

**Greenway Conservancy for the Hudson River Valley, Inc.**  
**Mission Statement and Performance Measurements**

**Name of Public Authority:** Greenway Conservancy for the Hudson River Valley, Inc.

**Public Authority's Mission Statement:**

To continue and advance the state's commitment to the preservation, enhancement, and development of the world-renowned scenic, natural, historic, cultural and recreational resources of the Hudson River Valley while continuing to emphasize economic development activities and remaining consistent with the tradition of municipal home rule.

**Date Adopted:** 1994

**List of Performance Goals (If additional space is needed, please attach):**

- Sufficient progress is being made on the funded goals and missions set forth in the Greenway enabling legislation, as assessed by the Executive Committee.
- Grants programs are robust and diverse.
- Economic Impact Studies show sufficient results.
- Pubic outreach mechanisms show adequate responses to allow confidence that our customers are informed about our programs.

**Additional questions:**

1. Have the board members acknowledged that they have read and understood the mission of the public authority?

Yes.

2. Who has the power to appoint the management of the public authority?

The Board of Directors appoints the Executive Director. The Executive Director hires all other staff, consulting with the Executive Committee, when appropriate.

3. If the Board appoints management, do you have a policy you follow when appointing the management of the public authority?

When necessary the Executive Committee conducts a candidate search, conducts interviews, and recommends a candidate to the Board. The Board may approve the candidate, conduct a further interview of the candidate, or reject the candidate.

4. Briefly describe the role of the Board and the role of management in the implementation of the mission.

The Board is responsible for strategic decisions of the organization, but is encouraged to consult with the Executive Director. The Executive Director and staff are responsible for implementation of Board strategic goals.

5. Has the Board acknowledged that they have read and understood the responses to each of these questions?

Yes.

Greenway Conservancy for the Hudson River Valley, Inc.

Schedule of Debt

March 31, 2021

As per Board of Director's direction, the Greenway Conservancy does not have any debt, or did the Conservancy pay off any outstanding debt in the fiscal year being reported.

Greenway Conservancy for the Hudson River Valley, Inc.

Real Property Report

March 31, 2021

As per Board of Director's direction, the Greenway Conservancy does not own any real property and has never owned any real property.



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

### Agency Overview/Organization

**Briefly describe the agency's mission and programs and, if applicable, identify the legal basis for the agency.**

Hudson River Valley Greenway's mission is to continue and advance the state's commitment to the preservation, enhancement and development of the world-renowned scenic, natural, historic, cultural and recreational resources of the Hudson River Valley while continuing to emphasize economic development activities and remaining consistent with the tradition of municipal home rule.

The Hudson River Valley Greenway Act of 1991 created a process for voluntary regional cooperation among 264 communities within 13 counties that border the Hudson River. A map of the Greenway area and communities can be found at the bottom of this page. The Hudson River Valley Greenway, as established in the Greenway Act, is an innovative state sponsored program created to facilitate the development of a regional strategy for preserving scenic, natural, historic, cultural and recreational resources while encouraging compatible economic development and maintaining the tradition of home rule for land use decision-making.

The Greenway Conservancy for the Hudson River Valley, Inc. is a public benefit corporation that works with local and county governments, regional, local, private and public organizations, and individuals. The Greenway Conservancy coordinates efforts to establish a Hudson River Valley Trail system, promote the Hudson River Valley as a single tourism destination area, assist in the preservation of agriculture and strengthen state agency cooperation with local governments.

**Briefly discuss major organizational units in terms of major operating responsibility, decision-making processes and level of autonomy.**

There is a single unit of five permanent and 1 full-time, temporary staff members.

**Describe the organizational structure of the agency; discuss the organization in terms of span of control and separation of duties. Attach agency and pertinent programmatic organizational charts.**

Our organizational unit is the Greenway Conservancy. Day-to-day operations are managed by the Executive Director.



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

### Number of employees for the most recently completed fiscal year.

	Central Office Positions (FTE)	Regional/Field Office Positions (FTE)
Managerial	1.5	0
Professional/Technical	4.5	0
Support/Clerical	0	0
Seasonal/Temporary	0	0
Total	6	0

### How would you characterize the agency's public purpose? (Percentage of time spent on each function)

Advocate	60	%
Provider	10	%
Regulatory/Control	0	%
Support	20	%
Administrative	10	%
Other (specify)	0	%



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

### Contract and Grant Management

**Describe the agency's policies and procedures for awarding, managing and monitoring grants and contracts, including labor management committee funds or other non-salary contractual items and legislative member items.**

#### Greenway Conservancy Grant Awarding

The Greenway Conservancy receives an annual EPF appropriation to give grants to municipalities and non-profits. Projects funded under this program include those that relate to development of the Hudson River Greenway Trail System. Notification of funding availability and grant applications are posted on our website, in our newsletter and in the contract reporter. Trail Grants are 100% matching grants whereby every dollar awarded by the state and through the Greenway must be matched by the grantee monetarily or with in-kind services. Greenway enabling legislation states that "the state share of the cost of such projects shall not exceed fifty percent of the total project cost."

To be eligible for a Trail Grant, the project must be located within the legislative boundaries of the Hudson River Valley Greenway. Both municipalities and non-profit organizations are eligible to apply.

Applicants must complete a grant application, work plan, project budget, as well as a resolution from the municipality/Board of Directors stating agreement to the submission of the application for the stated project, to the Greenway for review by staff. The Trail Grant Program is an annual program.



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

**Explain how the agency ensures that recipients spend funds in accordance with laws and regulations governing programs.**

Each application defines what the grant funds can be spent on and each applicant is required to submit a budget page and timeline which outlines how they plan on spending the funds. Our grant funding is provided to the recipients on a reimbursement basis. When a grant recipient submits a grant reimbursement voucher, it must include supporting documentation including copies of any purchases, receipts, canceled checks, and itemized labor or in-kind contributions. This documentation is verified against the project elements in the approved contract. If it is a capital or public access project, photo documentation or a site visit is required.

**Specify awards/grant recipients for the most recently completed fiscal year:**

	Number of Recipients	Aggregate Dollar Amount
Local Government	6	\$78,739
School Districts	0	0
Not-for-Profits	10	\$84,439
Labor Management Committees	0	0
Other (specify)	0	0



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

### Agency Control Systems

**Describe the basic control systems and the documents supporting those systems. Is documentation comprehensive, up-to-date and available for all functions?**

The Internal Controls Officer (ICO) has established a process for evaluating and monitoring internal controls which includes testing of various activities, policies and procedures. Because of the size of the corporation, evaluations of the controls are usually performed by the Executive Director and the ICO. The Executive Director and the ICO perform evaluations for the corporation as a whole.

We only have a few functions of the corporation that are evaluated and examined. There is a clearly defined mission statement, and objectives and goals for each function of the corporation. These are defined in the policy and procedures manual which is reviewed and updated when necessary. The corporation has established techniques to sustain an effective system of controls. Procedures are in place for testing and monitoring, review of function assessments, and documentation organization. The policy and procedure manual is available to staff and is updated periodically. An annual audit is performed by an independent CPA, who monitors internal accounting controls.

**How is compliance with these control systems monitored?**

We have established a monitoring system to ensure appropriate actions are taken when a deficiency occurs. This monitoring system includes amendments to the policies and procedures internal control manual, testing and re-testing of the internal controls, modifications to the review and testing process where necessary, and staff awareness of any deficiencies and/or modifications to policies and procedures.

**What training is in place for agency personnel on agency policies, procedures and control systems? What is the structure and frequency of this training?**

As a member of NYSICA, the Greenway receives alerts of training opportunities which are passed along to the Executive Director and also shared with staff who may be interested in attending or if there is new information obtained at a meeting, it is always communicated back to the staff. Due to the agency's small size, we do not have line staff, or middle managers. Since all staff report to the Executive Director, there is no need for specific training to any of the employees. The ICO handles all of the testing and reviews throughout the year. If assistance is needed in researching an issue with a control it will be brought to the attention of that person who handles it. If there are any amendments or changes to current policies and procedures, they are announced during our regularly scheduled staff meetings so that all staff are aware of a new or amended policy.





## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

**How often are they agency's internal control policies and procedures reviewed and revised? What is the structure of the review process and who is responsible for these activities (e.g., supervisor, managers, committees, task forces)?**

The ICO reviews and monitors the internal controls of several different functions and procedures on an ongoing basis. If a control deficiency exists, a new control will be put in place and then reviewed again.

**Does the agency have a formal planning process which includes risk analysis? If so, explain the specifics of the risk analysis process.**

The Conservancy does not have a formal planning process for assessing risks but we have identified which areas are high, medium and low risk and they are reviewed during our annual certification process. Most of the high-risk activities remain the same each year so they will always be reviewed and tested.

**Describe the agency's monitoring process for correcting identified control weaknesses.**

We have established a monitoring system to ensure appropriate actions are taken when a deficiency or weakness occurs. If a deficiency occurs and is found by the ICO's testing/reviews it is brought to the attention of the Executive Director to address the issue. The monitoring system includes amendments to the policies and procedures internal control manual, testing and retesting of the internal controls, modifications to the review and testing process where necessary, and staff awareness of any deficiencies and/or modifications to policies and procedures.



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

### Internal Audit

**Does the agency currently have an internal audit unit? If so, outline its functions and responsibilities.**

No

**Describe the internal audit unit's organization, staffing and operation.**

NA

**Does the unit have an annual audit plan? If so, how is it developed?**

NA



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

### Fiscal

**Describe the agency's procedures for receiving, recording, depositing and managing cash and checks.**

#### Funds Receipt

All mail is opened and date stamped and checks stamped or otherwise marked "for deposit only" by the Administrative Assistant who passes any funds received onto the Finance Manager.

#### Funds Deposit, Reporting, and Reconciliation

The Finance Manager notes the source and amount of the funds received, deposits the funds in the appropriate bank account, records them in the Sage Accounting program and notifies the Executive Director or Deputy Executive Officer. Once deposits have been recorded, the deposit slips are filed with the appropriate bank statement. The Finance Manager traces deposits through the monthly bank statements and reconciles the accounts to the general ledger in the month following the bank statement month. The Executive Director or Deputy Executive Officer reviews and signs off on the monthly bank reconciliations of all bank statements within a reasonable time frame.

**Identify the agency's sources of revenue or other assets collected in the most recent completed fiscal year.**

Source	Amount
Contracts	\$24,530,892
Grants	\$23,138
Users Fees	0
Fines	0
Assessments	0
Other – Interest, admin fees,donations	\$ 104,999



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

**Identify the agency's most recently completed fiscal year's budget expenditures:**

	General Fund	Federal	Other	Total
State Operations	\$ 167,631	\$116,406	\$ 160,506	\$444,543
Local Assistance	\$ 152,678	0	0	\$ 152,678
Capital	\$24,061,809	0	0	\$ 24,061,809
Total	\$24,382,117	\$ 116,406	\$ 160,506	\$24,659,029



# Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

## Risk Exposure Analysis

**On an agency-wide basis, how vulnerable are operations to such facts as error, misuse of resources, inefficiency, unfavorable public opinion, fraud, waste or abuse given the:**

	Risk Level			
	Low		High	
	1	2	3	4
Complexity of Agency Operations	x			
Frequency and Effectiveness of Internal Audits	x			
Frequency and Effectiveness of External Audits	x			
Number of Confidential Public Issues and/or Sensitive Program Areas	x			
Stability and Training of Personnel	x			
Scope/Size of Regional/District Office Structure	x			
Extent of Regulatory Control	x			
Potential for Disruption of Services	x			
Anticipated Program Growth	x			
Volume of Cash Transactions (Revenue or Fee Collections, etc.)	x			
Reliability of Management Information Systems	x			
Presence of Documented Operating Procedures	x			

**Describe the agency's highest risk and vulnerability program areas. Add rows and attach additional pages if necessary.**

Program Area	Reason for High Vulnerability
Currently the Conservancy does not regularly perform high risk activities.	



## Division of the Budget

**ANDREW M. CUOMO**

Governor

**ROBERT F. MUJICA JR.**

Director of the Budget

**SANDRA L. BEATTIE**

Deputy Director

### Summary Evaluation

**Based on preceding information and other management considerations deemed appropriate, provide a conclusion as to whether the agency requires an internal audit function. Fully explain the major factors that lead to this conclusion either to have or not have an internal audit function.**

After thorough review of the Conservancy's processes, high risk activities and vulnerabilities, we feel an internal audit function is not required. Having a small staff (none employed through the Council) and a low number of high risk activities, adding this function is not necessary.

**Greenway Conservancy for the Hudson River Valley, Inc.**  
**List of Committees**  
**March 31, 2021**

**Executive (Governance) Committee**

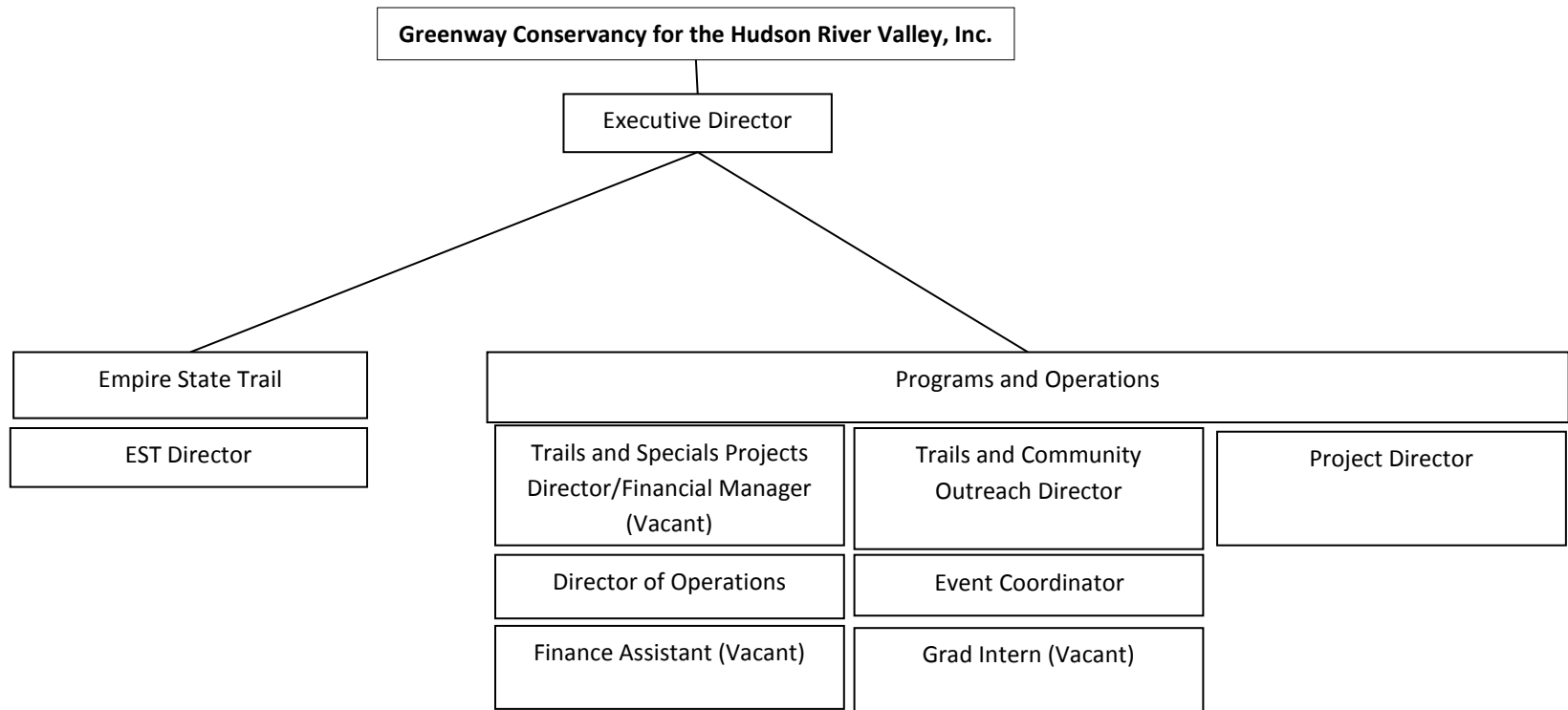
Kevin Burke, Chair  
Elizabeth Jacks, Vice Chair  
Sarah Olson, Secretary  
Jayne McLaughlin, Treasurer  
Scott Keller, Executive Director

**Audit and Finance Committee** Kevin

Burke, Chair  
Elizabeth Jacks, Vice Chair  
Sarah Olson, Secretary  
Jayne McLaughlin, Treasurer  
Scott Keller, Executive Director

**2020-21 Meetings**

Due to the pandemic no such meetings  
were held





BY-LAWS  
of the  
GREENWAY HERITAGE CONSERVANCY FOR  
THE HUDSON RIVER VALLEY, INC.

A public benefit corporation  
constituted by L. 1991, Ch. 748.

Statutory Authority for these Conservancy By-Laws:

§ 44-0107(l), Environmental  
Conservation Law of the State of New York

Originally adopted on May 13, 1993; Amended June 10, 1993, September 23, 1993,  
July 7, 1994, May 12, 1999, June 9, 2004, and October 8, 2014

BY-LAWS  
of the  
GREENWAY HERITAGE CONSERVANCY FOR  
THE HUDSON RIVER VALLEY

<b>Preamble</b>	<b>3</b>
<b>Article I - Offices</b>	<b>4</b>
Section 1. Principal Office	4
Section 2. Other Offices	4
Section 3. Books and Records	4
<b>Article II - Governing Board of the Corporation</b>	<b>4</b>
Section 1. Number, Term, Appointment and Vacancies	4
A. Number	4
B. Appointment	4
C. Terms	4
Section 3. Powers and Duties	4
<b>Article III - Corporate Board Meetings</b>	<b>4</b>
Section 1. Place of Meetings	5
Section 2. Annual Meeting	5
Section 3. Regular Meetings	5
Section 4. Special Meetings	5
Section 5. Quorum	5
Section 6. Electronic Participation	5
Section 7. Proxy Votes	6
Section 8. Related Party Transactions	6
A. Determining Appropriateness	6
Section 9. Meeting Procedures	6
<b>Article IV - Officers</b>	<b>6</b>
Section 1. Officers	6
Section 2. Election	7
Section 3. Term of Office	7
Section 4. Vacancies	7
Section 5. Removal	7
Section 6. Duties	7
A. Chairman (hereinafter "Chair")	7
B. Vice Chair	7
C. Executive Officer	7
D. Deputy Executive Officers	8
E. Secretary	8
F. Treasurer	8

<b>Article V - Committees</b>	<b>8</b>
Section 1. Executive Committee	8
Section 2. Other Committees	9
<b>Article VI - Fiscal Management</b>	<b>9</b>
Section 1. Fiscal Year	9
Section 2. Strategic Plan	9
Section 3. Annual Work Plan and Budget	9
Section 4. Property and Capital Expenditure Plan	9
Section 5. Expenditure Authorization Procedures	9
Section 6. Disbursement of Funds	9
Section 7. Financial Oversight	9
<b>Article VII - Execution of Instruments</b>	<b>10</b>
Section 1. Execution of Instruments	10
<b>Article VIII - Miscellaneous</b>	<b>10</b>
Section 1. Annual Report	10
Section 2. Conflict of Interest Policy	11
Section 3. Whistleblower Policy	11
Section 4. Corporate Policies and Procedures	11
<b>Article IX - Amendment</b>	<b>11</b>
Section 1. Amendment	11

## **PREAMBLE**

The Greenway Heritage Conservancy for the Hudson River Valley, or "Conservancy," was constituted as a public benefit corporation, a body corporate and politic in The Executive Department of the State of New York, by the Hudson River Valley Greenway Act of 1991, to preserve, enhance and restore natural and cultural resources and encourage compatible economic development within the greenway region of the Hudson River Valley. Its mission is to build cooperative undertakings to open new paths to the river and other recreational areas, protect natural resources, preserve open space and farmland, plan and manage scenic roads, restore urban waterfronts, revitalize beneficial water-dependent industries, foster development of tourism-destination facilities and waterborne transportation services connecting them, and promote adaptive reuse of historic structures. To further these statutory purposes and to authorize exercise of the statutory corporate powers of the Conservancy, these By-laws are duly adopted.

## ARTICLE I

### Offices

Section 1. **Principal Office.** The principal office of the Greenway Heritage Conservancy for the Hudson River Valley (hereinafter referred to as the "Conservancy") shall be located in Albany, New York.

Section 2. **Other Offices.** The Conservancy may also have offices at such other places as the Members may from time to time determine or the business of the Conservancy may require.

Section 3. **Books and Records.** Except as otherwise determined by the Members, or as the business of the Conservancy may require, all books and records of the Conservancy shall be kept at its principal office, or at a secure and accessible state storage facility as needed.

## ARTICLE II

### Governing Board of the Corporation

Section 1. **Number, Term, Appointment and Vacancies.** The number of Members of the Conservancy, who comprise its corporate governing board, and the appointment and process of filling vacancies shall be governed by Section 9 of the Hudson River Valley Greenway Act, L. 1991, Ch. 748, codified at Section 44-0111(2) of the Environmental Conservation Law, as amended (hereinafter referred to as the "Greenway Act").

A, **Number.** The Conservancy shall consist of seventeen voting members and nine non-voting members. All voting members must reside within the Greenway and may designate representatives to act in their stead.

B. **Appointments.** The appointments of all officers and resident managers, except the Chair, shall require approval of the Members. The Members may extend employment contracts to one or more officers of the Conservancy, except the Chair, Vice Chair, Secretary or Treasurer, in order to insure continuity of senior management.

C. **Terms.** The terms of Members of the Conservancy shall be each four years, with Members classed in three groups comprising each one gubernatorial appointment, one Senate and one Assembly appointment, and Council appointments being three appointments in two of the classes and two appointments in the remaining class.

Section 2. **Powers and Duties.** The powers and duties of the Members shall be governed by the Greenway Act.

## ARTICLE III

## **Corporate Board Meetings**

Section 1. **Place of Meetings.** Meetings of the Members shall be held at such place as the Members may from time to time designate.

