

FOR CONSIDERATION

February 17, 2022

TO: The Board of Trustees

FROM: Thomas Falcone

SUBJECT: Consideration of Approval of the Annual Review of the Governance Package

Requested Action

The Board of Trustees (the “Board”) of the Long Island Power Authority (the “LIPA”) is requested to adopt a resolution approving the annual review of the Board Governance policies (i.e., procurement, lobbying, property disposition, real property acquisition, code of ethics and conduct, and Bylaws), including approval of amendments to: (i) the Board Policy on Procurement; (i) the Board Policy on Lobbying; and (ii) the LIPA Code of Ethics and Conduct.

Board Policies Required by Law to be Reviewed Annually: Procurement and Property Disposition

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

LIPA Staff recommends no changes to the Board Policy on Property Disposition. With respect to the Board Policy on Procurement, LIPA Staff recommends amending the section relating to procurement lobbying to clarify that Trustees, in addition to LIPA Staff and consultants, are not designated contacts consistent with applicable law and the Board Policy on Lobbying. The amendment to the Board Policy on Procurement is more particularly shown on **Exhibit “C”**.

Board Policy on Lobbying

New legislation was recently enacted to amend section 1020-kk of the Public Authorities Law requiring LIPA to prepare a semi-annual expenditure and lobbying report regarding certain advertising and lobbying activities. LIPA shall provide such report to the governor, president of the senate, and speaker of the assembly beginning March 31, 2022. This policy was modified to reflect the change in law.

The amendments to the Board Policy on Lobbying are more particularly shown on **Exhibit “E”**.

LIPA Code of Ethics and Conduct

The LIPA Code of Ethics and Conduct was amended to clarify that Trustees should recuse themselves from all deliberations and decisions involving an entity that has, within the past 24-months, paid remuneration to the Trustee's employer valued at more than fifteen thousand dollars for goods and services or for which the Trustee's employer has received any other form of financial assistance valued at more than fifteen thousand dollars, as such situations would constitute either an actual or perceived conflict of interest. This definition is consistent with the Public Authorities Accountability Act of 2005, which defined an "independent" member as one who "is not, and in the past two years has not been... employed by an entity that has received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority." The amendments to the LIPA Code of Ethics and Conduct are more particularly shown on **Exhibit "G"**.

Recommendation

LIPA Staff has reviewed the other Board Governance policies, including the LIPA By-laws and recommends no changes at this time.

Based upon the foregoing, I recommend approval of the above requested action by adoption of a resolution in the form attached hereto.

Attachments

<u>Exhibit "A"</u>	Resolution
<u>Exhibit "B"</u>	Board Policy on Property Disposition
<u>Exhibit "C"</u>	Board Policy on Procurement (redline)
<u>Exhibit "D"</u>	Board Policy on Procurement (clean)
<u>Exhibit "E"</u>	Board Policy on Lobbying (redline)
<u>Exhibit "F"</u>	Board Policy on Lobbying (clean)
<u>Exhibit "G"</u>	LIPA Code of Ethics and Conduct (redline)
<u>Exhibit "H"</u>	LIPA Code of Ethics and Conduct (clean)

RESOLUTION APPROVING THE ANNUAL REVIEW OF THE GOVERNANCE PACKAGE

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

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, LIPA Staff recommends no changes to the Board Policy Property Disposition; and

WHEREAS, LIPA Staff recommends certain changes to the Board Policy on Lobbying, the Board Policy on Procurement, and LIPA’s Code of Ethics and Conduct; and

WHEREAS, LIPA Staff has reviewed the other Board Governance policies, including the LIPA By-laws and recommends no changes at this time.

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 the Board Policy on Procurement, as shown on **Exhibit “C”**, the Board Policy on Lobbying, as shown on **Exhibit “E”**, and amendments to the LIPA Code of Ethics and Conduct, as shown on **Exhibit “G”**.

Dated: February 17, 2022

Board Policy:	Property Disposition
Policy Type:	Compliance Process
Monitored by:	Governance Committee
Board Resolution:	Resolution #1610, approved March 29, 2021



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: **#1610, approved ~~March 29, 2021~~ February 17, 2022**



Long Island Power 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 \$500,000 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 (i) 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 Deputy General Counsel (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 \$500,000 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 staff, trustee or consultant employee~~ who is not a Designated Contact, the ~~Special Counsel for Ethics, Risk and Compliance~~ General Counsel, ~~(or individual serving in a comparable role)~~ designee, shall be notified who shall investigate the impermissible Contact.

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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.

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

Policy Type: **Compliance Process**

Monitored by: **Governance Committee**

Board Resolution: **#1610, approved February 17, 2022**



Long Island Power 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 \$500,000 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 (i) 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 Deputy General Counsel (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 \$500,000 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 Authority staff, trustee or consultant who is not a Designated Contact, the General Counsel, or designee, 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.

