

**NEW YORK LOCAL GOVERNMENT  
ASSISTANCE CORPORATION**

**ANNUAL PROCUREMENT CONTRACT REPORT**

**FISCAL YEAR 2004-05**

A report to:           Division of the Budget  
                          Office of the State Comptroller  
                          Department of Economic Development  
                          Senate Finance Committee  
                          Assembly Ways and Means Committee

## **ANNUAL PROCUREMENT CONTRACT REPORT**

Pursuant to Section 2879 of the Public Authorities Law and Article X of the Corporation's "Procurement Contract Guidelines, Including Standards for the Selection of Personal Service Contractors" (the "Procurement Guidelines") as approved by the Board of Directors on September 6, 1990, amended on May 24, 1994 and approved by the Board of Directors on June 29, 1994, the Corporation must annually prepare and approve a report on personal service contracts which includes a copy of the Corporation's Procurement Guidelines and any amendments thereto, a list of the personal service contractors performing services and the status of existing procurement contracts.

The Corporation's Procurement Guidelines describe:

- The areas of responsibility and oversight requiring the use of procurement contracts and the reasons for the use of procurement contracts in such areas;
- The requirements regarding the selection of procurement contractors;
- The types of contracts for which the Corporation should solicit minority business enterprise participation; and
- Standard provisions to be made a part of procurement contracts.

The Corporation extended those personal service contracts during the 2004-05 fiscal year where services were needed and additional extensions were authorized within the contracts.

During the 2004-05 fiscal year, the Corporation implemented the following new contractual actions:

- Approved the selection of KPMG LLP to provide professional auditing services as needed. The contract commenced on June 1, 2004.

The Corporation's Procurement Guidelines, as in effect as of March 31, 2005 are available at the Corporation's offices in the Office of the State Comptroller and the Division of the Budget. To obtain a copy please contact the Corporation's Treasurer, c/o Office of the State Comptroller, 110 State Street, 14<sup>th</sup> Floor, Albany, NY 12236. A listing of the Corporation's procurement contracts is attached.