Section 2. **Annual Meeting.** The annual meeting of the Members shall be held in June of each year, unless otherwise determined by them, and at such time and place as the Members may from time to time designate.

Section 3. **Regular Meetings.** Regular meetings of the Corporate Board shall be held on such day in such month as the Members may from time to time designate, at a time to be set by the Chair.

Section 4. **Special Meetings.** Special meetings of the Corporate Board may be called by the Chair or Vice Chair or upon the request of any six Members. The Secretary shall give notice of the time, place and purpose or purposes of each special meeting by mailing the same at least three days before the meeting or in person or by telephoning, faxing or telegraphing the same at least two days before the meeting to each Member. The notice required to be given under this section may be waived by the Member to whom such notice is required to be given. Any action required or permitted to be taken by the board of a committee thereof may be taken without a meeting if all members of the board or the committee consent to the adoption of a resolution authorizing the action. Consent may be in writing and signed by the chairman or consent may be emailed along with information that reasonably indicates approval of and authorization by the chairman.

Section 5. **Quorum.** For Routine Corporate Board meetings, the presence of a majority, or nine voting Members shall be necessary to constitute a quorum and shall be sufficient for the transaction of business. Any act shall be sufficient for the transaction of business if such nine voting Members are in agreement and any act of such nine voting present at a meeting and which constitutes a quorum shall be an act of the Corporate Board. At a Corporate Board meeting where a real property transaction is being deliberated which pertains to all or substantially all of the assets of the Conservancy, then the vote of two-thirds of the entire board, or thirteen voting members, shall be required.

Section 6. **Electronic Participation.** The use of electronic communication in board actions such as providing notice of meetings, cancelling meetings, and taking a vote is permitted. Any one or more members of the board or any committee thereof who is not physically present at a meeting may participate by means of a conference call or video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the board or committee.

Section 7. **Proxy Votes.** A voting Member of the Conservancy may appoint the Chair, or another identified individual person, to vote in that Member's absence at any meeting of the Members of the Conservancy. No individual, other than the Chair, may hold more than one proxy at any meeting.

**Section 8. Related Party Transaction.** The Conservancy is not permitted to enter into any related party transaction unless the board determines that such a transaction would be fair, reasonable, and in the best interest of the Conservancy. Any officer or key employee who has an interest in a related party transaction shall disclose to the board the material facts concerning such interest. A related party cannot participate in deliberations or voting related to related party transactions.

**A. Determining Appropriateness.** To determine when such a transaction is fair and reasonable the Conservancy shall: (1) consider alternative transactions to the extent available, prior to entering into such a transaction; (2) approve the transaction by a majority vote of the board or committee members present at the meeting; and (3) document in writing the basis for approval, including the board's consideration of alternatives.

## **Section 9. Meeting Procedure**

- a. All members of the Conservancy's Board are entitled to attend and personally participate in any Executive Sessions of the Board.
- b. The Secretary shall ensure that an agenda and minutes of the prior Board Meeting are sent to all Board Members prior to each meeting.
- c. The Treasurer shall ensure that a fiscal report is included as a part of each Board Meeting.
- d. Except as specifically provided for in these By- Laws, Robert's Rules of Order, Revised, shall govern the procedure at each Board Meeting.

## **ARTICLE IV**

### **Officers**

**Section 1. Officers.** The statutory officer of the Conservancy shall be a Chairman, herein referred to as "Chair," whose office is created by and named in Section 44-0111(2) of the Environmental Conservation Law; the non-statutory officers of the Conservancy shall be a Vice-chair, an Executive Officer, one or more Deputy Executive officers, a Secretary, a Treasurer, and one or more Assistant Secretaries. The Vice-chair, Secretary, and Treasurer shall be elected from the Members. The other officers shall be employees of the Conservancy.

**Section 2. Election.** All officers, except the Chair, shall be elected annually at the annual Members' meeting. Officers may be appointed and elected from time to time at any regular or special meeting of the Corporate Board.

**Section 3. Term of Office.** All officers, except the Chair, shall hold office for a term expiring at the next annual Members' meeting or until their successors are elected.

**Section 4. Vacancies.** The Members may leave unfilled for any such period any office except those of Chair, Vice Chair, Secretary, Treasurer or Executive Officer.

**Section 5. Removal.** Any officer, other than the Chair, shall be subject to removal at any time by the Members. In addition, every member of the conservancy, except ex-officio members, that is, members whose membership results by virtue of their incumbency of a public office, shall be removable by the public officer or public body which is empowered to appoint such authority or commission member, for inefficiency, breach of fiduciary duty, neglect of duty or misconduct in office, provided, however, that such member shall be given a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his or her defense upon not less than ten days' notice.

**Section 6. Duties.**

**A. Chair.** The Chair shall preside at all meetings of the Members and shall be the Chief Executive Officer of the Conservancy and shall exercise such duties and powers as hereinafter described and as customarily pertain to the office of chairman. In carrying out the policies as determined by the Members, the Chair shall have the general supervision and control of the affairs of the Conservancy. The Chair may appoint such assistants and employees as the Chair may deem necessary in order to administer the affairs of the Conservancy and may fix their powers, duties and compensations. The Chair may delegate to the Vice Chair, Executive Officer, or other officer or officers such of the Chair's powers and functions in the general supervision, administration and control of the business of the Conservancy. No employee of the Conservancy shall serve as chair of the board or hold any other title with similar responsibilities.

**B. Vice Chair.** The Vice Chair shall possess such powers and shall perform such duties as may be assigned to the Vice Chair from time to time by the Members. The Vice Chair shall be Acting Chair in the absence or incapacity of the Chair and shall assume the powers and perform all duties of the Chair if the Chair is unable to perform such duties for any reason. The Vice Chair, when acting in the capacity of Acting Chair under this section, may delegate the powers or duties of Chair to another Member or the Executive Officer during the period of disability or incapacity of the Chair.

**C. Executive Officer.** The Executive Officer shall be the Chief Operating Officer of the Conservancy and shall exercise such duties and powers as hereinafter described, subject, however, at all times to the supervision and control of the Chair and the Members and subject further to any limitations which the Chair or Members may from time to time prescribe. Except as may be prescribed by the Chair or the Members, the Executive Officer shall have general supervision over the property, business and affairs of the Conservancy and over its several officers, employees and agents other than the Chair, the Vice Chair, Secretary and Treasurer, and those officers reporting directly to the Chair. The Executive officer may sign, execute and deliver in the name of the Conservancy powers of attorney, contracts, agreements, leases, notes, checks, drafts, bonds, obligations and such documents other than those required by these By-laws, law or resolution to be executed by the Chair and/or the Secretary.

**D. Deputy Executive Officers.** The Deputy Executive Officers, assistant secretariats, and assistant treasurers, shall have such powers and perform such duties as customarily



pertain to such offices and as may be assigned to them by the Chair, Members or Executive Officer, subject, however, at all times to the supervision and control of the Chairman and Members and subject further to any limitations which the Chair or Members may from time to time prescribe.

E. **Secretary.** The Secretary shall attend all meetings of the Members and act as Secretary thereof and record all votes and shall keep a record of the proceedings of the Members in a Minute Book to be kept for that purpose. The Secretary shall cause notice to be given of all meetings of the Members and shall be custodian of the records of the actions of the Members and shall keep in safe custody the seal of the Conservancy and shall have the authority to affix such seal to all documents and papers authorized to be executed by the Members or officers of the Conservancy requiring such seal to be affixed. The Secretary shall attest to the signatures of the Members and officers of the Conservancy and shall have the authority to cause copies to be made of all minutes, resolutions, records and documents of the Conservancy and to deliver certificates under seal to the effect that such copies are true and accurate and that all persons dealing with the Conservancy may rely on same. The Secretary shall possess such powers and perform such other duties as customarily pertain to the office or may be from time to time assigned by the Chair, the President or prescribed by the Members, subject, however, at all times to the supervision and control of the Chair and the Members and subject further to any limitations which the Chair or Members may from time to time prescribe

F. **Treasurer.** The Treasurer shall have general custody of all funds and securities of the Conservancy and have general supervision of the collection and disbursement of Conservancy funds and shall endorse on behalf of the Conservancy for collection checks, notes and other obligations, and shall deposit the same to the credit of the Conservancy in such bank or banks or depositories as the Members may designate. The Treasurer may sign with the Executive Officer or such other person or persons as may be designated for such purpose by the Members, all bills of exchange or promissory notes of the Conservancy and shall possess such powers and shall perform such other duties as customarily pertain to the office or as may be assigned from time to time by the Chair, the Executive Officer or prescribed by the Members, subject, however, at all times to the supervision and control of the Chair and the Members and subject further to any limitations which the Chair or Members may from time to time prescribe.

## ARTICLE V

### Committees

Section 1. **Executive Committee.** The Executive Committee shall consist of the Chair, Vice Chair, Secretary, Treasurer, and Chief Executive Officer, and, at the discretion of the Chair, up to one additional member, such that the total Committee membership shall not exceed six members.

The Committee shall annually review Conservancy corporate strategies, policies and programs and shall make recommendations to the Corporate Board to modify such strategies, policies and programs as appropriate. The Chair, or in case of absence or disability of the Chair, the Vice Chair or Executive Officer shall preside at Executive

Committee meetings, which shall meet quarterly or more often as the Chair may designate.

**Section 2. Other Committees.** The Members or the Executive Committee may appoint other committees which may exercise such powers as shall be authorized by the Members or by action of the Executive Committee. A majority of any such committee may determine its action and fix the time and place of its meetings unless the Members or Executive Committee shall otherwise provide. The Members or the Executive Committee shall have the power at any time to change the powers and membership of any such committee, to fill vacancies and to dispose of any such committee.

## **ARTICLE VI**

### **Fiscal Management**

**Section 1. Fiscal Year.** The Members shall have the power to fix, and may from time to time change by resolution, the fiscal year of the Conservancy. Unless otherwise fixed by the Members, the fiscal year shall be April 1 to March 31.

**Section 2. Strategic Plan.** The Members may annually review a strategic plan which shall become the basis for the development of departmental plans, the annual budget and the capital expenditure plan.

**Section 3. Annual Work Plan and Budget.** The Members shall annually adopt a work plan and an operations and maintenance budget for the Conservancy's operating facilities and support departments.

**Section 4. Property and Capital Expenditure Plan.** The Members ~~shall~~ may annually review a property and capital expenditure plan, encompassing all interests or rights in real property of the Conservancy, which shall summarize all present and proposed capital projects.

**Section 5. Expenditure Authorization Procedures.** The Members shall adopt expenditure authorization procedures which shall govern the annual budget, property and capital expenditure plan, contract executions and all approval authorizations.

**Section 6. Disbursement of Funds.** The Members, except as otherwise provided in these By-laws, may authorize any officer or other employee to execute any requisition, voucher, draft or check for the disbursement or transfer of funds of the Conservancy.

**Section 7. Financial Oversight.** The Board or an independent audit committee shall (i) oversee the accounting and financial reporting processes of the organizations and the audit of its financial statements. In doing so, the board or committee thereof shall annually participate in the selection of the Auditor, set the scope of the audit, and review the results of the audit with the auditor.

The independent directors or audit committee shall review with the independent auditors the scope and planning of the audit prior to commencement of the audit. Upon completion of the audit, the committee shall discuss the following with the independent

auditor: (1) any material risks and weaknesses in internal controls identified by the auditors; (2) any restrictions on the scope of the auditor's activities or access to requested information; (3) any significant disagreement between the auditor and management; and (4) the adequacy of the corporation's accounting and financial reporting processes. In addition, the committee shall annually consider the performance and independence of the independent auditor.

## **ARTICLE VII**

### **Execution of Instruments**

Section 1. **Execution of Instruments.** The Members, except as otherwise provided in these By-laws, may authorize any officer, employee or agent pursuant to the expenditure authorization procedures or otherwise, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Conservancy and such power to execute and deliver may be general or specific; unless so authorized, no officer, employee or agent shall have any power or authority to bind the Conservancy by any contract or engagement or pledge its credit or to render it liable pecuniarily for any purpose or in any amount.

## **ARTICLE VIII**

### **Miscellaneous**

Section 1. **Annual Report.** The Members shall submit an annual report, as prescribed by the Public Authorities Law, to the governor, the chairman and ranking minority member of the senate finance committee, the chairman and ranking minority member of the ways and means committee, the state comptroller, and the authorities budget office within ninety days after the close of the fiscal year. The report shall include:

- (1) A description of the Conservancy's operations and accomplishments;
- (2) financial reports;
- (3) the mission statement and measurements
- (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance
- (5) a compensation schedule;
- (6) a description of the projects undertaken by such authority during the past year;
- (7) a listing and description
- (8) a copy of the legislation that forms the statutory basis of the authority;
- (9) a description of the authority and its board structure, including [i] names of committees and committee members, [ii] lists of board meetings and attendance, [iii] descriptions of major authority units, subsidiaries, and [iv] number of employees;
- (10) The charter, if any, and by-laws;

- (11) a listing of material changes in operations and programs during the reporting year;
- (12) A four-year financial plan, including [i] a current and projected capital budget, and [ii] an operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance;
- (13) Board performance evaluations; provided, however, that such evaluations shall not be subject to disclosure under article six of the public officers law;
- (14) A description of the total amounts of assets, services or both assets and services bought or sold without competitive bidding; and
- (15) a description of any material pending litigation in which the authority is involved as a party during the reporting year, except that no hospital need disclose information about pending malpractice claims beyond the existence of such claims.

Section 2. **Conflict of Interest Policy.** The board or a committee thereof shall oversee the adoption, implementation of and compliance with any conflict of interest policy.

Section 3. **Whistleblower Policy.** The board or a committee thereof shall oversee the adoption, implementation of and compliance with any whistleblower policy.

Section 4. **Corporate Policies and Procedures.** Unless otherwise provided by statute or these By-laws, the Members and every officer or employee of the Conservancy shall be subject to the Conservancy's corporate policies and procedures as embodied in its corporate policies program.

## ARTICLE IX

### Amendment

Section 1. **Amendment.** The Members shall have the power to amend, alter or repeal any provision or provisions of these By-laws at any regular or special meeting.

ADOPTED on May 13, 1993, by unanimous vote of the Members of the Conservancy at a duly noticed Meeting of the Conservancy, convened at Wilderstein, Rhinebeck, New York, and unanimously amended at duly noticed meeting of the Conservancy on June 10, 1993, September 23, 1993, July 7, 1994, May 12, 1999 and June 9, 2004. Subsequently amended on October 8, 2014

---

Acting Chairman – Sara Griffen

Attest \_\_\_\_\_  
Secretary – Jennifer Schwartz Berky



# Public Officers Law §74

## Code of Ethics.

---

### 1. Definition.

As used in this section: The term "**state agency**" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

The term "**legislative employee**" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

### 2. Rule with respect to conflicts of interest.

No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest.

### 3. Standards.

- a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his or her independence of judgment in the exercise of his or her official duties.
- b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position or authority.
- c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.
- d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

- e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her official duties.
  - f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.
  - g. An officer or employee of a state agency should abstain from making personnel investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.
  - h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.
  - i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.
4. Violations.

In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

Budget Report for Greenway Conservancy for the Hudson River Valley, Inc.

Fiscal Year Ending: 03/31/2021

Run Date: 04/15/2019

Status: CERTIFIED

Certified Date:04/15/2019

Budget & Financial Plan
Budgeted Revenues, Expenditures, And Changes in Current Net Assets.

		Last Year (Actual) 2019	Current Year (Estimated) 2020	Next Year (Adopted) 2021	Proposed 2022	Proposed 2023	Proposed 2024
<b>REVENUE &amp; FINANCIAL SOURCES</b>							
<b>Operating Revenues</b>							
	Charges For Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Rentals & Financing Income	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Other Operating Revenues	\$26,966.00	\$86,142.00	\$86,142.00	\$86,142.00	\$86,142.00	\$86,142.00
<b>Non-Operating Revenues</b>							
	Investment Earnings	\$3,846.00	\$1,774.00	\$1,774.00	\$1,774.00	\$1,774.00	\$1,774.00
	State Subsidies / Grants	\$10,693,347.00	\$21,204,319.00	\$16,096,015.00	\$680,000.00	\$680,000.00	\$680,000.00
	Federal Subsidies / Grants	\$605,628.00	\$545,415.00	\$524,042.00	\$523,280.00	\$523,280.00	\$523,280.00
	Municipal Subsidies / Grants	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Public Authority Subsidies	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Other Non-Operating Revenues	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Proceeds From The Issuance Of Debt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Revenues &amp; Financing Sources</b>		<b>\$11,329,787.00</b>	<b>\$21,837,650.00</b>	<b>\$16,707,973.00</b>	<b>\$1,291,196.00</b>	<b>\$1,291,196.00</b>	<b>\$1,291,196.00</b>
<b>EXPENDITURES</b>							
<b>Operating Expenditures</b>							
	Salaries And Wages	\$394,249.00	\$709,395.00	\$709,395.00	\$379,441.00	\$379,441.00	\$379,441.00
	Other Employee Benefits	\$65,156.00	\$182,197.00	\$182,197.00	\$95,374.00	\$95,374.00	\$95,374.00
	Professional Services Contracts	\$219,847.00	\$301,744.00	\$188,327.00	\$188,327.00	\$188,327.00	\$188,327.00
	Supplies And Materials	\$4,284.00	\$26,167.00	\$24,096.00	\$24,096.00	\$24,096.00	\$24,096.00
	Other Operating Expenditures	\$276,531.00	\$118,147.00	\$103,958.00	\$103,958.00	\$103,958.00	\$103,958.00
<b>Non-Operating Expenditures</b>							
	Payment Of Principal On Bonds And Financing Arrangements	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Interest And Other Financing Charges	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Subsidies To Other Public Authorities	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Capital Asset Outlay	\$10,112,193.00	\$20,000,000.00	\$15,000,000.00	\$0.00	\$0.00	\$0.00
	Grants And Donations	\$227,209.00	\$500,000.00	\$500,000.00	\$500,000.00	\$500,000.00	\$500,000.00
	Other Non-Operating Expenditures	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Expenditures</b>		<b>\$11,299,469.00</b>	<b>\$21,837,650.00</b>	<b>\$16,707,973.00</b>	<b>\$1,291,196.00</b>	<b>\$1,291,196.00</b>	<b>\$1,291,196.00</b>
	Capital Contributions	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Excess (Deficiency) Of Revenues And Capital Contributions Over Expenditures</b>		<b>\$30,318.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Budget Report for Greenway Conservancy for the Hudson River Valley, Inc.

Fiscal Year Ending: 03/31/2021

Run Date: 04/15/2019

Status: CERTIFIED

Certified Date:04/15/2019

The authority's budget, as presented to the Board of Directors, is posted on the following website: <https://hudsongreenway.ny.gov/overview-mission>

**Additional Comments**



**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.**

**FINANCIAL STATEMENTS**

**MARCH 31, 2021 AND 2020**

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.**

**TABLE OF CONTENTS**

**MARCH 31, 2021 AND 2020**

Independent Auditor's Report	Pages 1 - 2
Statements of Financial Position	Page 3
Statements of Activities	Page 4
Statements of Functional Expenses	Page 5
Statements of Cash Flows	Page 6
Notes to Financial Statements	Pages 7 - 13



## INDEPENDENT AUDITOR'S REPORT

Board of Directors  
Greenway Conservancy for the  
Hudson River Valley, Inc.  
Albany, New York

### ***Opinion***

We have audited the accompanying financial statements of Greenway Conservancy for the Hudson River Valley, Inc. (a public benefit corporation) which comprise the statements of financial position as of March 31, 2021 and 2020, and the related statements of activities, functional expenses and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Greenway Conservancy for the Hudson River Valley, Inc. as of March 31, 2021 and 2020, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### ***Basis for Opinion***

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Greenway Conservancy for the Hudson River Valley, Inc. and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Greenway Conservancy for the Hudson River Valley, Inc.'s ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

Board of Directors  
Greenway Conservancy for the Hudson River Valley, Inc.