Board Policy: **Procurement Lobbying**

Policy Type: **Compliance Process**

Monitored by: **Governance Committee**

Board Resolution: [#1347, approved March 29, 2017]

~~Amended #xxxx, approved~~ ~~amended, February 17, ———~~ 2022]



I. INTRODUCTION

In furtherance of LIPA's ~~(defined below)~~ commitment to ensure the transparency and accountability of its operations, the following Board Policy (the "Policy") sets forth LIPA's policy on (a) recording attempts to influence the outcome of LIPA's (a) LIPA's Procurements, and (b) Rules, Regulations, or Ratemaking activity and (be) the requirement that all LIPA employees and Trustees to report certain advertising and lobbying activities. —This Policy is applicable to all employees, officers and Trustees of LIPA, its wholly owned subsidiary 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 "LIPA") and is in compliance with the requirements of the "Procurement Lobbying Law" found in the State Finance Law, ~~and~~ the "Lobbying Contacts" provisions of the Public Authorities Law and Section 1020-kk of the Public Authorities Law. The restrictions and/or reporting requirements associated with both types of lobbying activity are outlined below.

II. PROCUREMENT LOBBYING

This section of the Policy has been issued pursuant to the State Finance Law, which generally prohibits, with limited exception, individuals or entities from communicating with anyone other than the person(s) designated by LIPA to communicate with such individuals or entities about a procurement for a prescribed period of time during the procurement process. LIPA is required to collect and record certain information pertaining to attempts to influence the procurement (a "**Contact**," defined below) during the procurement period from the earliest solicitation of a proposal to the final approval of the procurement (the "**Restricted Period**," defined below). The specific requirements related to these activities are set forth as follows:

A. Statutory Definitions¹

Article of Procurement

A commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of

¹ Defined terms are in bold.

an interest in real property that is the subject of a governmental procurement.

Contact²

Any oral, written or electronic communication with LIPA staff, trustees or ~~its~~ LIPA consultants about LIPA procurement under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.

Governmental Entity

All New York State agencies and authorities; both houses of the Legislature; the Unified Court System; municipal agencies and their respective employees.

LIPA Procurement

shall mean (i) the preparation or terms of the specifications, bid documents, requests for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the Comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the **Offerer**.

Offerer

The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that **Contacts** LIPA about a **LIPA Procurement** during the restricted period of the procurement.

Procurement Contract

Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, State Finance Law Article XI-B contracts between LIPA and not-for-profit organizations, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, and eminent domain transactions shall not be deemed **Procurement Contracts**.

² Note that the statutory definition for “Contact” is different for Procurement Lobbying discussed in Article II of this Policy and for Rule, Regulation or Ratemaking Lobbying discussed in Article III of this policy.

Restricted Period

The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract** with LIPA and ending with the final contract award and approval by LIPA, and where applicable, the Office of the State Comptroller.

B. Exemptions

Certain communications are exempt from the Policy. These include: (i) submissions in response to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

In addition, any communication received by LIPA from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, shall not be considered a **Contact** for recording purposes.

C. Violations

A violation of this Policy occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person(s) designated by LIPA to receive communications for the particular **LIPA Procurement**. This includes instances where the **Offerer Contacts** LIPA regarding a procurement of another **Governmental Entity**.

Attempts by an **Offerer** to influence a **LIPA Procurement** in a manner that would result in a violation of the Public Officers Law or any other applicable ethics code shall also be a violation of this Policy.

D. Procedures

a. Notifying Vendors of Procurement Lobbying Policy

- i. For each **Procurement Contract**, LIPA will designate a person or persons to receive communications from **Offerers** concerning the **LIPA Procurement**.**

- ii. LIPA will incorporate a summary of the policy governing lobbying during a **LIPA Procurement** in its documents relating to the **Procurement Contract** and provide a copy of the policy and prohibitions regarding permissible communications to **Offerers**.
- iii. LIPA shall seek written affirmation from all **Offerers** indicating that they understand and agree to comply with this Policy (*See Attachment 1*).

b. Making Determinations of Responsibility

- i. Prior to award of a **Procurement Contract**, LIPA must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**, using the **Offerer Disclosure of Prior Non-Responsibility Determinations Form** (*See Attachment 2*), whether it has been found non-responsible within the last four years by any **Governmental Entity** for: (1) failure to comply with State Finance Law § 139 j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to LIPA is complete, true and accurate.
- ii. The **Procurement Contract** must include a provision allowing LIPA to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by LIPA. LIPA can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in procurement record of the **LIPA Procurement**.

c. Recording Contacts

- i. All LIPA employees must record any **Contact** from any person or entity. **Contacts** may be initiated by parties with an interest in the **LIPA Procurement** that are not necessarily connected directly to the **Offerer**. **Contacts** may come in the form of

telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form (*See Attachment 3*) should be used to record all **Contacts**. The form is also available to employees on the LIPA Intranet.

ii.—Examples of **Contacts** for which a Record of Contact must be completed include:

ii.

