

BOARD AGENDA SUMMARY SHEET

Committee or Board: Board	Date: March 13, 2020	Board Meeting Date: March 27, 2020
-------------------------------------	--------------------------------	--

For All Board Voting Items:

Title of Agenda Item: Approval of Certain Compliance Board Policies and Amendments to LIPA’s By-laws

Consent Agenda: Yes No

Accompanying Presentation: Yes No

Recommendation from Committee: N/A F&A; GP&P; Oversight & REV

LIPA Presenter: N/A

PSEG Long Island Presenter: N/A

For Policy Reports Only:

Type of Policy / Report: Operating; Governance; Compliance; Mission

Date of Last Report: N/A

Compliance Since Last Report: Yes No

Proposed Changes to Policy: Yes No

Requested Action:	The Board is being requested to adopt a Resolution approving certain Compliance Board Policies and amendments to LIPA’s By-laws.
Summary: (include proposed amendments to Board Policies, if applicable)	In accordance with the New York State Public Authorities Law (“PAL”) and governance best practices, the Board has adopted the Board Policy on Procurement, the Board Policy on Property Disposition and the By-laws. Section 2879(1) of the Public Authorities Law requires that the procurement guidelines be annually reviewed and approved by LIPA. Additionally, Section 2896(1) of the Public Authorities Law requires that the property disposition guidelines be annually reviewed and approved LIPA. Staff recommends no changes to either the Board Policy on Procurement or the Board Policy on Property Disposition. With respect to the By-laws, Staff proposes to amend the provisions relating to Article IV, Section 5, Emergency Succession of the Chief Executive Officer.

FOR CONSIDERATION

March 27, 2020

TO: The Board of Trustees

FROM: Thomas Falcone

REQUEST: Approval of Certain Compliance Board Policies and Amendments to LIPA's By-laws

Requested Action

The Board of Trustees (the "Board") of the Long Island Power Authority (the "LIPA") is being requested to adopt a Resolution approving certain Compliance Board Policies and amendments to LIPA's By-laws

Discussion

In accordance with the New York State Public Authorities Law ("PAL") and governance best practices, the Board has adopted the Board Policy on Procurement, the Board Policy on Property Disposition and the By-laws. Section 2879(1) of the Public Authorities Law requires that the procurement guidelines be annually reviewed and approved by LIPA. Additionally, Section 2896(1) of the Public Authorities Law requires that the property disposition guidelines be annually reviewed and approved LIPA.

Annual Review and Amendments to Certain Board Policies

Staff recommends no changes to either the Board Policy on Procurement or the Board Policy on Property Disposition.

With respect to the By-laws, Staff proposes to amend the provisions relating to Article IV, Section 5, Emergency Succession of the Chief Executive Officer. The amended By-laws are attached hereto as **Exhibit "B"**.

Recommendation

Based upon the foregoing, it is recommended that the Trustees adopt the resolution in the form attached hereto as **Exhibit "A"**.

Attachments

- Exhibit "A"** Resolution
- Exhibit "B"** By-laws
- Exhibit "C"** Board Policy on Property Disposition
- Exhibit "D"** Board Policy on Procurement

RESOLUTION APPROVING THE ANNUAL REVIEW OF CERTAIN COMPLIANCE BOARD POLICIES AND AMENDMENTS TO LIPA’S BY-LAWS

WHEREAS, in accordance with the New York State Public Authorities Law (“PAL”) and governance best practices, the Board has adopted the Board Policy on Procurement, the Board Policy on Property Disposition and the By-laws; and

WHEREAS, Section 2879(1) of the Public Authorities Law requires that the procurement guidelines be annually reviewed and approved by LIPA; and

WHEREAS, Section 2896(1) of the Public Authorities Law requires that the property disposition guidelines be annually reviewed and approved LIPA; and

WHEREAS, Staff recommends no changes to either the Board Policy on Procurement or the Board Policy on Property Disposition; and

WHEREAS, with respect to the By-laws, Staff proposes to amend the provisions relating to emergency succession.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the Public Authorities Law, the Board of Trustees hereby approves the annual review of the Board Policy on Procurement and Board Policy on Property Disposition; and

BE IT FURTHER RESOLVED, the Board of Trustees hereby approves the amendments to LIPA’s By-laws relating to Emergency Succession of the Chief Executive Officer.

Dated: March 27, 2019

BY-LAWS
of the
LONG ISLAND POWER AUTHORITY

As amended March 27, 2020

Long Island Power Authority
333 Earle Ovington Blvd., Suite 403
Uniondale, New York 11553

BY-LAWS
of the
LONG ISLAND POWER AUTHORITY

ARTICLE I Offices.....	1
Section 1. Principal Office	1
Section 2. Other Offices	1
Section 3. Books and Records.....	1
ARTICLE II Trustees.....	1
Section 1. Number, Term, Appointment and Vacancies	1
Section 2. Powers and Duties.....	1
ARTICLE III Trustees’ Meetings.....	1
Section 1. Place of Meetings.....	1
Section 2. Meetings.....	1
Section 3. Quorum.....	2
Section 4. Adjournment of Meetings	2
Section 5. Open Meetings	2
Section 6. Consent Agenda	2
ARTICLE IV Officers and Employees	2
Section 1. Chair, Vice Chair and Officers.....	2
Section 2. Election and Appointment of Officers.....	2
Section 3. Term of Office	3
Section 4. Vacancies	3
Section 5. Emergency Succession of the Chief Executive Officer	3
Section 6. Removal	3
Section 7. Powers and Duties.....	3
A. Chair.....	3
B. Vice Chair	4
C. Chief Executive Officer.....	4
D. Chief Financial Officer	4
E. General Counsel.....	4
F. Secretary	5
G. Controller	5
Section 8. Personnel	5
Section 9. Outside Experts	5
ARTICLE V Committees.....	6
Section 1. Finance and Audit Committee.....	6
Section 2. Governance, Planning and Personnel Committee	6
Section 3. Oversight and Reforming the Energy Vision Committee	7
Section 4. Other Committees	7
Section 5. Ex-Officio Committee Member.....	7

ARTICLE VI Corporate Seal	7
Section 1. Seal.....	7
ARTICLE VII Fiscal Management	7
Section 1. Fiscal Year	7
Section 2. Budgets.....	8
Section 3. Expenditure and Contract Authorization Procedures	8
ARTICLE VIII Execution of Instruments.....	8
Section 1. Execution of Instruments.....	8
ARTICLE IX Amendment	8
Section 1. Amendment.....	8
ARTICLE X Indemnification of Trustees, Officers and Employees.....	8
Section 1. Purpose and Definitions	8
Section 2. General Scope of Indemnification	9
Section 3. Representation of Persons Indemnified	10
Section 4. Advances of Expenses.....	10
Section 5. Indemnification on Final Disposition	10
Section 6. Insurance	11
Section 7. Applicability of this Article.....	11
ARTICLE XI Miscellaneous.....	12
Section 1. Employment Contracts	12
Section 2. Annual Reports.....	12
Section 3. Severability	12
Section 4. Governing Law	12

ARTICLE I

Offices

Section 1. **Principal Office.** The principal office of the Long Island Power Authority (hereinafter referred to as the “Authority”) shall be its Uniondale, Long Island, New York Office.

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

Section 3. **Books and Records.** Except as otherwise determined by the Trustees, or as the business of the Authority may require, all books and records of the Authority shall be kept at its principal office.

ARTICLE II

Trustees

Section 1. **Number, Term, Appointment and Vacancies.** The number and term of Trustees and the appointment and process of filling vacancies shall be governed by Title I-A of Article 5 of the Public Authorities Law, Chapter 517 of the Laws of New York, 1986 (the “LIPA Act”), as amended by Chapter 173 of the Laws of New York, 2013 (hereinafter referred to as the “LIPA Reform Act”).

Notwithstanding the foregoing, a Trustee who shall have failed to attend six consecutive meetings of the Trustees or at least fifty percent of the meetings of the Trustees during a consecutive 12-month period shall thereupon and without further action be deemed to have resigned as a Trustee of the Authority.

Section 2. **Powers and Duties.** The powers and duties of the Trustees shall be governed by the LIPA Act, the LIPA Reform Act and any other applicable provisions of the Public Authorities Law, including Title 2 of Article 9, Chapter 766 of the Laws of New York, 2005, as amended.

ARTICLE III

Trustees’ Meetings

Section 1. **Place of Meetings.** Meetings of the Trustees shall be held at the principal office of the Authority or at such other place as the Chair may from time to time designate.

Section 2. **Meetings.** Meetings of the Trustees may be called by the Chair or upon the request of any six (6) Trustees. The Secretary shall give notice of the time, place and purpose or purposes of each meeting by mail at least three (3) days before the meeting or in person or by telephone, email or facsimile at least two (2) days before the meeting to each Trustee. The notice required to be given under this section may be waived by the Trustee to whom such notice is

required to be given. Attendance of a Trustee of the Authority at a meeting without objection shall constitute waiver of notice of the meeting.