***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatements, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgement made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgement and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Greenway Conservancy for the Hudson River Valley, Inc.'s internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgement, there are conditions or events, considered in the aggregate, that raise substantial doubt about Greenway Conservancy for the Hudson River Valley, Inc.'s ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*T. M. Byrbee Company, CPAs, NY, P.C.*

June 15, 2021  
Albany, New York

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
STATEMENT OF FINANCIAL POSITION  
MARCH 31, 2021 AND 2020**

**A S S E T S**

	<u><b>2021</b></u>	<u><b>2020</b></u>
<b>ASSETS</b>		
Cash	\$ 10,983,806	\$ 8,937,360
Grants Receivable	311,261	358,183
Due from Not-for-Profit	198,698	53,304
Prepaid Expenses	<u>320</u>	<u>741</u>
Total Current Assets	<u>11,494,085</u>	<u>9,349,588</u>
Property and Equipment - Net	<u>1,611</u>	<u>729</u>
<b>TOTAL ASSETS</b>	<u><u>\$ 11,495,696</u></u>	<u><u>\$ 9,350,317</u></u>

**LIABILITIES AND NET ASSETS**

**CURRENT LIABILITIES**

Accounts Payable	\$ 62,074	\$ 264,211
Accrued Vacation and Salaries	72,255	75,768
Deferred Revenue	<u>10,618,421</u>	<u>8,334,768</u>
Total Liabilities - All Current	<u>10,752,750</u>	<u>8,674,747</u>

**NET ASSETS**

Without Donor Restrictions	738,446	661,070
With Donor Restrictions	<u>4,500</u>	<u>14,500</u>
Total Net Assets	<u>742,946</u>	<u>675,570</u>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<u><u>\$ 11,495,696</u></u>	<u><u>\$ 9,350,317</u></u>

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
STATEMENT OF ACTIVITIES  
YEAR ENDED MARCH 31, 2021 AND 2020**

	2021			2020		
	<u>Without Donor Restrictions</u>	<u>With Donor Restrictions</u>	<u>Total</u>	<u>Without Donor Restrictions</u>	<u>With Donor Restrictions</u>	<u>Total</u>
<b>REVENUE</b>						
Revenue and Other Support						
Government Contract and Grant Revenue	\$ 24,544,030	\$ -	\$ 24,544,030	\$ 22,630,593	\$ -	\$ 22,630,593
Contributions	94,051	-	94,051	135,241	-	135,241
Interest	485	-	485	5,286	-	5,286
Administrative Fees	10,463	-	10,463	17,741	-	17,741
Total Revenue	24,649,029	-	24,649,029	22,788,861	-	22,788,861
Net Assets Released From Restrictions	10,000	(10,000)	-	-	-	-
<b>TOTAL REVENUE</b>	<u>24,659,029</u>	<u>(10,000)</u>	<u>24,649,029</u>	<u>22,788,861</u>	<u>-</u>	<u>22,788,861</u>
<b>EXPENSES</b>						
Program Services	24,578,958	-	24,578,958	22,661,650	-	22,661,650
Management and General	2,695	-	2,695	2,752	-	2,752
<b>TOTAL EXPENSES</b>	<u>24,581,653</u>	<u>-</u>	<u>24,581,653</u>	<u>22,664,402</u>	<u>-</u>	<u>22,664,402</u>
<b>CHANGES IN NET ASSETS</b>	77,376	(10,000)	67,376	124,459	-	124,459
<b>NET ASSETS - BEGINNING OF YEAR</b>	<u>661,070</u>	<u>14,500</u>	<u>675,570</u>	<u>536,611</u>	<u>14,500</u>	<u>551,111</u>
<b>NET ASSETS - END OF YEAR</b>	<u>\$ 738,446</u>	<u>\$ 4,500</u>	<u>\$ 742,946</u>	<u>\$ 661,070</u>	<u>\$ 14,500</u>	<u>\$ 675,570</u>

**GREENWAY CONSERVANCY FOR THE HUDSON RIVER VALLEY, INC.**  
**STATEMENTS OF FUNCTIONAL EXPENSES**  
**YEARS ENDED MARCH 31, 2021 AND 2020**

	<b>2021</b>			<b>2020</b>		
	<b><u>PROGRAM</u></b>	<b><u>MANAGEMENT</u></b>	<b><u>TOTAL</u></b>	<b><u>PROGRAM</u></b>	<b><u>MANAGEMENT</u></b>	<b><u>TOTAL</u></b>
	<b><u>SERVICES</u></b>	<b><u>&amp; GENERAL</u></b>		<b><u>SERVICES</u></b>	<b><u>&amp; GENERAL</u></b>	
Advertising	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Audit and Accounting	5,740	-	5,740	5,700	-	5,700
Awards	162,678	-	162,678	114,155	-	114,155
Consultants	23,544,556	-	23,544,556	21,625,029	-	21,625,029
Depreciation	616	69	685	19	2	21
Employee Benefits	96,838	-	96,838	97,074	-	97,074
Expendable Equipment Purchases	42,193	-	42,193	17,281	-	17,281
Fees and Services Charges	-	1,154	1,154	-	1,291	1,291
Insurance	-	-	-	8,473	-	8,473
Legal Fees	32,627	-	32,627	63,379	-	63,379
Meetings and Conferences	-	-	-	1,304	-	1,304
Memberships	2,500	-	2,500	2,000	-	2,000
Postage and Copying	9	-	9	-	-	-
Printing	31	-	31	307	-	307
Program Supplies	143,398	-	143,398	169,487	-	169,487
Rent	13,250	1,472	14,722	13,131	1,459	14,590
Salaries	528,694	-	528,694	539,595	-	539,595
Travel	5,828	-	5,828	4,716	-	4,716
<b>TOTAL EXPENSES</b>	<b><u>\$24,578,958</u></b>	<b><u>\$ 2,695</u></b>	<b><u>\$24,581,653</u></b>	<b><u>\$22,661,650</u></b>	<b><u>\$ 2,752</u></b>	<b><u>\$ 22,664,402</u></b>

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
STATEMENT OF CASH FLOWS  
YEAR ENDED MARCH 31, 2021 AND 2020**

	<u>2021</u>	<u>2020</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Change in Net Assets	\$ 67,376	\$ 124,459
Adjustments to Reconcile Change in Net Assets to Net Cash Provided by Operating Activities:		
Depreciation	685	21
(Increase) Decrease in:		
Grants Receivable	46,922	(324,047)
Due From Not-for-Profit	(145,394)	566,547
Prepaid Expenses	421	8
Increase (Decrease) in:		
Accounts Payable	(202,137)	243,457
Accrued Vacation and Salaries	(3,513)	6,328
Deferred Revenue	2,283,653	(3,158,649)
Total Adjustments	<u>1,980,637</u>	<u>(2,666,335)</u>
<b>NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES</b>	<u>2,048,013</u>	<u>(2,541,876)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase of Equipment	<u>(1,567)</u>	<u>(750)</u>
<b>NET CASH (USED IN) INVESTING ACTIVITIES</b>	<u>(1,567)</u>	<u>(750)</u>
<b>NET INCREASE (DECREASE) IN CASH</b>	2,046,446	(2,542,626)
<b>CASH - BEGINNING OF YEAR</b>	<u>8,937,360</u>	<u>11,479,986</u>
<b>CASH - END OF YEAR</b>	<u><u>\$ 10,983,806</u></u>	<u><u>\$ 8,937,360</u></u>



**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED MARCH 31, 2021  
(WITH COMPARATIVE DISCLOSURES FOR 2020)**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING AND REPORTING POLICIES**

**Organization**

The Greenway Act established the Greenway Conservancy for the Hudson River Valley, Inc. as a public benefit corporation. The Board of Directors and staff of the public benefit corporation are the same as for the not-for-profit corporation, Greenway Heritage Conservancy HRV, Inc. (GHC), (a related corporation).

The purpose of the Organization is to continue New York State's commitment to preserving and developing the world-renowned scenic, natural, recreational, cultural and historic resources of the Hudson River Valley while enhancing the economy of the region.

**Financial Statements**

The accompanying financial statements have been prepared on the accrual method of accounting.

**Property and Equipment**

Property and equipment is recorded at cost. Depreciation is provided for over the estimated useful life of the assets, from 3-5 years, using the straight-line method. Assets with a cost of less than \$1,000 are expensed in the year purchased. Assets under \$1,000 are occasionally capitalized for accountability purposes.

**Use of Estimates**

The preparation of financial statements in accordance with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Accounting for Contributions**

The Organization has adopted the provisions of the Financial Accounting Standards Board of Accounting Standards Codification which requires the Organization to distinguish between contributions that increase net assets with donor restrictions and net assets without donor restrictions. It also requires recognition of contributions, including contributed services meeting certain criteria, at fair values.

**Functional Expenses**

The costs of providing program and other activities have been summarized on a functional basis in the statements of activities. Accordingly, certain costs have been allocated among program services and supporting services benefited. Such allocations are determined by management on an equitable basis. The expenses that are allocated are allocated on the basis of estimates of time and effort.

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED MARCH 31, 2021  
(WITH COMPARATIVE DISCLOSURES FOR 2020)**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING AND REPORTING POLICIES  
(Continued)**

**Basis of presentation**

The financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("US GAAP"), which require the Organization to report information regarding its financial position and activities according to the following net asset classifications:

**Net assets without donor restrictions:** Net assets that are not subject to donor-imposed restrictions and may be expended for any purpose in performing the primary objectives of the organization. These net assets may be used at the discretion of the Organization's management and the board of directors.

**Net assets with donor restrictions:** Net assets subject to stipulations imposed by donors, and grantors. Some donor restrictions are temporary in nature; those restrictions will be met by actions of the Organization or by the passage of time. Other donor restrictions are perpetual in nature, where by the donor has stipulated the funds be maintained in perpetuity.

Donor restricted contributions are reported as increases in net assets with donor restrictions. When a restriction expires, net assets are reclassified from net assets with donor restrictions to net assets without donor restrictions in the statements of activities.

**Revenue Recognition**

All contributed revenue is considered to be available for unrestricted use in the current year unless specifically restricted by the donor. Grants and other contributions of cash and other assets are reported as restricted support if they are received with donor stipulations that limit the use of the donated assets. When the donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities as net assets released from restrictions. If support with restrictions is received and earned in the same year, it is reported as net assets without restrictions. Contributions for future programs are accounted for as revenue with donor restrictions.

Contract and program revenues are recognized as revenue in the applicable program period. Unearned contract and program revenues are accounted for as deferred revenue.

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED MARCH 31, 2021  
(WITH COMPARATIVE DISCLOSURES FOR 2020)**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING AND REPORTING POLICIES  
(Continued)**

**Grant Commitment**

Each year Greenway Small Grants and Trails Program Awards are made to community organizations of various municipalities on a conditional basis. Each organization must spend their allotment and provide proof of completion of the work in order to fully receive their grant. Grants are recorded upon receipt of proof of the expenditure by the awardee. As of March 31, 2021, commitments made and funds reserved total \$808,689. These encumbered funds are reflected as deferred revenues in the balance sheet.

**New Accounting Pronouncement**

In May 2014, the Financial Accounting Standards Board (FASB) issued guidance (Accounting Standards Codification (ASC) 606, Revenue from Contracts with Customers) which provides a five-step analysis of contracts to determine when and how revenue is recognized and replaces most existing revenue recognition guidance in the United States of America generally accepted accounting principles. The core principle of the new guidance is that an entity should recognize revenue to reflect the transfer of goods and services to customers in an amount equal to the consideration the entity receives or expects to receive. ASC 606 is effective for annual reporting periods beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2019. The Organization adopted ASC 606 with a date of the initial application of April 1, 2020.

As part of the adoption of ASC 606, the Organization elected to use the following transition practical expedients: (1) all contract modifications that occurred prior to the date of initial application when identifying the satisfied and unsatisfied performance obligations, determining the transaction price, and allocating the transaction price have been reflected in the aggregate; and (2) ASC 606 is applied only to contracts that are not completed at the initial date of application. Because contract modifications are minimal, there is not a significant impact as a result of electing these practical expedients.

There was no change that resulted from adoption. The reclassification had no effect on the change in Net Assets, and therefore, there was no adjustment to the opening balance of Net Assets. The Organization does not expect the adoption of the new revenue standard to have a material impact on its Change in Net Assets on an ongoing basis.

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED MARCH 31, 2021  
(WITH COMPARATIVE DISCLOSURES FOR 2020)**

**NOTE 2 – AVAILABILITY AND LIQUIDITY**

The following represents the Organization's financial assets at March 31, 2021 and 2020:

Financial Assets at Year End:	<u>2021</u>	<u>2020</u>
Cash	\$ 10,983,806	\$ 8,937,360
Grants Receivable	311,261	358,183
Due from Not-for-Profit	198,698	53,304
Total Financial Assets	<u>11,493,765</u>	<u>9,348,847</u>
Financial Assets Available to Meet General Expenditures Over the Next Twelve Months	<u>\$ 11,493,765</u>	<u>\$ 9,348,847</u>

The Organization's has maintained financial assets sufficient to meet more than one year of operating expenses based on 2021 expense levels.

**NOTE 3 - DESCRIPTION OF PROGRAMS**

The Organization is currently under contract to administer:

**Empire State Trail**

In 2017, the Organization was chosen to administer a portion of the project developing a continuous 750-mile route spanning the state from New York City to Canada and Buffalo to Albany. During the years ended March 31, 2021 and 2020, \$22,079,385 and \$21,543,672 respectively, were spent for this purpose.

**Greenway Small Grants Program**

Small matching grants of up to \$70,000 for projects supporting Greenway goals and criteria are made annually, but not paid until the projects are completed.

**Hudson River Greenway Trail**

The program is a legislative mandate to increase public access to the Hudson River and is designed to be a multi-use walking/hiking, biking and canoe trail system. Segments are developed and designated in communities along both sides of the river.

**Hudson River Valley Greenway Communities Council**

At the request of Hudson River Valley Greenway Communities Council, the Organization administers small grants for this Agency which was also created by the Greenway Act of 1991.

**Hudson River National Estuarine Research Reserve (the Reserve)**

The Organization administers U.S. Department of Commerce and other awards for research and monitoring related to the Reserve, which is comprised of four sites along the Hudson River.

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED MARCH 31, 2021  
(WITH COMPARATIVE DISCLOSURES FOR 2020)**

**NOTE 4 - FEDERAL INCOME TAXES**

The Organization is a public benefit corporation and is exempt from Federal and New York State income taxes. Accordingly, no provisions for income taxes have been made on the accompanying financial statements.

The Organization has adopted the provisions of FASB ASC 740-10 and as a result has identified its exemption from income tax as a tax position which falls within the scope of this FASB ASC section. The Organization does not believe this tax position will result in any change to its financial position. No interest or penalties related to income taxes have been recognized in the Statement of Financial Position or Statement of Activities.

**NOTE 5 - GRANTS RECEIVABLE**

These amounts represent grants receivable from:

	<u>2021</u>	<u>2020</u>
HRECOS	\$ 2,252	\$ 365
National Heritage Trust	<u>309,009</u>	<u>357,818</u>
<b>TOTAL</b>	<u><u>\$311,261</u></u>	<u><u>\$358,183</u></u>

**NOTE 6 - PROPERTY AND EQUIPMENT**

Property and equipment consist of the following at March 31, 2021:

	<u>March 31, 2020</u>	<u>Additions</u>	<u>Disposals</u>	<u>March 31, 2021</u>
Office Equipment	\$ 3,298	<u>\$ 1,567</u>	<u>\$ -</u>	<u>\$ 4,865</u>
Less: Accumulated Depreciation	<u>2,569</u>	<u>\$ 685</u>	<u>\$ -</u>	<u>3,254</u>
Net Property and Equipment	<u>\$ 729</u>			<u>\$ 1,611</u>

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED MARCH 31, 2021  
(WITH COMPARATIVE DISCLOSURES FOR 2020)**

**NOTE 7 - DEFERRED REVENUE**

These amounts represent unexpended grants at March 31:

	<u>2021</u>	<u>2020</u>
New York State Executive Department:		
Community Projects Fund	\$ 73,303	\$ 84,092
Environmental Protection Fund	1,647,649	1,289,537
Empire State Trail Fund	8,744,783	6,824,168
 NYS Department of Environmental Conservation	 <u>152,686</u>	 <u>136,971</u>
	<u>\$10,618,421</u>	<u>\$8,334,768</u>

**NOTE 8 - NET ASSETS WITH DONOR RESTRICTIONS**

Net assets with donor restrictions at March 31 are as follows:

	<u>2021</u>	<u>2020</u>
Amex Trails Grant	\$ -	\$10,000
Other Contributions	<u>4,500</u>	<u>4,500</u>
	<u>\$4,500</u>	<u>\$14,500</u>

**NOTE 9 - EMPLOYEE BENEFITS**

Health insurance is provided through the NYS Health Insurance Program. The Organization pays approximately 90% of single and 81% of family premiums for health insurance. This percentage will vary per rates set annually by the NYS Department of Civil Service.

The Organization employees are members of the NYS Retirement System and contribution rates range from 3% to 5.75% of their salary to the fund for the first ten years. The Organization is billed by New York State for life insurance, administration fees and for under-funded retirement accounts. For the years ended March 31, 2021 and 2020, retirement expense is \$31,392 and \$29,443, respectively.

**NOTE 10 - CONCENTRATIONS**

The Organization received 99% of its funding from New York State annual appropriations, during the year ended March 31, 2021. Management recognizes the vulnerability this concentration creates for potential near-term severe impact. The Empire State Trail project funds represent a substantial portion of funding received from New York State. This program is expected to be funded for less than five years.

**GREENWAY CONSERVANCY  
FOR THE HUDSON RIVER VALLEY, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED MARCH 31, 2021  
(WITH COMPARATIVE DISCLOSURES FOR 2020)**

**NOTE 11 - FINANCIAL INSTRUMENTS**

Cash in one financial institution at March 31, 2020 and 2019 exceeded Federal Deposit Insurance Corporation limits. On May 22, 1998 Key Bank and the Organization signed a Third-Party Collateral Agreement to secure deposits which exceed the Federal Deposit Insurance Corporation limits.

**NOTE 12 - DONATED MATERIALS, SERVICES AND FACILITIES**

Personnel expense, telephone, postage, copying and insurance were provided by the Organization to Greenway Heritage Conservancy HRV, Inc., (GHC), a not-for-profit corporation. The fair value of the donated costs is not accounted for in these financial statements. Contribution revenue during the years ended March 31, 2021 and 2020 includes \$0 and \$47,643 respectively received from the not-for-profit corporation and \$79,329 and \$73,008 from the Greenway Communities Council for the years ended March 31, 2021 and 2020 respectively.

Office space was provided by New York State to the Organization. The fair value of the donation is \$14,722 and \$14,590 for the years ended March 31, 2021 and 2020, respectively, and has been included in Contribution Income and Rent Expense. These amounts represent an allocated portion of the total donated space. A portion of the total has also been allocated to GHC.

Combined financial statements for the Organization and GHC have also been prepared for the years ended March 31, 2021 and 2020.

**NOTE 13 – COMMITMENTS AND CONTINGENCIES**

**Events Occurring After Reporting Date**

The Organization has evaluated events and transactions that occurred between March 31, 2021 and June 15, 2021, which is the date the financial statements were available to be issued, for possible disclosure and recognition in the financial statements.



June 15, 2021

Finance Committee  
Greenway Conservancy for the Hudson River Valley, Inc.  
Albany, New York 12207

We have audited the financial statements of Greenway Conservancy for the Hudson River Valley, Inc. for the year ended March 31, 2021 and have issued our report thereon dated June 12, 2020. Professional standards require that we provide you with the information about our responsibilities under generally accepted auditing standards. Professional standards also require that we communicate to you the following information related to our audit.

#### **Significant Accounting Policies**

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Association are described in Note 1 to the financial statements. As described in Note 1, the Organization changed accounting policies by implementing FASB Accounting Standards Codification (ASC) Topic 606 – *Revenue from Contracts with Customers*. Accordingly, the accounting change has been retrospectively applied to prior periods presented as if the policies had always been used.

We noted no transactions entered into by the Organization during the year for which there is a lack of authoritative guidance or consensus. All transactions have been recognized in the financial statements in the proper period.

The financial statement disclosures are neutral, consistent, and clear.

#### **Accounting Estimates**

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. There were no materially sensitive estimates to be disclosed in the financial statements for the year ended March 31, 2021.



### **Difficulties Encountered in Performing the Audit**

We encountered no difficulties in dealing with management in performing and completing our audit.

### **Corrected and Uncorrected Misstatements**

Professional Standards require us to communicate all misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. None of the misstatements detected as a result of audit procedures were material, either individually or in the aggregate, to the financial statements taken as a whole.

### **Disagreements with Management**

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

### **Management Representation**

We have requested certain representations from management that are included in the management representation letter dated June 15, 2021.

### **Management Consultations with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Organization's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

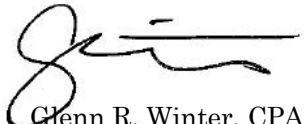
### **Other Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Organization's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Board of Directors and management of the Organization and should not be distributed to any other persons or used for any other purpose.

Very truly yours,

T. M. BYXBEE COMPANY, CPAs, NY, P.C.



Glenn R. Winter, CPA



June 15, 2021

Finance Committee  
Greenway Conservancy for the Hudson River Valley, Inc.  
Albany, New York 12207

In planning and performing our audit of the financial statements of Greenway Conservancy for the Hudson River Valley, Inc. as of and for the year ended March 31, 2021, in accordance with auditing standards generally accepted in the United States of America, we considered the Organization's internal control over financial reporting (internal control) as a basis for designing our auditing procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal control. Accordingly, we do not express an opinion on the effectiveness of the Organization's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the Organization's financial statements will not be prevented or detected and corrected on a timely basis.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

This communication is intended solely for the information and use of management, the Board of Directors, and others within the Organization, and is not intended to be, and should not be, used by anyone other than these specified parties.

We appreciate the opportunity to present these comments for your consideration. We take this opportunity to thank the management and staff for their utmost cooperation during our conduct of the audit.

Very truly yours,

Glenn R. Winter, CPA

To the greatest extent practicable, the Greenway Conservancy follows the NYS Procurement Guidelines, set forth herein.