# New York Local Government Assistance Corporation Annual Procurement Report

Contract No.	Name	Purpose	Contract Date	Expiration Date	Contract Amount	Life To Date	FY Amount 2004-05
LGAC005	The Bank of New York	Trustee/Tender Agent	1/22/1991	4/1/2025	\$3,381,190.00	\$2,362,603.38	\$303,045.00
LGAC011	Bear, Stearns & Co. Inc.	Remarketing Agent (1993A)	3/30/1993	4/1/2022	\$3,266,737.06	\$2,063,949.01	\$115,461.83
LGAC015	UBS Financial Services	Remarketing Agent (1994B)	3/17/1994	4/1/2023	\$1,579,025.17	\$859,695.47	\$64,067.84
LGAC018	Morgan Stanley & Co.	Remarketing Agent (1995B & C)	7/6/1995	4/1/2025	\$1,884,000.00	\$841,095.13	\$83,777.19
LGAC019	Goldman Sachs & Co.	Remarketing Agent (1995D & E)	7/6/1995	4/1/2025	\$1,875,550.30	\$836,470.12	\$83,577.58
LGAC020	UBS Financial Services	Remarketing Agent (1995F)	7/6/1995	4/1/2025	\$954,174.05	\$418,597.15	\$41,813.75
LGAC021	Citigroup	Remarketing Agent (1995G)	7/6/1995	4/1/2025	\$950,287.10	\$399,036.23	\$41,913.54
LGAC022	The Bank of Nova Scotia	Credit Facility (1995B-G)	7/6/1995	7/6/2006	\$17,129,088.32	\$14,390,836.71	\$2,028,511.11
LGAC040	WestLB AG	Credit Facility (1993A)	3/2/1999	7/1/2007	\$5,995,347.41	\$4,995,170.26	\$1,032,056.86
LGAC047	WestLB AG	Credit Facility (1994B)	7/2/1999	7/1/2007	\$3,351,801.11	\$2,500,479.18	\$572,671.13
LGAC052	Orrick Herrington & Sutcliffe LLP	Bond Counsel	4/1/2000	3/31/2004	\$791,550.00	\$566,107.97	\$7,413.39
LGAC100	Morgan Stanley Capital Services Inc	Swap Counter Party (2003A, 2004A)	2/20/2003	4/1/2022	\$195,345,601.34	\$22,700,932.58	\$11,188,066.37
LGAC101	UBS AG	Swap Counter Party (2003A)	2/20/2003	4/1/2024	\$108,124,000.00	\$12,123,110.95	\$5,854,201.14
LGAC102	Societe Generale	Swap Counter Party (2003A)	2/20/2003	4/1/2024	\$108,018,000.00	\$12,110,373.46	\$5,848,175.54
LGAC103	JPMorgan Chase Bank	Swap Counter Party (2003A)	2/20/2003	4/1/2022	\$144,508,000.00	\$19,348,979.26	\$9,350,612.40
LGAC104	Morgan Stanley	Remarketing Agent (2003A-5V,6V)	2/20/2003	4/1/2020	\$1,454,303.00	\$191,664.98	\$95,635.22
LGAC105	UBS Financial Services	Remarketing Agent (2003A-7V)	2/20/2003	4/1/2020	\$435,083.00	\$50,780.00	\$25,337.74
LGAC106	Merrill Lynch & Co. Inc	Remarketing Agent (2003A-BV)	2/20/2003	4/1/2021	\$1,514,819.00	\$188,320.00	\$93,966.16
LGAC107	JPMorgan Securities	Remarketing Agent (2003A-3V,4V, 8V)	2/20/2003	4/1/2024	\$2,936,909.00	\$315,885.00	\$157,617.36
LGAC108	Morgan Stanley	Broker-Dealer (2003A-9V,10V, 2004A-CV, DV)	2/20/2003	4/1/2021	\$7,931,676.38	\$927,825.88	\$578,556.56
LGAC109	UBS Financial Services	Broker-Dealer (2003A-11V,12V)	2/20/2003	4/1/2017	\$3,903,706.00	\$633,374.99	\$316,035.59
LGAC110	Dexia Credit Local	Standby Bond Purchase Agreement (2003A-BV)	2/20/2003	2/20/2006	\$1,793,000.00	\$1,143,186.39	\$579,397.87
LGAC111	Landesbank Baden-Wuerttemberg	Standby Bond Purchase Agreement (2003A-3V)	2/20/2003	2/20/2006	\$1,248,000.00	\$791,578.92	\$399,794.31
LGAC112	WestLB AG	Standby Bond Purchase Agreement (2003A-4V)	2/20/2003	2/20/2006	\$1,248,000.00	\$794,292.68	\$402,508.07
LGAC113	The Bank of Nova Scotia	Standby Bond Purchase Agreement (2003A-5V)	2/20/2003	2/20/2006	\$751,000.00	\$482,142.83	\$240,575.16
LGAC114	KBC Bank N.V.	Standby Bond Purchase Agreement (2003A-6V)	2/20/2003	2/20/2006	\$921,000.00	\$586,505.40	\$297,411.12
LGAC115	JPMorgan Chase Bank	Standby Bond Purchase Agreement (2003A-7V)	2/20/2003	2/20/2006	\$416,000.00	\$267,094.47	\$133,272.32
LGAC116	JPMorgan Chase Bank	Standby Bond Purchase Agreement (2003A-8V)	2/20/2003	2/20/2006	\$335,000.00	\$215,048.39	\$107,302.85
LGAC117	Davis Polk & Wardwell	Legal services in connection with the pymt by LGA	11/6/2003	11/5/2004	\$500,000.00	\$305,499.79	\$107,676.77
LGAC118	Kornstein Veisz Wexler Pollard, LLP	Legal services in connection with pymt by LGAC of	8/7/2003	8/6/2004	\$550,000.00	\$259,123.51	\$39,238.84
LGAC122	Goldman Sachs Mitsui Marine Derivative Pr	2004A Swap Counterparty	2/18/2004	4/1/2021	\$50,728,072.85	\$3,359,995.41	\$1,839,530.29
LGAC123	Goldman Sachs & Co.	Broker-Dealer for 2004A AV, BV.	2/26/2004	4/1/2021	\$4,027,870.38	\$287,677.23	\$262,520.98
LGAC124	Public Resources Advisory Group	Primary Financial Advisor	2/1/2004	1/31/2007	\$1,755,000.00	\$73,491.67	\$7,841.30
LGAC125	KPMG LLP	Independent auditor	6/1/2004	3/31/2007	\$63,340.00	\$20,400.00	\$20,400.00