1. During the **Restricted Period**, an **Offerer Contacts** a LIPA employee (other than the employee designated to receive such communications) to discuss the **Offerer's** cost, competitiveness or its suitability to be selected for a contract.
2. A court reporter, expert witness or any other vendor offers a LIPA employee a gift of any monetary value during the **Restricted Period**.

iii. Examples of permissible communications which may be directed to persons other than those designated by LIPA to receive communications from **Offerers** concerning the **LIPA Procurement** include:

1. Inquiries as to the status of the procurement process.
2. Requests to be included on LIPA's **Offerer** list.
3. Receipt of advertising material.
4. Intra-agency communications of administrative details concerning the procurement.
5. Responses to LIPA-issued Requests for Information.
6. Written questions submitted by **Offerers** regarding a solicitation during the allowable time period of a competitive procurement.
7. Complaints about the procurement process or outcome.
8. Participation in an **Offerer's** conference as provided for in a Request for Proposals of Invitation for Bids.
9. Submission of a proposal or bid in response to a Request for Proposals or Invitation for Bids.

10. Contract negotiations.

11. Debriefing of an **Offerer** after a contract award has been made.

None of the above communications require the preparation of a Record of Contact unless such communication constitutes an attempt to influence the **LIPA Procurement**.

- iv. If a LIPA employee is in doubt about whether a communication was intended to influence the **LIPA Procurement**, he or she should record the communication on the Record of Contact Form and submit it to the Director ~~of and~~ Procurement for further investigation.
- v. The LIPA Officer responsible for the procurement, or his or her designee, will be required to ensure that all Records of Contacts are included in the procurement record for the related **Procurement Contract**.

E. Investigation of Contacts/Penalties for Violations

- a. All reported **Contacts** will be immediately investigated by the Director of Procurement, or his or her designee. If the Director of Procurement finds sufficient cause to believe that an **Offerer** has violated this Policy, the **Offerer** will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the **LIPA Procurement**.
- b. If the Director of Procurement should find at the conclusion of the investigation that the **Offerer** knowingly and willfully made a prohibited **Contact** in violation of this Policy, then the **Offerer** shall be disqualified as non responsible, unless LIPA makes a finding that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

III. RULE, REGULATION OR RATEMAKING LOBBYING

This section of this Policy has been issued pursuant to the Public Authorities Law, and establishes measures to create -and maintain records of any attempt by a “**Lobbyist**” (as defined below) to influence: (a) the adoption or rejection of any rule or regulation by LIPA, and/or (b) the outcome of any ratemaking proceeding by LIPA, as follows:

A. Statutory Definitions³

- Contact** Any conversation, in person or by telephonic or other remote means, or correspondence between any **Lobbyist** engaged in the act of **Lobbying** and any employee, officer or trustee within LIPA who can make or influence a decision on the subject of the **Lobbying** on behalf of the LIPA.
- Lobbying** Any attempt to influence: (a) the adoption or rejection of any rule or regulation by LIPA, and/or (b) the outcome of any ratemaking proceeding by LIPA.
- Lobbyist** Every person or organization retained, employed or designated by any client to engage in **Lobbying**. **Lobbyist** does not include any officer, director, trustee, employee, counsel or agent of the state, or of any municipality or subdivision of New York State, when such persons are discharging their official duties.⁴

B. Responsibilities

- a. An employee, officer or trustee who is contacted by a **Lobbyist** shall make a contemporaneous record of such **Contact** on a form including the day and time of the **Contact**, the identity of the **Lobbyist** and a summary of the substance of the **Contact**. The employee, officer or trustee shall notify and deliver the completed form to the General Counsel.
- b. The General Counsel shall prescribe such form to be used by all employees, officers and trustees to record such lobbying **Contacts** under this Policy. (Attachment 4)
- c. Upon receipt of a record of **Contact**, the General Counsel shall maintain or cause to be maintained such record for a period of not less than seven (7) years in a filing system that is indexed or otherwise organized in a manner in which such records are readily identifiable and referenced to LIPA decisions regarding (a) the

³ Defined terms are in bold.

⁴ Officers, directors, trustees, employees, counsels or agents of colleges as defined by New York Education law §2(2) are considered lobbyists for purposes of PAL §2987.

adoption or rejection of any rule or regulation by LIPA and (b) the outcome of any ratemaking proceeding by LIPA.