# **NEW YORK STATE PROCUREMENT GUIDELINES**

**MAY 2014**

# TABLE OF CONTENTS

<b>I. OVERVIEW .....</b>	<b>1</b>
A. Introduction and Purpose .....	1
B. Terminology .....	1
C. Application and Scope of Guidelines .....	2
D. Competition and Maintaining a Fair and Open Process .....	2
<b>II. PROCUREMENT BASICS .....</b>	<b>4</b>
A. Overview of Procurement Tools .....	4
B. Choosing a Procurement Vehicle and the Order of Purchasing Priority .....	4
C. Preferred Source Offerings .....	6
D. Contracts .....	6
OGS Centralized Contracts .....	7
OGS or Less .....	7
Backdrop Contracts .....	8
Agency or Multi-Agency Established Contracts .....	8
E. Discretionary Purchases .....	9
F. Procurement Card Program .....	10
G. Purchase Orders .....	11
H. Purchase Authorizations .....	11
I. Interagency Memorandum of Understanding .....	12
<b>III. GENERAL GUIDANCE FOR SOLICITATIONS .....</b>	<b>13</b>
A. Introduction .....	13
B. Procurement Ethics .....	13
C. Mandatory Requirements .....	13
D. State Reserved Rights .....	14
E. Gathering and Exchanging Information Prior to Solicitation .....	15
Request for Information .....	16
Request for Comment .....	16
Draft Request for Proposals .....	16
Roundtable Session .....	16
F. Procurement Lobbying Law .....	17
G. Advertising Procurement Opportunities .....	17
H. Determination of Vendor Responsibility .....	18
I. Workers' Compensation Insurance and Disability Benefits Requirements .....	18
J. Bidder Debriefings .....	19
K. Contract Administration and Monitoring .....	19

<b>IV. SPECIFIC GUIDANCE: INVITATIONS FOR BIDS .....</b>	<b>21</b>
<b>A. Introduction .....</b>	<b>21</b>
<b>B. Steps for Conducting an IFB.....</b>	<b>21</b>
Step 1: Develop Specifications .....	22
Step 2: Prepare the Solicitation Document .....	23
Step 3: Advertise the Procurement Opportunity .....	23
Step 4: Distribute the IFB .....	23
Step 5: Conduct Site Visits and Pre-Bid Conferences .....	24
Step 6: Answer Questions.....	24
Step 7: Receive Bids.....	24
Step 8: Conduct Bid Opening.....	24
Step 9: Conduct Administrative Review of Bid Submission.....	24
Step 10: Verify Responsiveness and Responsibility of Apparent Low Bid .....	24
Step 11: Make Award.....	25
Step 12: Obtain Approvals .....	25
Step 13: Issue Purchase Order or Contract.....	26
<b>V. SPECIFIC GUIDANCE: REQUESTS FOR PROPOSALS .....</b>	<b>27</b>
<b>A. Introduction .....</b>	<b>27</b>
<b>B. Essential RFP Contents.....</b>	<b>27</b>
Table of Contents.....	27
Description of Program Objectives and Background .....	27
Scope of Services .....	27
Detailed Requirements/Specifications .....	28
Performance Standards .....	28
Green Performance Standards .....	28
Mandatory Versus Optional Elements in the Response .....	28
Overview of the Solicitation Process.....	28
Timeline and Calendar of Events.....	29
Anticipated Start Date and Term of Contract.....	30
Method of Award .....	30
Evaluation Criteria.....	30
Offerer's Minimum Qualifications .....	30
Mandatory Requirements.....	30
Reserved Rights.....	31
Method for Issuing Clarifications or Modifications to the RFP .....	31
<b>C. Additional Content Considerations.....</b>	<b>31</b>
Prequalification Criteria .....	31
Risk Management / Required Assurances.....	31
Cost Adjustments .....	31
References .....	31
Insurance.....	31

<b>D.</b>	<b>RFP Distribution and Receipt of Proposals .....</b>	<b>32</b>
	Advertisement of the Solicitation .....	32
	Distribution of the RFP .....	32
	Receipt of Proposals .....	32
<b>E.</b>	<b>Evaluation of Proposals – Overview .....</b>	<b>32</b>
<b>F.</b>	<b>Evaluation Team.....</b>	<b>33</b>
	Separate Team Approach .....	33
	Single Team/Evaluator Approach .....	34
<b>G.</b>	<b>Conducting the Administrative Review .....</b>	<b>34</b>
<b>H.</b>	<b>Conducting the Technical Evaluation.....</b>	<b>34</b>
	Development of the Technical Evaluation Criteria .....	34
	Assignment of Values to Technical Evaluation Criteria .....	35
	The Technical Evaluation Instrument.....	36
	Evaluating Technical Proposals.....	36
<b>I.</b>	<b>Conducting the Cost Evaluation .....</b>	<b>37</b>
	Conversion of Price to a Weighted Point Score.....	38
	Comparison of Life Cycle Costs.....	38
<b>J.</b>	<b>Determining the Final Score .....</b>	<b>38</b>
<b>K.</b>	<b>Agency-Recommended Award and Notification.....</b>	<b>38</b>
	Agency-Recommended Award .....	38
	Notification of Award .....	39
<b>L.</b>	<b>Contract Negotiation.....</b>	<b>39</b>
<b>M.</b>	<b>Documentation Requirements for Control Agency Review and Approval .....</b>	<b>39</b>
<b>VI.</b>	<b>BEST PRACTICES.....</b>	<b>41</b>
<b>A.</b>	<b>Knowing the Business Needs.....</b>	<b>41</b>
<b>B.</b>	<b>Proper Planning .....</b>	<b>41</b>
<b>C.</b>	<b>Thorough Information Gathering .....</b>	<b>41</b>
<b>D.</b>	<b>Green Purchasing .....</b>	<b>41</b>
<b>E.</b>	<b>Conducting Pre-Bid Conferences .....</b>	<b>42</b>
<b>F.</b>	<b>Providing for Site Visits.....</b>	<b>42</b>
<b>G.</b>	<b>Discussion with the Office of the State Comptroller.....</b>	<b>43</b>
<b>H.</b>	<b>Use of F.O.B. Destination .....</b>	<b>43</b>
<b>I.</b>	<b>Review of Terms and Conditions Proposed by Vendors.....</b>	<b>43</b>
<b>J.</b>	<b>Negotiating Effectively .....</b>	<b>43</b>
<b>K.</b>	<b>Involving Upper Management.....</b>	<b>44</b>
<b>L.</b>	<b>Documenting .....</b>	<b>44</b>
<b>M.</b>	<b>Adapting Standard Formats to the Specific Procurement.....</b>	<b>44</b>
<b>N.</b>	<b>Insurance Requirements .....</b>	<b>45</b>

<b>VII. GLOSSARY.....</b>	<b>46</b>
<b>VIII. EXHIBITS .....</b>	<b>53</b>
<b>A.    SAMPLE OUTLINE FOR AN “INVITATION FOR BIDS” .....</b>	<b>53</b>
<b>B.    SAMPLE OUTLINE FOR A “REQUEST FOR PROPOSALS” .....</b>	<b>54</b>
<b>C.    GREEN PURCHASING .....</b>	<b>56</b>





# I. OVERVIEW

## A. Introduction and Purpose

New York State (“State”) agencies must procure commodities, services, and technology in accordance with Article 11 of the New York State Finance Law.

The Procurement Guidelines (“Guidelines”) presented in this document are established by the State Procurement Council pursuant to State Finance Law §161(2)(d). The Guidelines are designed to assist State agencies in making procurements efficiently and effectively by providing agency program and fiscal staff with a source of basic, systematic guidance about State procurement policies and practices.

State procurement must facilitate each agency's mission while protecting the interests of the State and its taxpayers, on the one hand, and promoting fairness in contracting with the business community, on the other. The Guidelines are intended to advance these goals by encouraging agencies to adopt and implement appropriate procurement practices consistent with State policies.

The State's procurement policies form a framework for conducting procurements and establishing contracts. Policies address such issues as ensuring sufficient competition, preserving fair and open competition, establishing vendor responsibility, providing for participation of State certified minority- and women- owned business enterprises as well as service disabled veteran owned **small businesses**, promoting local food growers, and protecting human health and the environment. When conducting procurements, each agency may have supplemental policies and requirements that should also be reviewed and followed.

## B. Terminology

Becoming familiar with the vocabulary is fundamental to understanding and properly performing **procurements**. In these Guidelines, important terms will appear in blue italicized bold face upon first use (as demonstrated in this paragraph) and are defined in Chapter VII: Glossary.

Some terms are used interchangeably. For example, an entity that provides **commodities, services, or technology** may be variously, and often interchangeably, referred to as a “**vendor**,” “offerer,” “**bidder**,” “proposer,” or “**contractor**.” Similarly, the words “service” or “services,” when used in these Guidelines, are meant to include both services and technology (as each term is separately defined in the Glossary), unless the context indicates that the meaning is expressly directed at one or the other term. Additionally, the words “products” and “goods” are used to mean commodities.

## C. Application and Scope of Guidelines

The Guidelines are designed to apply to a wide range of procurements, from the very routine to the very complex. The applicability of specific chapters, sections, and provisions will vary depending on the nature, objectives, and particular circumstances of each procurement.

The Guidelines presented in this document do not govern the following types of **contracts**, for which different, distinct procurement laws, rules and processes are in place:

- **Revenue contracts**;
- Construction contracts covered by §8 of the New York State Public Buildings Law, §38 of the New York State Highway Law, and §376 of the New York State Education Law;
- Contracts with not-for-profit organizations covered by Article 11-B of the New York State Finance Law;
- Contracts for architectural, surveying or engineering services covered under §136-a of the New York State Finance Law;
- Transactions that are covered under the New York State Real Property Law; and
- Monetary thresholds and approval processes for purchases made under the SUNY Flex legislation (Education Law §§355.5 and 355.16) and CUNY Flex legislation (Education Law §6218).

## D. Competition and Maintaining a Fair and Open Process

As mentioned above, the State's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet **agency** needs;
- Provide for checks and balances to regulate and oversee agency procurement activities; and
- Protect the interests of the State and its taxpayers.

Competition in the procurement process serves both State agencies and potential offerors by ensuring that the procurement process produces an optimal solution at a reasonable **price**; and allowing qualified vendors an opportunity to obtain State business.

The primary responsibility for procurement rests with State agencies. In addition to complying with existing statutory and regulatory requirements, State agencies must conduct procurements in accordance with the following general principles:

- Make reasonable efforts to ensure that vendors are aware of opportunities to compete for State business;

- Define the process by which the procurement is being conducted;
- Disclose the general process to potential offerers;
- Adhere to the process while conducting the procurement; and
- Document the process, including information gathering and decisions made relating to the procurement.

## II. PROCUREMENT BASICS

### A. Overview of Procurement Tools

State agencies purchase commodities, services, and technology to address needs or solve problems in the performance of agency mission. Needs and problems vary with respect to how well they can be defined. Some are highly standardized and are common among most, if not all, agencies. Others are unique to a given agency and range from simple, routine concerns to complicated problems requiring complex solutions.

To address this array of conditions, a variety of procurement tools and techniques are available. Among the most common are: *preferred source* offerings; *Office of General Services* (OGS) *centralized contracts*; agency or multi-agency established contracts resulting from competitive *bids* conducted by State agencies; *sole source* contracts; *single source* contracts; *piggyback contracts*; *emergency* contracts; and *discretionary purchases*. These and other procurement tools are discussed in greater detail later in this chapter.

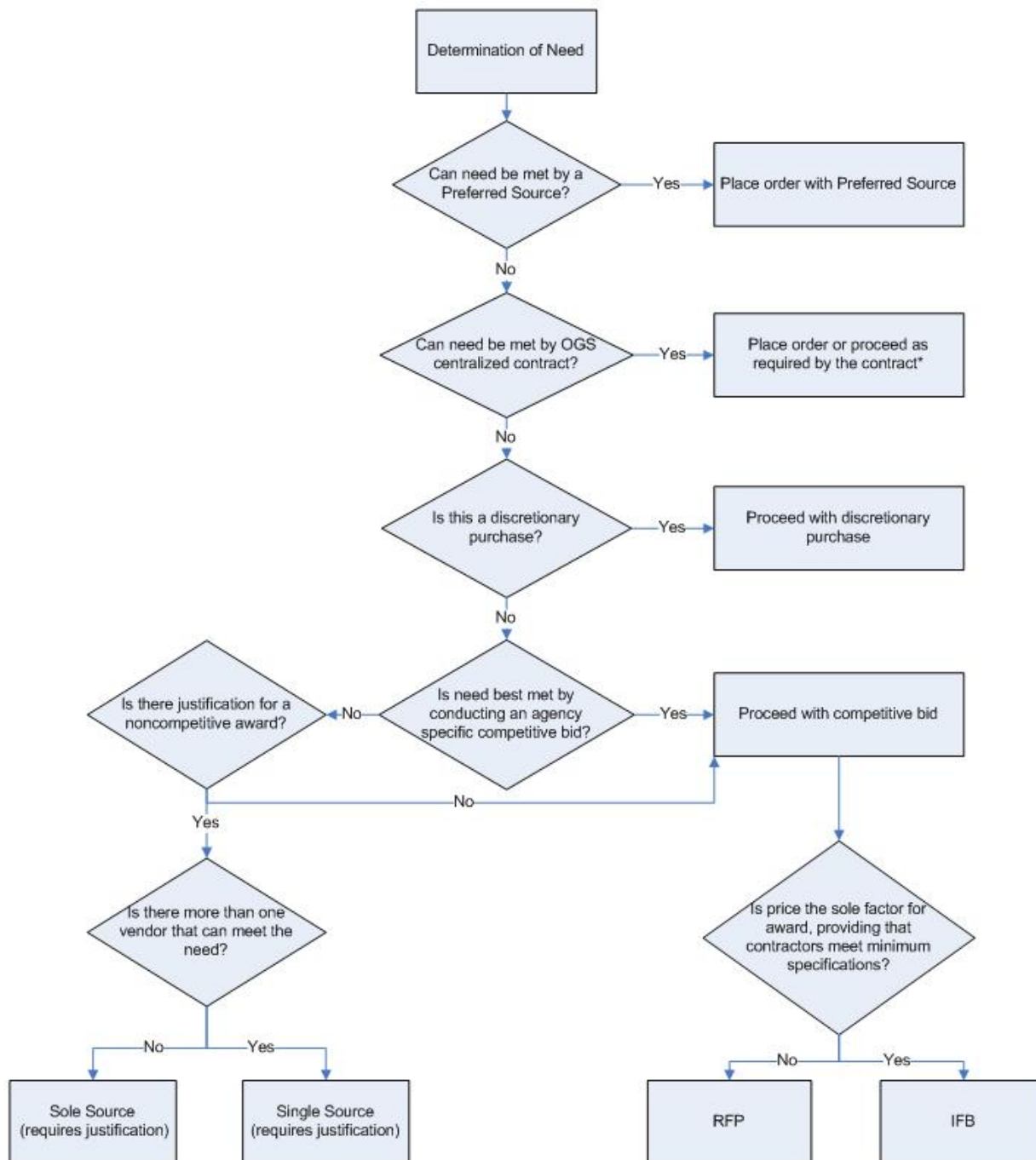
### B. Choosing a Procurement Vehicle and the Order of Purchasing Priority

As noted, State agencies undertake procurements to address a wide range of needs. To meet their varying needs and their *form, function and utility* requirements, agencies must first identify their specific needs and relevant State requirements and goals (i.e., *recycled content*) and then follow the following order of precedence when choosing the proper procurement vehicle:

- First: Preferred source offerings;
- Second: OGS centralized services and technology contracts (except by State agencies where the head of the agency is not appointed by the governor, including but not limited to the State Education Department, the Department of Law, and the Department of Audit and Control); OGS centralized commodity contracts
- Third: Agency or multi-agency established contracts; and
- Fourth: An “open market” procurement that can either be discretionary or result from a formal, competitive bidding process based on the total value of the procurement.

A diagram titled “**Selecting a Procurement Method**” follows. When there is no established contract available that would meet an agency’s particular need, the agency should use the decision path depicted to choose the proper procurement method.

# Selecting A Procurement Method



\*State agencies where the head of the agency is not appointed by the Governor including but not limited to the State Education Department, the Department Of Law and the Department of Audit and Control, are not required to use centralized contracts to acquire services and technology.

## C. Preferred Source Offerings

When a commodity or service desired by a State agency, political subdivision or public benefit corporation (including most public authorities) is available from a preferred source in the form, function and utility required, and the price, as determined by OGS, is no more than 15 percent above the prevailing market rate (or, in the case of the Correctional Industries Program, the price of the commodity does not exceed a reasonable, fair market rate as determined by the Department of Correctional Services), the State agency must purchase that commodity or service from a preferred source. When doing so, agencies must adhere to the priority that has been accorded to the preferred sources in State Finance Law §162, as follows:

With respect to commodities, agencies must purchase from preferred sources in the following prioritized order, if available:

- First: From the Department of Correctional Services' Correctional Industries Program (CORCRAFT);
- Second: From the approved, charitable, non-profit making agencies for the blind; and
- Third: Equal priority is accorded to approved, charitable, non-profit making agencies for the severely disabled, qualified special employment programs for mentally ill persons, and qualified veterans workshops.

With respect to services, if more than one preferred source meets the agency's form, function and utility requirements, equal priority shall be accorded to the services rendered and offered for sale among the approved charitable, non-profit making agencies for the blind, other severely disabled persons, qualified special employment programs for mentally ill persons, and qualified veterans workshops. If more than one preferred source meets the agency's requirements, **cost** shall be the determining factor.

**NOTE:** CORCRAFT is not a preferred source option for the purchase of services.

Products or services purchased from preferred sources do not require competitive bids. For more information and the list of approved preferred sources offerings, see:

[www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf)

and

<http://purchasingforum.ogs.ny.gov/sites/default/files/Supporting%20Preferred%20Sources.pdf>

## D. Contracts

Contracts are written agreements between a buyer (the State) and a seller (the vendor). These documents specify various terms and conditions to which the parties must adhere. Some examples of these terms and conditions include the following:

- Price;
- Delivery terms;
- Description of the commodity or service being procured;
- Payment terms;
- Duration of the contract; and
- Liability clauses and any other requirements of either the buyer or seller.

Contracts may be issued by the OGS on behalf of all agencies or may be issued by one or more agencies for their unique needs. The following provides a general description of various types of contracts used by State agencies:

### ***OGS Centralized Contracts***

OGS creates centralized contracts for commodities or services. There are more than 1,000 such contracts in place. Once these contracts are established and approved, agencies may purchase from them. For the purchase of commodities or services available from an OGS centralized contract (for example, a P-contract, PC-contract, PS-contract or PT-contract), the agency may issue a purchase order directly to the contractor without prior approval by the [Office of the State Comptroller](#) (OSC). Agencies are encouraged to attempt to negotiate more favorable prices.

The State Finance Law requires that agencies use an OGS centralized contract to purchase commodities that meet the agency's requirements with respect to form, function and utility. Agencies, except State agencies where the head of the agency is not appointed by the governor, including but not limited to the State Education Department, the Department of Law, and the Department of Audit and Control, are also required to use OGS services and technology contracts that meet the agency's requirements with respect to form, function and utility.

### ***OGS or Less***

In addition, pursuant to State Finance Law § 163(3)(a)(v), OGS centralized commodities contracts that contain a clause known as "OGS or Less" may allow an agency to obtain needed commodities from a non-contract vendor in order to take advantage of non-contract savings that may develop in the marketplace. "OGS or Less" purchases may not be made if the commodities are available from:

- Legally established preferred sources in the form, function and utility required;
- State contracts based on filed requirements (e.g., fuel, oil, etc.); or
- Agency-specific contracts.

After determining that the needed commodity cannot be obtained from these sources, the agency must determine, and document in the [procurement record](#), that the purchase price, including delivery, warranty and other relevant terms, offered by the non-contract vendor is more economically beneficial than what is offered on OGS centralized contract(s) for a commodity substantially similar in form, function and utility. Agencies must not solicit multiple



offers from the same vendor and must not create a bidding war. State contractors must be allowed a minimum of two business days to match the lower non-contract price. If the State contractor provides written confirmation that it will match the lower price, the agency proceeds with the purchase in accordance with agency purchasing procedures. If the State contractor is unable or unwilling to match the lower price, the agency must document this in the procurement record, and in lieu of purchasing the commodity from the OGS centralized contractor at the OGS centralized contract price, may procure through either a discretionary or competitive procurement, as applicable.

### ***Backdrop Contracts***

Additionally, OGS establishes **backdrop contracts** that prequalify vendors for provision of services. These contracts establish standard terms and conditions, set maximum not-to-exceed prices, and satisfy many legal requirements associated with State procurements, such as advertisement in the New York State Contract Reporter, vendor responsibility determination, and sales tax certification. OGS identifies its backdrop contracts as either “CMT” (Centralized Management – Technology) or “CMU” (Centralized Management – Unknown).

Utilization of backdrop contracts may require additional competitive procurement processes at the authorized user level (e.g., a **Mini-Bid**) and as applicable, approval of OSC, prior to the purchase of services. An authorized user may conduct a formal mini-bid process by developing a project definition that outlines its specific requirements and solicits bids from qualified backdrop contractors to determine the best value solution. The best value may also be the lowest price. The exact processes to be followed are set forth either in the OGS backdrop contract or the guidelines associated with that contract on the OGS website.

An authorized user and contractor cannot amend the terms and conditions of the backdrop contract, but may, through the mini-bid process, agree to pricing or terms more favorable to the State or the authorized user only (e.g., delivery terms, longer warranty period, no-cost maintenance). Under no circumstances can the authorized user and the contractor trade off terms for pricing. For example, the authorized user cannot agree to a waiver of indemnity or agree to indemnify the contractor in return for better pricing.

### ***Agency or Multi-Agency Established Contracts***

These are contracts established by an agency or multiple agencies to procure on an ongoing basis. They enumerate the specific terms and conditions binding both the vendor and the State. These contracts are usually in effect for multiple years. More guidance on establishing a contract is provided in Chapters III, IV and V. An agency may also use an agency or multi-agency established contract to purchase commodities, but typically these items can be obtained through use of a purchase order or a purchase authorization.

- **Competitively Bid Contract** – A contract awarded pursuant to an IFB or RFP. More guidance is provided in Chapters IV and V.
- **Sole Source Contract** – A sole source procurement is one in which only one vendor can supply the commodities or services required by an agency. The agency must document why the proposed vendor is the only viable source for the commodities and/or services needed by the agency. OSC approval must be

obtained for a sole source contract if the contract's value is over the State Finance Law §112 discretionary threshold. In addition, if the agency is seeking a waiver from advertising in the New York State Contract Reporter, OSC must approve the exemption.

- **Single Source Contract** – A single source procurement is one in which, although there are two or more potential offerers, the agency has determined that it is in the best interest of the State to procure from a particular vendor. (A typical example would be where an agency needs maintenance for a particular piece of equipment, and that maintenance must be provided by a particular vendor to maintain the warranty.) OSC approval must be obtained for a single source contract if the contract's value is over the State Finance Law §112 discretionary threshold. In addition, if the agency is seeking a waiver from advertising in the New York State Contract Reporter, OSC must approve the exemption.
- **Piggyback Contract** – At times, an agency may find it more efficient to establish a contract based on another governmental entity's contract. This is known as "piggybacking" and may be used in accordance with the criteria established by OGS in the "Contract 'Piggybacking' Guidelines" State Finance Law § 163 (10) (e)", available at:

[www.ogs.ny.gov/BU/PC/SFL.asp](http://www.ogs.ny.gov/BU/PC/SFL.asp)

The agency must seek approval for the use of a piggyback contract from OGS. Finally, the agency must create a New York State contract and obtain all approvals necessary for the specified contract value.