Section 3. **Quorum.** As set forth in Section 2826 of the Public Authorities Law, five (5) Trustees of the Authority shall constitute a quorum for the transaction of any business or the exercise of any power of the Authority and shall only have the power to act by a vote of five (5) Trustees.

Section 4. **Adjournment of Meetings.** A majority of Trustees, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of such adjourned time and place shall be given to each Trustee not present at such meeting or, if no announcement of such adjourned time and place was made at such meeting, at least three (3) days' notice of the newly scheduled meeting must be given to all Trustees. No such adjournment shall be used to defeat a notice provision.

Section 5. **Open Meetings.** All meetings of the Trustees shall be conducted in compliance with the provisions of the Open Meetings Law, set forth in Article 7 of the Public Officers Law.

Section 6. **Consent Agenda.** To make more efficient use of meeting time, the Chair, or the Trustee performing the duties of the Chair, is authorized to place items on a consent agenda as part of the regular meeting agenda. The consent agenda will condense into either a single motion or several categorical motions routine, ministerial, non-controversial, or self-explanatory items including, for example, approval of the minutes from previous Board meetings or award of non-material contracts. Items on a consent agenda will not be discussed prior to action. However, if any Trustee believes that any item placed on the consent agenda by the Chair requires discussion, that Trustee may remove the item from the consent agenda by requesting same. The exempted item then moves to the regular agenda, and the Trustees may take action as they deem appropriate.

ARTICLE IV

Officers and Employees

Section 1. **Chair, Vice Chair and Officers.** The Chair shall be chosen by the Governor of New York State from among the Trustees in accordance with the LIPA Reform Act. A Vice Chair may be elected by the Trustees. The Authority shall have the following officers: a Chief Executive Officer, a Chief Financial Officer, a General Counsel, a Secretary and a Controller, all of whom shall be employees of the Authority. The Authority may also have such other officers (including assistant and acting officers) and agents as the Chief Executive Officer may deem necessary or desirable, all of whom shall be employees of the Authority. Neither the Chair nor any Vice Chair shall simultaneously hold the position of any officer in the Authority.

Section 2. **Election and Appointment of Officers.** The Chief Executive Officer, Chief Financial Officer, and General Counsel of the Authority shall be elected by the Trustees. The Chief Executive Officer shall appoint the Secretary and Controller of the Authority and may appoint such other officers as he or she may from time to time deem necessary or desirable.

Section 3. **Term of Office.** Except as the Trustees may otherwise specify, officers of the Authority shall hold their respective offices until their respective successors shall have been duly elected or appointed, as the case may be, or until their earlier resignation, removal or death.

Section 4. **Vacancies.** A vacancy occurring for any reason in any office of the Authority elected by the Trustees may be filled at any time by the Trustees. A vacancy for any reason in any office appointed by the Chief Executive Officer may be filled at any time by the Chief Executive Officer for such term as he or she shall determine or until such officer's earlier resignation, removal or death. In the event of the absence, disability, incapacity or resignation of the Chief Financial Officer or General Counsel, the Chief Executive Officer may appoint a member of the Authority's staff to perform such duties on an interim basis until the termination of such absence, disability or incapacity or until a successor is elected by the Trustees.

Section 5. **Emergency Succession of the Chief Executive Officer.** The Chief Executive Officer shall annually, in consultation with the Chair of the Governance, Planning & Personnel Committee, designate the order in which up to three of his or her direct reports shall perform the duties of the Chief Executive Officer in the event of the Chief Executive Officer's absence, disability, incapacity or resignation. The Chief Executive Officer shall provide the Trustees notice of the annual designation by filing such designation with the Board Chair. That individual shall perform such duties until the termination of such absence, disability or incapacity or until a successor Chief Executive Officer is elected by the Trustees. In the absence of such a designation, the General Counsel shall perform such duties.

Section 6. **Removal.** Any officer elected by the Trustees shall be subject to removal at any time by the Trustees with or without cause. Any officer appointed by the Chief Executive Officer shall be subject to removal at any time by the Chief Executive Officer with or without cause.

Section 7. **Powers and Duties.** The Chair, Vice Chair, and each officer elected by the Trustees shall have such authority and perform such duties, in addition to those specified in these By-Laws, as may be prescribed by the Trustees from time to time. The Trustees may from time to time authorize the Chair, Vice Chair, or any officer to appoint and remove any other officer or agent and to prescribe such person's authorities and duties. Except as otherwise provided in these By-Laws or by law, any person may hold no more than two offices at one time.

A. **Chair.** The Chair shall preside at all meetings of the Trustees and shall exercise such duties and powers as hereinafter described and as customarily pertain to the Office of Chair, including responsibility for the leadership and good governance of the Authority's Board. Such duties include appointing the membership of Board committees, preparing agendas for Board meetings that facilitate decision making, and managing the governance and policy setting processes of the Board, with a focus on defining the mission and values of the Authority through Board-approved policies. The Chair may also have such other duties and responsibilities as the Trustees may from time to time assign. The Chair may delegate to the Vice Chair, the Chief

Executive Officer, or the Chief Financial Officer, or any other officer or officers such of the Chair's powers and functions as he or she may deem appropriate from time to time to the extent consistent with applicable law. Such delegation shall continue until affirmatively revoked by the then-current Chair or the Trustees.

B. **Vice Chair.** The Vice Chair shall possess such powers and shall perform such duties as may be assigned to him from time to time by the Trustees. The Vice Chair is empowered to be Acting Chair in the absence, disability, incapacity or vacancy in the office of the Chair and shall assume the powers and perform all duties of the Chair if the Chair is unable or unavailable to perform such duties for any reason.

C. **Chief Executive Officer.** The Chief Executive Officer of the Authority, subject to such supervision as the Trustees may exercise, shall have such duties and powers as hereinafter described and as customarily pertain to the office of the Chief Executive Officer, including serving as the primary liaison and interface on behalf of the Authority with the Trustees. Except as may be prescribed by the Trustees, the Chief Executive Officer shall have general supervision and control over the property, business and affairs of the Authority and over its several officers, employees and agents, including its service providers and other contractors, and is responsible for advancing the mission and modeling the values of the Authority as defined by the Board, directing the implementation of the policies and decisions of the Board, as well as the Authority's internal operations. The Chief Executive Officer may sign, execute and deliver in the name of the Authority 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. Except as may be otherwise provided in these By-Laws, the Chief Executive Officer may delegate powers and duties to those officers as the Chief Executive Officer shall determine appropriate consistent with applicable law. Such delegation shall continue until affirmatively revoked by the then-current Chief Executive Officer or the Trustees.

D. **Chief Financial Officer.** The Chief Financial Officer shall have general custody of all funds and securities of the Authority and have general supervision of the collection and disbursement of Authority funds and shall endorse on behalf of the Authority for collection checks, notes and other obligations, and shall deposit the same to the credit of the Authority in such bank or banks or depositories as the Chief Executive Officer may designate, and shall perform such other duties as customarily pertain to such office as may be assigned from time to time by the Chief Executive Officer, subject, however, at all times to the supervision and control of the Chief Executive Officer, or the officer performing the duties of Chief Executive Officer, and subject further to any limitations which the Chief Executive Officer, or the officer performing the duties of Chief Executive Officer, may from time to time prescribe.

E. **General Counsel.** The General Counsel shall be the chief legal officer of the Authority and in that capacity shall advise and represent the Authority and its Trustees in their capacity as such generally in all legal matters and proceedings, including legislative proceedings, and possess such powers and shall have general supervision over the property, business and affairs of the legal office of the General Counsel and shall perform such other duties as customarily pertain to such office or as may be from time to time assigned by the Chief Executive Officer or the Trustees, subject, however, at all times to the supervision and control of the Chief Executive Officer, or the officer performing the duties of Chief Executive Officer, and the Trustees, and

subject further to any limitations which the Chief Executive Officer, or the officer performing the duties of Chief Executive Officer, may from time to time prescribe.

F. **Secretary.** The Secretary shall attend all meetings of the Trustees and act as Secretary thereof and record all votes and shall keep a record of the proceedings of the Trustees in a Minute Book to be kept for that purpose. The Secretary shall cause notice to be given of all meetings of the Trustees and shall be custodian of the records of the actions of the Trustees and shall keep in safe custody the seal of the Authority and shall have the authority to affix such seal to all documents and papers authorized to be executed by the Trustees or officers of the Authority requiring such seal to be affixed. The Secretary shall attest to the signatures of the Trustees and officers of the Authority and shall have the authority to cause copies to be made of all minutes, resolutions, records and documents of the Authority and to deliver certificates under seal to the effect that such copies are true and accurate and that all persons dealing with the Authority 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 Chief Executive Officer, or the officer performing the duties of Chief Executive Officer, subject, however, at all times to the supervision, control of and any limitations prescribed by the Chief Executive Officer, or the officer performing the duties of Chief Executive Officer, as appropriate.

