



ALL AGENCY GENERAL CONTRACT PROCUREMENT GUIDELINES

Adopted by the Board on March 30, 2022

These guidelines (the “**General Contract Guidelines**”) apply to the Metropolitan Transportation Authority (“**MTA**”), the New York City Transit Authority (“**NYCT**”), the Long Island Rail Road Company (“**LIRR**”), The Metro-North Commuter Railroad Company (“**MNR**”), the Staten Island Rapid Transit Operating Authority (“**SIRTOA**”), the Manhattan and Bronx Surface Transit Operating Authority (“**MaBSTOA**”), MTA Construction and Development (“**MTAC&D**”), MTA Bus Company (“**MTA Bus**”), First Mutual Transportation Assurance Co. (“**FMTAC**”), Grand Central Madison Concourse Operating Company (“**GCMC**”), and the Triborough Bridge and Tunnel Authority (“**Bridges and Tunnels**”) insofar as they are consistent with the provisions of law applicable to Bridges and Tunnels (each of the MTA, NYCT, LIRR, MNR, SIRTOA, MaBSTOA, MTAC&D, MTA Bus, FMTAC, GCMC and Bridges and Tunnels is referred to jointly and severally, as the “**Authority**”).

Article I - Applicability of General Contract Guidelines

These **General Contract Guidelines** apply to

- A. purchase contracts for supplies, materials, equipment or other goods (“**Purchase Contracts**”);
- B. public work contracts (“**Public Work Contracts**”); and
- C. “**Miscellaneous Procurement Contracts**” are defined as leases of equipment with or without an option to purchase, computer software licenses, including software as a service subscription, software maintenance agreements, printing contracts (where editorial services do not predominate), and any other contract which is not otherwise classified under these General Contract Guidelines or the All Agency Service Contract Procurement Guidelines (the “**Service Contract Guidelines**”, and collectively with these General Contract Guidelines, the “**Guidelines**”).

Purchase Contracts, Public Work Contracts and Miscellaneous Procurement Contracts are collectively referred to herein as “**General Contracts**”.

In the event a proposed contract contains elements of more than one type of General Contract and/or elements of either or both types of Service Contracts (as such term is defined in the Service Contract Guidelines), the elements of the type of contract that predominates shall determine whether the General Contract Guidelines or the Service Contract Guidelines apply and which type of contract within the applicable Guidelines shall apply.

Article II - Delegation of Authority

The Chairman, the Managing Director, the President, or chief procurement officer (“**CPO**”) of the relevant Authority thereof, and any further delegations that the Chairman or relevant Authority President may make for those specified delegated purposes only (each defined for purposes of these General Contract Guidelines as an “**Authorized Officer**”) are hereby empowered with respect to General Contracts to be entered into by the relevant Authority acting on its own behalf or as agent for MTA, as follows:

- A. to implement these General Contract Guidelines.

- B. to establish procedures for the award of General Contracts (including contracts for a small business concern (“SBC”), a certified minority or women-owned business enterprise (“MWBE”) or a certified service disabled veteran owned business (“SDVOB”)) estimated to involve the expenditure of \$1 million or less, which procedures shall be competitive to the extent deemed practicable by the Authorized Officer;
- C. to do the following for the award of Purchase Contracts and Public Work Contracts estimated to involve the expenditure in excess of \$1 million:
 - 1. to determine the criteria for the evaluation of bids/proposals, which may include, but are not limited to, unit or aggregate amount bid, life cycle costs or savings (including but not limited to costs or savings associated with installation, energy use, maintenance, operation, salvage and disposal), discounts and costs of maintenance and inspection services;
 - 2. to determine whether a Purchase Contract or Public Work Contract required to be advertised in the New York State Contract Reporter (“NYSCR”) is exempt from such requirement due to the need to award such contract on an emergency or other critical basis;
 - 3. to advertise for, solicit and open bids/proposals;
 - 4. to record the name of each bidder and the amounts of the bid/proposal;
 - 5. to determine the lowest responsive and responsible bidder, including, in the event two or more responsible bidders submit identical bids which are the lowest bids, to award the Purchase Contract or Public Work Contract to any of such bidders or obtain new bids from such bidders;
 - 6. to reject all bids when it is determined to be in the public interest to do so; and
 - 7. to award the Purchase Contract or Public Work Contract;
- D. to determine whether a bidder/proposer is responsible pursuant to the All-Agency Responsibility Guidelines; and
- E. in addition to the other authorizations set forth elsewhere in these General Contract Guidelines, to establish guidelines governing the qualifications of bidders for General Contracts, and to fix the standards for the prequalification of bidders entering into such contracts for the East Side Access Project in accordance with Section 1265-a.2(c) of the Public Authorities Law.