- **Emergency Contracts** – An emergency procurement is one in which an urgent and unexpected situation occurs where health and public safety or the conservation of public resources is at risk. Where an emergency exists, an agency may issue procurement contracts without complying with formal competitive bidding requirements. However, an agency should make a reasonable attempt to obtain at least three oral quotes. An agency's failure to properly plan in advance – which then results in a situation where normal practices cannot be followed – does not constitute an emergency. OSC approval must be obtained for an emergency contract if the contract's value is over the State Finance Law §112 discretionary threshold. In addition, if the agency is seeking a waiver from advertising in the New York State Contract Reporter, OSC must approve the exemption.

## E. Discretionary Purchases

Discretionary purchases are procurements made below statutorily established monetary levels and at the discretion of the agency, without the need for a formal competitive procurement process. Use of discretionary purchasing streamlines the procurement process. Discretionary purchasing also improves opportunities for **Minority or Women-Owned Business Enterprise** (M/WBE) vendors and **New York State Small Businesses** to secure business with the State and promotes the use of **recycled** or **remanufactured commodities or technology** as well as **food, including milk and milk products, grown, produced or harvested in NYS**.

When contemplating a discretionary purchase, the agency must first undertake an analysis to determine whether its needs can best be met by acquiring through the preferred source program. If that is not possible, and if the acquisition is for a commodity, the agency must make the purchase using an OGS centralized commodity contract which will meet the agency's form, function and utility needs. If the acquisition is for a service or technology, the agency, except State agencies where the head of the agency is not appointed by the governor, including but not limited to the State Education Department, the Department of Law, and the Department of Audit and Control, must make the purchase using an OGS centralized services or technology contract which will meet the agency's form, function and utility needs. The agency must also determine that the purchase falls within their discretionary purchasing authority. More information on discretionary purchasing can be obtained from the Procurement Council bulletin at:

<http://www.ogs.ny.gov/procurecounc/pdfdoc/DiscretionaryPurchasingGuidelines.pdf>

And from the discretionary buying thresholds chart at:

<http://www.ogs.ny.gov/BU/PC/docs/PnpDiscretionaryThresholds.pdf>

The chart provides information on purchases above certain thresholds which, while not subject to the formal competitive procurement process requirements, may require approval by OSC and/or advertisement in the New York State Contract Reporter.

The agency may proceed to exercise its discretionary purchasing authority only after it has verified that the discretionary purchasing method is appropriate. Further, when making a discretionary purchase, an agency must:

- Ensure that the commodities and services acquired meet their form, function and utility needs, including relevant State law and policy requirements;
- Document and justify the selection of the vendor;
- Document and justify the reasonableness of the price to be paid;
- Buy from a **responsible** vendor; and
- Comply with the agency's internal policies and procedures.

## **F. Procurement Card Program**

The State's Procurement Card (P-Card) Program is a procurement and payment method designed to expedite purchases and payments. When properly used, the P-Card is an efficient and cost-effective alternative to a variety of traditional labor-intensive procurement and payment tools. Some purchases and payments that can be made with a P-Card include:

- Commodities or services from preferred sources;
- Commodities or services from an OGS centralized contract; and
- Supplies and materials.

Employees must be authorized by their agency to have a P-Card. The maximum single transaction limit for a P-Card holder cannot exceed the agency's Discretionary Purchasing Threshold. Agencies may set lower limits for specific employees and can impose additional limits in order to control P-Card activity.

The P-Card contract can be found at:

<http://www.ogs.ny.gov/purchase/snt/awardnotes/7900822712can.HTM>

P-Card holders should also review their agency's policies and procedures pertaining to P-Card use. Ultimately, it is the P-Card holder who is responsible for the proper use and safekeeping of a P-Card.

## **G. Purchase Orders**

A Purchase Orders (PO) is a basic contractual document, issued by an agency's finance office or other authorized individual(s), and is generally for "one time" purchases. A PO usually consists of the vendor's name/address, a description of the item, quantity, cost per item, shipping terms, total cost and some data for State use (cost center, object code, and the applicable OGS or purchase authorization contract number). The PO solidifies the terms of the purchase. POs are used to procure from preferred sources, OGS centralized contracts, and agency open market purchases (except preferred source services over \$50,000 and open market services over \$50,000 in which multiple payments will be made and thus may require a contract). **Appendix A** must be incorporated in the agency's purchase orders.

## **H. Purchase Authorizations**

A Purchase Authorizations (PA) is issued by a State agency and is similar in both form and function to OGS centralized commodity contracts, in that once the PA is approved, agencies can issue purchase orders against the PA without further approval of OSC. An example is when an agency knows that a particular product, not available through a preferred source or an OGS centralized contract, will be needed over an extended period of time, but the exact quantity is not known at the time of establishing the PA.

The primary benefit of the PA is that it allows an agency to establish terms and pricing of a product without needing to encumber funds at the time of submission of the PA to OSC. However, if the contract provides for a guaranteed minimum purchase, OSC requires a purchase order encumbering the guaranteed purchase amount prior to approval. Additional information, as well as a standard format for the PA and award letter, is available through the OSC Guide to Financial Operations, Chapter XI.5: Purchase Authorizations, at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp>

## **I. Interagency Memorandum of Understanding**

An Interagency Memorandum of Understanding (MOU) is an informal agreement entered into between two or more New York State agencies that outlines matters of substance, such as budget and reporting responsibilities, but does not include formal standard contract terms. Since MOUs are not legally binding contracts, they do not require the approval of OSC. An agreement between a State agency and another governmental entity that is not a State agency is called an intergovernmental agreement and requires OSC approval when valued above the agency's discretionary purchasing authority. Additional information on these documents can be obtained through the OSC Guide to Financial Operations, Chapter XI.9: Intergovernmental Agreements, at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp>

# III. GENERAL GUIDANCE FOR SOLICITATIONS

## A. Introduction

This chapter is intended to provide guidance to agencies on the following key considerations that apply to most solicitations:

- Procurement ethics;
- Mandatory requirements that must be considered and included in procurements;
- Methods for gathering information before developing the solicitation document and *specifications*;
- Advertisement of procurement opportunities;
- Determination of vendor responsibility; and
- Contract administration and monitoring.

Building on this base, Chapters IV and V will provide further detailed guidance to agencies on conducting procurements using two of the most common types of solicitations: *Invitation for Bids* (IFB) and *Request for Proposals* (RFP).

## B. Procurement Ethics

Procurements are an expenditure of public monies, and public employees must always ensure that all procurements are conducted so as not to cause any concern that special considerations have been shown to a vendor. Actions such as providing a vendor with information that is not available to other vendors, accepting a gift, or having lunch with a potential vendor could be construed as showing favoritism to a vendor, and may violate State law. Certain meetings with existing or potential vendors may also need to be reported in the State's online *Project Sunlight* database. Questions regarding procurement ethics should be directed to the Agency Ethics Officer and/or the New York State Joint Commission on Public Ethics (JCOPE). Information on Project Sunlight reporting is available at:

<http://projectsunlight.ny.gov>.

JCOPE information and restrictions are available at: <http://www.jcope.ny.gov/>

## C. Mandatory Requirements

State procurements, whether using an Invitation for Bids, Request for Proposals, or other method, must comply with a number of different statutes, regulations, and policy requirements. Principal among these are:

- Procurement Lobbying Law;
- Sales tax certification;
- Vendor responsiveness and responsibility;
- Office of Information Technology Services (ITS) approval, as applicable;
- **Prevailing wage** schedules;
- Consultant disclosure;
- Reference and compliance with Executive Law Article 15-A (M/WBE & EEO)
- Workers' compensation insurance and disability benefits insurance;
- Bidders' right to a **debriefing**; and
- **Green purchasing** goals, policies, specifications and standards. See Exhibit C: Green Purchasing for a list of State requirements and <http://www.ogs.ny.gov/EO/4/Default.asp> for a list of current approved specifications).

More information on a number of these areas is provided in subsequent sections.

Additional information can also be found at:

<http://www.ogs.ny.gov/BU/PC/SPC.asp>

<http://osc.state.ny.us/agencies/guide/MyWebHelp>

In addition, there are standard clauses that must be included in every State contract. This body of clauses is commonly referred to as "Appendix A." It can be found at:

<http://www.ogs.ny.gov/purchase/bidcreation.asp>

It should be noted that, depending on the nature of the procurement, additional requirements may apply. Check with your agency counsel or contracts management office.

## **D. State Reserved Rights**

In addition to mandatory requirements, there are a number of State reserved rights that are typically included to provide additional protections to the agency conducting the procurement. These should be clearly stated in the solicitation. The following is the most common set:

The [name of agency] reserves the right to:

- Reject any or all proposals received in response to the IFB/RFP;
- Withdraw the IFB/RFP at any time, at the agency's sole discretion;
- Make an award under the IFB/RFP in whole or in part;\*

- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB/RFP;
- Seek clarifications and revisions of proposals;\*
- Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB/RFP;
- Prior to the **bid opening**, amend the IFB/RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB/RFP amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB/RFP in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.\*

**\*NOTE:** Failure to include these specific reserved rights (marked with an asterisk) in the solicitation precludes their use in that procurement.

Depending on the nature of the procurement, there may be additional State reserved rights beyond those presented here.

## **E. Gathering and Exchanging Information Prior to Solicitation**

Procurement staff have several methods available to them for gathering and exchanging information with potential bidders, prior to issuing a solicitation or making a purchase. These methods enable information-gathering while promoting openness, fairness, and transparency. The most common information-gathering options are described below.



As a best practice when gathering information, it is suggested that an agency issue a notice in the New York State Contract Reporter to ensure that a level playing field among potential bidders is provided. Other means of identifying potential bidders, such as market-based research and newspaper/trade journal advertisements, may be used depending upon the nature of the agency's need.

### ***Request for Information***

A **Request for Information** (RFI) is a research and information gathering document used when an agency seeks to learn about the options available for addressing a particular need or wants to obtain information to help create viable requirements for a potential solicitation. For example, an agency needs to buy decals to affix to the exterior of a vehicle, but does not know how various materials (such as stock or ink) withstand long-term exposure to the elements. Issuing an RFI to potential bidders would elicit responses that would enable the agency to write specifications to provide the agency with the best solution.

### ***Request for Comment***

A **Request for Comment** (RFC) is used to solicit input from all potential bidders about a solicitation's structure and language to assess its impact on potential bidders. For example, an agency has drafted a Request for Proposals (RFP), but is unsure if potential bidders will find the language too restrictive or the requirements unclear. The RFC allows the agency to gather information, revise the RFP as appropriate, and issue a document to which potential bidders would be more likely to respond. This practice differs from sending a **Draft RFP**, in that the agency is only sending the sections of the RFP that are open for discussion.

### ***Draft Request for Proposals***

An agency may submit a Draft RFP to all potential bidders for remarks/comments prior to issuance. The cover letter releasing the draft RFP should state for which sections of the document the agency is requesting feedback. It should be noted that certain sections of the RFP are not subject to amendment (e.g., Appendix A, which sets forth the standard clauses for New York State contracts).

### ***Roundtable Session***

A roundtable session generally is an open meeting among all potential bidders and the agency(ies) involved in the procurement before the release of a competitive solicitation. These meetings allow potential vendors and agency staff to ask questions of each other and allow for an open exchange of information. It is suggested that these meetings be moderated to ensure that all attendees are provided an equal opportunity to participate. Techniques that can be used include: agendas detailing the topics to be discussed; prior submission of questions; and restricting time allowed for responses.

**NOTE:** Requests for Information, Requests for Comments, and Draft Requests for Proposals generally do not commence the **restricted period** under State Finance Law §139-j, commonly referred to as the Procurement Lobbying Law, because the documents do not

request a proposal intended to result in a procurement contract (see the following section, Procurement Lobbying Law).

## **F. Procurement Lobbying Law**

State Finance Law §§139-j and 139-k impose certain restrictions on communications between an agency and an offerer/bidder during the procurement process. An offerer/bidder is restricted from making “**contacts**” (defined in the law as communications intended to influence the procurement) from the date of the earliest notice of intent to solicit offers/bids through the date of the final award, and, if applicable, approval of the contract by the Office of the State Comptroller, to other than designated staff (as identified by the agency). The interval between these points is known as the “restricted period.” Certain exceptions to this restriction are set forth in State Finance Law §139-j (3) (a). An example of an exception would be communication during contract negotiations.

Employees are also required to obtain certain information when contacted during the restricted period and to make a determination of the responsibility of the offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award. In the event of two such findings within a four-year period, the offerer/bidder is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found on the OGS website:

[www.ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html](http://www.ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html)

## **G. Advertising Procurement Opportunities**

An agency has a statutory obligation to advertise a procurement opportunity in the New York State Contract Reporter when the procurement exceeds the agency’s advertising threshold. If the agency seeks a waiver from this requirement, OSC must approve the exemption. The publication is available online at:

<http://www.nyscr.ny.gov>

Advertising thresholds for agencies are defined in the chart that is available at:

[www.ogs.ny.gov/BU/PC/docs/PnpDiscretionaryThresholds.pdf](http://www.ogs.ny.gov/BU/PC/docs/PnpDiscretionaryThresholds.pdf)

The intent of advertising is to promote competition. Advertisements should provide prospective bidders with an overview of the proposed procurement, including a brief description of the commodities or services sought, the contract period, the proposal due date, and contact information. In addition, as a best practice, an agency should also advertise its procurement opportunities in other sources such as trade publications, journals, newspapers, and agency websites and mailing lists. More information on advertising can be obtained from the Procurement Council bulletin at:

[www.ogs.state.ny.us/procurecounc/pdfdoc/bulletin-Contractreporterquarterlylistings\\_2\\_.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/bulletin-Contractreporterquarterlylistings_2_.pdf)

and from the OSC Guide to Financial Operations, Chapter XI.14.A: Publication of Procurement Opportunities, located at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

## **H. Determination of Vendor Responsibility**

State Finance Law §163(9)(f) requires that a State agency make a determination that a bidder is responsible prior to awarding that bidder a State contract. It is further recommended that the contract expressly obligate the contractor to maintain its responsibility throughout the term of the agreement. The responsibility determination is based upon many factors, including, but not limited to, the bidder's:

- Financial and organizational capacity;
- Legal authority to do business in this state;
- Integrity of the owners/officers/principals/members and contract managers; and
- Past performance of the bidder on prior government contracts.

Review of these four elements is commonly known as the "FLIP" review.

Whether a bidder is "responsible" is a question of fact to be determined on a case-by-case basis after a comprehensive weighing of all factors. An unfavorable rating in one or more areas of evaluation does not need to result in a non-responsibility determination; however, it does require the agency to make a determination that it has reasonable assurance that the proposed contractor is indeed responsible or non-responsible, as applicable.

Before finding a bidder non-responsible, a State agency must ensure that the bidder was afforded due process rights and provided with the opportunity to explain its position in writing and, in some instances, in person, at a responsibility meeting. If responsibility issues cannot be resolved or explained to the satisfaction of the agency, the agency may issue a finding of non-responsibility to the bidder. This finding must be provided in writing. For more information on how to conduct a responsibility review and hold a responsibility meeting with a bidder or contractor, review the slide show presentation and handouts for Contract Administration and Vendor Responsibility at:

<http://www.ogs.ny.gov/BU/PC/CAVR.asp>

Additional information and links to more resources for verifying a vendor's responsibility are also located at:

[www.osc.state.ny.us/vendrep/webresources.htm](http://www.osc.state.ny.us/vendrep/webresources.htm)

## **I. Workers' Compensation Insurance and Disability Benefits Requirements**

As indicated in Section C above, Workers' Compensation Law (WCL) §57 & §220 requires that the heads of all municipal and State entities ensure that a business applying for

permits, licenses, or contracts provides evidence of appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, and apply whether the governmental agency is having the work performed or is simply the entity issuing the permit, license, or contract.

In the context of State procurements, the solicitation must make it clear that the bidder/vendor will be required to provide proof of such coverage (or of having received a legal exemption) prior to being awarded a contract or receiving a contract renewal. Failure to do so will result in their bid being rejected or, in the case of contract renewals, their contract being allowed to expire. For more information, refer to the Workers' Compensation website at:

[www.wcb.ny.gov](http://www.wcb.ny.gov)

## **J. Bidder Debriefings**

The solicitation must include information advising bidders that a debriefing may be requested by any unsuccessful offerer, within a reasonable time frame after the contract award, regarding the reasons that the proposal or bid submitted by the unsuccessful offerer was not selected for an award. While a debriefing is typically conducted in person, it may be conducted by video conference, over the phone, or through written summaries, if agreed to by the bidder. During the debriefing, the State agency may do one or more of the following:

- Limit the discussion to the reasons why the bid was not successful;
- Discuss the reasons why the winning bid was selected; and
- Offer advice and guidance to the bidder to improve future bids.

To view a “mock debriefing” visit: <http://www.ogs.ny.gov/BU/PC/PPD.asp>

## **K. Contract Administration and Monitoring**

The approved contract must be administered and monitored properly. Regular, diligent oversight of all activities and actions regarding the contract is an important part of the overall life cycle of a contract. The agency should assign a contract manager, who will be responsible for ensuring that the contractor performs the requirements of the contract in accordance with the contract's terms, conditions and specifications. Proper oversight and administration of the contract may entail educating and communicating with those agency personnel who will be direct users of the goods, services or technology acquired and who will therefore be in the best position to participate in monitoring the vendor's performance of contract provisions. Regular performance monitoring is a powerful tool for ensuring that required performance specifications and/or standards are being met and maintained.

Additional guidelines for contract administration and monitoring can be found in the Procurement Council's “Receiving Agency Inspection Guidelines” at:

[www.ogs.state.ny.us/procurecounc/pdfdoc/inspgdl.pdf](http://www.ogs.state.ny.us/procurecounc/pdfdoc/inspgdl.pdf)

and in the OSC Guide to Financial Operations, Chapter XI.11.F: Contract Monitoring, at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp>

## IV. SPECIFIC GUIDANCE: INVITATIONS FOR BIDS

### A. Introduction

An Invitation for Bids (IFB) is the appropriate solicitation to be used when the method of award is to be based on lowest price only. An IFB describes the administrative process; defines specifications; establishes required delivery terms, bidder qualifications, method of award, and terms and conditions; and provides instructions for responding.

For commodities, award shall be made on the basis of lowest price among responsible and **responsive** offers (State Finance Law §163(3)(a)(ii)). In the case of services, the award must be based on “**best value**” (State Finance Law §163(4)(d)). For certain services procurements, best value can be equated to low price. See Chapter V: Specific Guidance: Requests for Proposals.

### B. Steps for Conducting an IFB

The following steps outline the process:

- Develop specifications for the commodity/service needed referring to State green purchasing requirements where available and appropriate. See Exhibit C: Green Purchasing for a list of requirements and OGS Green Specifications. Review <http://www.ogs.ny.gov/EO/4/Default.asp> for a list of current approved specifications;
- Prepare the solicitation document;
- Advertise the procurement opportunity (New York State Contract Reporter);
- Distribute the IFB to all potential bidders;
- Conduct site visits and pre-bid conferences (as necessary);
- Receive questions and provide responses (as necessary);
- Receive bids;
- Conduct the bid opening;
- Conduct administrative review of bid submissions;
- Verify responsiveness and responsibility of apparent low bidder;
- Make award;
- When necessary, obtain approvals; and,
- Issue purchase order or contract.

More detail about each of these steps follows.

### **Step 1: Develop Specifications**

The specifications must ensure that bidders know exactly what is required. Specifications should be as clear, inclusive and informative as possible. Specifications should be precise enough so that the agency will receive the commodity or service needed, yet broad enough to encourage competition. The agency should develop generic requirements that do not favor a particular vendor. However, the solicitation may incorporate any information obtained from research regarding the products and/or services available.

Specifications establish the minimum level of acceptable requirements. The level of detail required in the specification depends upon the complexity of the commodities and/or services being procured.

There are several methods for creating specifications. The most common are:

**Make and Model or Equal** – If an agency is not limiting the procurement to a specific brand, it may use a brand name and model as a reference to describe requirements such as functionality, style or capacity. The agency would award to the low bid offering the specified product or one of equal characteristics. (For example, “XYZ Corporation’s washing machine Model #123 or equal.”)

**Make and Model Specific** – If an agency determines (and can justify in writing for inclusion in the procurement record) that only one product (specific brand) or certain products meet its needs, and where competition exists, the IFB must state that bids will be accepted on the specified items only and no substitutions will be considered. (For example, “XYZ Corporation’s Part #”.)

**Technical Specifications** – These describe the product, usually detailing the physical components, method of assembly and, in some cases, chemical composition. (For example, a chain must be made of a certain material, a particular gauge, and have a specific tensile strength.)

**Performance Specifications** – Describes the performance standards required for the product and/or service that is being procured. The bidder must ensure that the product or service offered will meet the performance specifications. (For example, a window washing contract on a set schedule.)

**Green Performance Specifications** – Describes the environmental performance standards required for the product, service or technology that is being procured. The bidder must ensure that their offering will meet State environmental performance specifications. For example, a computer must meet certain energy conservation requirements. For a list of approved State green performance specifications see <http://www.ogs.ny.gov/EO/4/Default.asp>.

### ***Step 2: Prepare the Solicitation Document***

In addition to the product/service specifications, the solicitation informs potential bidders of the nature of the procurement, any statutory requirements, the deadline for submission of bids, the location where bids must be sent, delivery terms, any special delivery requirements, and the basis for the award (e.g., lowest price).