9/4/90

As amended 5/24/94

NEW YORK LOCAL GOVERNMENT ASSISTANCE CORPORATION  
PROCUREMENT CONTRACT GUIDELINES  
INCLUDING STANDARDS FOR THE SELECTION OF  
PERSONAL SERVICE CONTRACTORS

ARTICLE I

STATEMENT OF PURPOSE

101. These Guidelines are adopted pursuant to the provisions of the Act and Section 2879 of the Public Authorities Law and shall be reviewed and approved by a quorum of the Corporation's Directors at least annually.

ARTICLE II

DEFINITION OF TERMS

201. Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

"Act" shall mean Chapter 220 of the Laws of 1990, as amended, creating the New York Local Government Assistance Corporation.

"Corporation" shall mean the New York Local Government Assistance Corporation.

"Counsel" shall mean the Corporation's General Counsel or any Deputy Counsel or Assistant Counsel appointed by the General Counsel.

"Minority Business Enterprise" shall mean any minority business enterprise as defined in Section 2879 (3)(c) of the Public Authorities Law.

"Officer" shall mean any person so defined in the By-Laws of the Corporation.

"Personal Services" shall mean any services performed for fee, commission, or other compensation by persons or organizations who are not providing such services as Officers or employees of the Corporation or any State agency or public corporation. Personal Services include, but are not limited to, the following services: legal, audit and accounting, management consulting, investment banking, financial advice, or any other services of a consulting, technical or professional nature.

"Procurement Contract" means any written agreement of the Corporation for the acquisition of goods or services of any kind in the actual or estimated amount of \$5,000 or more.

"Women-Owned Business Enterprise" means a women-owned business enterprise as defined in Section 2879(3)(a) of the Public Authorities Law.

## ARTICLE III

### TYPES OF GOODS AND SERVICES FOR PROCUREMENT

301. A description of the types of goods purchased and, for procurement contracts for services, the areas of responsibility and oversight requiring the use of procurement contracts and the reasons for the use of the procurement contracts include but are not limited to the following:

1. Types of Goods Purchased

- a. Furnishings and equipment.
- b. Supplies.

2. Types of Services Procured

- a. Legal  
Provide legal services in the areas of Corporation bond and note financing and litigation.
- b. Audit and Accounting  
Provide audit services pertaining to the year-end financial statements for the Corporation. Perform special audits.
- c. Investment Banking  
For negotiated or private sales, provide assistance, including remarketing agent services, in the preparation, marketing, sale, and distribution of Corporation debt instruments.
- d. Trustee Banking Services  
Provide banking services to monitor the timely receipt of debt service payments, compliance with reserve requirements, retirement of debt, collateral valuations, investment of Corporation funds, including bond and note proceeds, and other services, including escrow agent and tender agent services, as required by the Corporation's various debt resolutions.
- e. Custody and Safekeeping Services  
Provide custody and safekeeping services to secure Corporation investments and receive and value underlying collateral securing the investment of Corporation funds including bond and note proceeds.
- f. Printing
  - 1. Provide financial printing services.
  - 2. Provide graphic, layout and printing services for Corporation annual and special reports.