Article III - Selection of General Contractors Without Competitive Sealed Bidding

- A. A competitively bid Miscellaneous Procurement Contract may be awarded without Board approval. No Board approval shall be required for a Miscellaneous Procurement Contract awarded pursuant to Article III.B.5.
- B. Except as otherwise provided in Article III.C. or Article VII., a General Contract estimated to involve the expenditure in excess of \$1 million may be awarded without competitive bidding under the circumstances set forth below, provided that the Authorized Officer recommends such an action and the Board adopts a resolution (i) declaring competitive bidding to be impractical or inappropriate because of the existence of any of the

circumstances set forth in Articles III.B.1. to 6., (ii) stating the reasons therefore, and (iii) summarizing any negotiations that have been conducted. Except in a situation specified in Article III.B.1., such resolution shall be approved by two-thirds of the members of the Board then in office. A resolution under Article III.B.1. shall require approval by a majority of the members of the Board in attendance at a meeting at which a quorum is present.

1. Emergency, Critical Need or Unforeseen Circumstances. The existence of an emergency involving danger to life, safety or property, or a critical need or unforeseen circumstance which requires immediate action and cannot await competitive bidding; or when the item to be purchased is essential to the efficient operation of or the adequate provision of service and, as a consequence of an unforeseen circumstance, such purchase cannot await competitive bidding. Competitive bidding is hereby declared to be impractical and inappropriate in any of the foregoing situations where an Authorized Officer must take appropriate action and cannot await action by the Board; provided, however, that notice of such action shall be given to the Board in a timely manner, together with a statement of the reasons for such action and a request for ratification by the Board.
2. Single Source. The item to be purchased is available only from a single responsible source provided, however, that a notice of the Authority's intent to purchase such item without competitive bidding shall be posted on the Authority's website, and, if bids have not been solicited for such item within the preceding twelve months, a notice must be published pursuant to Article V hereof. Any notices required by this Article III.B.2. shall a. set forth the Authority's intent to purchase the item without competitive bidding because the item is available from only one source, and b. invite any firm which believes it can provide the item to so inform the Authority and to provide the Authority with additional information which confirms that the firm can supply the item.
3. No Bids or One Responsive Bid. Competitive bids are solicited and
 - a. no responsive bid is received; or
 - b. only a single responsive bid is received, and the Authorized Officer rejects the bid.
4. Experiments, Tests and Evaluations. With respect to a product or technology, the Authority wishes to:
 - a. experiment with or test it;
 - b. experiment or test a new source for it; or
 - c. evaluate its service or reliability.

Such a General Contract may not be awarded until at least thirty days after the date the Board has declared competitive bidding to be impractical or inappropriate.

5. Riding an Existing Contract. The item is available through an existing General Contract between a vendor and any of the following and the resolution adopted by the Board, if Board authorization would otherwise be required under these General Contract Guidelines, includes a determination that, and the reasons, why, it is in the public interest to do so:
- a. Any public authority (not New York State) provided such General Contract had been awarded through a process of competitive sealed bidding or a competitive request for proposals (“RFP”);
 - b. A New York State agency or authority (including the New York State Office of General Services (“OGS”)), the City of New York, or Nassau County (except for NYCT, SIRTOA and MaBSTOA, as to Nassau County only).

It is hereby determined that competitive bidding is inappropriate and, because of the likelihood that a competitive process will not result in better commercial terms, that it is in the public interest to purchase an item through an existing General Contract of the State of New York, the City of New York, a different Authority, or any other public authority, where price and other commercial terms specified in such General Contract are satisfactory to the Authorized Officer. Such a determination shall be documented in writing by the Authorized Officer, and included in the contract file.