The solicitation may also include other terms that the procuring agency desires or requires to be in the contract. For example, if the agency chooses to allow for cost adjustments, the basis for the cost adjustment must be specified in the IFB. Cost adjustments may be based on standard measures such as the U.S Bureau of Labor Statistics Consumer Price Index (CPI) or the Producer Price Index (PPI). An agency may also include insurance requirements that specify that a bidder must provide insurance on behalf of the State. Insurance requirements, including limits, should be tailored to the scope of the contract. Additional information on insurance requirements may be found in Chapter VI: Best Practices Bid instructions should inform the potential bidder of the contract period, the price structure, (hourly, per item, per carton, square foot, etc.), the agency's *bid protest* / dispute resolution policy (if applicable), performance requirements, contract monitoring, termination rights and any optional requirements. The solicitation should also outline any bidder qualifications that the agency requires, such as licensing, if required, special equipment, financial viability, minimum years of experience, etc. If a specified qualification results in reduced competition, the agency may need to justify the requirement.

The document must inform potential bidders of the State's "reserved rights." A list of reserved rights is included in Chapter III and should be the minimum used. Agencies are encouraged to review the list and add to it, as needed.

The solicitation should inform potential bidders of the method of award – that is, whether the award will be by lot, item, region, or some other method.

The solicitation should also inform bidders of the requirements of Appendix A and depending on the nature and/or value of the contract, other requirements that must be included in the IFB.

### ***Step 3: Advertise the Procurement Opportunity***

Refer to Chapter III of these Guidelines.

### ***Step 4: Distribute the IFB***

Once the IFB has been completed and the advertisement(s) placed, the IFB should be distributed to all known potential bidders and any bidder that requests a copy as a result of the advertisement(s). Potential bidders can be identified through web searches, previous procurements, *bidder lists* maintained by the agency, and/or the Empire State Development list of New York State Certified M/WBEs. The IFB (or notice of the IFB) can be distributed via postal mail, e-mail, posting to agency website, and other means.



### ***Step 5: Conduct Site Visits and Pre-Bid Conferences***

Prior to the due date for bids, an agency may require site visits to ensure that bidders are aware of site conditions. The agency may also hold a pre-bid conference to allow bidders to ask questions and/or exchange information with agency staff. The solicitation must identify the date, time and location of such events, if planned, and whether attendance is mandatory in order to bid.

### ***Step 6: Answer Questions***

The agency should allow a period of time for bidders to submit written questions, and for the agency to provide written responses. All questions raised and answers provided, including those arising during site visits and pre-bid conferences, must be confirmed in writing and shared with all potential bidders.

### ***Step 7: Receive Bids***

The IFB must state the location, time and date for the submission of the bids. Any bid received must be kept in a secured area by the agency and not opened prior to the date and time of the bid opening. As a general rule, bids received after the deadline specified in the IFB cannot be accepted.

### ***Step 8: Conduct Bid Opening***

The bid opening should be conducted at the location and time stated in the IFB. At this time, all timely bids are opened and recorded. It is suggested that a minimum of two staff conduct the bid opening; one to open and announce the bids and one to record them. This will create a "bid tabulation," which must be kept as part of the procurement record and must accompany the bid package sent to OSC for approval, if necessary.

The bid tabulation must include all timely bids received. It should be signed and certified by the agency staff responsible for opening and recording the bids. Bid prices listed in the bid tabulation should state the prices required by the method of award.

### ***Step 9: Conduct Administrative Review of Bid Submission***

The agency must ensure that the bid submission is complete and accurate. This includes: confirming that the bidder understood the specifications and can perform/deliver at the bid price, particularly if there are large variances in the bid prices between the apparent low bid and the next low bid, and ascertaining that all materials are submitted and appendices are signed.

### ***Step 10: Verify Responsiveness and Responsibility of Apparent Low Bid***

Beginning with the apparent low bid, the agency must verify that: 1) the winning bid is responsive by meeting all mandatory requirements and specifications of the IFB; and 2) the

winning bidder is responsible. If the apparent low bidder is not found to be responsive or responsible, the bid must be rejected and the next lowest price bid must be reviewed. In addition, notice should be provided to an apparent low bidder who is being rejected as non-responsive or non-responsible.

**NOTE:** In the event of a tie bid, the decision as to the winning bid must be made in accordance with the State Finance Law §163(10)(a) and any policy stated in the IFB.

### ***Step 11: Make Award***

Once the agency has reviewed and verified the lowest responsive and responsible bidder(s), the award(s) shall be made in accordance with the method of award in the IFB. The agency must retain the supporting documentation as part of the procurement record.

### ***Step 12: Obtain Approvals***

Contracts resulting from an IFB are subject to review and approval first by the Office of the **Attorney General** (OAG) (with certain exemptions for OGS centralized contracts), and second by the Office of the State Comptroller (OSC), in accordance with State Finance Law §112.

The OAG generally requires only the contract document for its review and approval, but may require the entire procurement record. The agency may choose to submit the entire procurement record to the OAG, and request that, upon OAG's approval of the contract, OAG forward the file to OSC for its review and approval.

As provided for in State Finance Law §112, procurements over certain thresholds must be approved by OSC. If the value of the procurement is below the agency's State Finance Law §112 discretionary purchasing authority, the agency may proceed to issue the purchase order or contract. However, when the contract's value exceeds the State Finance Law §112 discretionary threshold, the agency must prepare an award package to submit to OSC for prior approval.

As part of the OSC contract approval process, agencies must identify the intended encumbrance amount (purchase order amount) on the Single Transaction Summary (STS) / **AC 340-S Form**. Agencies are not required to submit paper copies of contract related purchase orders to OSC. Agencies are encouraged to review the following sources for information related to encumbering a contract in SFS: the OSC Guide to Financial Operations, Chapter 11: Procurement and Contract Management, available at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp>

and OSC Contract Advisories, available at:

[http://www.osc.state.ny.us/agencies/contract\\_advisories/index.htm](http://www.osc.state.ny.us/agencies/contract_advisories/index.htm).

***Step 13: Issue Purchase Order or Contract***

Once the above steps have been completed and all necessary approvals have been obtained, the agency may proceed to issue the purchase order or contract to the vendor.

## V. SPECIFIC GUIDANCE: REQUESTS FOR PROPOSALS

### A. Introduction

A Request for Proposals (RFP) is generally used for the procurement of services or technology in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

Appropriate planning is essential for a successful RFP. The first step is to view the process as a project and to develop a timeline of events to meet the agency's programmatic needs and effectively budget staff time. It is also essential to focus on and develop the contract scope of service and deliverables that are required before proceeding to develop the methodology for evaluating proposals.

**NOTE:** If a vendor participates in the development or writing of the specifications for the RFP, that company is generally prohibited from participating in the procurement. (See State Finance Law §163(2); and for technology procurements, see State Finance Law §163-a.)

### B. Essential RFP Contents

An RFP should clearly convey all the information needed for potential bidders to determine their interest in participating in the solicitation and to offer a competitive proposal. At a minimum, the RFP should include language addressing each of the following items:

#### ***1. Table of Contents***

A detailed and accurate Table of Contents improves the ability of potential bidders to grasp and keep track of all aspects of the RFP and to respond effectively.

#### ***2. Description of Program Objectives and Background***

This RFP section provides a general description of the agency's overall objectives and the underlying reasons for the procurement.

#### ***3. Scope of Services***

This section generally describes the scope of services necessary to meet the agency's needs. The section should include any strategic and tactical plans/direction of the agency to be affected by the required services.

#### **4. Detailed Requirements/Specifications**

This section details the technical specifications, which may be presented as specific, individual requirements or as a part of a deliverable. Specifications should not be written to favor a particular vendor and should clearly indicate the agency's needs as well as the performance standards to which the contractor will be held. This section should also describe the relative roles and responsibilities that the contractor and the agency are expected to undertake during the term of the contract.

#### **5. Performance Standards**

This section should describe the performance standards that will be used to assess the contractor's compliance with the contract requirements. If recommended by agency counsel, this section can include *liquidated damages* provision(s).

#### **6. Green Performance Standards**

This section should describe the environmental performance standards that will be used to assess the contractor's compliance with the contract requirements. For example, compliance with green cleaning best practices. For a list of approved State green performance specifications see <http://www.ogs.ny.gov/EO/4/Default.asp>.

#### **7. Mandatory Versus Optional Elements in the Response**

The RFP should specify which aspects or features of the requested deliverables are critical to the agency, and therefore to the response the proposer provides, based on the following categories:

- **Mandatory** – Minimum required goods or services that the agency deems essential to the program including, but not limited to, the M/WBE goals, service disabled veteran's small business goals, local foods, and *environmental attributes* (see Exhibit C: Green Purchasing).
- **Options** – Goods or services that the offerer must propose, but that the agency is not obligated to purchase.
- **Desirable** – Goods or services that the agency prefers, but that the offerer is not obligated to propose.
- **Alternative** – An approach proposed by the offerer that provides a different solution to the agency need.

#### **8. Overview of the Solicitation Process**

This section should provide information about how the agency will conduct the administrative aspects of the solicitation, selection, and contract development process. Procurements must be conducted in accordance with the process described in the RFP.

## **9. Timeline and Calendar of Events**

This section should provide a specific timetable for the procurement process. Important milestones to be specified typically include:

**a. Dates for Question Submission and Agency Response** – The RFP should provide the time frames for submission of questions and responses to those questions. The method for submitting questions should be stated. The question and answer process may be multiphased, allowing for questions and answers prior to, during, and/or after the pre-bid conference. If no pre-bid conference will be held, the agency should still provide for a question and answer period. Answers provided must be vendor neutral and provided in writing to all potential offerers.

**b. Date for Pre-Bid Conference** – The schedule should provide the date for the pre-bid conference if the agency decides to conduct one. Pertinent details such as time, specific location, security sign-in procedures, and parking arrangements should be included. Attendance must be defined as optional or mandatory; if attendance is mandatory, proposals may only be considered from offerers who participated.

**c. Date for Notice of Intent to Bid (optional or mandatory)** – The RFP may require a vendor to provide, by a specified date, notice of its intent to submit a bid. This notice may be optional or mandatory, at the agency's discretion, although agencies are encouraged to provide maximum flexibility for receipt of bids from all interested offerers.

If the notice of intent to bid is made mandatory, the agency should only consider proposals from those vendors who have submitted the notice of intent to bid on or before the date specified. Furthermore, the agency should distribute any amendments to the RFP and other communications only to such vendors. An exception would be if the amendment constitutes a material change that could have affected the ability of potential vendors to bid. In that event, the agency should provide the amendment to all potential vendors including those who did not submit a notice of intent to bid by the required deadline.

**d. Date for No Bid Reply Form** – Agencies may choose to include in the RFP a form that vendors will submit indicating their intention not to bid. The form should include space for vendors to explain why a bid is not being submitted. The form should indicate that a no bid response will not impact participation in future solicitations. A date for its return should be specified. Return of this form is usually requested no later than the proposal due date and time. The no bid reply form helps the agency demonstrate that proposals were shared with others besides those responding, and to understand why a company did not bid.

**e. Date for Submission of Proposals** – The earliest possible due date for submission of proposals is fifteen (15) business days after the advertisement appears in the New York State Contract Reporter. However, when selecting the submission date, consideration should be given to time frames necessary for intervening activities, such as the pre-bid conference and the question and answer period. Other factors, such as the complexity of the RFP, the time needed for vendors to prepare an effective response and obtain necessary internal approvals, and holidays that may impact availability of the agency and offerers, should also be taken into account.

## **10. Anticipated Start Date and Term of Contract**

The term of the contract and any renewal/extension provisions must be specified in the RFP and the resultant contract.

## **11. Method of Award**

This section should identify the method of award as best value. State Finance Law § 163(4)(d) mandates that a contract for services (including technology) be awarded on the basis of best value which takes into consideration cost as well as technical or non-cost factors. For certain service and technology procurements, however, best value can be equated to low price. An RFP should be used for the procurement of services even where best value is equated to low price.

The RFP should indicate whether the agency anticipates making a single or **multiple award** pursuant to the solicitation. If there will be multiple awards, it should also state whether awards will be made by lot, region, type of service, or some other characteristic.

## **12. Evaluation Criteria**

The RFP must present the criteria that will be used for the evaluation of proposals. At a minimum, the agency must disclose in the RFP the relative weights that will be applied to the cost and technical components of the proposals. An example would be: 30 percent for cost and 70 percent for technical.

An agency may elect to include in the RFP a more detailed breakdown of the evaluation criteria, such as specifying the relative weights for detailed categories (e.g., Experience = 20 percent, Staffing = 15 percent, energy efficiency = 10 percent, and so forth). Additional information about developing and using evaluation criteria can be found in subsequent sections of this chapter.

## **13. Offerer's Minimum Qualifications**

The RFP should state any qualifications that the offerer must meet to be eligible for consideration. Minimum qualifications may address characteristics of the business such as company capacity, staffing, licenses or certifications, experience (company and/or employee), recently completed projects of similar scope/size, and references.

## **14. Mandatory Requirements**

Refer to Chapter III.

### ***15. Reserved Rights***

The RFP must inform potential bidders of the agency's "reserved rights." A list of reserved rights is included in Chapter III, and represents the minimum that should be used. Agencies are encouraged to review the list and add to it as needed.

### ***16. Method for Issuing Clarifications or Modifications to the RFP***

This section should specify how the agency will issue any clarifications or modifications to the RFP that may arise after it is first issued.

## **C. Additional Content Considerations**

### ***Prequalification Criteria***

An agency may establish minimally acceptable qualifications that an offerer must meet in order to be deemed responsive. These may include but are not limited to: adequacy of resources, experience, and past performance. If the agency elects to apply a prequalification screening, it must disclose in the RFP both the prequalification criteria and that offerers not meeting these criteria will be eliminated without further evaluation. Typically, prequalification criteria are scored on a pass/fail basis.

### ***Risk Management / Required Assurances***

An agency may opt to mitigate risk by requiring some form of financial assurance such as a letter of credit, performance bond or insurance coverage.

### ***Cost Adjustments***

If the agency chooses to allow for cost adjustments (whether up or down), the basis must be specified in the RFP. Cost adjustments may be based on standard measures such as the Consumer Price Index (CPI).

### ***References***

If the agency requires a bidder to submit references as part of the response, the agency must, at a minimum, verify the references provided as part of its evaluation process. If the agency opts to score reference checks, the scoring methodology must be disclosed in the RFP.

### ***Insurance***

An agency may include insurance requirements that specify that a bidder must provide insurance on behalf of the State. Insurance requirements, including limits, should be tailored to



the scope of the contract. Additional information on insurance requirements may be found in Chapter VI: Best Practices.

## **D. RFP Distribution and Receipt of Proposals**

### ***Advertisement of the Solicitation***

The requirement to advertise solicitations in the New York State Contract Reporter is discussed in Chapter III.

### ***Distribution of the RFP***

Once the RFP is finalized, it should be distributed to all known potential bidders and any bidder that requests a copy as a result of the advertisement. Potential bidders may be identified through lists maintained by the agency, web searches, previous procurements, and/or Empire State Development's list of M/WBEs. The RFP (or notice of the RFP) can be distributed via postal mail, e-mail, and/or posting to the agency website, among other means.

### ***Receipt of Proposals***

As noted above, the agency must state in the RFP the date and time that proposals are due. As a general rule, late proposals cannot be accepted. However, if permitted by agency policy and if no timely and responsive proposals are received, a late proposal may be accepted. Before accepting a late proposal, agencies should contact OSC. The agency must certify that proposals were received in accordance with the RFP.

## **E. Evaluation of Proposals – Overview**

The objective of the evaluation process is to develop and apply criteria that will ensure that proposals are evaluated objectively, fairly, equally and uniformly and that the agency selects the best value solution among the submitted proposals.

Typically, evaluations are an analysis of the technical proposals, a separate comparative analysis of the cost proposals, and a method for combining the results of the technical and cost proposal evaluations to arrive at the selection of the proposal deemed to be the best value to the State. Thus, there are up to three distinct parts to the evaluation process:

- Administrative review of prequalification criteria (optional);
- Technical evaluation – An examination of the non-cost elements that were not considered during the administrative review, such as the functional specifications (e.g., hardware requirements, scheduling); and

- Cost evaluation – A comparison of the price proposed (and, at the agency's option, other costs of the project) to the prices and costs of other competing proposals.

More detail is provided in subsequent sections of this chapter.

## **F. Evaluation Team**

It is strongly recommended that the agency establish an evaluation team. The agency may also establish various oversight roles to provide policy, guidance, and direction for the evaluation process and team, and to ensure the integrity of the procurement. An individual may be designated a lead role to coordinate all activities within the process.

The number and selection of evaluators should be based on many factors including the complexity of the procurement and the level of knowledge possessed by the potential evaluators available to analyze the proposals. There may be rare instances where a single evaluator must be used for the entire technical evaluation, or a portion of it, such as when available expertise for evaluating the technical considerations is limited.

It is strongly recommended that technical and cost proposals be reviewed by different evaluation sub-teams although it is recognized that in limited situations separate teams may not be feasible. Both approaches are addressed briefly below.

### ***Separate Team Approach***

Under this approach, the technical and cost evaluation teams may conduct their reviews simultaneously.

**Technical Proposal Review Team** – This team is typically comprised of program and technical experts, and may conduct its evaluation under the direction of a technical evaluation manager or a team leader. The team is responsible for all aspects of the evaluation of the technical proposal. This may include review of vendor qualifications, such as the number of past projects performed of a similar size and scope, and proposed personnel resources, such as staff capacity. Depending on the nature of the RFP, the team may also be responsible to perform such activities as benchmark tests, site visits, and reference checks.

**Cost Proposal Review Team** – The cost proposal review team is typically comprised of one individual, but may be a team of people, responsible for evaluating and scoring the cost proposals submitted in response to the RFP. The cost team works under the direction of a procurement director or coordinator.

**NOTE:** While it may be necessary for the cost team to obtain technical information to clarify the association between costs and technical components, the technical evaluators must not be provided with the proposed costs until after their evaluation is complete.

### ***Single Team/Evaluator Approach***

Under this model, one team or one individual evaluator conducts all evaluations. When a single team/evaluator is used, the cost proposals must remain sealed until completion of the technical evaluation.

## **G. Conducting the Administrative Review**

At its discretion, the agency may conduct an administrative review of proposals to:

- Ensure that all required documents and forms are included in the submission. Proposals found to be materially incomplete may be disqualified as provided for in the RFP.
- Determine on a pass/fail basis that certain minimum mandatory qualifications (e.g., minimum experience requirements) set forth in the RFP have been met.

Depending on the number and complexity of proposals expected to be submitted, the agency should designate an individual or team to conduct this review.

## **H. Conducting the Technical Evaluation**

The technical evaluation measures the extent by which a proposal will meet the agency's needs and relies upon the evaluators' expertise in assessing the strengths and weaknesses of each response. The technical evaluation is a critical part of the ultimate goal of determining which proposal presents the best value to the State. The main steps for performing the technical evaluation are discussed below.

### ***Development of the Technical Evaluation Criteria***

The criteria selected for evaluation must reflect the agency's objectives, scope of services, and requirements as set forth in the RFP. Examples of typical technical evaluation criteria include, but are not limited to:

- Work plan and methodology to achieve desired end results;
- Degree to which the proposal satisfies mandatory, optional, desirable and/or alternative green performance standards;
- Experience of the offerer in providing the required services and/or technology;
- Management capability of the offerer;
- Offerer's overall past performance;
- Qualifications and experience of the offerer's proposed staff;
- Conformance with the schedule of work set forth in the RFP; and

- Offerer references.

**NOTE:** Agencies are reminded that the criteria and sub-criteria may, but are not required, to be disclosed in the RFP.

### ***Assignment of Values to Technical Evaluation Criteria***

Once the technical evaluation criteria have been determined, values must be assigned to the criteria and any sub-criteria. Following are three examples of the ways in which values are typically assigned:

**Example 1:** Points are assigned to each technical evaluation criterion. Evaluators review the technical proposals and assign a score up to the maximum points for each technical evaluation criteria category. Illustration:

- Work plan and methodology to achieve desired end results = 20 points
- Satisfaction of green performance standards = 15 points
- Offerer's experience in providing the required services and/or technology = 10 points
- Offerer's management capability = 10 points
- Proposed staffing plan = 10 points
- Conformance with the schedule of work set forth in the RFP = 5 points

**Example 2:** The technical criteria may be further broken down into sub-criteria and a subset of points is assigned to each sub-criterion. Evaluators review the technical proposals and score each sub-criterion. Illustration:

- Proposed Staffing Plan = 10 points
  - Staffing Plan proposes at least ten Programmer I positions = 2 points
  - Staffing Plan proposes at least four Programmer II positions = 2 points
  - Staffing Plan proposes at least three Analyst I positions = 2 points
  - Staffing Plan proposes at least one Analyst II position = 2 points
  - Staffing Plan proposes at least three Trainer positions = 2 points

**Example 3:** The technical criteria may be considered according to a pre-established scale. Evaluators grade the technical proposals and assign points for each criterion within the scale. Illustration:

- Excellent Staffing Plan = 8-10 points
- Good Staffing Plan = 5-7 points
- Fair Staffing Plan = 3-4 points
- Poor Staffing Plan = 0-2 points

In rare instances, due to the nature of the procurement, alternative concepts for assigning value to the technical criteria may be permissible. In such instances, it is recommended that the agency consult with the OSC Bureau of Contracts before beginning the procurement.

**NOTE:** The evaluation criteria and the values assigned must be consistent with any information provided in the RFP.

### ***The Technical Evaluation Instrument***

The nature, scope, and complexity of evaluation methods vary widely. However, in accordance with State Finance Law §§163(9)(a) and (b), the evaluation criteria and methodology for evaluating proposals must be completed and secured prior to the initial receipt of proposals. This principle applies to both technical and cost components.

The evaluation instrument is the tool that will be used by the evaluators to apply the evaluation criteria to the proposals and includes the breakdown of the relative weights (for technical versus cost) into more detailed categories (for example, experience = 20%, staffing = 15%, and so forth). This tool consists of a series of documents used during the evaluation process. This series may include, but is not limited to:

- Evaluator instructions;
- Evaluator confidentiality/conflict of interest statement;
- Rating sheet which defines allocation of points;
- Evaluator forms and summary evaluation sheet;
- Scripted interview questions;
- Scripted reference checks; and
- Oral/product presentation/agenda.