- g. Financial Advice  
Provide independent advice to the Corporation on planning for the sale, structure, method, and documentation for its sales of bonds or notes; and provide post-sale monitoring advice on accounts, investments, and Federal regulations; and the preparation of Corporation reports.
- h. Investment Agent  
Provide investment services for Corporation funds, including bond and note proceeds.
- i. Management Consulting  
Provide analysis and recommendations concerning the Corporation's organizational structure and the management of its operations.
- j. Credit Facility Provider  
Provide credit facility or liquidity support for payment of debt service on Corporation bonds, notes, or other obligations.

#### ARTICLE IV

##### SELECTION OF PERSONAL SERVICE CONTRACTORS

#### 400. Application of this Article

This Article shall apply to the selection of Investment Banking Services for negotiated or private sales of Corporation bonds, notes or other obligations and other providers of services who are appointed by the Corporation Directors but whose appointment is not governed by a contract as well as providers of services who are subject to formal contract award.

#### 401. Use of Personal Service Contractors

It is the preference of the Corporation Directors that Corporation responsibilities be performed by New York State or Corporation employees assigned to provide services to the Corporation, and that, when Personal Service Contractors are used, contractors be selected from as broad a spectrum of providers as is practical and contracts be awarded consistent with the quality of service required at fair and reasonable prices. Personal Services Contractors shall be used only when it has been determined by the Directors or by a Corporation Officer, as authorized by the Corporation Directors that such service is necessary or convenient to the performance of Corporation responsibilities.

#### 402. Selection and Approval of Personal Services Contractors

##### 1. Source Selection Methods

The Corporation shall select personal service contractors in accordance with the following selection methods:

- a. Competitive bid  
Solicitation of price bids for specified services, to be awarded to qualifying personal service contractors primarily on the basis of the lowest price. Competitive bids are to be solicited when the 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.
  
- b. Requests for proposals  
Solicitation of specific proposals responsive to the solicitation that indicate an understanding of the financial, legal, organizational and logistical requirements and technical problems involved in the solicitation, which also details elements of performance including techniques and procedures, together with prices. Award of a contract with this method is made on the basis of a formal evaluation of the characteristics, quality and cost of such proposals. Whenever possible, the Request for Proposal must state the Corporation's evaluation criteria, including the process for evaluation of the proposals and award of proposal. Before the proposals are evaluated, a Corporation Officer must approve a procedure with instructions for evaluation for the review of proposals and distribute the procedure to all involved in the evaluation process. The method of evaluation should include, where applicable, provision for numerical ranking of proposals, according to stated evaluation criteria. Evaluations of interviews of proposers shall also be done based on criteria stated in the Request for Proposal. The Corporation shall document the evaluation results and explain the process for selection and the basis for award in its recommendation to the Corporation's Directors for approval of the award of the winning proposal.
  
- c. Sole source  
When an authorized Officer or agent of the Corporation determines in writing that there is only one source for a required service, the contract for that service may be awarded without competitive procedures.
  
- d. Emergency  
In the case of an emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting funds of the Corporation, property of the Corporation or life, health, or safety require immediate action which cannot avail competitive procedures, an authorized Officer or agent of the Corporation may award a contract without competitive procedures. A record setting forth the circumstances under which a contract was let shall be maintained for a period of at least a year following the date of approval of the Corporation's next Annual Report on Procurement Contracts.