6. Request For Proposals. The Authority determines that it is in the public interest to award the General Contract through a competitive RFP.
- a. For purposes of this Article III.B.6., an RFP shall mean a method of soliciting proposals and awarding a General Contract on the basis of a formal evaluation of the characteristics which are deemed relevant to the Authority’s operations, such as quality, cost, delivery schedule and financing, against stated selection criteria. Where the RFP involves the purchase or rehabilitation of rail cars, transit cars or buses, the selection criteria may also include the extent to which the performance of all or a portion of the General Contract will involve the use of sites within the State of New York or the use of goods produced or services provided within the State of New York.
 - b. For those General Contracts awarded under this Article III.B.6., (1) such contracts may not be awarded until at least thirty days after the Board has declared competitive bidding to be impractical or inappropriate and (2) the Board’s approval resolution must (i) disclose the other proposers and the substance of their proposals, (ii) summarize the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (iii) set forth the criteria upon which the selection was made. The Board’s contract approval resolution may be adopted simultaneously with or subsequent to the Board’s declaration that competitive bidding is impractical or inappropriate, provided that, if the Board’s declaration and the Board’s approval resolution are adopted simultaneously or within less than thirty days of

each other, the subject General Contract may be executed by the Authority no less than thirty days after the adoption of the Board's declaration that competitive bidding is impractical or inappropriate.

- c. In addition to the information required under Article V.C., the public notice of an RFP must include a statement of the selection criteria. Such notice shall also be provided by mail or electronically to professional and other organizations, if any, that represent or regularly notify certified MWBEs or certified SDVOBs of the type of procurement opportunity that is the subject of the RFP notice.
 - d. The Authority may engage in a selection process involving multiple steps such as requests for interest, requests for qualifications, requests for technical proposals and requests for quotations. After the publication of the notice, any or all of the selection criteria specified in the advertisement may be changed, provided that, if the change is material, proposers and potential proposers who, prior to the deadline for the receipt of proposals, have expressed an interest in the RFP, shall be informed of the change and afforded the opportunity to modify their proposals.
 - e. After receipt of the proposals, an Authority may:
 - i) change the selection criteria provided that, if the change is material, all proposers that have not been eliminated from the competitive process prior to such change, are informed of the change and afforded the opportunity to modify their proposals;
 - ii) request that any of the proposers make a presentation. If it does so, it is not required to afford such opportunity to all proposers;
 - iii) negotiate with any of the proposers. If it does so, it is not required to negotiate with all proposers;
 - iv) reject any proposal at any time; and
 - v) reject all proposals, in which event the Authority may decide to take no further action, solicit new proposals or solicit bids.
- C. Under the MTA Small Business Mentoring Program (the "**SBMP**"), a non-federally funded Public Work Contract that is designated by the Authority as a small business mentoring program contract within the meaning of Section 1265-b(1)(e) of the Public Authorities Law, may be awarded in accordance with the provisions of Section 1265-b of the Public Authorities Law, notwithstanding any other provision of law or these General Contract Guidelines. A Public Work Contract that is partially or wholly federally funded, subject to United States Department of Transportation regulations and estimated to involve an expenditure of not more than \$3 million, may be awarded pursuant to the MTA Small Business Federal Program (the "**SBFP**") established under 49 CFR 26.39 in accordance with the competitive procedures established under the SBFP, notwithstanding any other provision of law or these General Contract Guidelines. Pursuant to the SBMP procedures, the Chairman or Authority President designates members of an SBMP steering committee, which includes diversity, engineering and procurement personnel. Such

SBMP steering committee is authorized to designate which eligible Public Work Contracts shall be SBMP or SBFP Public Work Contracts.

- D. A Purchase Contract or a Miscellaneous Procurement Contract, not estimated to involve the expenditure in excess of \$1 million, that is not federally funded, may be awarded pursuant to Section 1209.7(b) or Section 1265-a.2(b) of the Public Authorities Law without competitive sealed bidding or other formal competitive process, notwithstanding any other provision of law or these General Contract Guidelines where the Purchase Contract or Miscellaneous Procurement Contract involves goods or technology that are recycled or remanufactured.