IV. SEMI-ANNUAL EXPENDITURE AND LOBBYING REPORT

A. Statutory Definitions

Lobbying or Lobbying Activities: communicating with Government Officials in an attempt to influence the making, developing, amending, or defeating of legislative proposals, bills, or resolutions, regulations, policies, or programs including any attempt to influence:

- i) the passage or defeat of any legislation or resolution by either house of the state legislature including but not limited to the introduction or intended introduction of such legislation or resolution or approval or disapproval of any legislation.
- ii) the adoption, issuance, rescission or modification or terms of a gubernatorial executive order.
- iii) the adoption or rejection of any rule or regulation having the force and effect of law by a state agency.
- iv) the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality.
- v) the adoption, issuance, rescission, modification, or terms of any executive order issued by the chief executive officer of a municipality; and
- vi) the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution or regulation.

Advertising: any promotional activity or public service announcement that requires the purchase of media space, including television airtime, radio airtime, internet media space, billboards, newspaper space, magazine space or any private publication which requires the expenditure of any public funds.

Government Official: an elected or appointed official, officer, employee, or director of, or any representative or agent acting on behalf of:

- i) a body of any level of government, whether federal, provincial, state, municipal or other.
- ii) a political party, a party official or candidate for political office.

- iii) a state-owned or controlled entity.
- iv) a public international or intergovernmental organization; or
- v) a person who holds a legislative, administrative, or judicial position.

Employee: LIPA Trustees and staff.

B. Responsibilities

- i) LIPA employees engaged in lobbying and advertising activities, as defined above, must track such activity by completing ~~the~~ prescribed LIPA reporting form within 5 days of the event (Attachment 5 [to come]).
- ii) _____
- iii) LIPA's General Counsel, on or before March 31, 2022 and every semi-annual period thereafter, shall prepare an expenditure and lobbying report to be sent to the governor, the president of the senate, and the speaker of the assembly ~~based upon the information recorded by employees as described above.~~

Any questions regarding this Policy and/or interpretation of this Policy should be directed to LIPA's General Counsel.

Board Policy: **Procurement Lobbying**
Policy Type: **Compliance Process**
Monitored by: **Governance Committee**
Board Resolution: **#1347, approved March 29, 2017**
#xxxx, amended February 17, 2022



I. INTRODUCTION

In furtherance of LIPA's commitment to ensure the transparency and accountability of its operations, the following Board Policy (the "Policy") sets forth LIPA's policy on (a) recording attempts to influence the outcome of LIPA's Procurements, Rules, Regulations, or Ratemaking activity and (b) the requirement that all LIPA employees and Trustees report certain advertising and lobbying activities. This Policy is applicable to all employees, officers and Trustees of LIPA, its wholly owned subsidiary 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 "LIPA") and is in compliance with the requirements of the "Procurement Lobbying Law" found in the State Finance Law, the "Lobbying Contacts" provisions of the Public Authorities Law and Section 1020-kk of the Public Authorities Law. The restrictions and/or reporting requirements associated with both types of lobbying activity are outlined below.

II. PROCUREMENT LOBBYING

This section of the Policy has been issued pursuant to the State Finance Law, which generally prohibits, with limited exception, individuals or entities from communicating with anyone other than the person(s) designated by LIPA to communicate with such individuals or entities about a procurement for a prescribed period of time during the procurement process. LIPA is required to collect and record certain information pertaining to attempts to influence the procurement (a "**Contact**," defined below) during the procurement period from the earliest solicitation of a proposal to the final approval of the procurement (the "**Restricted Period**," defined below). The specific requirements related to these activities are set forth as follows:

A. Statutory Definitions¹

Article of Procurement

A commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of

¹ Defined terms are in bold.

an interest in real property that is the subject of a governmental procurement.

Contact²

Any oral, written or electronic communication with LIPA staff, trustees or LIPA consultants about LIPA procurement under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.

Governmental Entity

All New York State agencies and authorities; both houses of the Legislature; the Unified Court System; municipal agencies and their respective employees.

LIPA Procurement

shall mean (i) the preparation or terms of the specifications, bid documents, requests for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the Comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the **Offerer**.

Offerer

The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that **Contacts** LIPA about a **LIPA Procurement** during the restricted period of the procurement.

Procurement Contract

Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, State Finance Law Article XI-B contracts between LIPA and not-for-profit organizations, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, and eminent domain transactions shall not be deemed **Procurement Contracts**.

² Note that the statutory definition for “Contact” is different for Procurement Lobbying discussed in Article II of this Policy and for Rule, Regulation or Ratemaking Lobbying discussed in Article III of this policy.

Restricted Period

The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract** with LIPA and ending with the final contract award and approval by LIPA, and where applicable, the Office of the State Comptroller.

B. Exemptions

Certain communications are exempt from the Policy. These include: (i) submissions in response to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

In addition, any communication received by LIPA from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, shall not be considered a **Contact** for recording purposes.

C. Violations

A violation of this Policy occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person(s) designated by LIPA to receive communications for the particular **LIPA Procurement**. This includes instances where the **Offerer Contacts** LIPA regarding a procurement of another **Governmental Entity**.