- e. Legal Services  
The Corporation will ordinarily select firms to provide Legal Services through a Request for Proposal process. However, the Corporation may select contractors for legal services from a pre-qualified group of potential contractors. The pre-qualified group shall be selected after a competitive process taking into account qualifications and performance data. Any pre-qualified group shall be updated and/or recertified annually. Contract awards shall be based upon responses received from the prequalified group for the specific services then required.
- f. Noncompetitive Procedures  
The Corporation may award personal service contracts valued below \$5,000, without complying with competitive procedures or, the Corporation may award any contract without following competitive procedures when the Directors unanimously determine that it is in the best interest of the Corporation to do so and approve a resolution stating the reasons therefore.
- g. Advertisement Requirements for Competitive Sources Selection Methods  
The solicitation of bids, proposals, or submissions of qualification data for personal service contracts shall be made by the Corporation in a manner determined by an authorized Officer or agent of the Corporation to be the most cost effective for providing reasonable competition for the Corporation's personal service contracts. This may include advertisement in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these guidelines, including the minority business provisions thereof. Notice of procurement contract opportunities must be advertised in the State's Contract Reporter as required by Article 4-C of the Economic Development Law.
- h. All contracts for Personal Services shall be limited to a maximum of one year unless the Corporation Directors by resolution determine that a longer period for a particular contract is in the best interest of the Corporation. Contracts for periods of longer than one year must be approved by Directors' resolution and reviewed annually by the Directors. Contracts for Legal Services and Financial Advice Services shall not be longer than five years, including the initial contract period and any contract extensions approved by the Corporation's Directors.
- i. All contracts for Personal Services shall be in writing and approved by an authorized Officer or agent of the Corporation.
- j. The form of all contracts for Personal Services shall be approved by the Corporation's Counsel.



- k. The Corporation Directors may select a team of senior managing underwriters for a period of several years through a Request for Proposal Process managed by the Comptroller in his role as Exclusive Agent for the private sale of Corporation bonds or notes.

403. All contracts for personal services, where required, shall be submitted to the Office of the State Comptroller's contracts office for review and approval.

## ARTICLE V

### SELECTION OF VENDORS AND SUPPLIERS FOR THE PURCHASE OF GOODS

501. In the procurement of furniture, equipment and supplies for the Corporation, the Corporation shall perform the following tasks:

- a. Establish a realistic furniture, equipment and supplies budget.
- b. Place advertisements for goods and services in the same manner as described in 402.g. of these Guidelines.
- c. Perform a comparative pricing and cost analysis for each item needed, including prices of those items which are available through the State Office of General Service contracts.
- d. Prepare contracts and/or purchase orders for the acquisition of all commodities. Use of State contracts are preferable when the items are available at lower costs.
- e. Monitor vendors for quality control and timely deliveries.
- f. Verify the quantities received and the quality of the products in light of the specifications, and monitor the vendor invoices for timely payments.
- g. If the estimated cost of the goods exceeds \$5,000 or more, a competitive bidding procedure will be followed unless the Directors unanimously determine that it is in the best interest of the Corporation not to use the competitive process, and approve a resolution stating the reasons therefore.

502. All contracts for procurement of goods, where required, shall be submitted to the Office of the State Comptroller's contract office for review and approval.

## ARTICLE VI

### TYPES OF CONTRACTS FOR WHICH THE CORPORATION SHOULD SOLICIT MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION

601. The Corporation shall, in order to promote the use of Minority and Women-Owned Enterprises in procurement contracts and the provision of investment banking services, solicit offers from Minority and Women-Owned Business Enterprises known to have experience in the area of the goods and services to be provided, regardless of the type of contract or investment banking services. If the performance of any contract or appointment for investment banking services permits or requires the use of a subcontractor, said contract shall require the contractor to act affirmatively to secure participation by Minority and Women-Owned Business Enterprises in such subcontract and to report the nature and extent of such efforts to the Corporation. For the purpose of these Guidelines, Minority and Women-Owned Business Enterprises shall have the same meaning as set forth in Section 2879 of the Public Authorities Law.

## ARTICLE VII

### POLICIES TO PROMOTE THE PARTICIPATION BY NEW YORK BUSINESS ENTERPRISES AND NEW YORK STATE RESIDENTS IN PROCUREMENT CONTRACTS

701. The Corporation shall comply with the State Omnibus Procurement Law when applicable.

## ARTICLE VIII

### PROVISIONS MADE A PART OF SERVICE CONTRACTS

801. Provisions to be contained in Personal Service contracts are the following:

- a. Scope of Services.
- b. Contract Price or Fee Structure.
- c. Method or Basis of Payment.
- d. Compliance with Laws, Rules and Regulations.
- e. Laws of New York Apply
- f. Provisions Required by Law Deemed Inserted.
- g. Creation of Independent Contractor Relationship.
- h. Suspension or Alteration of Agreement.
- i. Termination of Contract for Cause and Convenience
- j. Contract Deemed Executory.

- k. The Corporation's Appendix I, "Standard Clauses for all New York Local Government Assistance Corporation Contracts" which is made a part of these Procurement Guidelines.

## ARTICLE IX

### PROCUREMENT CONTRACTS WITH FORMER OFFICERS OR EMPLOYEES OF THE CORPORATION

901. The Corporation may not enter into procurement contracts with former Officers or employees of the Corporation or former New York State employees who provided services to the Corporation where such contract would be in contravention of law, would create a conflict of interest or may create the appearance of impropriety.

## ARTICLE X

### REPORTS TO THE DIRECTORS CONCERNING PROCUREMENT CONTRACTS

1001. The Corporation shall annually prepare and approve a report on contracts and services providers for which contracts are not required. The report shall include:

- a. The Guidelines;
- b. An explanation of the Guidelines and any amendments to the Guidelines made since the last report;
- c. A list of the contractors providing goods or performing services since the last annual report;
- d. A list of all procurement contracts entered into since the last annual report, the selection process used to select contractors, and the status of existing procurement contracts.

The report shall identify any contractors and service providers not subject to contract that are Minority and Women-Owned Enterprises and shall identify Corporation efforts to solicit Minority and Women-Owned Enterprises to provide goods and services.

1002. The Corporation shall submit its annual report on procurement contracts to the Division of the Budget.

1003. The Corporation shall submit copies of its annual report on procurement contracts to the:

- a. Office of the State Comptroller
- b. Senate Finance Committee
- c. Assembly Ways and Means Committee
- d. Department of Economic Development

1004. The Corporation shall make copies of its annual report on procurement contracts available to the public upon reasonable request.

#### ARTICLE XI

##### ANNUAL REVIEW AND APPROVAL OF GUIDELINES

1101. The Corporation Directors shall annually review and approve these Procurement Contract Guidelines.

#### ARTICLE XII

##### AMENDMENT OF GUIDELINES

1201. The Corporation Directors may, from time to time, amend by resolution, these Procurement Contract Guidelines.

#### ARTICLE XIII

##### EFFECT OF NONCOMPLIANCE WITH GUIDELINES

1301. Failure by the Corporation to comply with the provisions of these Guidelines shall not be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement for the procurement of goods or services.

Attachment: "Appendix I"

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## APPENDIX I

### STANDARD CLAUSES FOR ALL

#### NEW YORK

#### LOCAL GOVERNMENT ASSISTANCE CORPORATION CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the New York Local Government Assistance Corporation (hereinafter "Corporation") or the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. The Corporation shall have no liability under this contract to the Contractor or anyone else in excess of moneys available to the Corporation for the purpose of making payments pursuant to this contract. The Corporation expects to have moneys available to it only from the proceeds of bonds issued by the Corporation or appropriations by the Legislature of the State of New York. In accordance with Section 3240 of the Public Authorities Law, the State of New York (hereinafter the "State") shall have no liability under this contract and is not obligated to appropriate moneys to the Corporation. No contractor shall have the right to force the Corporation to issue its bonds to make moneys available for payment pursuant to any contract.

2. NON-ASSIGNMENT CLAUSE. This contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Corporation and any attempts to assign the contract without the Corporation's written consent are null and void. The Contractor may, however, assign its right to receive payment without the Corporation's prior written consent.

3. WORKERS' COMPENSATION BENEFITS. This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

4. NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the State's Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, genetic predisposition or carrier status or marital status. Furthermore, in accordance with Section 220-e of the State Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex (including gender identity or expression) or national origin: (a) discriminate in the hiring against any New York State citizen who is qualified and available to perform the

work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the State Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex (including gender identity or expression) or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

5. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

6. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 2878 of the State's Public Authorities Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Corporation a non-collusive bidding certification on Contractor's behalf.

7. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the State Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Corporation within five (5) business days of such conviction, determination or disposition of appeal.

8. SET-OFF RIGHTS. The Corporation shall have the right of set-off. This right shall include, but not be limited to, the Corporation's option to withhold for the purposes of set-off any moneys due to the Contractor under the contract up to any amounts due and owing to the Corporation or the State with regard to this contract or any other contract with the Corporation, including any contract for a term commencing prior to the term of this contract.

9. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized by the Corporation to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspecting, auditing and copying. The Corporation shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the State's Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Corporation official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Corporation's right to discovery in any pending or future litigation.

10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or  
FEDERAL SOCIAL SECURITY NUMBER

All invoices or vouchers submitted to the Corporation for payment for the sale of goods or services or the lease of real or personal property to the Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION.

The authority for the Corporation to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Corporation is mandatory. The principal purpose for which the information is collected is to enable the Corporation or the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND  
WOMEN.

The Corporation has determined that it will require all contractors to adhere to the provisions of Article 15-A of the State's Executive Law. In accordance with Section 312 of the State's Executive Law, if this contract is: (i) a written agreement or purchase order instrument,

providing for a total expenditure in excess of \$25,000.00, whereby the Corporation is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Corporation; or (ii) a written agreement in excess of \$100,000.00 whereby the Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

- (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- (b) at the request of the Corporation, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and
- (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the Corporation's contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b" and "c", above in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovations, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The Corporation shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Corporation shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the Corporation shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.



12. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix I, the terms of this Appendix I shall control.

13. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

14. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Section 2880 of the Public Authorities Law and the rules and regulations promulgated by the Corporation pursuant thereto.

15. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

16. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the Corporation's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Corporation to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

17. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

18. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of the Corporation to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl Street – 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St – 2<sup>nd</sup> Floor  
Albany, New York 12245  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided on request to the Corporation;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documents to the Corporation upon request; and
- (d) The Contractor acknowledges notice that the Corporation may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the Corporation in these efforts.

19. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684, and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Note: as of May 15, 2002 the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

20. LIABILITY. Contractor shall be responsible for all damage to life and properties due to negligent or otherwise tortious acts, errors or omissions of Contractor, in connection with their services under this contract. Further, it is expressly understood that Contractor shall indemnify and save harmless the Corporation, its officers and employees and/or the State of New York, its officers and employees, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent

performance of the services of Contractor under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided.

21. OBSERVATION OF LAWS. The Contractor agrees to observe all Federal, State and local laws and regulations, whether or not referred to in this Contract or this Appendix I, and to procure all necessary licenses and permits.

22. COOPERATION IN INVESTIGATIONS. In accordance with Public Authorities Law Section 2875, upon refusal of certain persons to waive immunity from subsequent criminal prosecution in connection with certain types of investigations, this Contract may be terminated and the Contractor may be disqualified for future contracts with public authorities.

23. INDEPENDENT CONTRACTOR STATUS. The relationship of the Contractor to the Corporation is that of an independent contractor and the officers and employees of the Contractor shall conduct themselves in a manner consistent with such status, shall neither hold themselves out as nor claim to be officers, employees or agents of the Corporation by reason hereof, and shall not make any claim, demand or application to or for any right of the Corporation, including but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.

24. ENTIRE AGREEMENT. This contract, together with this Appendix I, constitutes the entire understanding between the parties and there are no other oral or extrinsic understanding of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

Revised: August 1, 2003