G. **Controller.** The Controller shall be the principal accounting officer of the Authority, unless another individual shall be so designated by the Trustees. The Controller shall be responsible for maintaining the accounting records of the Authority and for preparing necessary financial reports and statements, and the Controller shall properly account for all moneys and obligations due the Authority and all properties, assets, and liabilities of the Authority. The Controller shall render to the Chief Executive Officer, or their designee, such periodic reports covering the result of operations of the Authority as may be required by Chief Executive Officer, or their designee. The Controller shall have such other duties as may from time to time be prescribed by the Trustees or the Chief Executive Officer or their designee.

Section 8. **Personnel.** Subject to the restrictions of the LIPA Reform Act and any policies established by the Trustees, the Chief Executive Officer may from time to time appoint employees (other than those officers elected by the Trustees) as he or she may deem necessary to exercise the powers, duties and functions of the Authority as prescribed by law. The selection, qualification, and compensation of such employees shall be determined by the Chief Executive Officer, subject to the laws of the State of New York and any compensation policies established by the Trustees. The Chief Executive Officer shall report annually to the Trustees on the staffing of the Authority but retains sole authority to make all decisions related to employees that are not appointed by the Trustees.

Section 9. **Outside Experts.** Financial advisors, accountants, auditors, engineers, attorneys and other consultants may be retained on a contract basis or otherwise for rendering professional or technical services or advice by the Chief Executive Officer or his or her designee consistent with the terms of the Authority's procurement guidelines. Such outside experts shall perform their designated duties under the direct supervision of the Chief Executive Officer or his or her designee.

ARTICLE V

Committees

Section 1. **Finance and Audit Committee.** The Finance and Audit Committee shall consist of not less than three (3) Trustees appointed by the Chair, all of whom shall be “independent” within the meaning of Section 2825(2) of the Public Authorities Law. To the extent practicable, its members shall be familiar with corporate financial and accounting practices and possess the necessary skills to understand the duties and functions of the Finance and Audit Committee.

The Finance and Audit Committee shall review and make recommendations to the Trustees as to the engagement of and compensation to be paid to the Authority’s independent certified accountants, who shall be selected in accordance with the LIPA Reform Act (or other applicable State law), and the Authority’s general accounting and internal control systems and policies and practices. The Finance and Audit Committee will have responsibility to directly oversee the performance of the audits performed by the Authority’s independent accountants and to review the results of the annual internal control review and changes in accounting policies that may be required. The Finance and Audit Committee will present these results and changes with their recommendation to the Trustees. Any audit of the Authority by the State or any other agency which is conducted and results in the issuance of interim and/or formal reports shall also be reported to the Finance and Audit Committee for conveyance to the Trustees. The Finance and Audit Committee shall also review and make recommendations concerning the Authority’s budgets, the management and investment of all funds of the Authority, the Authority’s financial and investment policies, and proposals for the issuance of debt by the Authority.

Section 2. **Governance, Planning and Personnel Committee.** The Governance, Planning and Personnel Committee (the “Governance Committee”) shall consist of not less than three (3) Trustees appointed by the Chair, all of whom shall be “independent” within the meaning of Section 2825(2) of the Public Authorities Law and possess the necessary skills to understand the duties and functions of the Governance Committee. The Governance Committee shall keep the Trustees informed of current governance best practices, review corporate governance trends, update the Authority’s corporate governance policies, advise the Governor, Majority Leader of the Senate and Speaker of the Assembly on the skills and experience required of potential Trustees, examine ethical and conflict of interest issues, perform board self- evaluations, and recommend amendments to these By-laws.

Additionally, the Governance Committee shall review and make recommendations to the Board of Trustees with respect to monitoring the Authority's staffing needs and developing and monitoring the implementation of policies and procedures related to employment at the Authority, including those designed to attract and retain valuable employees. The Governance Committee shall recommend for approval by the Trustees the compensation of the Chief Executive Officer.

Section 3. **Oversight and Reforming the Energy Vision (“REV”) Committee.** The Oversight and REV Committee (the “Oversight Committee”) shall consist of not less than three (3) Trustees appointed by the Chair, all of whom shall be “independent” within the meaning of Section 2825(2) of the Public Authorities Law. The Oversight Committee shall be responsible for monitoring the service provider’s operational and financial performance, including oversight of the same provided by the staff of the Authority, and the implementation of recommendations made pursuant to management and operations audits. The Oversight Committee shall review the Authority’s operational and financial oversight process and report to the Trustees and others related to its findings. Additionally, the Oversight Committee shall remain knowledgeable and report to the Board on the principles, policies and recommendations of the New York Public Service Commission’s REV proceeding as a necessary part of carrying out the Authority’s obligations and oversight of its service provider.

Section 4. **Other Committees.** The Chair or the Trustees may appoint other committees which shall have and may exercise such powers as shall be authorized by the Chair or Trustees. For those Committees appointed by the Chair, notice of the purpose and scope of such committees will be provided to the Trustees.

Section 5. **Ex-Officio Committee Member.** For any committee appointed by the Chair or Trustees, the Chair shall be an ex-officio member who has the right, but not the obligation, to participate in the proceedings of the committees and vote on any action to be taken. Such ex-officio membership shall not, however, be counted for purposes of determining whether a quorum of the committee exists, but the Chair’s vote shall be counted in determining whether a proposed committee action has been approved or disapproved by the requisite vote.

ARTICLE VI

Corporate Seal

Section 1. **Seal.** The seal of the Authority shall be a design symbolizing its activities and shall be surrounded by the words “Long Island Power Authority” as shown by the following impression of such seal:



ARTICLE VII

Fiscal Management

Section 1. **Fiscal Year.** The Trustees shall have the power to fix, and may from time to time change by resolution, the fiscal year of the Authority. Unless otherwise fixed by the Trustees, the calendar year shall be the fiscal year.

Section 2. **Budgets.** The Trustees shall adopt such operations and maintenance budgets and capital budgets as necessary to support the Authority's and any subsidiaries' operations and departments, in accordance with the LIPA Reform Act.

Section 3. **Expenditure and Contract Authorization Procedures.** The Trustees shall adopt expenditure and contract authorization procedures which shall govern the budget, contract executions and all approved authorizations.

ARTICLE VIII

Execution of Instruments

Section 1. **Execution of Instruments.** The Chief Executive Officer, except as otherwise provided in these By-Laws, may authorize any officer, employee or agent (including himself) to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Authority, and such power to execute and deliver may be general or specific; unless so authorized and except as otherwise provided herein, no officer, employee or agent shall have any power or authority to bind the Authority by any contract or engagement or pledge its credit or to render it liable pecuniarily for any purpose or in any amount.

ARTICLE IX

Amendment

Section 1. **Amendment.** The Trustees shall have the power to amend, alter or repeal any provision or provisions of these By-Laws at any meeting; provided that written notice of the intention to consider a resolution amending the By-Laws shall have been given to all Trustees at least three (3) days prior to such meeting.

ARTICLE X

Indemnification of Trustees, Officers and Employees

Section 1. **Purpose and Definitions.** The purpose of this Article is to provide for

indemnification of Trustees, officers and employees of the Authority so as to encourage the service of the most competent and civic-minded persons to effectuate the purposes of the Act. In this Article, the following terms shall have the meanings indicated below:

(1) “action or proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative;

(2) “party to an action or proceeding” means a person made, or threatened to be made, a defendant or respondent or otherwise a party in an action or proceeding, and includes a person called upon, voluntarily or by subpoena, to give testimony, produce documents or respond to interrogatories in connection with any action or proceeding;

(3) “Trustee” means each Trustee of the Authority appointed pursuant to the LIPA Reform Act, including the Trustee designated as Chair;

(4) “officer” means each officer of the Authority hired pursuant to the LIPA Act and these By-Laws;

(5) “employee” means each employee of the Authority who is not also an officer;

(6) “Trustee,” “officer” and “employee” of the Authority each includes persons who formerly served in such capacity and the estates of deceased persons who had served in such capacity, and the legal or personal representative of such persons;

(7) “Authority” shall include any wholly owned subsidiary created or acquired in accordance with section 1020-i of the LIPA Act; and

(8) “applicable standard of conduct” means that the Trustee, officer or employee seeking to be indemnified hereunder acted (or omitted to take action) in good faith for a purpose which he or she reasonably believed to be in the best interests of the authority and, in criminal actions or proceedings, had reasonable cause to believe his or her action or inaction was lawful; and in no case shall any acts or omissions by the Trustee, officer or employee which may be determined to constitute negligence, recklessness, or gross negligence be deemed violative of the applicable standard of conduct. Furthermore, the termination of any action or proceeding by judgment, settlement, conviction or upon plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such Trustee, officer or employee did not act in accordance with the applicable standard of conduct.

Section 2. General Scope of Indemnification. The Authority hereby confers the benefits of Section 18 of the New York Public Officers Law (“POL § 18”) on the Authority’s Trustees, officers and employees and agrees to be held liable for the costs thereof. Further, the Authority shall, to the fullest extent permitted by law, including, but not limited to, POL § 18, indemnify and hold harmless any person who becomes a party to an action or proceeding by reason of the fact that he or she is or was a Trustee, officer or employee of the Authority against judgments, penalties, amounts paid in settlement and reasonable expenses, including attorney’s fees actually and necessarily incurred as a result thereof, unless the conduct of such Trustee, officer or

employee in the matters at issue in such action or proceeding is found by a final judgment of a court of applicable jurisdiction, in the manner prescribed in the Article, not to have met the applicable standard of conduct.

Neither the failure of the Authority (including its Trustees or counsel) to have made a determination that the person seeking indemnification or advancement of expenses is entitled to indemnification or advancement of expenses in the circumstances nor an actual determination by the Authority (including its Trustees or independent legal counsel) that the person seeking indemnification or advancement of expenses is not so entitled shall be a defense to an action or create a presumption that the person seeking indemnification or advancement of expenses is not so entitled.

Section 3. Representation of Persons Indemnified. Where not otherwise inconsistent with law, the Authority may, either by its own in-house counsel or by outside counsel of its choice, assume the representation of any person entitled to indemnification by the Authority who becomes a party to an action or proceeding, except in situations in which the Authority's Chief Executive Officer or counsel determines that it is a conflict or otherwise inappropriate or inadvisable for such person to be represented by counsel chosen by the Authority. In the event that the Authority does not assume such representation, such person shall have the right to engage private counsel of his or her choice and the Authority shall have the obligation of indemnification for the reasonable fees and expenses of such private counsel as provided in this Article; provided however, that the Authority as a condition to such indemnification for the cost of private counsel may, and where the Attorney General has so required as a condition to indemnification by the State of New York shall, require appropriate groups of persons to be represented by the same counsel except when there is a conflict.

Section 4. Advances of Expenses

(a) A Trustee, officer or employee who becomes a party to an action or proceeding may request that the Authority advance expenses pending the final disposition of such action or proceeding. Upon such request, the Authority shall promptly pay, from time to time in advance of the final disposition of the action or proceeding, reasonable expenses as described in Section 2 of this Article X incurred by such Trustee, officer or employee in connection with such action or proceeding.

(b) The Authority shall require each person receiving amounts under paragraph (a) of this Section 4 to agree in writing that the same shall be repaid if the person receiving such advance is ultimately found not to be entitled to indemnification, or to the extent the expenses so advanced by the Authority exceed the indemnification to which he or she is ultimately found to be entitled.

Section 5. Indemnification on Final Disposition

(a) A person who has been wholly successful, on the merits or otherwise, in the defense of an action or proceeding shall be deemed to have met the applicable standard of conduct and shall be entitled to indemnification against reasonable expenses as described in Section 2, and the Authority shall make such indemnification without necessity for any authorization, findings

or other action by the Trustees prior to such indemnification.

(b) A Trustee, officer or employee who has not been wholly successful in the defense of an action or proceeding, or who was a party to an action or proceeding without being a defendant or respondent therein, may request indemnification from the Authority. Upon such request: (i) if there is a quorum of Trustees who are not parties to such action or proceeding, the Board shall make a finding as to whether the requesting Trustee, officer or employee has met the applicable standard of conduct; or (ii) if such a quorum of Trustees is not obtainable with due diligence, the Board shall obtain an opinion in writing of outside legal counsel as to whether such standard of conduct has been met by the requesting Trustee, officer or employee. If a quorum of Trustees makes such finding or outside legal counsel gives such opinion, the Board shall authorize, and the Authority shall make, indemnification as provided in Section 2, upon a determination by the Trustees (or a person or body designated by the Trustees) that expenses sought be to indemnified were reasonable and actually and necessarily incurred as a result of the action or proceeding, and that any amounts paid in settlement (unless approved by the Trustees prior to such settlement) were reasonable in the circumstances.

Section 6. **Insurance.** The Authority may purchase and maintain insurance, at its expense, to protect itself and any Trustee, officer or employee of the Authority against any expense, liability or loss sought to be indemnified, whether or not the Authority would have the power to indemnify such person against such expense, liability or loss under this Article.

Section 7. **Applicability of this Article**

(a) This Article is to be construed liberally in favor of each Trustee, officer or employee to the fullest extent permitted by law, and any ambiguity, uncertainty or reasonable doubt as to facts, interpretation or legal conclusions shall be resolved in favor of such Trustee, officer or employee.

(b) The provisions of this Article shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

(c) The provisions of this Article shall be in addition to and shall not supplant any indemnification by the State heretofore or hereafter conferred upon any Trustee, officer or employee by section 1020-bb of the LIPA Act, by applicable provisions of the Public Officers Law, or otherwise. The indemnification hereby granted by the Authority shall be in addition to and not in restriction or limitation of any other privilege or power which the Authority may lawfully exercise with respect to the indemnification or reimbursement of Trustees, officers or employees.

(d) Unless and until this Article shall be amended, supplemented or repealed in accordance with Article IX, including, without limitation, paragraph (e) below, the provisions of this Article shall constitute a contract between the Authority and each Trustee, officer or employee for indemnification in accordance with the provisions of this Article, which contract shall survive the termination of the term of service of such Trustee, officer or employee. In the event that any Trustee, officer or employee shall be aggrieved by a determination of the Authority or the Trustees or outside counsel made under this Article, or by a failure of the

Authority or Trustees to act as provided herein, he or she shall be entitled to seek appropriate relief against the Authority in any court of competent jurisdiction within the State of New York in accordance with the standards for indemnification set forth herein.

(e) This Article shall be applicable to any claim for indemnification made after its adoption as a By-Law of the Authority, whether the action or proceeding to which such claim relates commenced, or the matters at issue therein occurred, before or after the adoption of this Article. It is contemplated that no subsequent amendment, supplement or repeal of this Article which deprives a Trustee, officer or employee of any substantial right or benefit conferred herein will be made applicable with respect to any claim for indemnification arising out of conduct of such Trustee, officer or employee occurring or alleged to have occurred after the adoption of this Article and prior to such amendment, supplement or repeal.

(f) The provisions of this Article are severable, and if any section, provision, or clause of this Article or the application thereof to any person or circumstances is held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other section, provision or clause of this Article or the application of any such provision to such person or circumstances or to any other person or circumstance; and the Authority shall nevertheless indemnify each Trustee, officer or employee to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

ARTICLE XI

Miscellaneous

Section 1. **Employment Contracts.** The Authority may enter into employment contracts with one or more officers of the Authority.

Section 2. **Annual Reports.** The Authority shall submit and make available an annual report, as prescribed by the Public Authorities Law, within ninety days after the close of the fiscal year. The annual report shall be certified in writing by the Chief Executive Officer and the Chief Financial Officer in accordance with Section 2800 of the Public Authorities Law.

Section 3. **Severability.** In case any one or more of the provisions of these By-Laws shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of these By-Laws and the By-Laws shall be construed as if such illegal or invalid provisions had not been contained herein.

Section 4. **Governing Law.** These By-Laws shall be construed and enforced in accordance with the substantive laws of the State of New York.

Board Policy:	Property Disposition
Policy Type:	Compliance Process
Monitored by:	Governance Committee
Board Resolution:	Resolution #1402, approved March 29, 2018



Long Island Power Authority (referred to herein as the “Authority”) is required by Section 2896 of the Public Authorities Law to adopt by resolution comprehensive guidelines, to be annually reviewed and approved by the Trustees of the Authority, regarding the use, awarding, monitoring and reporting of contracts for the disposal of Property. The following Board Policy (the “Policy”) is adopted pursuant to such requirement and is applicable with respect to the use, awarding, monitoring and reporting of all Property Disposition Contracts which are (i) entered into by the Authority and (ii) solicited or awarded by the Authority on behalf of the Long Island Lighting Company d/b/a LIPA and d/b/a Power Supply Long Island or on behalf of the Utility Debt Securitization Authority (collectively, the “Authority”).

I. DEFINITIONS

1. “Contracting Officer” shall mean the General Counsel or his or her designee.
2. “Dispose” or “disposal” shall mean transfer of title or any other beneficial interest in personal or real property in accordance with these guidelines.
3. “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace
4. "Property" shall mean personal property, real property, and any inchoate or other interest in such property owned by the Authority, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party. Neither electricity nor natural gas nor any attributes derived therefrom, shall be considered Property for purposes of this guideline.
5. "Property Disposition Contracts" shall mean written agreements for the sale, lease, transfer or other disposition of Property.
6. "Real Property" shall mean real property and interests therein.

II. PRINCIPAL DUTIES OF CONTRACTING OFFICER

The Contracting Officer, as designated in Section I.1, is responsible for the supervision and direction over the custody, control and disposition of Property and responsible for the

Authority's compliance with, and enforcement of, these guidelines. The Contracting Officer shall: (a) maintain adequate inventory controls and accountability systems for all Property under the Authority's control; (b) periodically inventory such Property to determine which Property shall be disposed of; (c) transfer or dispose of such Property as promptly as possible in accordance with these guidelines; and (d) produce and submit reports pursuant to Section IV.B. of these guidelines.

III. PROPERTY DISPOSITION CONTRACTS

A. Reason(s) for Use of Property Disposition Contracts

Property Disposition Contracts may be entered into for the purpose of disposing of Property which is no longer necessary or useful for the operations of the Authority or the Subsidiary to warrant retention, if the disposition of such Property will result in cost savings or other benefits to the Authority, the disposition thereof will result in the receipt of valuable consideration or other benefits by the Authority, or the disposition is of neutral or nominal value to the parties.

B. Method of Disposition

The Authority may dispose of Property for no less than the Fair Market Value by sale, exchange, or transfer, for cash, credit or other Property, with or without warranty, upon such terms and conditions as are determined by the Contracting Officer; except as otherwise permitted by this Section III.B. and Section III.C.4 (below). However, no disposition of Real Property, or any interest in Real Property shall be made unless an appraisal of such Property has been made by an independent appraiser and included in the record of the transaction. Further, no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

In addition to the circumstances permitted by Section III.C.4 (below), the Authority may dispose of Property for less than Fair Market Value when the value of the transaction is nominal and the Property Disposition Contract is temporary and revocable. For such transactions, the requirements of Sections III.C.5, 6 and 7 (also below) do not apply.

C. Award of Property Disposition Contracts; Selection Criteria for Property Disposition Contracts

1. All sales or other dispositions of Property shall be conducted in accordance with these Guidelines by or under the supervision of the Contracting Officer.
2. All Property Disposition Contracts shall be made after publicly advertising for bids unless the criteria set forth below in the Guidelines at Section III.C.3. have been met for such contracts to be made by negotiation or public auction. Whenever public advertising for bids is required, (i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions, as shall permit full and free competition

consistent with the value and nature of the Property; (ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

3. Property Disposition Contracts may be negotiated or made by public auction without regard to the criteria set forth above in the Guidelines at Section III.C.2. but subject to obtaining such competition as the Contracting Officer determines is feasible under the circumstances, if (i) the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of by publicly advertising for bids, would adversely affect the state or local market for such property, and the estimated Fair Market Value of such property and other satisfactory terms of disposal can be obtained by negotiation; (ii) the Fair Market Value of the Property does not exceed fifteen thousand dollars; (iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the Property, or have not been independently arrived at in open competition; (iv) the disposition of Property will be to the state or any political subdivision, and the estimated Fair Market Value of the Property and other satisfactory terms of disposal are obtained by negotiation; (v) under the circumstances permitted by Section III.C.4, or (vi) such action is otherwise authorized by law.
4. Property may not be disposed of for less than Fair Market Value unless the following criteria are met: (i) the property is transferred to a government or other public entity and the terms and conditions of the transfer require that the ownership and use of the property will remain with the government or any other public entity; (ii) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or (iii) if the transfer is other than to a governmental entity and would not be consistent with the Authority's mission, purpose or governing statute, the Authority shall provide written notification to the governor, speaker of the assembly and temporary president of the senate. The governor, senate or assembly may deny the transfer. The governor or either house of the legislature will take action within sixty days of receiving notification of the proposed transfer from January through June. If the notification is received by the legislature from July through December, the legislature may take any action within sixty days of January first of the following year. In the event that there is no denial within sixty days of the notification to the governor, senate and assembly, the Authority may effectuate the transfer.
5. In the event the Authority proposes that property be disposed of for less than Fair Market Value, the following information must be provided to the Authority Board of Trustees and the public prior to being approved by the Board of Trustees:

- (i) a full description of the property;
 - (ii) an appraisal of the Fair Market Value of the property and any other information establishing the Fair Market Value sought by the Board of Trustees;
 - (iii) a description of the purpose of the transfer and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits to the communities in which the property is situated
 - (iv) a statement of the value to be received as compared to the Fair Market Value;
 - (v) the names of any private parties participating in the transfer and a statement of the value to the private party if different than the statement in (iv) above;
 - (vi) the names of other private parties who have made an offer for such an asset, the value offered, and the purpose for which the asset was sought to be used.
6. Before approving the disposition of property for less than Fair Market Value, the Board of Trustees must consider the information described in paragraph 5 above and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer. Such determination may be provided on a case-by-case basis or a blanket basis for all such dispositions that have substantially similar circumstances.
7. Except for dispositions where the purpose of the transfer is within the purpose, mission or governing statute of the Authority, the Contracting Officer shall transmit a statement explaining the circumstances of the negotiated disposition of Property by at least ninety days prior to such disposal to each of the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State legislature, and the Authorities Budget Office, and a copy thereof shall be preserved in the files of the Authority. Such a statement shall be prepared in connection with a negotiated disposition of Property of any of the following: (i) any personal property which has an estimated Fair Market Value in excess of fifteen thousand dollars; (ii) any Real Property that has an estimated Fair Market Value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses iii and iv of this Section.; (iii) any Real Property disposed of by lease if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars; (iv) any Real Property or related personal property disposed of by exchange, regardless of value, or any Property any part of the consideration for which is Real Property.

To the extent that Property Disposition Contracts are competitively awarded, such awards shall be made upon receipt and evaluation of bids or proposals or other information obtained from persons/firms responding to a request for proposals or other form of solicitation on the basis of the criteria specified in the request for proposals or other solicitation. The Contracting Officer shall document the processes by which Property is sold or otherwise disposed of, by making a record summarizing the nature and scope of the Property disposed, the name of each person or organization submitting, or requested to submit, a bid or proposal, the

price or other consideration bid and received, and the basis for selection of both the purchaser and method of disposition of the Property.

8. All dispositions of Property also shall be subject to compliance with Section 6.15 of the Financing Agreement, dated as of May 1, 1998, between the Authority and the Subsidiary (the "Financing Agreement") and Section 714 of the Electric System General Revenue Bond Resolution adopted by the Authority on May 13, 1998, as supplemented (the "General Resolution"). In furtherance thereof, no Property of the Authority or the Subsidiary shall be sold or otherwise disposed of unless the Chief Financial Officer has determined that such disposition (i) is desirable in the conduct of the business of the Authority or the Subsidiary, (ii) is not disadvantageous in any material respect to the holders of the Authority's Obligations (as defined in the General Resolution), (iii) does not materially impair the ability of the Authority and the Subsidiary to comply with their respective obligations to comply with the rate covenants contained in Section 6.1 of the Financing Agreement and Section 701 of the General Resolution, and (iv) does not breach any covenants of the Authority or the Subsidiary relating to the exclusion of interest on the Authority's Obligations, which determinations shall be evidenced in writing and maintained with the records of the Authority relating to the disposition of such Property.

D. Approval Process for Property Disposition Contracts

In addition to any other approvals required by law, the award of Property Disposition Contracts and any related determinations made in connection therewith shall be approved as follows:

1. Property Disposition Contracts in amounts equal to or less than \$1,000,000 and related determinations shall be approved by the Contracting Officer and the Chief Financial Officer or the Chief Executive Officer.
2. Property Disposition Contracts in amounts greater than \$1,000,000 and related determinations shall be approved by the Trustees of the Authority.

IV. GENERAL

A. Implementation of Guidelines

The Contracting Officer is empowered to prepare such supplemental procedures as may be required to effectively implement these Guidelines, copies of which shall be provided to the Trustees.

B. Reports

1. Property Disposition Guidelines approved by Authority shall be annually reviewed and approved by the Trustees of the Authority. On or before the thirty-first day of March in each year, the Authority shall file with the State Comptroller a copy of the most recently reviewed and adopted guidelines, including the name of the Contracting Officer, and must post such guidelines on the Authority's website. Guidelines posted on the Authority's website shall be maintained at least until the disposition guidelines for the following year are posted on the website.
2. Within ninety days of the end of the fiscal year, the Contracting Officer shall prepare and submit to the Trustees, the Governor, the Chairman and ranking minority member of the Senate Finance Committee, the Chairman and ranking minority member of the Assembly Ways and Means Committee, the State Comptroller, and the Authorities Budget Office, a report listing all Real Property of the Authority having an estimated Fair Market Value in excess of fifteen thousand dollars that the Authority disposed of during the previous fiscal year. The report shall contain the price received by the Authority and the name of the purchaser for all such property sold by the Authority during such period.

C. Effect of Awarded Contracts

These Guidelines are intended for the guidance of the officers and employees of the Authority and the Subsidiary only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof, or 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, these Guidelines. In accordance with Section 2897.5 of the Public Authorities Law, a deed, bill of sale, lease, or other instruments executed by or on behalf of the Authority or the Subsidiary, purporting to transfer title or any other interest in Property shall be conclusive evidence of compliance with these guidelines insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of compliance with these guidelines prior to the closing

Board Policy: **Use, Awarding, Monitoring and Reporting
of Procurement Contracts**

Policy Type: **Compliance Process**

Monitored by: **Governance Committee**

Board Resolution: **#1348, approved March 29, 2017**



Long Island Power Authority (referred to herein as the “Authority”) is required by Section 2879 of the Public Authorities Law to adopt by resolution comprehensive guidelines, to be annually reviewed and approved by the Trustees of the Authority, regarding the use, awarding, monitoring and reporting of procurement contracts. The following Board Policy (the “Policy”) is adopted pursuant to such requirement and is applicable with respect to the use, awarding, monitoring and reporting of all Procurement Contracts which are (i) entered into by the Authority and (ii) solicited or awarded by the Authority on behalf of the Long Island Lighting Company d/b/a LIPA and d/b/a Power Supply Long Island and the Utility Debt Securitization Authority (collectively referred to herein as the “Authority”).

I. DEFINITIONS

1. “Best Value” means the basis for awarding contracts which best achieves the criteria specified by the Authority in a solicitation for proposals, including without limitation, quality, cost and efficiency.
2. “Electricity” means electric energy or capacity, transmission capacity or services, including related financial rights, or ancillary services.
3. “Electricity Contract” means any Procurement Contract for the acquisition of electric energy or capacity, transmission capacity or services, including related financial rights, or ancillary services.
4. “Goods” consist of supplies, materials and equipment acquired by the Authority, but shall not include product acquired pursuant to an Electricity Contract.
5. “Procurement Contract” means any written agreement signed by the Authority, and any amendment thereto, for the acquisition of Goods, Services, Technology, Electricity, and construction in the actual or estimated amount of five thousand dollars or more.

6. “Procuring Officer” means the Authority officer conducting any procurement of Goods, Services, Technology, Electricity and construction pursuant to Section I.1 of Article II of this Policy.
7. “Proposer” means anyone, including without limitation potential contractors, consultants, suppliers, manufacturers, subcontractors and sub-consultants, seeking to enter into a Procurement Contract with the Authority.
8. “Services” consists of legal, accounting, management consulting, investment banking, planning, training, statistical, research, public relations, construction management, architectural, engineering, surveying, or other services, whether personal or non-personal, of a consulting, professional, technical or other nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of the Authority.
9. “Technology” includes a Good or a Service or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity.

II. PROCUREMENT CONTRACTS

A. Reason(s) for Use of Services Contracts

Services contracts may be entered into because of one or more of the following factors or considerations:

1. Requirement of special expertise or unusual qualifications.
2. Nature, magnitude or complexity of Services required.
3. Lack of sufficient in-house resources, support staff, specialized facilities or equipment.
4. Lower cost.
5. Short-term or infrequent need for the Services does not warrant permanent Authority staffing.
6. Distance of the location or locations where the Services must be performed from the Authority offices or facilities.
7. Performance of a function requiring independence from the Authority management (e.g., independent auditors).
8. To meet unusual schedule requirements or emergencies.

B. Selection Procedures

1. Selection Procedures for Procurement Contracts

Except as specifically waived for one or more of the reasons set forth in Section B.2 of Article II of this Policy or as otherwise may be required or authorized by law, Procurement Contracts shall be awarded as set forth below.

a. General Policy for Procurement Contracts

The Authority is adopting this Policy in accordance with Section 2879 of the New York Public Authorities Law (the "PAL"). In accordance with Section 2879 of the PAL, all Procurement Contracts shall be awarded in accordance with this Policy. To the extent required by Section 1020-cc of the PAL, contracts for construction or purchase of Goods shall be let pursuant to Section 103 or, as applicable, Section 120-w(4)(e) of the New York General Municipal Law (the "GML").

The Procurement Officer conducting any procurement of any contract for construction or purchase of Goods shall determine, in consultation with the Authority's General Counsel, whether Section 103 of the GML, Section 120-w(4)(e) of the GML, or any other provisions of New York State law (including State Finance Law Section 163 ("Wick's Law") are applicable to the procurement. If it is determined that such contract is to be let in accordance with Section 103 or Section 120-w(4)(e) of the GML, the provisions of such section and, to the extent not inconsistent therewith, this Policy shall govern such procurement.

Procurement Contracts are to be awarded to persons/firms on a competitive basis to the maximum extent possible. Such awards are to be made by the Authority on the basis of:

- (i) lowest price or Best Value for contracts procured pursuant to Section 103 of the GML; provided, however, that contracts for construction of public works pursuant to Article 8 of the New York Labor Law shall be awarded on the basis of lowest price; and
- (ii) Best Value for all other Procurement Contracts;

and based upon receipt and evaluation of proposals or other information obtained from responsible persons/firms submitting a responsive bid or proposal in response to a request for proposals, an invitation for bid or other method of procurement.

The Authority encourages the use of qualified labor, suppliers and other resources from the Authority's service area to the extent possible consistent with law and this policy.

b. Public Notice

To the extent required by Article 4-C of the Economic Development Law, notice of all Procurement Contract opportunities estimated to be \$50,000 or more shall be advertised in the State's procurement opportunities newsletter. Notice of the award of all Procurement Contracts valued at \$50,000 or more shall also be posted in the State's procurement opportunities newsletter.

In addition to the above, all invitations for bids for Procurement Contracts for construction or purchase of Goods pursuant to Section 103 of the GML involving an expenditure of more than \$20,000 shall be advertised in the principal newspaper of the Authority's service area, if any, or, if none, in such newspaper of general circulation in the service area as may be designated by the officer supervising such procurement. All solicitations for proposals for Procurement Contracts for construction or purchase of Goods conducted in accordance with Section 120-w(4)(e) of the GML shall be advertised in (i) the principal newspaper of the Authority's service area, if any, (ii) at least one newspaper of general circulation (which may be the principal newspaper of the Authority's service area), (iii) the state register and (iv) the environmental notice bulletin.

c. Soliciting and Accepting Proposals

- (i) For every procurement, a record shall be maintained ("Procurement Record") documenting the basis for all the decisions made by the Authority during the procurement process.
- (ii) Except as otherwise provided in this Policy, the Authority shall select a competitive procurement process and document this process in the Procurement Record. The method of award, including the evaluation methodology, must be established prior to the opening of bids or proposals.
- (iii) The solicitation shall prescribe the specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluations and selection shall be conducted.
- (iv) The Authority may seek clarification from Proposers for purposes of assuring a full understanding as to responsiveness of the proposal to the procurement's specifications and/or requirements.
- (v) The Authority may clarify the requirements set forth in the solicitation document.
- (vi) The Authority may negotiate with one or more Proposers determined to be susceptible of being selected for contract award prior to award.
- (vii) The Authority may conduct competitive negotiations.

- (viii) The Authority may, prior to making an award, request best and final offers from one or more Proposers determined to be susceptible of being selected for contract award.
- (ix) The Authority may withdraw any pending solicitation at any time for cause or no cause. All proposals may be rejected. Where provided in the solicitation, separable portions of proposals may be rejected.
- (x) Prior to making an award of contract, based upon such criteria and factors as the Authority shall have established, the Authority shall make a determination of the responsiveness of each proposal and of the responsibility under State Finance Law of the selected Proposer(s).
- (xi) Except as may be provided for in the solicitation or as may be required by law, disclosure of the content of competing proposals received in response to a solicitation, or of any clarifications, modifications, revisions or supplements thereto, shall be prohibited prior to approval of the contract.
- (xii) The solicitation shall prescribe the designated point(s) of contact for the Authority (“Designated Contacts”), consistent with the Authority’s obligations under State Finance Law Sections 139-j and 139-k (as more fully set forth in Article II.F of this Policy), and shall require a Proposer to identify in its proposal a single point of contact. The solicitation shall prescribe that Proposer shall not communicate or make contact, as defined in State Finance Law Section 139-j(1)(c), (a “Contact”) with anyone other than the Authority’s Designated Contacts, except as authorized by State Finance Law Section 139-j (3). The solicitation shall further prescribe that all Contacts by a Proposer must be recorded and that impermissible Contacts may be grounds for finding the Proposer non-responsible and ineligible for a contract award. The solicitation shall require all Proposers to disclose prior findings of non-responsibility pursuant to State Finance Law Sections 139-j and 139-k. The solicitation shall include a summary of the policy and prohibitions regarding permissible contacts and shall also require a written affirmation by the Proposer as to its understanding of the Authority’s procedures in accordance with the provisions of State Finance Law Section 139-j(3) and its agreement to comply.

d. Letting of Procurement Contracts

- (i) Selection and award of any Procurement Contract shall be made by the Authority in a manner consistent with the method of award established for the procurement. The award(s) and the basis for determining the award(s) shall be documented in the procurement record.
- (ii) To the extent provided in the solicitation and determined to be in the best interests of the Authority, the Authority may elect to award a contract for

Services or Technology or an Electricity Contract to more than one responsive and responsible Proposer. When multiple contract awards are made, the selection of the contractor to provide the required services or technology shall be based on the most practical and economical alternative to the Authority at the time of purchase. The basis for determining the most practical and economical alternative shall be documented in the Procurement Record.

2. Waiver of Selection Procedures for Procurement Contracts

Except as may otherwise be required by law, Procurement Contracts (other than Electricity Contracts) may be awarded to persons/firms without regard to Section B.1 of Article II when any of the following circumstances exist:

- a. In the event of an emergency or other extraordinary circumstances including but not limited to i) a threat to: a) the health or safety of the public, b) Authority employees and any other workers, including contracted labor, operating, maintaining or otherwise performing services on the Authority's transmission and distribution system and/or related facilities; ii) those necessary to assure the proper functioning of the Authority's transmission and distribution system; iii) those necessary to adhere to schedule for completion of capital improvements and operation and maintenance projects wherein the failure to complete projects on time will result in lost revenue, penalties or unnecessary and unreasonable expenses or cost increases; and iv) storm restoration.
- b. Only one source for the Goods, Services or Technology is available (sole source procurement).
- c. Legal, professional, technical or other specialized services are required for which a certain person/firm has unique expertise, or has greatly superior qualifications to perform the service at a cost that is determined to be fair and reasonable (single source procurement).
- d. The contract is based upon an unsolicited proposal or offer, submitted at the sole initiative of the Proposer, and involving unique, innovative, or unusually meritorious methods or ideas, after having considered other options.
- e. The compatibility of Technology, equipment, accessories, or spare or replacement parts is the paramount consideration.
- f. Technology or Services are required to extend or complement a prior procurement and it is impracticable or uneconomical to have a source other than the original source continue the work.
- g. A sole or single supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source; or

- h. The Procurement Contract (i) is (a) less than \$50,000 for Goods, construction, Services or Technology; or (ii) involves an expenditure not exceeding \$200,000 for the purchase of Goods or Services from New York State small business concerns or from those firms certified as Minority/Women Owned Business Enterprises (M/WBE) by the Department of Economic Development pursuant to Article 15A of the executive law, or for purchases of goods or technology that are recycled or remanufactured; or (iii) involves the purchase of goods or services using the terms and conditions and pricing contained in contracts awarded by any department, agency, officer, political subdivision, public authority or public corporation of New York State, including, but not limited to, the Office of General Services, the Federal government or any other governmental entity; or (iv) involves the purchase of goods or services using the terms and conditions and pricing contained in contracts let by any electric utility if it is unlikely that the Authority will achieve savings through a competitive procurement.

When a Procurement Contract is awarded pursuant to this Section B.2 of Article II of this Policy, the Authority shall make a determination that the specifications or requirements for said purchase have been designed in a fair and equitable manner. The Authority shall document in the procurement record the basis for a determination to purchase pursuant to this Section B.2 of Article II of the Policy.

3. Selection Procedures for Electricity Contracts

- a. Electricity Contracts are not subject to Section B.1 of Article II if they are (i) entered into in accordance with rate schedules or tariffs filed with applicable federal or state regulatory agencies or adopted and maintained by the Authority, the Subsidiary or a public agency vendor not regulated by the Federal Energy Regulatory Commission, or (ii) subject to rates provided in rate schedules or tariffs regulated by the Federal Energy Regulatory Commission, or established by the Authority or a public agency vendor, and shall be awarded in accordance with such rate schedules and tariffs.
- b. All other Electricity Contracts are subject to Section B.1 of Article II.

C. Minority and Women-Owned Business Enterprises

It is the policy of the Authority to foster and promote the participation of minority and women-owned business enterprises in Authority procurements, to develop such enterprises and to facilitate the awarding of a fair share of Procurement Contracts to such enterprises. In contracting, the Authority shall use its best efforts to give minority business enterprises and women-owned business enterprises an opportunity to compete for the Authority's business by eliminating barriers to participation by M/WBEs in Authority procurements. When adopting its annual goals for the participation of M/WBEs, the Authority shall consult the most recent disparity study published by the State of New York.

The Authority shall administer the rules and regulations promulgated by the Director of the Division of Minority and Women-Owned Business Development within the Department of Economic Development in a good faith effort to meet the maximum feasible portion of the Authority's adopted goals. The Authority hereby designates the Division of Minority and Women-Owned Business Development within the Department of Economic Development to certify and decertify minority and women-owned business enterprises.

1. The Authority hereby designates the Special Counsel for Ethics, Risk and Compliance (or individual serving in a comparable role) to oversee its M/WBE program.

2. The Authority shall maintain a list of qualified certified M/WBEs that have expressed an interest in doing business with the Authority and ensure that such list is regularly updated. To assist in developing such list, the Authority shall periodically invite the submission of statements of qualifications from minority business enterprises and women-owned businesses for the purpose of identifying firms having experience in the type of Goods, Services and Technology contracted for by the Authority or Subsidiary. The list shall also include all M/WBEs that have responded to Authority solicitations for bids and proposals and/or have inquired about notices of Authority procurements placed in the State's procurement opportunities newsletter.

3. When soliciting bids and proposals, in addition to publication in the State's procurement opportunities newsletter, the Authority shall (a) consult the Directory of certified M/WBEs maintained by the Department of Economic Development; (b) provide each bidder and proposer with a copy of said Directory; and (c), provide notice to professional and other organizations that serve minority and women-owned business enterprises providing the types of services procured by the Authority.

4. To foster the increased use of M/WBEs, the Authority may seek a single proposal not exceeding \$200,000 in the aggregate, including all amendments, from a certified M/WBE that offers a reasonable price for such goods and/or services.

5. When provided for in the solicitation, bids and proposals shall be accepted from joint ventures between MWBEs and non-minority and women-owned business enterprises.

6. The Authority shall evaluate each contract to determine the goal for M/WBE participation in subcontracting opportunities based on the level of subcontracting needed and the

availability of certified M/WBEs to competitively respond to subcontracting opportunities. Each solicitation shall set forth the goal for M/WBE subcontracting opportunities. The Authority shall consider, where practicable, separating a single procurement into several for the purpose of maximizing M/WBE participation.

7. Where subcontracting goals are established for a Procurement Contract, the solicitation shall require that bidders and proposers submit a subcontractor utilization plan with the bid or proposal and which the Authority shall review as required. A contractor who is a certified M/WBE may count the work it performs toward meeting its goal for either minority or women participation, but not both.

8. In determining to award a contract, the Authority shall, where practicable, feasible and appropriate, assess the diversity practices of a bidder or proposer; provided, however, that a bid or proposal shall not be automatically rejected based on a lack of diversity practices.

9. The Authority shall verify M/WBE participation to the extent indicated in the bid or proposal selected for contract award.

10. Every Authority contract shall contain a provision expressly providing that any contractor who willfully and intentionally fails to comply with the M/WBE requirements imposed upon contractors by Article 15-A of the Executive Law shall be liable to the Authority for liquidated or other damages, as specified, and shall include other appropriate remedies on account of such non-compliance. The Authority shall consider compliance with the requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of Article 15-A of the Executive Law.

11. The Authority may waive obligations of the contractor relating to minority and women-owned business enterprise participation only after a showing of good faith efforts to comply with the requirements of Article 15-A of the Executive Law pursuant to the waiver provisions contained in Subdivision 6 of Section 313 of the Executive Law.

12. Upon execution of a contract, the Authority shall post on its web site any required minority and women-owned business enterprise subcontractor utilization plans and any waivers of compliance approved by the Authority within 30 days after such approval is granted.

13. The requirements of this section shall not apply to Electricity Contracts that meet the requirements of Section B.3(a) of Article II.

D. New York State Business Enterprises and New York Residents

It is the policy of the Authority to promote participation in Procurement Contracts by New York State business enterprises and New York residents, including without limitation, business enterprises located in the service area and residents of the service area, by encouraging them to compete through measures including, but not limited to:

1. Collecting and consulting the specifications of New York State business enterprises in developing any specifications for any Procurement Contract for the purchase of goods where possible, practicable, feasible, and consistent with open bidding, except for procurement contracts for which the Authority would be expending funds received from another state. The Authority will, where feasible, make use of the stock order specification forms prepared by the Commissioner of General Services and, where necessary, consult with the Commissioner of General Services in developing such specifications and make such determinations.
2. With the cooperation of the Department of Economic Development and through cooperative efforts with contractors, providing for the notification of New York State business enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract, contractors shall be required to document their efforts to encourage the participation of New York State business enterprises as subcontractors and suppliers on such Procurement Contracts. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from New York State business enterprises, including certified minority and women-owned businesses, or (b) contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals, and other trade publications circulated in New York State, or (d) participated in bidder outreach conferences. If a contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.
3. Except for Procurement Contracts for which the Authority would be expending funds received from another state, including in all solicitations a statement that information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development, including the directory of certified minority and women-owned businesses, and that it is the policy of the Authority to encourage the use of New York State subcontractors and suppliers and to promote the participation of minority and women-owned businesses, where possible, in the procurement of goods and services.
4. With the cooperation of the Community Services Division of the Department of Labor and through cooperative efforts with contractors, providing for the notification to New York State residents of employment opportunities arising in New York State out of Procurement Contracts in an amount estimated to be equal to or greater than one million dollars; and assuring compliance by contractors by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the Community Services Division

or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

5. Including in each solicitation a statement notifying potential Proposers in foreign countries that the Authority may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York State; providing for the assignment or other form of transfer of offset credits created by such procurement contracts, directly or indirectly, to third parties located in New York State, in accordance with the written directions of the Commissioner of Economic Development; and providing for the Authority otherwise to cooperate with the Department of Economic Development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York State created by such Procurement Contracts.
6. Each contract shall expressly obligate contractors to comply with the federal Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), as amended.

As used in this section the terms “New York State business enterprise” and “New York resident” shall have the meaning assigned to such terms in Section 2879 of the PAL.

E. New York State Service-Disabled Veteran-Owned Businesses (“SDVOBs”)

It is the policy of the Authority to promote participation in Procurement Contracts by SDVOB’s including without limitation, SDVOB’s located in the Authority’s service area.

New York State has established an overall goal of 6% for contracting with SDVOB’s and the Authority shall utilize its best efforts to assist the state in meeting these goals. In addition, the Authority shall utilize its best efforts to assist the Division of Service-Disabled Veterans' Business Development in the furtherance of these goals in accordance with their guidelines: <http://www.ogs.ny.gov/Core/docs/Guidelines.pdf>.

F. Restrictions on Procurement Lobbying

Pursuant to State Finance Law Sections 139-j and 139-k, an Offerer (as defined in Section 139-j(1)(h)) is restricted to making Contact with the Authority’s Designated Contacts only from the earliest solicitation of offers through final award and approval of procurement contracts (as defined in Section 139-j(1)(g)) by the Authority and, if applicable, Office of the State Comptroller (“Restricted Period”) except as provided for in State Finance Law Section 139-j(3)(a). When a Contact is received during the Restricted Period, Authority employees are required to obtain the name, address, telephone number, place of employment and occupation of the person or organization making the Contact and whether the person or organization was the Offerer or was retained, employed or designated by the Offerer to Contact the Authority about the procurement. If the Contact is received by an Authority employee who is not a Designated Contact, the Special Counsel for Ethics, Risk and Compliance (or individual serving in a comparable role) shall be notified who shall investigate the impermissible Contact.

If the General Counsel, or designee, determines that there is sufficient cause to believe that the Offerer violated the provisions of State Finance Law Section 139-j(3), notice shall be given to the Offerer who shall have the opportunity to be heard. If it is determined that the impermissible Contact was knowing and willful, the Offerer is non-responsible and shall not be awarded a contract except as otherwise provided in State Finance Law Section 139-j (10). In the event of two such findings within a 4-year period, the Offerer is debarred from participating in or receiving an Authority procurement contract, as defined by in Section 139-j(1)(g) for four years.

Proposers shall be provided with a summary of the Authority's policies and procedures regarding permissible contacts and shall affirm in writing its understanding and agreement to comply with the same. All contractors shall certify that information provided to the Authority pursuant to State Finance Law Sections 139-j and 139-k is true and accurate. All contracts shall include a provision that the contract may be terminated if the certification is found to be intentionally false or intentionally inaccurate.

G. Additional Certifications

It is the policy of the Authority to promote increased public confidence in its procurement practices, including requiring Proposers to certify in writing, upon submission of their proposals and at the time of execution of a contract with the Authority, the following:

1. Non-Collusion

- a. The prices in the bid or proposal have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor.
- b. Unless otherwise required by law, the prices which have been quoted in the bid or proposal have not knowingly been disclosed by Proposer, and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor.
- c. No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not submit a bid or proposal for the purpose of restricting competition.

Proposer shall make this certification under penalty of perjury, in accordance with Section 2878 of the PAL.

2. Contingent Fees

- a. Proposer has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Authority contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto.
- b. Proposer will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Authority provided however that this provision shall not apply to real estate brokers and other real property buyer/seller/lessor/lessee representatives engaged to act on behalf of the Authority.

A Proposer's failure to provide the certifications required by Sections G(1) and (2) of Article II will be grounds for disqualification from the procurement process.

A Proposer's violation of Section G(2)(a) or (b) of Article II will be grounds for disqualification from the procurement process.

H. Penalties

A Proposer's failure to comply with any of the provisions contained in this Policy is grounds for disqualification in the procurement process, and may constitute a crime under State or Federal Law.

I. Conduct of Procurements; Approval Process for Contracts

1. All procurements shall be conducted in accordance with this Policy by the responsible Procuring Officer.
2. The award of Procurement Contracts for Services, including those Procurement Contracts awarded without regard to Section B.1 of Article II, shall be approved as follows:
 - a. Procurement Contracts for Services having a value less than or equal to \$1,000,000 shall be approved by the responsible Procurement Officer and either the Chief Financial Officer or the Chief Executive Officer.
 - b. Procurement Contracts for Services having a value greater than \$1,000,000 and/or to be rendered over a period in excess of one year (regardless of the value) shall be approved by the Authority Board of Trustees.

3. The award of Procurement Contracts for Goods or Technology, including those Procurement Contracts awarded without regard to Section B.1 of Article II, shall be approved as follows:
 - a. Procurement Contracts for Goods or Technology having a value less than \$1,000,000 shall be approved by the responsible Procurement Officer and either the Chief Financial Officer or the Chief Executive Officer.
 - b. Procurement Contracts for Goods or Technology having a value equal to or greater than \$1,000,000 and/or to be rendered over a period in excess of one year (regardless of the value) shall be approved by the Authority Board of Trustees.
4. The award of Electricity Contracts shall be approved as follows:
 - a. Electricity Contracts having a term greater than 60 months shall be approved by the Authority Board of Trustees.
 - b. All other Electricity Contracts shall be approved by the responsible Procurement Officer, and either the Chief Financial Officer or the Chief Executive Officer, unless Board approval is otherwise required by applicable law, including to comply with the State Environmental Quality Review Act.
5. Procurement Contracts in an amount greater than \$50,000 shall not be valid, effective or binding upon the Authority until approved by the State Comptroller and filed in that office.

J. Employment of Former Officers and Employees

To the extent permitted by Public Officers Law Section 73, former Authority officers and employees are eligible to be considered to be retained as contractors and/or consultants, provided that they meet all criteria for contractors and/or consultants generally as specified in this Policy and upon the approval of the Trustees.

K. Types of Provisions to be Contained in Procurement Contracts

The following types of provisions shall be contained in all Authority procurement contracts, unless one or more such provision is inapplicable and/or unnecessary based on the nature and/or duration of the contract or any other circumstance that the Authority deems to be in its interest.

1. Description/Scope of Work
2. Term
3. Compensation
4. Relation between the Contractor and the Authority, including Supervision of Work, Use of Subcontractors, Conflict of Interest and Use of Authority Supplies, Facilities and Personnel

5. Ownership, Maintenance, Confidentiality and Other Provisions Related to Documents and Records
6. Termination
7. Provisions Required by Federal, State and Local Law
8. Warranty, Indemnity, Contingent Fee and Other Standard Provisions
9. Billing Policy
10. Insurance
11. The percentage of minority and women-owned subcontracting goals
12. The percentage of New York State Service-Disabled Veteran-Owned Business (SDVOB) subcontracting goals
13. Notice, Service of Process and Other Miscellaneous Provisions

III. GENERAL

A. Implementation of Guidelines

The Chief Executive Officer, Chief Financial Officer and/or General Counsel are empowered to prepare:

1. Such supplemental procedures as may be required to effectively implement this Policy, copies of which shall be provided to the Trustees; and
2. Proposed amendments to this Policy for approval by the Authority Board of Trustees when and as required.

B. Reports

1. No less frequently than annually, the Authority will prepare a report which summarizes its Procurement Contract activity for the period of the report, which will include a list of all Procurement Contracts entered into, all contracts entered into with New York State business enterprises and the subject matter and value thereof, all contracts entered into with certified minority or women-owned business enterprises and the subject matter and value thereof, all referrals made and all penalties imposed pursuant to section three hundred and sixteen of the executive law, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all Procurement Contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, the basis of such exemption and the status of existing Procurement Contracts.
2. Also on an annual basis, the Authority will prepare and approve a report on Procurement Contracts, which report will include this Policy and an explanation of this Policy and any amendments to them since the last report. The Authority will submit this report to any such governmental entities as may be entitled to receive it under applicable law, including the Public Authorities Law and the State Finance Law,

and will make this report available to members of the public on the Authority's website.

These guidelines shall be annually reviewed and approved by the Authority.

C. Effect of Awarded Contracts

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