Attempts by an **Offerer** to influence a **LIPA Procurement** in a manner that would result in a violation of the Public Officers Law or any other applicable ethics code shall also be a violation of this Policy.

D. Procedures

a. Notifying Vendors of Procurement Lobbying Policy

- i. For each **Procurement Contract**, LIPA will designate a person or persons to receive communications from **Offerers** concerning the **LIPA Procurement**.**

- ii. LIPA will incorporate a summary of the policy governing lobbying during a **LIPA Procurement** in its documents relating to the **Procurement Contract** and provide a copy of the policy and prohibitions regarding permissible communications to **Offerers**.
- iii. LIPA shall seek written affirmation from all **Offerers** indicating that they understand and agree to comply with this Policy (*See Attachment 1*).

b. Making Determinations of Responsibility

- i. Prior to award of a **Procurement Contract**, LIPA must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**, using the **Offerer Disclosure of Prior Non-Responsibility Determinations Form** (*See Attachment 2*), whether it has been found non-responsible within the last four years by any **Governmental Entity** for: (1) failure to comply with State Finance Law § 139 j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to LIPA is complete, true and accurate.
- ii. The **Procurement Contract** must include a provision allowing LIPA to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by LIPA. LIPA can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in procurement record of the **LIPA Procurement**.

c. Recording Contacts

- i. All LIPA employees must record any **Contact** from any person or entity. **Contacts** may be initiated by parties with an interest in the **LIPA Procurement** that are not necessarily connected directly to the **Offerer**. **Contacts** may come in the form of

telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form (*See Attachment 3*) should be used to record all **Contacts**. The form is also available to employees on the LIPA Intranet.

ii. Examples of **Contacts** for which a Record of Contact must be completed include:

1. During the **Restricted Period**, an **Offerer Contacts** a LIPA employee (other than the employee designated to receive such communications) to discuss the **Offerer's** cost, competitiveness or its suitability to be selected for a contract.
2. A court reporter, expert witness or any other vendor offers a LIPA employee a gift of any monetary value during the **Restricted Period**.

iii. Examples of permissible communications which may be directed to persons other than those designated by LIPA to receive communications from **Offerers** concerning the **LIPA Procurement** include:

1. Inquiries as to the status of the procurement process.
2. Requests to be included on LIPA's **Offerer** list.
3. Receipt of advertising material.
4. Intra-agency communications of administrative details concerning the procurement.
5. Responses to LIPA-issued Requests for Information.
6. Written questions submitted by **Offerers** regarding a solicitation during the allowable time period of a competitive procurement.
7. Complaints about the procurement process or outcome.
8. Participation in an **Offerer's** conference as provided for in a Request for Proposals of Invitation for Bids.
9. Submission of a proposal or bid in response to a Request for Proposals or Invitation for Bids.

10. Contract negotiations.

11. Debriefing of an **Offerer** after a contract award has been made.

None of the above communications require the preparation of a Record of Contact unless such communication constitutes an attempt to influence the **LIPA Procurement**.

- iv. If a LIPA employee is in doubt about whether a communication was intended to influence the **LIPA Procurement**, he or she should record the communication on the Record of Contact Form and submit it to the Director of Procurement for further investigation.
- v. The LIPA Officer responsible for the procurement, or his or her designee, will be required to ensure that all Records of Contacts are included in the procurement record for the related **Procurement Contract**.

E. Investigation of Contacts/Penalties for Violations

- a. All reported **Contacts** will be immediately investigated by the Director of Procurement, or his or her designee. If the Director of Procurement finds sufficient cause to believe that an **Offerer** has violated this Policy, the **Offerer** will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the **LIPA Procurement**.
- b. If the Director of Procurement should find at the conclusion of the investigation that the **Offerer** knowingly and willfully made a prohibited **Contact** in violation of this Policy, then the **Offerer** shall be disqualified as non responsible, unless LIPA makes a finding that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

III. RULE, REGULATION OR RATEMAKING LOBBYING

This section of this Policy has been issued pursuant to the Public Authorities Law, and establishes measures to create and maintain records of any attempt by a “**Lobbyist**” (as

defined below) to influence: (a) the adoption or rejection of any rule or regulation by LIPA, and/or (b) the outcome of any ratemaking proceeding by LIPA, as follows:

A. Statutory Definitions³

- Contact** Any conversation, in person or by telephonic or other remote means, or correspondence between any **Lobbyist** engaged in the act of **Lobbying** and any employee, officer or trustee within LIPA who can make or influence a decision on the subject of the **Lobbying** on behalf of the LIPA.
- Lobbying** Any attempt to influence: (a) the adoption or rejection of any rule or regulation by LIPA, and/or (b) the outcome of any ratemaking proceeding by LIPA.
- Lobbyist** Every person or organization retained, employed or designated by any client to engage in **Lobbying**. **Lobbyist** does not include any officer, director, trustee, employee, counsel or agent of the state, or of any municipality or subdivision of New York State, when such persons are discharging their official duties.⁴

B. Responsibilities

- a. An employee, officer or trustee who is contacted by a **Lobbyist** shall make a contemporaneous record of such **Contact** on a form including the day and time of the **Contact**, the identity of the **Lobbyist** and a summary of the substance of the **Contact**. The employee, officer or trustee shall notify and deliver the completed form to the General Counsel.
- b. The General Counsel shall prescribe such form to be used by all employees, officers and trustees to record such lobbying **Contacts** under this Policy. (Attachment 4)
- c. Upon receipt of a record of **Contact**, the General Counsel shall maintain or cause to be maintained such record for a period of not less than seven (7) years in a filing system that is indexed or otherwise organized in a manner in which such records are readily identifiable and referenced to LIPA decisions regarding (a) the adoption or rejection of any rule or regulation by LIPA and (b) the outcome of any ratemaking proceeding by LIPA.

IV. SEMI-ANNUAL EXPENDITURE AND LOBBYING REPORT

³ Defined terms are in bold.

⁴ Officers, directors, trustees, employees, counsels or agents of colleges as defined by New York Education law §2(2) are considered lobbyists for purposes of PAL §2987.

A. Statutory Definitions

Lobbying or Lobbying Activities: communicating with Government Officials in an attempt to influence the making, developing, amending, or defeating of legislative proposals, bills, or resolutions, regulations, policies, or programs including any attempt to influence:

- i) the passage or defeat of any legislation or resolution by either house of the state legislature including but not limited to the introduction or intended introduction of such legislation or resolution or approval or disapproval of any legislation.
- ii) the adoption, issuance, rescission or modification or terms of a gubernatorial executive order.
- iii) the adoption or rejection of any rule or regulation having the force and effect of law by a state agency.
- iv) the passage or defeat of any local law, ordinance, resolution, or regulation by any municipality.
- v) the adoption, issuance, rescission, modification, or terms of any executive order issued by the chief executive officer of a municipality; and
- vi) the adoption or rejection of any rule, regulation, or resolution having the force and effect of a local law, ordinance, resolution or regulation.

Advertising: any promotional activity or public service announcement that requires the purchase of media space, including television airtime, radio airtime, internet media space, billboards, newspaper space, magazine space or any private publication which requires the expenditure of any public funds.

Government Official: an elected or appointed official, officer, employee, or director of, or any representative or agent acting on behalf of:

- i) a body of any level of government, whether federal, provincial, state, municipal or other.
- ii) a political party, a party official or candidate for political office.
- iii) a state-owned or controlled entity.
- iv) a public international or intergovernmental organization; or
- v) a person who holds a legislative, administrative, or judicial position.

Employee: LIPA Trustees and staff.

B. Responsibilities

- i) LIPA employees engaged in lobbying and advertising activities, as defined above, must track such activity by completing the prescribed LIPA reporting form within 5 days of the event (Attachment 5 [to come]).
- ii)
- iii) LIPA's General Counsel, on or before March 31, 2022 and every semi-annual period thereafter, shall prepare an expenditure and lobbying report to be sent to the governor, the president of the senate, and the speaker of the assembly based upon the information recorded by employees as described above.

Any questions regarding this Policy and/or interpretation of this Policy should be directed to LIPA's General Counsel.

**CODE OF ETHICS AND CONDUCT OF THE
LONG ISLAND POWER AUTHORITY**

~~July 22, 2020~~ February 17, 2022

Long Island Power Authority
333 Earle Ovington Boulevard
Uniondale, New York 11553

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LONG ISLAND POWER AUTHORITY CODE OF ETHICS AND CONDUCT

I. Introduction

The Long Island Power Authority (“LIPA”), as a public entity, has a responsibility for maintaining the highest level of honesty, ethical conduct, and public trust in all its activities. To meet this responsibility, LIPA adopted codes of ethics and conduct for its Trustees and Employees. This Code of Ethics and Conduct (the “Code”) addresses the ethical and professional standards of conduct expected of both LIPA’s Board of Trustees and its Employees.

The Code applies to LIPA's current Trustees and Former Trustees and current and Former Employees (hereafter Trustees and Employees) and states in specific form LIPA's position on Conflicts of Interest. Personal integrity is the cornerstone of the Code. Each Trustee and Employee has the primary responsibility for avoiding Financial Interests and Other Interests which might create a conflict with his or her position as a fiduciary of LIPA and LIPA property. As LIPA is a public entity, Trustees and Employees are responsible for conducting Authority business solely in the public interest.