Article IV - Qualified Products Lists

The Board hereby determines that for reasons of efficiency, economy, compatibility or maintenance reliability, there is a need for standardization as to various supplies, materials and equipment which are purchased by the Authorities and authorizes the establishment of a qualified products list (“QPL”) identifying such supplies, materials and equipment as hereinafter provided. A purchase contract for an item which has been included on a QPL duly established and maintained by an Authority may be entered into by that Authority as hereafter set forth:

- A. An Authorized Officer determines as to a specific item that, for reasons of efficiency, economy, compatibility or maintenance reliability, there is a need for standardization.
- B. The QPL is reviewed no less than two times per year in order to evaluate whether to add or delete items or vendors to or from the QPL.
- C. A notice is published by the Authority no less than one time per year in a general circulation newspaper and in the NYSCR which:
 - 1. advertises the existence of the QPL;
 - 2. states that the QPL is available for public inspection; and
 - 3. specifies the name and address of the Authority’s office which may be contacted in regard to the procedure for the compilation of the QPL.
- D. A contract for an item on the QPL may be awarded:
 - 1. without competitive sealed bidding if only one source for the item is specified on the QPL;
 - 2. by competitive sealed bidding, but without advertising, provided the invitation to bid is sent to all vendors listed on the QPL for the particular item;
 - 3. by competitive sealed bidding after advertising the bid pursuant to Article V.A. of these General Contract Guidelines.
- E. Two or more Authorities may utilize the same QPL provided that such Authorities jointly comply with the provisions of this Article.

Article V – Notice and Advertising

Except as provided in Article V.C. and Article III.B.2., in those instances where advertising is required under these General Contract Guidelines:

- A. Regardless of the selection process used, for Purchase Contracts and Public Work Contracts in the actual or estimated amount in excess of \$1 million, an advertisement shall be published at least once in a newspaper of general circulation in the area served by the Authority and in the NYSCR. Such advertisement and notice in the NYSCR must be placed at least fifteen (15) business days prior to the planned date on which a bid/proposal is due; provided that, if the Purchase Contract or Public Work Contract is to be awarded without the solicitation of competitive sealed bids or RFP, the timing of the publication in the NYSCR shall be determined by an Authorized Officer.
- B. The advertisement and the notice in the NYSCR must contain, as applicable, a statement of: 1) the name of the contracting Authority; 2) the contract identification number; 3) a brief description of the goods, supplies, materials, or equipment sought, the location where work is to be performed or goods are to be delivered and the contract term; 4) the address where bids/proposals are to be submitted; 5) the date when bids/proposals are due; 6) a description of any eligibility or qualification requirement or preference; 7) a statement as to whether the contract may be fulfilled by a subcontracting, joint venture (“JV”) or co-production arrangement; 8) any other information which the Authority deems useful to potential contractors; 9) the name, address and the telephone number of the person to be contacted for additional information; and 10) the time and place where bids received will be publicly opened and read. In addition, if a purchase contract is involved, the advertisement in the NYSCR shall also include a statement as to whether the goods, supplies, materials, or equipment sought had, in the immediately preceding three year period, been supplied by a foreign business enterprise as that term is defined in Article 4-C of the Economic Development Law.
- C. Advertisement in a general circulation newspaper and in the NYSCR is not required if the Authority regularly purchases the particular supplies, material or equipment and bids are solicited from a list of potential suppliers for the item which has been established and maintained as set forth in Article VI hereof.
- D. In addition to the above advertisements, the Authority shall provide notice to professional and other organizations, if any, that regularly notify MWBEs of the type of procurement opportunity that is the subject of the solicitation.

Article VI - Contractor Outreach

The Authority shall encourage firms to be interested in competing for Authority contracts. The Authority shall do so in the following manner:

- A. Suppliers Lists for Purchase Contracts: the Authority shall compile a list of potential sources of supplies, materials, equipment, and other goods which it regularly purchases. Such list must be compiled in accordance with the following procedures:

1. Advertisements must be periodically placed in one or more publications which are likely to be read by manufacturers, suppliers and others who deal in the item, including firms which may be MWBEs or SDVOBs, which set forth a general description of categories of items which are regularly procured by the Authority and invites firms to utilize the MTA Business Services Center Vendor Portal to be placed on the suppliers list for specific items or categories of items.
 2. A periodic effort:
 - i) must be undertaken to identify potential bidders for the item who are not on the list, including MWBEs and SDVOBs. Such effort shall include the use of the Authorities' websites, use of appropriate publications, including those, if any, that serve MWBEs and SDVOBs, other sources of information, and cooperation with federal, state and local agencies and other authorities. Where appropriate, a print or electronic letter shall be sent to a new potential supplier which invites it to request that it be added to the list and, if it does not wish to be added, requests that it indicate why; and
 - ii) where appropriate, must be undertaken to identify firms which have not responded to bids or expressed an interest in remaining on a list. An effort should be made to contact such firms to determine why they have not bid, whether they are interested in remaining on the list and, if not, why not. A firm may be deleted from the list where it requests deletion, or where the circumstances indicate that it is unlikely that the firm is interested in remaining on the list.
 3. The Authority will maintain lists of certified MWBEs and SDVOBs, including professional firms that have expressed an interest in doing business with the Authority and ensure that such lists are updated regularly. The Authority will also consult the lists of MWBEs maintained by the New York State Department of Economic Development and the lists of SDVOBs maintained by, the OGS Division of Service-Disabled Veterans' Business Development ("**OGS DSDVBD**").
 4. An advertisement must be placed quarterly in the State Register and in the NYSCR.
 5. In the event it is not practicable to maintain a suppliers list for a specific item, such item shall be included in a broader category or other appropriate classification which reasonably includes the item, and a suppliers list shall be maintained with respect to the category or classification.
- B. Capital Program Purchase Contracts and Public Work Contracts: the Authority shall establish an Outreach program, to be developed by the Chief Development Officer or his designee, to identify and attract capable U.S. and international firms to compete for MTA contracts. In addition, the Authority shall place an advertisement in the NYSCR no less than four times per year which sets forth a general list of anticipated capital program Purchase Contracts and Public Work Contracts, and the address of the Authority's office which may be contacted in order to be afforded the opportunity to compete for such

contracts and for other Authority contracts. Advertisements will also be placed in publications that serve MWBEs.

Article VII – MWBE, SDVOB, and Disadvantaged Business Enterprise (“DBE”)

The potential exists for MWBE, SDVOB, and DBE involvement in General Contracts. The Authority shall use its best efforts to maximize the utilization, as applicable, of DBEs under the Authority’s federal program, and MWBEs and SDVOBs under the New York State programs set forth in Public Authorities Law §2879, Article 15-A and Article 17-B of the Executive Law and these General Contract Guidelines.

- A. The MTA Chief Diversity Officer is responsible for ensuring compliance with all applicable laws and regulations and for overseeing the programs established by the MTA to promote and assist: 1) the participation by MWBEs and SDVOBs in procurement opportunities and facilitation of the award of General Contracts to such enterprises; 2) the utilization of MWBEs and SDVOBs as subcontractors and suppliers to Authority prime contractors; and 3) the utilization of partnerships, JVs or other similar arrangements between MWBEs, SDVOBs and prime contractors. The Chief Diversity Officer reports directly to the Chairman in connection with the responsibilities set forth herein, and will participate in the procurement process either directly or through his or her designees.

- B. A Purchase Contract or a Miscellaneous Procurement Contract, not estimated to involve the expenditure in excess of \$1 million, that is not federally funded, may be awarded pursuant to Section 1209.7(b) or Section 1265-a.2(b) of the Public Authorities Law without competitive sealed bidding or other formal competitive process, notwithstanding any other provision of law or these General Contract Guidelines where the proposed award is to a SBC, MWBE or SDVOB. The MTA and its agencies will administer set-aside procurements pursuant to the laws, rules and procedures that govern small purchase contracting.

The Authority CPO or his/her designee shall determine which Purchase Contracts or Miscellaneous Procurement Contracts are appropriate for these procurements. In the case of Purchase Contracts or Miscellaneous Procurement Contracts that are eligible pursuant to Section 2879(3)(b)(i) of the Public Authorities Law for award to SBCs, MWBEs or SDVOBs, the CPO may make a determination that any such Purchase Contract or Miscellaneous Procurement Contract may only be awarded to an MWBE, or only to an SDVOB, or only to an MWBE or an SDVOB. The basis for such a determination must be to promote participation of MWBEs and SDVOBs in Authority contracts, as mandated by Articles 15-A and 17-B of the Executive Law, respectively, and to assist the Authorities in achieving their MWBE and SDVOB goals.

Notice of such procurements shall be placed on the Authority website inviting responsive bids/proposals from qualified SBCs, MWBEs and/or SDVOBs. Awards pursuant to this process shall be made to the bidder/proposer determined to have submitted the bid/proposal that is most advantageous to the Authority after considering price and any other relevant factors. The CPO may reject all offers and withdraw the designation of a contract as one to be awarded pursuant to this process if the CPO determines that an award will result in the payment of an unreasonable price or otherwise not be advantageous to the Authority.

The value for SDVOB set aside contracts may be in excess of \$1 million. In these instances, notice of such procurements must also be placed in the NYSCR.

- C. For contracts awarded pursuant to these General Contract Guidelines, other than those whose award process is described in Article VII.B., the Authority shall establish appropriate goals for participation by MWBEs and SDVOBs and for the utilization by prime contractors of MWBEs and SDVOBs as subcontractors and suppliers. Statewide MWBE numerical participation target goals will be established by the Authority based on the findings of the most recent New York State Disparity Study.

- D. The Authority will conduct non-federally funded procurements in a manner that enables the Authority to achieve the maximum feasible portion of the goals set pursuant to Article VII.C., including by taking the following actions:
 - 1. establishing measures and procedures to ensure that MWBEs and SDVOBs are given the opportunity for maximum feasible participation in the performance of Authority contracts and to assist in the identification of those contracts that are best suited for MWBE and SDVOB participation so as to facilitate the Authority's achievement of the maximum feasible portion of the MWBE and SDVOB goals;
 - 2. designating the New York State Division of Minority and Women-owned Business Development ("**DMWBD**") to certify and decertify MWBEs, and OGS DSDVBD to certify and decertify SDVOBs, for purposes of these General Contract Guidelines;
 - 3. setting forth in each contract solicitation the expected degree of MWBE and SDVOB participation based on potential subcontracting opportunities and the availability of MWBEs and SDVOBs to respond competitively to those opportunities;
 - 4. providing to prospective contractors in writing, or by identifying a link to a website containing a current list of MWBEs and SDVOBs;
 - 5. with regard to JVs, allowing a bidder/proposer to count toward meeting its MWBE and SDVOB participation goals, the MWBE or SDVOB portion of the JV;
 - 6. waiving a contractor's obligation relating to MWBE or SDVOB participation after a showing of good faith efforts to comply with the participation goal; and
 - 7. verifying that MWBEs and SDVOBs listed in a successful bid/proposal are actually participating to the extent listed in the project for which the bid/proposal was submitted.

- E. The Authority will also consider, where practicable:
 - 1. the severability of construction projects and other bundled contracts;
 - 2. with respect to MWBEs, the implementation of a program that will enable the Authority to evaluate each contract to determine the appropriateness of the goal pursuant to the most recent New York State Disparity Study; and

3. compliance with the requirements of any federal law or regulations concerning opportunities for any DBEs, MWBEs and SDVOBs that effectuates the purposes of this Article VII.
- F. The Chief Diversity Officer or his/her designee is responsible for ensuring compliance with all applicable laws and regulations with regard to the utilization of DBEs on federally funded General Contracts.

Article VIII - Change Orders

- A. A change order to a General Contract which (a) exceeds \$1 million, (b) increases the total contract price by more than ten percent of the original value, or (c) increases the contract duration by more than ten percent of the original contract duration, may be entered into by an Authorized Officer, upon the approval of the Board pursuant to a resolution adopted in accordance with Article IX hereof. The submission to the Board shall include an explanation of the need for the change order. In order to avoid splitting change orders to below \$1 million for the purpose of avoiding the Board approval requirements of this Article VIII.A., the CPO of the relevant Authority must approve multiple change orders to the same contract and for the same scope of work, if all such change orders for any rolling 12-month period would equal to or be more than \$1 million.
For example only, if change order #1 is issued in March Year 1 for \$600,000, change order #2 is issued in June Year 1 for \$300,000 and change order #3 is issued in January Year 2 for \$200,000 (all for the same scope of work), then the CPO would be required to approve change order #3 because the total amount would be \$1.1 million for the rolling 12-month period from March Year 1 to March Year 2, and further the CPO would need to approve any other change order issued during any rolling 12-month period which would bring that 12-month period total to be equal to or greater than \$1 million.
- B. All other change orders shall be approved by an Authorized Officer; provided that a change order over \$250,000 must be approved by the Authority President, CPO, or the Authority President's designee. This provision applies to all contracts subject to these General Contract Guidelines.
- C. Notwithstanding the foregoing, an Authorized Officer may enter into a change order without Board approval in any of the following situations as determined by an Authorized Officer:
1. The existence of an emergency, other critical need or unforeseen circumstance;
 2. There is a risk of a substantial increase in cost or delay if prompt action is not taken; or
 3. The change order does not change the total contract price to exceed the contract budgeted cost, including contingency.
- D. Change orders that do not require Board approval pursuant to Paragraph C above, but that (a) increases the total contract price by more than ten percent of the original value, or (b) increases the contract duration by more than ten percent of the original contract duration, shall require prior written notice to the Chairman of the Finance Committee.

- E. The Chairman shall establish policies with respect to the delegation of responsibilities set forth in this Article.

Article IX - Form of Board Resolution

- A. Except as otherwise required in Article III, the procedure for the adoption by the Board and the format of a resolution pursuant to these General Contract Guidelines shall be determined by the Chairman and may be in the form of a staff summary or a formal resolution. Provided, however, that any Board resolution or staff summary sought pursuant to these General Contract Guidelines shall 1) identify the contractor by name; 2) briefly describe the substance of the General Contract; 3) specify all the information required under the applicable provisions of these General Contract Guidelines; and 4) specify the estimated or actual cost to the Authority or that the estimated or actual cost shall be within the budget approved by the Board for that purpose.
- B. To the extent practicable, the recommendation of award and the associated resolution or staff summary shall first be submitted to the standing committee of the Board responsible for the Authority.
- C. The Chairman may modify the procedures in this Article for all Authorities.

Article X - Responsibilities of General Contractors

In each General Contract, a general contractor shall have the following responsibilities:

- A. To perform the contract in accordance with its terms and to remain a responsible contractor;
- B. To provide the public work, goods, supplies, materials, or equipment required under the contract competently, efficiently, in a timely manner, at a fair and reasonable cost and in a manner which is satisfactory to the Authority; and
- C. To cooperate with Authority personnel who are directing, supervising or monitoring the performance of the general contractor or who are assisting in their performance.

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

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

Article XII - Miscellaneous

- A. Except to the extent prohibited by law, the Chairman or Chief Executive Officer, or his/her designee, with prior notice to the Chairman of the Finance Committee, may waive the provisions of these General Contract Guidelines in the event of an emergency involving the health or safety of the public. If a contract is federally assisted, prior to issuing a

waiver, consideration should be given to the steps which may be taken to assure that federal assistance is not jeopardized.

- B. No Board Committee action or Authority policy, other than one approved by the Chairman, shall be inconsistent with these General Contract Guidelines.
- C. An Authority may not divide or split any contract or series of contracts for the purpose of avoiding the requirements of these General Contract Guidelines provided that with regard to SBMP and SBFP contracts awarded under Article III.C. and discretionary contracts awarded under Article VII.B., an Authority may divide requirements for the purpose of unbundling contracts to create SBMP, SBFP or discretionary contracting opportunities.
- D. If prior to the commencement of an Authority fiscal year, an Authorized Officer reasonably anticipates that, during the next fiscal year, the Authority will expend, in the aggregate, in excess of \$1 million for a series of Purchase Contracts for the same or substantially similar good or for a series of Public Work Contracts for same or substantially the same type of public work: 1) such requirement shall be met pursuant to a requirements contract awarded pursuant to the applicable provisions of these General Contract Guidelines; 2) each such Purchase Contract shall be awarded pursuant to the provisions of Article II.C., Article III, Article IV, Article VI, or Article VII.B. of these General Contract Guidelines or 3) each such contract shall be awarded pursuant to the provisions of Article II.C., Article III, or Article VII.B. or a procedure determined by an Authorized Officer to be comparable to Article IV or Article VI.
- E. Nothing in these General Contract Guidelines shall preclude the Authority from accepting bids/proposals utilizing an electronic bidding system that may inform bidders whether their bid is the current low bid, and allow bidders to submit new bids before the date and time assigned for the opening of bids. Such procedure shall not constitute disclosure in violation of Section 2878 of the Public Authorities Law.
- F. A General Contract awarded by an Authority pursuant to these General Contract Guidelines may provide that the General Contract includes the requirements of one or more other Authorities.
- G. Each Authority shall maintain records, for each fiscal year, of the all Purchase Contracts in an actual or estimated amount of \$15,000 or more entered into by the Authority at the request of such Division/Department, and such reports shall be prepared pursuant to the specifications located in Article IX.B. and Article IX.C. of the Services Contract Guidelines.
- H. The Authority shall prepare a publicly available report no less frequently than annually, summarizing procurement activity by the Authority for the period of the report in accordance with the reporting requirements of Section 2879(6) of the Public Authorities Law.
- I. These General Contract Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended or shall be

construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.

- J. To make MTA work more appealing to contractors and thereby increase competition and reduce the costs that the MTA typically pays for its Capital Program projects, the following Cost Containment Initiatives shall be implemented on all Capital Program projects unless the Chief Development Officer grants a waiver based upon a determination that such Cost Containment Initiative is impractical for a specific project:
1. Neutral Dispute Resolution: Disputes shall be resolved by a neutral arbitrator or panel of arbitrators or in a court of competent jurisdiction.
 2. Project CEOs: The Chief Development Officer or his designee shall appoint a Project CEO (“PCEO”) for each project who shall be empowered to make project decisions and shall be accountable for the project’s budget and schedule. PCEO decisions affecting scope, budget and schedule can only be overruled or amended by the MTA Chief Development Officer.
 3. In developing the Request for Proposal or Bid documents for a project, and as part of any negotiation and contractor selection process, the PCEO shall develop a strategy designed to optimize the cost and schedule for the project. Such strategy shall be approved by the Chief Development Officer or his designee and shall establish the following:
 - a. A contracting approach that considers factors other than just price in selecting a contractor (e.g., competitive RFP or A+B bidding), even where design-build contracting is not required. Excluded from this requirement are contracts awarded under the Small Business Mentoring Program and the Small Business Federal Program for which a traditional low bid contracting approach is permissible.
 - b. Optimal turnaround times for submittals and similar documentation, which times shall be incorporated into the contract(s).
 - c. A strategy to allocate risk to the party in the best position to manage such risk. Factors to be considered in this category include, but are not limited to: (i) the availability of MTA provided outages, flaggers and other services; (ii) delays by third parties such as Amtrak, utility companies, and government agencies; and (iii) existing conditions, including both structural conditions and interferences and the existence of hazardous materials. The PCEO, in consultation with the Leaders of the MTA C&D Delivery and Contracts groups and the applicable operating agencies, shall establish for each project the optimal method for incorporation of such risk allocation into the contract(s) (e.g. guaranteed number of outages subject to a contractual percentage of cancelations, allowances, etc.).
 - d. Favorable payment terms, to be established in consultation with the MTA Chief Financial Officer. Unless otherwise indicated, payment terms shall be 15 days.
 - e. Guidelines that promote the use of off-the-shelf products and components and eliminate customization to the extent practicable.
 4. Reduced Bonding Requirements: Unless otherwise prohibited by law or by MTA funding partners for specific projects (e.g., the Federal Transit Administration), the Request for Proposal or Bid documents for a project shall provide that Payment and

Performance bonds on contracts more than \$250 Million may be reduced from 100% of the contract amount provided that the Contracting entity is able to provide adequate alternative security and/or guarantees. The appropriateness of such alternative security and/or guarantees shall be approved by the MTA Chief Development Officer and/or the MTA Chief Financial Officer or his/her designees.

- K. Nothing in these General Contract Guidelines shall preclude the Authority from offering stipends to proposers on Design-Build contracts as part of an RFP process. The request for Board approval to use the RFP process for a specific Design-Build contract may include a request for approval of the use of stipends in connection with such RFP.
- L. Nothing contained in these General Contract Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these General Contract Guidelines.
- M. Where applicable federal, state or local laws, ordinances, codes, rules or regulations contain requirements which are in conflict with or which impose greater obligations upon the Authority than these General Contract Guidelines, then such requirements shall take precedence over those contained herein.
- N. For those General Contracts for which the Office of the State Comptroller (“OSC”) has requested review and approval pursuant to Public Authorities Law §2879-a, if the Authority has not received OSC approval or disapproval within thirty days of submission to the OSC, the Authority may enter into such General Contract without further waiting for such review and approval.