### ***Evaluating Technical Proposals***

As a preliminary step, proposals should be reviewed for compliance with the minimum mandatory technical requirements set forth in the RFP. After the preliminary review, the technical proposal evaluation must be conducted as documented in the RFP and the evaluation instrument. The evaluation team members apply scores to the pre-determined criteria and sub-criteria if applicable. Scoring is based on information provided in the submitted proposal. However, additional factors, as established in the RFP and/or the evaluation instrument, may be considered. Examples include:

- Product or service demonstrations and presentations;
- Reference checks (staff and/or company performance);
- Vendor site inspections;
- Interviews of key proposed managers and technical experts;

- Written proposal clarifications; and
- Rating services (such as Moody's or Dun & Bradstreet)

The above factors may be used for non-scored validation purposes, as cumulative information to be considered together with submitted information, or as separately scored criteria. For example:

- A reference check might be used to verify submitted information (e.g., the proposer has in fact successfully completed three jobs of similar size/scope). A reference check might also be used as a separately scored criterion (e.g., the average satisfaction rating from three references is 7 on a scale of 0 – 10).
- Presentations and interviews might be used as cumulative information along with submitted documentation for scoring a criterion (e.g., experience, work plan). A presentation might also be used as a separately scored criterion.

The agency has the authority to waive mandatory requirements that are not material provided that:

- The RFP discloses to the offerers the agency's reserved right;
- The mandatory requirements are not met by all offerers;
- The waiver does not disadvantage the State;
- The waiver does not benefit the proposed contractor; and
- The waiver does not prejudice any non-winning bidder or potential bidder.

Following completion of the initial technical proposal review, evaluation scores are adjusted and finalized, as provided for in the evaluation instrument.

Regardless of the scoring methodology utilized, evaluators must document the basis for the rating using narrative to explain the proposal's strengths and weaknesses, thereby justifying the score. For example:

"The offerer's proposed Project Director was given the maximum number of points because this individual has successfully managed a project of similar complexity and he/she will be critically important to the success of our project."

## **I. Conducting the Cost Evaluation**

Methods for calculating costs vary depending on a mix of factors concerning the nature and extent of the services, the costs associated with utilizing the services, and the impact of the services on agency programs and operations (State Finance Law §§160(5) and (6)).

The two most common methods for comparing the cost proposals are:

### ***Conversion of Price to a Weighted Point Score***

Points = (Lowest bid divided by the bid being evaluated) x cost points

### ***Comparison of Life Cycle Costs***

Procurements that entail the expenditure of funds for both the fees associated with the services to be procured (i.e., price) and costs associated with the introduction of the services into the environment (i.e., indirect costs) could be evaluated by analyzing total **life cycle costs**, defined as the sum of the fees and indirect costs.

An example of life cycle costs for a computer system conversion would be the offer price of the new system combined with other expenses, such as, but not limited to, upgrades to existing infrastructure, additional staff requirements, if necessary, and the cost of end-of-life management.

Once the total life cycle costs for competing proposals have been determined, the life cycle costs associated with each proposal must be converted to a weighted point score using the formula above.

**NOTE:** If an agency wishes to use a cost evaluation method other than those described above, such as “banding” or “competitive cost range,” it should contact OSC for further discussion before proceeding.

## **J. Determining the Final Score**

The agency should weigh the technical and cost evaluation results as two components, which together total 100 percent of the evaluation. For example, the technical evaluation could be weighted at 70 percent and the cost evaluation weighted at 30 percent. After the technical evaluation has yielded a technical score and the cost evaluation has yielded a cost score, the scores are weighted and combined to produce a final score for the proposal.

## **K. Agency-Recommended Award and Notification**

### ***Agency-Recommended Award***

The agency's selection of the vendor must be in accordance with evaluation criteria developed prior to the initial receipt of proposals. The agency may reject all proposals or – if provided for in the RFP – may reject separate parts of the scope of services. (State Finance Law §163(9)(d)).

The agency may award a contract to an offerer if only one proposal was submitted, provided that the agency documents that the RFP did not restrict competition and that the cost is reasonable.

### ***Notification of Award***

Upon completion of the evaluation and vendor selection, the agency must send notification of award to all successful and non-successful offerers. Notification to the selected offerer(s) should indicate that the award is subject to approval by control agencies before the contract is finalized. The agency must provide non-successful bidders the opportunity for a debriefing, if requested.

### **L. Contract Negotiation**

In cases where the RFP has specifically provided for negotiation of terms and conditions, the agency may engage in negotiation with the successful bidder prior to settling on the contract terms. Revisions must not substantially alter the requirements or specifications set out in the RFP. To assess whether a potential revision constitutes a substantial change, the question should be asked: "Would other bidders or non-bidders have responded differently if the term or condition to be revised as a result of negotiation had been included in the RFP?" If the answer is "yes" or "possibly," then the provision may not be revised.

### **M. Documentation Requirements for Control Agency Review and Approval**

Contracts resulting from an RFP are subject to review and approval first by the Office of the Attorney General, and second by the Office of the State Comptroller, in accordance with State Finance Law §112 (except centralized contracts awarded by OGS). Depending on the nature of the procurement, approval from other control agencies may be required.

Generally, when OAG approval is required, only the contract itself needs to be submitted for review. However, OAG may, for any particular contract, request the entire procurement record. The agency may also ask OAG if the entire procurement record can be submitted for forwarding on to OSC upon OAG's approval of the contract.

The OSC Bureau of Contracts conducts the final review and provides its determination. OSC's review includes but is not limited to ensuring that:

- The procurement was conducted in accordance with the process established by the agency;
- The procurement and resulting contract complies with all relevant laws; and
- The contract terms and conditions are in the best interests of the State.

(State Finance Law §112 and State Finance Law §163(9)(g)).

**NOTE:** As part of the OSC contract approval process, agencies must identify the intended encumbrance amount (purchase order amount) on the STS / AC 340-S Form. Agencies are not required to submit paper copies of contract related purchase orders to OSC. Agencies are encouraged to review the following sources for information related to encumbering a contract in



SFS: the OSC Guide to Financial Operations, Chapter 11: Procurement and Contract Management, available at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp>

and OSC Contract Advisories, available at:

[http://www.osc.state.ny.us/agencies/contract\\_advisories/index.htm](http://www.osc.state.ny.us/agencies/contract_advisories/index.htm).

## VI. BEST PRACTICES

This chapter highlights practices that experience has shown will make a procurement easier to manage, help ensure that the appropriate goods/services are obtained, increase the ability to receive control agency approval, and minimize the likelihood of a bid protest.

### A. Knowing the Business Needs

Know what the “end result” needs to be. Before starting the procurement process, have a good understanding of what the agency needs, what a product will be used for, whether there will be a need for modifications to existing equipment or facilities, and what is available in the marketplace. Identification of the business needs may require meeting with end-users to bring added clarity to the scope of the transaction and the various components of the transaction, such as the intended product usage, what services are needed, or site conditions.

### B. Proper Planning

Proper planning is the single most important factor in conducting a successful procurement. Proper planning includes allowing adequate time for advertisement, writing a clear and concise solicitation, allowing sufficient time for potential bidders to ask questions and prepare bids/proposals (taking into account the complexity of the solicitation), reviewing the bids/proposals, and conducting internal/external reviews of the final contract.

### C. Thorough Information Gathering

Consider using a Request for Information (RFI), as discussed in Chapter IV, to gather information about the types of goods/services that are available. Certain types of products evolve rapidly; therefore, sending an RFI to vendors may provide insight on newer, more efficient products or services that better address the needs of the agency. It is also strongly recommended that an RFI be advertised in the New York State Contract Reporter to provide additional vendors with an opportunity to respond to the RFI.

### D. Green Purchasing

Assess the environmental attributes of goods and services to protect human health and the environment. For many products, green specifications that include guidance about such assessments and appropriate environmental goals can be found on OGS’s website (<http://www.ogs.ny.gov/EO/4/ApprovedSpecs.asp>). These specifications detail performance requirements such as ingredient disclosure, the efficient use of resources (including water, energy, and virgin materials) durability, recyclability and reductions in packaging. Products and services with **green attributes** are integrated into State contracts and are highlighted on the OGS website in various locations, including the ones referenced below

Energy Efficient Products/Renewable Power Sources/Alternative Fueled Vehicle Contracts: <http://www.ogs.ny.gov/purchase/spg/pdfdocs/EE-Products.pdf>

Green Cleaning Products, Programs, Equipment and Supply Contracts: <http://www.ogs.ny.gov/purchase/spg/pdfdocs/3900021931ra.pdf>

Recycled Content and Energy Efficient Contracts: <http://www.ogs.ny.gov/purchase/spg/pdfdocs/EnergyRecycled.pdf>

100% Recycled Content Copy Paper Contracts: <http://www.ogs.ny.gov/purchase/spg/pdfdocs/5021121239a.pdf>

In situations where applicable green specifications have not yet been issued, agencies should seek to procure product or services that increase positive environmental impacts, support the health and well-being of users and manufacturers of the products, and provide the needed product or service at a reasonable price. Additional detail on the requirements related to environmental attributes are described in Exhibit C: Green Purchasing.

## **E. Conducting Pre-Bid Conferences**

Pre-bid conferences can be very helpful to both agency staff and prospective bidders, particularly with respect to complex procurements. A pre-bid conference provides the prospective bidders and agency staff an opportunity to ask questions and obtain a better understanding of what is needed and what might be offered. Participation by potential bidders in a pre-bid conference can be deemed mandatory or optional. The conference can be conducted via a conference call, in-person, or as a combination of both. If a pre-bid conference is held, the agency must document who attended, the questions raised, the location, time, and other salient information. Questions and answers must be provided to all potential bidders after the conference is conducted. Questions should remain “vendor neutral” – that is, the identity of the vendor asking the question should not be revealed in the presentation of either the question or the answer.

## **F. Providing for Site Visits**

Site visits can be very beneficial for both potential bidders and agency staff. These can be deemed mandatory or optional. For example, a site visit may be useful in a procurement for janitorial services so potential bidders can know exactly what the equipment and/or facility looks like, whether there is access for vehicles, what the security procedures are, and other factors. Consideration may also be given to visiting the bidders’ sites to ensure that they have the necessary equipment and/or facilities to meet the contract requirements.

## **G. Discussion with the Office of the State Comptroller**

Prior to issuing the IFB/RFP, consideration should be given to discussing complicated and/or sensitive solicitations or unique evaluation methodologies with the OSC Bureau of Contracts to ensure that the procurement is undertaken in an appropriate manner.

## **H. Use of F.O.B. Destination**

When buying goods, the recommended practice is to require that quotes or bids be based on “**Free on Board (F.O.B.) Destination**,” meaning that there is no additional delivery charge and the title (ownership) does not transfer until the product reaches its destination. This requirement ensures that bids can be evaluated in an equal manner. Further, it ensures that the agency does not assume risk of loss until the product is delivered to the agency and any problems during transport are the vendor’s responsibility. By contrast, title to items purchased **Free on Board (F.O.B.) Origin** (a/k/a “F.O.B. Shipping Point”) transfers upon shipping and the agency is therefore responsible for any risk of loss or problems during transport.

## **I. Review of Terms and Conditions Proposed by Vendors**

Carefully read all terms and conditions that are proposed by the vendor to ensure that nothing conflicts with Appendix A. In addition, any terms proposed by the vendor such as limits of liability, indemnification, and warranties, or those that may be detrimental to the State, should be discussed with agency counsel.

**NOTE:** Material terms of a contract awarded pursuant to a competitive bid cannot be negotiated.

**NOTE:** When issuing a purchase order on an OGS centralized contract, agencies and vendors are not authorized to change the terms and conditions of that contract, unless such changes are more favorable to the State.

## **J. Negotiating Effectively**

The following are suggestions for negotiating contracts that are most commonly awarded via an RFP, or under a single or sole source theory:

- Prior to negotiating, the agency should identify all known issues and outline its position and acceptable alternatives.
- To the maximum extent possible, negotiations should be conducted at the agency’s office. Always allow sufficient time to discuss the issues fully.
- Look for a “win-win.” Often, it is possible for vendors and procurement staff to agree on terms that are beneficial to both parties. Making any necessary concessions incrementally will aid in working towards a “middle ground” that is satisfactory to all.

- Notes should be kept of all negotiation discussions and all revisions should be tracked in writing to ensure that the contract being signed contains all agreed upon terms and conditions.

**CAUTION:** Material terms of a contract awarded pursuant to a competitive bid cannot be negotiated.

## **K. Involving Upper Management**

Even procurements that are limited in scope or are relatively simple have the potential to become controversial. It is recommended that the final selection of a contractor be reviewed by a manager who both has a broad perspective of the agency's operations and knows the strategic considerations related to the procurement. Management may: 1) concur with the selection; 2) request a re-evaluation in accordance with the pre-established evaluation methodology; or 3) determine that all offers should be rejected and a new procurement conducted. Management may not, however, direct an award to a specific vendor who is not the low bidder or who has not offered the best value in accordance with the pre-established evaluation methodology.

## **L. Documenting**

Documentation of all phases of the procurement, including communications with bidders or agency program staff, should be included in the procurement record. Note that contacts with bidders must also be documented in accordance with the requirements of the Procurement Lobbying Law.

## **M. Adapting Standard Formats to the Specific Procurement**

In general, previously issued solicitations and/or solicitation templates can be very helpful when creating a solicitation document for a new procurement. However, it is important to recognize that such models must often be adapted to suit the particular circumstances. Be aware that changes in law may have occurred since the example was created, which in turn may alter the provisions that must be included. Some amount of tailoring is typically necessary to construct an appropriate and effective solicitation package.

Sample outlines for developing an IFB and an RFP are included in these Guidelines in Chapter VIII. Exhibits. Consistent with the point made above, depending on the scope and nature of the specific procurement project, not all of the sections and clauses in these samples may apply. Similarly, the scope and nature of the procurement may require sections and clauses that are not listed in the respective samples.

For additional guidance in adapting a template or a previously used format to suit the procurement situation at hand, it is advisable to refer to the agency's policy and procedures and consult with experienced procurement personnel.

## **N. Insurance Requirements**

Solicitations and contracts should require bidders/contractors to obtain insurance on behalf of the State of New York as a condition of doing business with the State. This insurance is in addition to the requirements for the provision of Workers' Compensation and Disability insurance discussed herein. In an effort to standardize insurance requirements among State entities, the New York **State Procurement Council** and the New York State Council of Contracting Agencies adopted guidelines for insurance requirements which provide model insurance specifications and suggestions on how to monitor compliance with those requirements. Those guidelines can be found at:

<http://www.ogs.ny.gov/BU/DC/Docs/PDF/CCAInsProcManual.pdf>

## VII. GLOSSARY

**AC 340-S Form** – The contract encumbrance request form that an agency prepares to record a new contract or an amendment onto the OSC Statewide Financial System and encumber funds from the current year to ensure that payments can be made.

**Agency (State Agency)** – Includes all State departments, boards, commissions, offices or institutions. This term excludes, however, for the purposes of subdivision five of §355 of the Education Law, the State University of New York and excludes, for the purposes of §6218 (a) of the Education Law, the City University of New York. Furthermore, the term does not include the Legislature or the Judiciary.

**Agency Specific Contract** – A contract where the specifications for the product and/or service are described and defined by an agency to meet its needs.

**Appendix A** – The document containing standard clauses required in all New York State contracts.

**Attorney General (OAG)** – The Office of the Attorney General of the State of New York. The duties of this office are set forth in Executive Law § 63. With regard to procurement, the OAG reviews contract terms to ensure that the interests of New York State are protected. This office also reviews complaints of improper conduct and may conduct examinations into the performance of a contract.

**Authorized Users** – Entities who may purchase products or services from centralized contracts, including but not limited to State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations (State Finance Law § 163 (1) (k)).

**Backdrop Contract** – A contract resulting from a process in which vendors respond to specifications in order to prequalify for a later solicitation. Such later solicitation will usually be conducted through a competitive mini-bid process. Prices offered under backdrop contracts are generally established as "maximum not to exceed prices." Where a mini-bid is not required, State agencies are encouraged to negotiate lower prices than the "maximum not to exceed prices" contained in the backdrop contract. The backdrop contracts may be awarded by the Office of General Services for use by all State agencies or by an individual agency for its own use.

**Best Value** – The basis for awarding all service and technology contracts to the offerer that optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall be, wherever possible, quantifiable (State Finance Law §163 (1) (j)).

**Bid** – An offer or proposal submitted by a bidder to provide a product or service at a stated price for the stated contract term.

**Bid Opening** – The formal process in which sealed bids are opened, usually in the presence of one or more witnesses, at the time and place specified in the solicitation.

**Bid Protest (also known as a Bid Dispute)** – A formal written complaint made against the methods employed or decisions made by a State agency in the process leading to the award of a contract.

**Bidder (also referred to as an offerer or proposer)** – Any individual, business, vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a bid in response to a bid solicitation.

**Bidder List** – A list of names and addresses of bidders from whom bids, proposals, or quotations are solicited. This may also apply to a list of potential bidders that is maintained by an agency.

**Centralized Contract** – Any contract let by the OGS New York State Procurement for use by authorized users, including but not limited to State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations, for the purchase of commodities or services. Centralized contracts are established or approved by the Commissioner of General Services as meeting the State's requirements.

**Commodities** – Material goods, supplies, products, construction items or other standard articles of commerce (other than technology) that are the subject of any purchase or exchange (State Finance Law §160 (3)).

**Contact** – Any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement (State Finance Law §§139-j (1) and 139-k (1) (c)).

**Contract** – A written agreement that formalizes the obligations of all parties involved.

**Contractor** – Any individual, business, vendor or other legal entity awarded a contract with a State agency to furnish commodities or services for an agreed-upon price.

**Cost** – The total dollar expenditure of a procurement. Article 11 of the State Finance Law requires costs of the given goods or services to be quantifiable. This must take into account the price; the administrative, training, storage, maintenance or other associated overhead expenses; the value of warranties, delivery schedules, financing costs and foregone opportunity costs; and the life span and associated life cycle costs of the given good or service being purchased (State Finance Law §160 (5)).

**Debriefing** – The practice whereby, upon the request of a bidder, the State agency advises such bidder of the reasons why its bid was not selected for an award. It is viewed as a learning process for the bidder to be better prepared to participate in future procurements.

**Discretionary Purchase** – Purchases below an established dollar level that are authorized by law to be made without a formal competitive process.

**Draft RFP** – An advance copy of the RFP that is sent to known potential bidders for remarks or comments prior to the RFP being issued by the agency.



**Emergency** – An urgent and unexpected situation where health and public safety or the conservation of public resources are at risk. Such situations may create a need for an emergency contract (State Finance Law §163 (1) (b)). An agency's failure to properly plan in advance, which results in a situation where normal practices cannot be followed, does not constitute an emergency.

**End of Life** - A term used to describe the point in a product's lifecycle when it has reached the end of its useful life in its current form. Product disposition costs, including the costs of recycling or disposal, are important to factor into purchasing decisions since certain materials can be expensive to recycle or dispose of properly.

**Environmental Attributes** – Also called Green Attributes. The characteristics of a product or service that determine the type and extent of its impacts on the environment. Examples include energy or water use and waste discharge.

**F.O.B. Destination** – As defined in U.C.C. §2-319, “free on board (F.O.B.) destination” means there will be no additional charge for delivery to the agency's specified location, and that the title is conveyed from the vendor to the agency at the destination of the shipment. The vendor owns the goods during transit and will file any damage claims.

**F.O.B. Origin** – As defined in U.C.C. §2-319, “free on board (F.O.B.) origin” means that the receiving agency pays the delivery charges and the title is conveyed from the vendor to the agency at the origin of the shipment. Because the agency owns the goods during transit, it will file any damage claims. This may also be referred to as “F.O.B. Shipping Point.”

**Form, Function and Utility** – The minimum essential requirements that will meet the agency's needs. These requirements are defined by the agency. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.

**Green Attributes** – See Environmental Attributes.

**Green Purchasing** – Also called Environmentally Preferable Purchasing or EPP. The purchase of products and services that improve environmental quality and human health by increasing positive impacts or reducing negative impacts, compared to traditional products. See Exhibit C: Green Purchasing in these Guidelines for assessing whether products and services are environmentally preferable.

**Greenwashing** – Marketing that misleads the buyer regarding the environmental practices of a company or the environmental benefits of a product or service, typically through vague and deceptive language without specific data or substantiation. For specifications that include standards and acceptable certification programs, see OGS Green Specifications in Exhibit C: Green Purchasing.

**Invitation for Bid (IFB)** – A competitive solicitation seeking bids for a specified commodity, pursuant to which award is made to the responsive and responsible bidder(s) submitting the lowest price.

**Life Cycle Cost** – The overall costs associated with the full life of a product, service, or system. Life Cycle Costs include all initial costs, such as purchase price; recurring costs, operation and maintenance; and final disposition costs at the end of life (i.e. recycling, salvage, or disposal).

**Liquidated Damages** – A monetary amount agreed to in the contract to provide for reasonable compensation to the State for the contractor's failure to meet its contractual obligations.

**Mini-Bid** – An abbreviated bid process in which an authorized user develops a project definition outlining its specific requirements and solicits bids from existing prequalified backdrop contractors. When a mini-bid is required, the exact process is clearly outlined in the backdrop contract. The mini-bid award is made based on best value or lowest price.

**Minority- or Women-Owned Business Enterprise (M/WBE)** – A business certified under Article 15-A of the Executive Law that is independently owned, operated and authorized to do business in New York State; and is owned and controlled by at least fifty-one percent women or minority group members who are citizens of the U.S. or permanent resident aliens. Such ownership must be real, substantial and continuing; and the minorities or women must have and exercise the authority to control independently the day-to-day business decisions of the enterprise.

**Multiple Award** – A contract that is awarded to more than one responsive and responsible bidder who meets the requirements of a bid specification in order to satisfy multiple factors and needs as set forth in the bid document. These factors may include: complexity of terms; various manufacturers; differences in performance required to accomplish or produce required end results; production and distribution facilities; price; compliance with delivery requirements; and geographic location (State Finance Law §163 (10) (c) and 9 NYCRR 250.10 (c)).