The Code is not intended to address all situations or answer all questions related to daily ethical conduct. Trustees and Employees should inquire of LIPA’s General Counsel if they have questions as to any provision of the Code. In addition, Trustees and Employees who have questions as to whether a prospective personal or business Transaction or assumption of a position of responsibility or trust would violate the Code, may request in writing an advance determination on the matter from LIPA’s General Counsel pursuant to Section VIII of the Code.

Violations of the Code or applicable statutory provisions may subject a Trustee or Employee to discipline up to and including removal from the board by the appointing authority, termination of employment at LIPA and/or expose the Trustee or Employee to civil and/or criminal penalties.

The Code will be reviewed and updated by the Governance, Planning and Personnel Committee as necessary with a copy distributed to each Trustee and Employee.

II. Definitions

The following definitions apply to the Code.

A. “Benefit” means any gain or advantage to, or reduction in the liabilities of, the beneficiary and includes any gain or advantage to, or reduction in the liabilities of, a third person pursuant to the desire or consent of the beneficiary.

B. “Confidential Information” means information which is available to a Trustee only because of his or her status as a Trustee and is not a matter of public knowledge.

C. “Conflict of Interest” means a situation in which the financial, familial, or personal

interests of a Trustee or Employee conflict, may conflict or could be perceived as conflicting with their responsibilities to LIPA

D. “Dependent Child” means any son, daughter, stepson or stepdaughter of a Trustee or Employee who is under age eighteen, unmarried and living in the household of the Trustee; or a “dependent” of the Trustee or Employee within the meaning of section 152 of the Internal Revenue Code.¹

E. “Employee” means any person employed by or officer of LIPA.

F. “Financial Interest” means any of the following:

1. Ownership or control of 10 percent or more of the stock of any entity (or 1 percent in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity;

2. Ownership of an interest in a business or real property which interest (a) reflects a 10 percent or more ownership of the business, or (b) in the case of a Spouse or Dependent Child, constitutes 10 percent or more of the net worth of the person owning such interest, or the combined net worth of the Trustee and his or her Spouse and Dependent Child. In determining net worth, the value of any interest in the Trustee or Employee’s personal residence(s) shall be excluded. In determining the value of an interest, debts, mortgages, liens or other encumbrances thereon are to be disregarded; or

3. Liability or indebtedness to a person or business in excess of \$5,000, excluding liabilities owed to Relative(s) and excluding mortgages, liens or other encumbrances on or secured by real property which constitutes the Trustee or Employee’s personal residence(s) or furniture or appliances therein.

G. “Former Trustee” and “Former Employee” mean persons who are no longer Trustees or Employees of LIPA but were at any time following LIPA’s adoption of this Code or any predecessor code of ethics and conduct.

H. “Gift” means a payment, advance, forbearance, rendering, or deposit of money, or anything of more than nominal value, unless the donor receives consideration of equal or greater value. Nominal value means an item or service with a fair market value of \$15 or less.

I. Trustee’s or Employee’s “Independent Business” means, for the purposes of Section IV (B) (11) of the Code: (1) any entity, including but not limited to a firm, partnership or association of which a Trustee or Employee, or a Trustee’s or Employee’s Spouse or Dependent Child serves as an employee, consultant or contractor, or is entitled to receive income, dividends or anything of value; or (2) a corporation, 10% or more of the stock of which is owned or controlled directly or indirectly by a Trustee or Employee or a Trustee or Employee’s Spouse or Dependent Child.

¹ The definition of “Dependent Child” includes adopted children, who under New York State law have the same rights and privileges of biological children. See, *New York Estates, Powers and Trusts Law Section 2-1.3(a)*

J. “LIPA” means the Long Island Power Authority and its wholly owned subsidiary, the Long Island Lighting Company d/b/a LIPA and d/b/a Power Supply Long Island, as well as any other subsidiaries created by the Long Island Power Authority.

K. “Operations Services” means the management of the daily operation of LIPA’s electric transmission and distribution system and the management of LIPA’s power supply resources.

L. “Other Interest” means holding a position in a business such as an officer, director, trustee, partner, proprietor, executor, employee, or a position of management, or acting as a consultant, agent or representative therefore in any capacity.

M. “Policy-Making Position” means Trustees and Employees in management and non-management positions designated as Policy-Making positions by LIPA, because the individual holding the position exercises responsibilities of a broad scope in the formulation of plans for the implementation of goals or policy for LIPA or acts as an advisor to an individual in such a position.

N. “Relative” shall mean a Trustee or Employee’s Spouse, domestic partner as defined by N.Y. Public Health Law § 2961(6-a), child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the Trustee or Employee, or of the Trustee or Employee’s Spouse.

O. “Spouse” shall mean the husband or wife of the Trustee or Employee unless living separate and apart from the Trustee with the intention of terminating the marriage or providing for permanent separation or unless separated pursuant to: (i) a judicial order, decree or judgment, or (ii) a legally binding separation agreement. Spouse also includes persons in legally recognized marriages as provided in New York’s Marriage Equality Act of 2011.

