs listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted, including verification that the procured primary Contractors are truly providing for the participation of MWBEs as described in the Procurement Contract. Participation of MWBEs shall be verified by (i) electronically monitoring and tracking the utilization, prompt payment and unauthorized substitutions of MWBE subcontractors and (ii) the provision of the following data, by the Contractor to the Corporation, for each MWBE subcontract:
 - (a) name(s) of the MWBE subcontractor;
 - (b) total dollar amount of the MWBE’s participation;
 - (c) scope of work of the MWBE subcontractor; and
 - (d) dates of participation.
- (x) In the implementation of this section the Corporation shall:

- (a) consider, where practicable, the severability of construction projects and other bundled Contracts; however, unbundling must be conducted within the constraints of the Corporation' need to ensure efficiency and limit costs;
- (b) evaluate each Contract to determine the appropriateness of the goals, as set forth in this Article, including:
 - A. increasing MWBE outreach and communication efforts by use of the internet to facilitate access to information and build relationships between MWBEs and potential partners by: (i) Posting a list on the Corporation's website; and (ii) Requiring Corporation staff to include certified MWBEs in the solicitation lists for procurements not expected to exceed \$15,000;
 - B. considering the number and types of MWBEs located in the region in which the Procurement Contract is to be performed;
 - C. considering the total dollar value of the Procurement Contract, the scope of work to be performed, and the project size and term;
 - D. considering whether the contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event, (i) whether or not certified MWBEs that have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and (ii) whether certified MWBEs which have been solicited by the Contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the Corporation's bid date;
 - E. considering whether there has been written notification to appropriate certified MWBEs that appear in the directory of certified MWBEs, and
 - F. considering whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified MWBEs.
- (c) consider compliance with the requirements of any federal law concerning opportunities for MWBEs which effectuates the purpose of this section; and
- (d) consult the most recent Disparity Study, pursuant to Article 15-A of the Executive Law.

3. New York Businesses. It is the policy of the Corporation to promote the participation by New York State Business Enterprises and New York State residents in Procurement Contracts, with the cooperation of the Department of Economic Development and the Job Service Division of the Department of Labor including, but not limited to providing through cooperative efforts with contractors for the notification of New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts in an amount estimated to be equal to or greater than \$1 million; by cooperating with New York State in efforts to obtain offset credits from foreign countries and promulgating

procedures which will assure compliance by contractors with such notification as a condition of awarding bids. Such contractors shall, as supplementary materials to their bids, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on Procurement Contracts equal to or greater than \$1 million; attest to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended, document their efforts to provide notification to New York State residents of employment opportunities through listing any such positions with the job service, division, or providing for such notification in, such manner as is consistent with existing collective bargaining contracts or agreements. For the purposes of this section:

- (i) *New York State Business Enterprise* means a business corporation, which offers for sale or lease or other form of exchange, goods that are sought by the Corporation and that are substantially manufactured, produced or assembled in New York State, or services which are sought by the Corporation and that are substantially performed in New York State.
- (ii) *Foreign Business Enterprise* shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the corporation and which are substantially produced outside New York State, or services sought by the Corporation and which are substantially performed outside New York State.

4. *Architecture, Engineering or Surveying*. The Corporation shall not refuse to negotiate with a Professional Firm solely because the ratio of the Allowable Indirect Costs to direct labor costs of the Professional Firm or the hourly labor rate in any labor category of the Professional Firm exceeds a limitation generally set by the Corporation in the determination of the reasonableness of the estimated cost of services to be rendered by the Professional Firm, but rather the Corporation will also consider the reasonableness of cost based on the total estimated cost of the service of the Professional Firm which will include, among other things, all the direct labor costs of the Professional Firm for such services plus all allowable indirect costs, other direct costs, and negotiated profit of the Professional Firm. For the purposes of this section the following terms are defined in Section 2879(3)(iv) of the Public Authorities Law:

- (i) *Professional Firm* is any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.
- (ii) *Allowable Indirect Costs* of a Professional Firm are those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

D. WAIVER OF SELECTION CRITERIA

Procurement Contracts may be awarded to persons/firms on a non-competitive basis when such contracts are:

1. for the purchase of goods or services from Small Businesses or certified MWBEs, or goods or technology that are recycled or remanufactured, in amounts at or below \$200,000;
2. for the purchase of goods or services through programs offered by the New York State Office of General Services (“OGS”) and as may be permitted under Article XI of the State Finance Law;
3. exempt under Section 144 of the Economic Development Law; or
4. when circumstances such as the following exist:
 - (i) in the event an emergency, critical or other extraordinary circumstance exists which make competition impracticable or inappropriate;
 - (ii) only one source for the services is available;
 - (iii) when legal services or other specialized services are required for which a certain person\firm’s expertise is unique;
 - (iv) continuation of existing services is desirable to provide continuity to the orderly development of a Corporation project;
 - (v) where a person\firm has superior qualifications to perform the service at a cost that is determined to be fair and reasonable; or
 - (vi) where information is obtained which indicates that persons\firms which were invited to submit proposals are not qualified, responsive or responsible based upon the appropriate criteria for the project.

E. APPROVAL PROCESS

The award of Procurement Contracts and/or the waiver of the selection criteria shall be approved as follows:

1. Procurement Contracts and waivers in amounts under \$50,000 shall be approved by the President/Chief Executive Officer;
2. Procurement Contracts and waivers in amounts of \$50,000 or over shall be approved by the President/Chief Executive Officer and the Board of Directors of the Corporation; and
3. Procurement Contracts for services to be rendered over a period in excess of one year shall be approved by the President/Chief Executive Officer and the Board of Directors of

the Corporation and such contracts shall be annually approved by the Board of Directors of the Corporation thereafter.

4. Where the Comptroller of the State of New York (“NYS Comptroller”) determines pursuant to § 2879-a of the Public Authorities Law and his or her authority to supervise the accounts of public corporations, that contracts or categories of contracts in excess of one million dollars (a) to be awarded by the Corporation to a single source, a sole source or pursuant to any other method of procurement that is not competitive, or (b) which are to be paid in whole or in part from monies appropriated to the Corporation by the State of New York for such contractual expenditure, require supervision in the form of prior review and approval of such contracts, and the NYS Comptroller so notifies the Corporation of such determination, then any such contract entered into subsequent to such notification shall be submitted to the NYS Comptroller for his or her approval and shall not be a valid enforceable contract unless it shall first have been approved by the NYS Comptroller. Where the NYS Comptroller has so notified the Corporation that any contract or category of contracts shall be subject to his or her approval, the Corporation shall include or cause to be included in each such contract a provision informing the other party that such contract is subject to the NYS Comptroller's approval pursuant to the NYS Comptroller's authority to supervise the accounts of public corporations. If the NYS Comptroller has not approved or disapproved any contract subject to his or her approval within ninety (90) days of submission to his or her office, such contract shall become valid and enforceable without such approval.

F. RESPONSIBILITIES OF PROCUREMENT CONTRACTORS

Contractors shall have the following responsibilities:

1. To perform the contract in accordance with its terms.
2. To perform the services required under the contract completely, efficiently, in a timely manner, at a reasonable cost and in a manner which is satisfactory to the Corporation.
3. To cooperate with Corporation personnel who are directing, supervising or monitoring the performance of the services or who are assisting in their performance.

G. PROCUREMENT CONTRACTS INVOLVING FORMER OFFICERS OF THE CORPORATION

The Corporation shall not enter into Procurement Contracts with its former officers or employees, or with firms employing such officers or employees, except as specifically approved by resolution of the Board of Directors, provided, however, that any such resolution

shall be deemed not to impose a more stringent requirement than as may be permitted by the applicable provisions of Section 73 of the Public Officers Law.

H. IMPLEMENTATION OF GUIDELINES

1. The Chief Financial Officer of the Corporation shall:

- (i) be responsible for preparing for approval by the President/Chief Executive Officer (or designee thereof) such supplemental procedures as may be required to effectively implement the approved Guidelines;
- (ii) oversee the Corporation's programs established to promote and assist:
 - (a) participation by certified minority or women-owned business enterprises in the Corporation's procurement opportunities and facilitation of the award of procurement contracts to such enterprises;
 - (b) the utilization of certified minority and women-owned business enterprises as subcontractors and suppliers by entities having procurement contracts with the Corporation; and
 - (c) 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 Corporation;
- (iii) be familiar with the procurement of the types of construction, financial, legal or professional services utilized by the Corporation, report directly to the Corporation's President/Chief Executive Officer and either directly or through a designee participate in the procurement process; and
- (iv) monitor departmental compliance with the approved Guidelines.

2. The General Counsel shall be responsible for preparing proposed amendments to the Guidelines for approval by the President/Chief Executive Officer and the Board of Directors when and as required.

I. REPORTING

1. Annual Report on Procurement Contracts. The Chief Financial Officer shall annually prepare for approval by the Board of Directors a report on Procurement Contracts, the selection process used and the status of all existing Procurement Contracts, as of the end of each fiscal year, for submission to: (1) The Division of Budget; (2) The Department of Audit and

Control; (3) The Senate Finance Committee; (4) The Assembly Ways and Means Committee; (5) Members of the Public (upon receipt of reasonable requests therefor); and (6) Department of Economic Development. The annual report shall include:

- (i) these Guidelines, amendments thereto, and an explanation thereof;
- (ii) status of existing Procurement Contracts setting forth a description of the duties performed by the contractor; the date of the contract and its duration; the total amount of the contract; and the status of the contract including the amount spent on the contract during the reporting period and for the life of the contract to date; and
- (iii) list of Procurement Contracts:
 - (a) entered into with New York state business enterprises and the subject matter and value thereof;
 - (b) entered into with certified minority or women-owned business enterprises and the subject matter and value thereof, all referrals made and all penalties imposed pursuant to section 316 of the Executive Law;
 - (c) foreign business enterprises and the subject matter and value thereof;
 - (d) the selection process used to select such contractors; and
 - (e) all contracts which were exempt from publication requirements of article four-C of the Economic Development Law, and the basis for any such exemption.

2. Annual MWBE Report. The Chief Financial Officer shall annually report to the Governor, Legislature and the MWBE Director, on various issues pertaining to Procurement Contracts relating to MWBE, in accordance with Article 15-A of the Executive Law, including but not limited to:

- (i) the Annual Goals for Contracts with MWBEs, defined in these Guidelines;
- (ii) any documentation of a good faith effort to meet the Corporation's goals described in these Guidelines, in the event that the Corporation's projected goals cannot be achieved;
- (iii) the number of actual Contracts issued to MWBEs;
- (iv) any activities undertaken to promote and encourage procurement opportunities of Minority Group Members and women and promote and increase participation by certified businesses with respect to Procurement Contracts and subcontracts;

- (v) a summary of all contracts for leases of real property by the Corporation to a Lessee where (1) the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such Lessee, and (2) the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon exceeds the sum of \$100,000;
- (vi) a summary of all enforcement actions undertaken by the Corporation against a contractor for breach of Procurement Contract pursuant to §316-a of Article 15-A of the Executive Law and these Guidelines;
- (vii) a summary of all waivers of obligations of contractors relating to MWBE participation, as defined in these Guidelines, permitted by the Corporation during the period covered by the MWBE Report, including:
 - (a) a description of the basis of the waiver request; and
 - (b) the rationale for granting any such waiver; and
- (viii) any remedial plan, if the Corporation has been required to prepare one, and the extent to which the Corporation has complied with each element of the plan.

J. EFFECT ON AWARDED CONTRACTS

Nothing contained in these Guidelines shall be deemed to alter, effect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with these Guidelines.

K. MISCELLANEOUS

1. Powers of Amendment. The Corporation shall have the power from time to time to amend these Guidelines in accordance with the provisions of Section 2879 of the Public Authorities law; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Procurement Contracts, the terms of which were established pursuant to these Guidelines or to previously existing Guidelines.

2. No Recourse under these Guidelines. No provision of these Guidelines shall be the basis for any claim based on these Guidelines against any Director, officer or employee of the Corporation or the Corporation itself.

3. Provisions Required by Law. These Guidelines are hereby deemed to include any provision required by law to be included herein.