**Office of General Services (OGS)** – The agency tasked with creating statewide centralized contracts for use by authorized users, as per State Finance Law §163.

**Office of the State Comptroller (OSC)** – The agency tasked with reviewing and approving contractual agreements and payments, as per §112 of State Finance Law, and granting exemptions from advertising requirements, as per State Economic Development Law §144.

**Piggyback Contract** – A newly created contract based upon a contract awarded by the United States government, or any state or any political subdivision thereof, in accordance with the requirements of the New York State Finance Law.

**Preferred Source** – In order to advance special social and economic goals, State Finance Law §162 requires that a governmental entity purchase select commodities and services from designated organizations when the commodities or services meet the "form, function and utility" requirements of the governmental entity. Under State Finance Law §163, purchases of commodities and services from preferred sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State preferred sources include: Corcraft; New York State Preferred Source Program for People Who are Blind (NYSPSP); New York State Industries for the Disabled, Inc.; and the New York State Office of Mental Health. These requirements apply to a State agency, political subdivision and public benefit corporation (including most public authorities).

**Prevailing Wage** – The pay rate that is required to be paid to all private workers (non-government) on all New York State public works projects. Generally, prevailing wage rates apply to construction, repair or renovation of government facilities (state or local) or building service contracts. The New York State Department of Labor issues wage schedules on a county-by-county basis that contain minimum rates of pay for various job classifications (State Labor Law Articles 8 and 9).

**Price** – Unless otherwise specified, the amount of money set as consideration for the sale of a commodity or service. When applicable and specified in the solicitation, it may include, but is not limited to, delivery charges, installation charges, and other costs (State Finance Law §160(6)).

**Procurement** – The acquisition of goods and/or services.

**Procurement Record** – Documentation of the decisions made and the approach taken in the procurement process (State Finance Law §163 (f)).

**Project Sunlight** – An online database where State entities must report certain meetings with vendors. Information on the specific types of meetings and other reporting requirements is available at <http://projectsunlight.ny.gov>.

**Proposal** - A bid, quotation, offer or response to a governmental entity's solicitation relating to a procurement. In general, a proposal is submitted for an RFP and a bid is submitted for an IFB, but the terms are often used interchangeably.

**Recyclable** - Any commodity that can be collected, separated, or otherwise recovered from the solid waste stream for reuse, remanufacture or assembly of another commodity.

**Recycled Commodity** – A product that is manufactured from secondary materials as defined in the State Economic Development Law §261 (1) and State Finance Law §165 (3) (a). The law creates a preference for purchases of recycled commodities when they meet the form, function, and utility of the authorized user after the cost of the commodity has been considered. The State Environmental Conservation Law (§ 368.4(a)) defines the specified minimum percentage by weight of post-consumer material. The unqualified use of the word "recycled" as an independent term represents that the package or product contains 100 percent recycled material content.

**Recycled Content** – Materials that have been recovered or otherwise diverted from disposal, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). Post-consumer content may also be referred to as "recovered" material.

**Remanufactured Commodity** – A commodity that has been restored to its original performance standards and function and is thereby diverted from the solid waste stream, retaining, to the extent practicable, components that have been through at least one life cycle and replacing consumable or normal wear components. (State Finance Law §165 (3) (a)). The law creates a preference for purchases of remanufactured commodities when they meet the form, function, and utility of the authorized user after the cost of the commodity has been considered.

**Request for Comment (RFC)** – An advance copy of sections of an RFP that is sent to all potential bidders for remarks or comments to solicit input about the solicitation's structure and language to assess its impact on potential bidders prior to the RFP being issued by the agency.

**Request for Information (RFI)** – A research and information gathering document used when an agency is seeking to learn about the options available to address a particular need and wants to obtain information to help create viable requirements for a potential solicitation.

**Request for Proposals (RFP)** – A competitive solicitation seeking proposals for a specified service or technology, pursuant to which an award is made to the responsive and responsible proposer(s) offering the best value.

**Responsible** – The status afforded an individual or company based on factors such as: financial ability and organizational capacity; legal authority to conduct business in New York State; integrity as it relates to business related conduct; and past performance. (These four factors are sometimes summarized by the acronym “FLIP.”)

**Responsive** – Meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services by a State agency (State Finance Law §163 (d)).

**Restricted Period** – The period of time commencing with the earliest written notice, advertisement or release of an RFP, IFB or other solicitation from offerers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, OSC (State Finance Law §§139-j (1) (f) and 139-k (1) (f)). During this period, State Finance Law §139-k requires a governmental entity to collect and record certain information pertaining to those individuals who contact it in an attempt to influence a procurement. The law restricts the time frame and manner in which the business community may contact a governmental entity with regard to attempting to influence a procurement. Under the law, the business community is obligated to make only permissible contacts during the restricted period and may only contact those who are designated by the governmental entity regarding a procurement.

**Revenue Contract** – A binding agreement between a governmental entity and another party that defines the terms under which revenue will be received by the governmental entity. Individuals should familiarize themselves with their agency’s policies and procedures pertaining to revenue contracts.

**Secondary material** – May also be referred to as recovered material. Any combination of pre-consumer material and post-consumer material but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (ECL § 368.2(o)).

**Service** – The performance of a task or tasks that may include a material good or a quantity of goods, and which is the subject of a purchase or other exchange. Procurements of technology are conducted in the same manner as are procurements of services.

**Single Source** – A procurement in which, although two or more offerers can supply the required commodities or services, the Commissioner or State agency, upon written findings setting forth the material and substantial reasons therefore, may award the contract to one offerer over the other. The Commissioner or State agency shall document in the procurement record the circumstances leading to the selection of the vendor, including the alternatives considered, the rationale for selecting the specific vendor, and the basis upon which it determined the cost was reasonable (State Finance Law §163 (h)).

**Single Transaction Summary (aka AC 340-S Form)** – The contract encumbrance request form that an agency prepares to record a new contract or an amendment onto the OSC Statewide Financial System and encumber funds from the current year to ensure that payments can be made.

**Small Business** – A business that is resident in this State, independently owned and operated, not dominant in its field, and employs no more than one hundred people (State Finance Law §160 (8)).

**Sole Source** – A procurement in which only one offerer is capable of supplying the required commodities or services (State Finance Law §163 (g)).

**Specifications (Requirements)** – Description of the physical or functional characteristics or the nature of a commodity, the work to be performed, the service or products to be provided, the necessary qualifications of the offerer, the capacity and capability of the offerer to successfully carry out the proposed contract, the process for achieving specific results and/or anticipated outcomes, or any other requirement necessary to perform the work. Specifications may include a description of any obligatory testing, inspection, or preparation for delivery and use. They may also include federally required provisions and conditions where the eligibility for federal funds is conditioned upon the inclusion of such federally required provisions and conditions. Specifications should be designed to enhance competition, ensuring that the commodities or services of any offerer are not given preference, except where required by the State Finance Law (State Finance Law §163 (1) (e)).

**State Procurement Council** – The policy-making body established under State Finance Law §161 that is responsible for the study, analysis and development of recommendations to improve State procurement policy and practices, and, for development and issuance of guidelines governing State agency procurement.

**Technology** – A good, either new or used, or service, or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity (State Finance Law §160 (10)). Procurements of technology are conducted in the same manner as are procurements of services.

**Vendor** – A supplier/seller of commodities or services.

## **VIII. EXHIBITS**

### **A. SAMPLE OUTLINE FOR AN “INVITATION FOR BIDS”**

The following provides a detailed example of sections and clauses that can be considered for inclusion in an Invitation for Bids (IFB). The scope and nature of the IFB may require sections or clauses that are not listed here. For additional information, refer to the agency's policy and procedures.

#### **1. OVERVIEW/COVER LETTER**

- 1.1 Designated Contact
- 1.2 Minimum Qualifications
- 1.3 Key Events/Timeline
- 1.4 IFB Questions and Clarifications
- 1.5 Instructions for Bid Submission

#### **2. ADMINISTRATIVE INFORMATION**

- 2.1 Issuing Office
- 2.2 Method of Award
- 2.3 Term of Contract
- 2.4 Price (Including Price Adjustment Provisions)
- 2.5 Method of Payment
- 2.6 Electronic Payment
- 2.7 Reserved Rights
- 2.8 Dispute Resolution
- 2.9 Prime Contractor Responsibilities
- 2.10 Glossary of Terms
- 2.11 Rules of Construction
- 2.12 Debriefing Information

#### **3. SPECIFICATIONS/SCOPE OF WORK**

- 3.1 Operations Standards
- 3.2 Scope
- 3.3 Site Visit, as required
- 3.4 Resources and Specific Requirements
  - 3.4.1 What the Contractor Shall Provide
- 3.5 Contract Delivery/Contract Period
- 3.6 Contract Representative
- 3.7 Reporting Requirements
- 3.8 Performance Guarantees (i.e. Progress Payments, Letters of Credit)

#### **4. CONTRACT CLAUSES AND REQUIREMENTS**

- 4.1 Order of Precedence
- 4.2 Procurement Lobbying Requirement
- 4.3 Contractor Insurance Requirements
- 4.4 Tax Law Section 5-A Clause

- 4.5 Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-Owned Business Enterprises
- 4.6 Freedom of Information Law/Trade Secrets
- 4.7 General Requirements
- 4.8 New York State Vendor Responsibility Questionnaire
- 4.9 Ethics Compliance
- 4.10 Contract Modification Procedure

## **Attachments to an IFB**

Agency practices differ. However, the solicitation should set forth any required documents, such as those listed below, that the bidder should be aware of and should complete and submit as necessary. Reference to on-line versions of a form may also be used in certain circumstances.

- Appendix A: Standard Clauses for New York State Contracts
- NYS Vendor Responsibility Questionnaire
- Taxation and Finance Form ST-220 CA
- Procurement Lobbying Forms
- Cost Proposal Form
- M/WBE / EEO Compliance Documentation Forms
- Sample Contract
- Workers' Compensation and Disability Insurance
- NYS Required Certifications

## **B. SAMPLE OUTLINE FOR A “REQUEST FOR PROPOSALS”**

The following provides an example of sections and clauses that can be considered for inclusion in a Request for Proposal (RFP). Depending on the scope and nature of the specific RFP, not all of these sections or clauses may apply. Further, the scope and nature of the RFP may require clauses that are not listed here. For additional information, refer to the agency's policy and procedures.

### **1. INTRODUCTION**

- 1.1 Overview
- 1.2 Designated Contact
- 1.3 Minimum Qualifications
- 1.4 Key Events/Timeline

### **2. PROPOSAL SUBMISSION**

- 2.1 Intent to Submit a Proposal



- 2.2 RFP Questions and Clarifications
- 2.3 Proposal Format and Content
- 2.4 Instructions for Proposal Submission
- 2.4.1 Packaging of RFP Response

### **3. ADMINISTRATIVE INFORMATION**

- 3.1 Issuing Office
- 3.2 Method of Award
- 3.3 Term of Contract
- 3.4 Price (Including Price Adjustment Provisions)
- 3.5 Method of Payment
- 3.6 Electronic Payment
- 3.7 Reserved Rights
- 3.8 Exceptions to RFP
- 3.9 Waiver of Rights
- 3.10 Dispute Resolution
- 3.11 Inspection of Books
- 3.12 Prime Contractor Responsibilities
- 3.13 Prevailing Wage
- 3.14 Glossary of Terms
- 3.15 Rules of Construction
- 3.16 Debriefing Information

### **4. EVALUATION AND SELECTION PROCESS**

- 4.1 Proposal Evaluation
  - 4.1.1 Technical Evaluation
  - 4.1.2 Cost Evaluation
- 4.2 Notification of Award

### **5. SCOPE OF WORK**

- 5.1 Operations Standards
- 5.2 Scope
- 5.3 Site Visit, as required
- 5.4 Resources and Specific Requirements
  - 5.4.1 What the Contractor shall provide:
- 5.5 Performance Guarantees (i.e. Progress Payments, Letters of Credit)
- 5.6 Contract Representative
- 5.7 Reporting Requirements

### **6. CONTRACT CLAUSES AND REQUIREMENTS**

- 6.1 Order of Precedence
- 6.2 Procurement Lobbying Requirement
- 6.3 Contractor Insurance Requirements
- 6.4 Tax Law Section 5-A Clause
- 6.5 Contractor Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State Certified Minority- and Women-Owned Business Enterprises
- 6.6 Freedom of Information Law/Trade Secrets
- 6.7 General Requirements
- 6.8 Contract Terms
- 6.9 Procurement Rights



- 6.10 Termination
- 6.11 New York State Vendor Responsibility Questionnaire
- 6.12 Ethics Compliance
- 6.13 Contract Modification Procedure

## **Attachments to an RFP**

Agency practices differ. However, the solicitation should set forth any required documents, such as those listed below, and any additional statutory requirements pertaining to the particular service being procured (such as consulting disclosure forms), that the bidder should be aware of and should complete and submit as necessary. Reference to on-line versions of a form may also be used in certain circumstances.

- Appendix A: Standard Clauses for New York State Contracts
- NYS Vendor Responsibility Questionnaire
- Taxation and Finance Form ST-220 CA
- Procurement Lobbying Forms
- Cost Proposal Form
- M/WBE / EEO Compliance Documentation Forms
- Sample Contract
- Workers' Compensation and Disability Insurance
- NYS Required Certifications

## **C. GREEN PURCHASING**

State agencies can simultaneously improve environmental quality, protect public health, and save money and other resources through green purchasing. While green purchasing is a relatively new term, agencies have long been required to consider environmental quality, health and safety when making purchasing decisions. Existing policies require State agencies to:

- Conserve, improve and protect natural resources and the environment;
- Prevent water, air and land pollution;
- Enhance the health, safety and welfare of State residents and their overall economic and social well-being;
- Promote cost effective methods to reduce energy and resource consumption;
- Reduce greenhouse gas emissions;
- Reduce or eliminate the use of hazardous substances and the generation of hazardous substances, pollution and waste at the source; and
- Reduce the generation of solid waste, reusing materials, and recycling materials that cannot be reused.

State agencies should consider environmental attributes and green performance standards as part of their overall assessment of the agency's need for goods or services. In this way, specifications and contracts can be developed efficiently to meet State requirements and goals. Below is a list of the primary State policies that are most relevant to green purchasing at this time. For more information, specific goals and applicability for your agency's needs, contact your agency's designated sustainability coordinator.

#### Executive Orders (EO's) and Initiatives

1. Executive Order (EO) No. 4, *Establishing a State Green Procurement and Agency Sustainability Program*. Contains green purchasing requirements, including the development of new contracts/solicitations containing green specifications, and agency utilization of existing green specifications; the purchase of copy paper and janitorial supplies that contain 100 % post-consumer recycled content and are process chlorine-free; and the implementation of agency sustainability programs, including the reduction and recycling of solid waste. Available at: <http://www.ogs.ny.gov/EO/4/Docs/FinalGreenProcurementEO.pdf>.
2. EO No. 18, *Restricting the Use of Bottled Water at State Facilities and Promoting Executive Agency Sustainability*. Restricts the purchase and use of bottled water where potable tap water is available. Available at: [http://www.governor.ny.gov/archive/paterson/executiveorders/eo\\_18.html](http://www.governor.ny.gov/archive/paterson/executiveorders/eo_18.html).
3. EO No. 24, *Establishing a Goal to Reduce Greenhouse Gas Emissions Eighty Percent by the Year 2050 and Preparing a Climate Action Plan*. Available at: [http://www.governor.ny.gov/archive/paterson/executiveorders/eo\\_24.html](http://www.governor.ny.gov/archive/paterson/executiveorders/eo_24.html).
4. EO No. 39, *Establishing State Policies for the Promotion of Sustainable Local Farms and the Protection of Agriculture Lands*. Directs state agencies to increase the proportion of their total food purchases comprised of locally grown food. Available at: <http://www.governor.ny.gov/archive/paterson/executiveorders/EO39.html>.
5. EO No. 88, *Build Smart NY*. Requires improved energy efficiency in State buildings, sets specific targets and implementation measures for all executive entities. Available at: <http://www.governor.ny.gov/executiveorder/88>. For additional information, go to: [www.buildsmart.ny.gov](http://www.buildsmart.ny.gov).
6. EO No. 134, *Directing State Agencies To Use Environmentally Preferred Cleaning Products*. This EO has not been continued; however, the continuation of agency green cleaning programs are part of compliance with EO 4 and OGS considers the text of EO 134 to be instructive. Available at: <http://www.ogs.state.ny.us/purchase/spg/pdfdocs/EO134.pdf>. For additional information, go to: <http://www.ogs.state.ny.us/purchase/environmentpurchasing.asp>.
7. Executive Order No. 142, *Directing State Agencies and Authorities to Diversify Transportation Fuel and Heating Oil Supplies Through the Use of Bio-Fuels in State Vehicles and Buildings*. Encourages the purchase of alternative fuels. Section II of this EO was rescinded. Available at: <http://www.nyserda.ny.gov/-/media/Files/Publications/PPSER/NYSERDA/EO142/EO-142-energy-efficiency-program.pdf>.

#### New York State Laws and Regulations

1. State Solid Waste Management Policy, Environmental Conservation Law (ECL) Article 27 Section 27-0106, prioritizes reduction of waste generation and reuse and recycling of materials before refuse disposal. This policy requires State government to promote waste reduction and the expansion of markets for recovered materials. Guidance from the Department of Environmental Conservation on The State Solid Waste Management Policy is available at: <http://www.dec.ny.gov/regulations/8749.html>. The text of ECL § 27-0106 is available at: [http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$ENV27-0106\\$\\$@TXENV027-0106+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=46833732+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$ENV27-0106$$@TXENV027-0106+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=46833732+&TARGET=VIEW).
2. State Finance Law, Article XI, State Purchasing. Available at: <http://www.ogs.ny.gov/purchase/snt/sflxi.asp>. This article of the law:
  - Requires OGS and State agencies to purchase recycled, remanufactured or **recyclable** commodities;
  - Requires OGS and State agencies to reduce waste generation and maximize the recovery and reuse of **secondary materials**, in particular paper commodities;
  - Restricts the use of tropical hardwood; and
  - Promotes the reuse of surplus material. Surplus computers may be managed through NYS Education Department and other materials are to be managed through OGS. See the OGS "Guide for Recycling Electronics", available at: <http://www.ogs.state.ny.us/purchase/spg/pdfdocs/RecycleElectronicGuide.pdf>.
3. Green Cleaning Law Chapter 584 of the Laws of 2005 requires elementary and secondary schools to procure and use environmentally sensitive cleaning and maintenance products. See EO 4 and EO 134 requiring State agencies to reduce toxics and use green cleaning products.
4. Public Buildings Law Article 4-C, State Green Building Construction Act or Agency Green Building Construction Requirements. The construction of new buildings and the substantial renovation of existing buildings shall comply with such green construction requirements and procedures.
5. Recycling Emblems, ECL Chapter IV Subpart B, Part 368 sets standards for the use of recycling emblems. Vendors and buyers should be aware that the use of the word "recycled" without any qualifiers represents that the package or product contains 100 percent recycled material content. The text of Part 368 is available at: <http://www.dec.ny.gov/regs/4392.html>.

#### Federal Environmental Marketing Guidance

1. Federal Trade Commission, "Guides for the Use of Environmental Marketing Claims", 16 CFR Part 260. Available at: <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>

## Investment Report

Funds are permitted to be deposited in interest-bearing and non-interest-bearing accounts at a practicable number of federally insured banks. To the greatest extent possible, funds in such banks will be collateralized or federally insured.

**At this time no investments are authorized, therefore there is no investment report beyond the guidelines below, and no independent audit of investments.**

### **Investment Guidelines**

In order to invest funds, the Board of Directors must authorize staff to enter into a written contract pursuant to which investments are made, unless the corporation shall by resolution determine that a written contract is not practical or that there is not a regular business practice of written contracts with respect to a specific investment or transaction, in which case the corporation shall adopt procedures covering such investment or transaction. Such contracts and procedures shall include provisions:

- (i) deemed necessary and sufficient to secure in a satisfactory manner the corporation's financial interest in each investment;
- (ii) covering the use, type and amount of collateral or insurance for each investment;
- (iii) establishing a method for valuation of collateral, and procedures for monitoring the valuation of such collateral on a regular basis;
- (iv) for the monitoring, control, deposit and retention of investments and collateral which shall include, in the case of a repurchase agreement, a requirement that the obligations purchased be physically delivered for retention to the corporation or its agent (which shall not be an agent of the party with whom the corporation enters into such repurchase agreement), unless such obligations are issued in book-entry form, in which case the corporation shall take such other action as may be necessary to obtain title to or a perfected security interest in such obligations.

## **Lobbying Policy**

The Hudson River Valley Greenway has no regulatory or rulemaking authority. All Board Members and staff are required to report any lobbying contacts to the Lobbying Officer. If a lobbyist makes contact with anyone required to report such contact, that person shall make a contemporaneous record of such contact containing the day and time of the contact, the identity of the lobbyist and a general summary of the substance of the contact. The lobbying Officer is the Executive Director or his/her/their appointee.

## **Prompt Payment Statement**

Contractors will submit to the Greenway a complete and proper invoice by mail to Hudson River Valley Greenway, 625 Broadway Fl 4, Albany NY 12233-2995 or email. [hrvg@hudosngreenway.ny.gov](mailto:hrvq@hudosngreenway.ny.gov), or as otherwise required by the Greenway. Once the invoice is accepted as to form, the Greenway will pay the invoice within 30 business days. If the Greenway does not pay an approved invoice within 30 business days, the Greenway will pay interest at the rate of 0.00%. The Greenway has no source of funds to pay interest.

The Greenway may extend the payment due date when inspection of work is required, and inspection is not possible or when the state legislature has not appropriated funds.

The Greenway may modify this statement at any time for any reason.

This policy does not apply to payments made to: to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity.