

RESOLUTION
ADOPTING GUIDELINES FOR THE AWARDING OF PERSONAL SERVICE CONTRACTS
PURSUANT TO SECTION 2879
OF THE PUBLIC AUTHORITIES LAW

WHEREAS, Section 2879 of the Public Authorities Law was enacted for the purpose of establishing guidelines governing each public authority and every public benefit corporation whose members are appointed by the Governor in reference to contracts for personal service as set forth in said statute; and

WHEREAS, the Port of Oswego Authority is a public benefit corporation organized and operating pursuant to the provisions of Section 1350 and seq. of the Public Authorities Law of the State of New York, all of whose members are appointed by the Governor of the State of New York, and thus the said Authority is within the requirements of Section 2879 of the Public Authorities Law; and

WHEREAS, said Section 2879 of the Public Authorities Law defines personal service contracts to mean the written agreement to provide a service including but not limited to a legal, accounting, management consulting, investment banking, planning, training, statistical, research, public relations, architectural, engineering, surveying or other personal services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such service as officers or employees of a state agency or public corporation;

NOW, THEREFORE, BE IT RESOLVED, that the Port of Oswego Authority does hereby establish the following guidelines which detail the Authority's operative policy and instructions regarding the use, awarding, monitoring and reporting of personal service contracts.

GUIDELINES FOR PROCUREMENT CONTRACTS

1. TITLE. The following comprehensive guidelines detailing the operative policy and instructions of the Port of Oswego Authority and its subsidiary corporations herein collectively referred to as (the "Authority") regarding the use, awarding, monitoring, and reporting of procurement contracts, shall be known as "Guidelines for Procurement Contracts." They shall be referred to herein as the "Guidelines".

2. DEFINITIONS.

A. Procurement Contract - any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of \$5,000.00 or more.

B. Contract for Goods and Services - any written agreement to provide a good or service (other than those hereinafter defined as personal services), pertaining to: vehicle or building operation and maintenance, office equipment and supplies, fuel and consumable liquids, printing, promotional materials, or any other similar item or items.

C. Contract for Personal Services - any written agreement to provide a service, including but not limited to legal, accounting, management consulting, investing, banking, planning, training, statistical, research, public relations, architectural,

engineering, surveying, or other personal services of a consulting, professional, or technical nature, for a fee, commission or other compensation by a person or persons not providing such services as an officer or employee of a state agency or public benefit corporation.

D. Minority Business Enterprise -

I. Any business enterprise, including a sole proprietorship, partnership or corporation that is:

- a. An enterprise in which at least fifty-one percent of the ownership of which is controlled by one or more minority group members or, in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by one or more minority group members;
- b. An enterprise in which the minority ownership is real, substantial and continuing;
- c. An enterprise in which the minority ownership has and exercises the authority independently to control the day-to-day business decisions of the enterprise; and
- d. An enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

II. For the purpose of these Guidelines, a minority group member means a United States citizen or permanent resident alien who can demonstrate membership in one of the following groups:

- a. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- b. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
- c. Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or
- d. Native American persons having origins in any of the original peoples of North America.

III. For the purpose of these Guidelines, a women-owned business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation which is:

- a. At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women or, in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by a United States citizen or citizens or a permanent resident alien or aliens who are women;
- b. An enterprise in which the ownership interest of women is real, substantial and continuing;
- c. An enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
- d. An enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

3. INTENT. It is the intent of the Authority that to the fullest extent practical, and except as otherwise provided for herein, the selection of procurement contractors shall be from the widest available selection of responsible procurement contractors for a particular good or service.

4. RESPONSIBILITY FOR PROCUREMENT CONTRACTS. The Executive Director of the Authority, or his duly appointed designee, has the overall day-to-day responsibility and oversight regarding the awarding and monitoring of procurement contracts. Personal service contractors shall be utilized in those areas where the Authority Board determines that such services may not reasonably be obtained by staff members of the Authority or its subsidiary corporations, or by officers or employees of another state agency or public corporation. In making such determination, facts such as timing, costs, qualifications or the nature of the services to be rendered shall be taken into consideration.

5. REQUIREMENTS REGARDING THE SELECTION OF PROCUREMENT CONTRACTORS.

A. Personal Services

I. The selection of personal services contractors shall be on a competitive basis except that the Board may waive competition if it is in the best interest of the Authority for the Board to do so. The standard of "Best Interest of the Authority" may, but need not be, based upon one or more of the following criteria for the selection of personal services contractors:

- a. Confidentiality,
- b. Specialized expertise or unusual qualifications; or services obtainable from one source only,
- c. Historical relationship with the Authority or its subsidiary corporations, the continuation of which is in its or their best interest,
- d. Specialized knowledge,
- e. Geographical proximity to the Authority,

- f. Lack of responsible competition, in the sole opinion of the Authority, to perform the desired services,
- g. Nature, magnitude or complexity of services required,
- h. Lack of Authority resources, support staff, specialized facilities or equipment,
- i. Lower cost,
- j. Short-term or infrequent need for services, or
- k. Selection which is necessary or convenient to the operations of the Authority or any of its subsidiary corporations.

II. Any contract involving services to be rendered over a period in excess of one year, shall require the approval of the Board by resolution, and an annual review of the contract by the Board.

III. A personal services contract shall require approval of the Board by resolution, when the amount thereof exceeds \$10,000.

IV. Legal services need not be awarded on a competitive basis.

V. A personal services contract over \$2,500.00 which is to be awarded on a non-competitive basis shall require board approval. Reasons for a non-competitive award should be stated in the approving motion or resolution.

VI. Personal services contracts of less than \$2,500.00 need not be awarded on a competitive basis nor approved by the Board unless for a period in excess of one year.

B. Goods and Other Services

I. Selection of contractors for goods and services other than personal services shall be made only on a competitive basis except as herein otherwise set forth. The level of competition and authorization shall depend upon the estimated or actual value of the good or service as follows:

<u>Level</u>	<u>Estimated or Actual Value</u>	<u>Required Level of Competition</u>	<u>Highest Authorization Level Required</u>
I	Up to \$500	Not Required	Director of Operations
II	\$500 - 2,500	3 Quotations	Director of Operations
III	\$2,500 - 5,000	3 Written Quotations	Executive Director
IV	\$5,000 and up	Public Bids	Board Resolution

II. Competition may be waived:

a. On an emergency basis when the safety of life or property is involved. A written explanation of the nature of the emergency must accompany the purchase order/contract.

b. When only one source is available. A written statement must accompany the purchase order/contract, explaining the need for sole source acquisition.

The level of approval required for such waivers of competition as set forth in subsections 2(a) and (b) herein shall be either General Manager or Executive Director within Levels II - IV above, and the Board of Directors for Level V.

c. When public procurement arrangements are use, such as:

- i. City, County or regional supply contracts
- ii. Federal G.S.A. contracts
- iii. State O.G.S. contracts

d. Under a warranty, when the Authority may be required to obtain service from a manufacturer-designated entity.

e. When the best interest of the Authority is clearly saved, as determined by the Executive Director or the Board.

III. Any contract for goods or services other than personal services, awarded for a period in excess of one year, shall require the approval of the Board by resolution, and an annual review of the contract by the Board.

6. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (“MBE/WBE”)

A. Minority and women-owned businesses shall be given full opportunity to compete in all types of procurements contracts.

B. Janitorial services have been identified as an area set aside for MBE/WBE bids, where practicable.

C. In any procurement where an MBE submits a low-bid which is equivalent to a bid from a non-MBE/WBE firm, the MBE/WBE firm, if determined possible, will be given preference.

7. PROCEDURES FOR COMPETITIVE SELECTION - PERSONAL SERVICES.

The procedures for competitive selection of personal services contractors when such method of selection is considered to be in the best interest of the Authority, is as follows:

A. The Authority shall prepare a written statement containing a description of the services, the reasons why they are required, and the required estimated schedule or duration of the services.

B. A request for proposals (“RFP”) shall whenever practicable and desirable be sent to three or as many more firms as are in the best interest of the Authority to assure competition, including any MBE firms selected to receive the RFP pursuant to authority MBE programs, unless there are less than three qualified firms or unless competition is waived as provided in the Guidelines.

C. The RFP shall describe the services to be performed, any competition dates or time requirements, MBE requirements, if applicable, and the criteria to be utilized by the Authority in evaluating proposals, and shall contain a requirement for a cost proposal and the date, time, and place when proposals must be received.

D. The Authority may select one or more proposers with which to negotiate after evaluation of the proposals received. The award shall be made to the proposer or proposers whose proposal(s) will be the most advantageous to the Authority, price, qualifications and other factors considered, using such evaluation criteria as the basis for the decision.

E. Architectural, Engineering and Survey Contracts.

I. In the procurement of such architectural, engineering and surveying services as the Authority determines should be received through the RFP process, the Authority shall evaluate current statements of qualifications and performance data. If desired, the Authority may conduct discussions with three or more professional firms regarding anticipated design concepts and proposed methods of approach to the assignment.

II. The Authority shall then comply with the provisions of Subparagraphs “A”, “B”, and “C” of Section 7 of these Guidelines.

III. The Authority shall negotiate a contract with the highest qualified professional firm for architectural and/or engineering services and/or surveying services at compensation which the Authority determines in writing to be fair and reasonable. In making this decision, the Authority shall take into account the estimated value of the services to be rendered, the scope, complexity and professional nature thereof. Should the Authority be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee it determines to be fair and reasonable, negotiations with the professional firm shall formally be terminated. The Authority shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, the Authority shall then undertake negotiations with the third most professional firm. Should the Authority be unable to negotiate a satisfactory contract with any of the selected professional firms in order of their competence and qualification, it

shall continue negotiations in accordance with this subparagraph until an agreement is reached.

IV. The provisions of this subparagraph "3" shall apply only to engineering and/or architectural services and/or surveying services contracts in excess of twenty-five thousand dollars (\$25,000.00).

V. Contracts for engineering, architectural or surveying services involving lesser amounts may be entered into pursuant to the provisions of this section or any other applicable provisions of the Guidelines.

8. PROVISIONS TO BE CONTAINED IN ALL PROCUREMENT CONTRACTS.

A. Procurement contracts shall set forth the nature, quantity, if applicable, and monitoring of work performed, the use of corporate supplies and facilities, the use of corporate personnel, and other provisions considered to be in the best interest of the Authority. All requirements of law shall be incorporated by reference in the Authority's Procurement contracts. Procurement contracts shall be awarded only to persons or firms deemed responsive to the Authority's Procurement documents as well as capable and responsible.

The following types of provisions shall be contained in all procurement contracts, except that any of the provisions listed which are inapplicable or unnecessary because of the nature of duration of the services or goods to be delivered, the location or locations where they are to be performed or the type of compensation being paid therefor need not be included. Any other terms deemed applicable may be added.

- I. Description of services
- II. Compensation
- III. Time for performance or date of completion
- IV. Liability of contractor or consultant; indemnification of Authority
- V. Reports of contractor or consultant
- VI. Ownership of plans, drawings, or other products of the performance of the services (professional services)
- VII. No assignments or subcontracts without the express written consent of the Authority
- VIII. Maintenance of records, accounts
- IX. Right of Authority to inspect and/or audit books and records of contractor or consultant (professional services)
- X. Insurance requirements
- XI. Termination
- XII. Monitoring of the performance of services
- XIII. Use of Authority supplies, facilities or property
- XIV. Use of Authority personnel
- XV. All provisions required to be included in Authority contracts by Federal, State, or local laws, ordinances, codes, rules or regulations, and
- XVI. Involvement of former officers or employees.

B. Contractor shall have the following responsibilities:

I. To perform the contract in accordance with its terms;

II. To perform services required under a contract competently, efficiently, in a timely and first-class manner, at a reasonable cost and in a manner which is acceptable to the Authority, or to deliver goods or supplies in first-class condition, to the proper location, on a timely basis, and in a manner which is acceptable to the Authority; and

III. To cooperate fully with Authority personnel who are directing, monitoring, or supervising the delivery of services or goods, or who are assisting in the delivery thereof.

9. INVOLVEMENT OF FORMER OFFICERS OR EMPLOYEES. No procurement contracts shall be entered into with former officers or employees of the Authority except by a resolution adopted by a majority of the Members of the Board upon showing that such contract is in the best interest of the Authority, and then only to the extent permitted by Section 73 of the Public Officers Law, the Authority Code of Ethical Conduct concerning outside activities, and other applicable provisions of the law.

10. PUBLICLY AVAILABLE REPORTS. A publicly available report shall be prepared on not less than an annual basis, summarizing procurement activity by the Authority, including a listing of all contracts entered into, the process used to select such contractors, and the status of existing procurement contracts. For the purposes of such report, only contracts in the actual or estimated amount of \$5,000.00 or more and for at least one year in duration need be included.

11. ANNUAL REPORT ON PROCUREMENT CONTRACTS.

A. The Authority shall annually prepare and approve a report on procurement contracts which shall include the Guidelines, an explanation of the Guidelines, and any amendments thereto since the last annual report. Such report on procurement contracts may be a part of any other annual report that the corporation is required to make. For the purposes of this report, only procurement contracts in the actual or estimated amount of \$5,000.00 need be included.

B. Such report shall be submitted annually to the Division of the Budget and copies thereof to the Department of Audit and Control, the Senate Finance Committee and Assembly Ways and Means Committee.

C. Copies of the annual report are to be made available to the public upon reasonable request therefor.

12. THIRD PARTY RIGHTS; VALIDITY OF CONTRACTS

A. These Guidelines are intended for the guidance of officers and employees of the Authority only, and nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason, of any requirement or provision hereof.

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

13. MISCELLANEOUS.

A. Where applicable Federal, State or local laws, ordinances, codes, rules or regulations containing requirements which are in conflict with or impose greater obligations upon the Authority than these Guidelines, than such requirements shall take precedence over those contained herein.

B. Any specific provision of the Guidelines may be waived by the Chairman, Executive Director or President of the Authority or its subsidiary corporations, or such individuals as they may designate, but only under extraordinary circumstances. Any waivers of the Guidelines herein due to extraordinary circumstances shall be reported to the Port of Oswego Authority Board no later than the first monthly meeting following the waiver to allow the Board to certify the extraordinary circumstances are present and necessary.

C. The Authority shall not be precluded from adopting additional requirements relating to the matters covered by these Guidelines.

14. EFFECTIVE DATE. The Guidelines shall be effective as of the first day of April, 1990.