P. “Trading” means, in reference to securities, the buying and selling of securities, or the buying and selling of options, calls, puts, or any other right relating to a security.

Q. “Transaction” means buying, selling, renting (as lessor or lessee), or otherwise acquiring or disposing of services, materials, supplies, equipment, or property having a value of one hundred dollars or more or an interest having a value of one hundred dollars or more in such services, materials, supplies, equipment or property; borrowing or investment of money; preparing, requisitioning, ordering, approving, advising on, administering or otherwise acting in reference to a contract having a value of one hundred dollars or more; or the promulgation of rules and regulations affecting such activities.

R. “Trustee” means the Trustees of LIPA appointed pursuant to Public Authorities Law §§ 1020-d.

III. Standards and Principles of Conduct

The following standards and principles of conduct are to be followed to assure compliance with the Code. A breach of these standards and principles constitutes a violation of the Code.

A. General Standards

1. Trustees and Employees are subject to New York State ethics laws including Public Officers Law Sections 73-a, 74 and the rules and regulations promulgated thereunder. Employees are further subject to Public Officers Law Section 73, and the rules and regulations promulgated thereunder.

2. Trustees and Employees should endeavor to pursue a course of conduct that will not raise suspicion among the public that he or she is likely to engage in acts that are in violation of the public trust.

B. Specific Standards and Principles

Personal or Financial Interests/Independence/Privileges

~~1.~~ Trustees and Employees shall not have any interest or incur any obligation, financial or otherwise, direct or indirect, or engage in any business or Transaction or professional activity, which conflicts with the proper discharge of their duties in the public interest.

~~1.2.~~ Trustees shall recuse themselves from all deliberations and decisions involving an entity that has, within the past 24-months, paid remuneration to their employer valued at more than fifteen thousand dollars for goods and services or for which their employer has received any other form of financial assistance valued at more than fifteen thousand dollars.

~~2.3.~~ Trustees and Employees shall avoid any action, whether or not specifically prohibited by the Code, which might result in or create the appearance of:

- (a) using his or her official position for private gain;
- (b) giving preferential treatment to any person, including himself or herself or any Relative
- (c) lacking independence or impartiality;
- (d) affecting adversely the confidence of the public in the integrity of LIPA;
or,
- (e) violating any provision of the Code.

~~3.4.~~ Trustees and Employees should abstain from making personal investments in enterprises that may require his or her direct involvement in decisions affecting LIPA or that will otherwise create substantial conflict between his or her duty in the public

interest and his or her private interest.

~~4.5.~~ (a) If any Trustee shall have a Financial Interest, either direct or indirect, in any Transaction to which LIPA is, or is to be, a party, such interest shall be promptly disclosed in writing to the Chair or Vice Chair of the Board of Trustees as well as the LIPA's General Counsel as provided in Section X of this Code.

(b) If any Employee shall have a Financial Interest, either direct or indirect, in any Transaction to which LIPA is, or is to be, a party, such interest shall be promptly disclosed in writing to LIPA's General Counsel.

~~5.6.~~ No Trustee or Employee shall (1) accept other employment or engage in any business, professional or other activity which will impair his or her independence of judgment in the exercise of his or her official duties or which involves a matter in which LIPA has a substantial interest, or (2) receive or enter into any agreement for any compensation for the appearance or rendition of services against the interest of LIPA in relation to any case, proceeding, or matter.

~~6.7.~~ No Trustee or Employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

Improper Influence/Lobbying

~~7.8.~~ A Trustee or Employee shall not by his or her conduct give reasonable basis for the impression that any person may improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.

~~8.9.~~ A Trustee or Employee shall report to LIPA's General Counsel any communication directed to him or her -where a reasonable person would infer that the communication was intended to influence the consideration or outcome of an active procurement being conducted by LIPA or its service provider. Attempts by third parties to influence procurements are required to be collected and reported by LIPA and may result in Trustee or Employee's recusal from actions related to the procurement and disqualification of bidders from the procurement.

Transactions Involving a Trustee or Employee, Trustee's or Employee's Spouse, Dependent Child or Independent Business

~~9.10.~~ No Trustee or Employee shall be involved in any Transaction as representative or agent of LIPA with, or be involved in any evaluation of, any business entity in which the Trustee or Employee or the Trustee or Employee's, Spouse or Dependent Child has a direct or indirect Financial Interest. Prior to becoming involved in any Transaction as representative or agent of LIPA with, or becoming involved in any evaluation of, a business entity in which the Trustee or Employee or Trustee or Employee's Spouse or Dependent Child holds a Financial Interest, the Trustee, Employee, Spouse or Dependent Child must sell or transfer such Financial Interest.

~~10.11.~~ No Trustee or Employee's Spouse or Dependent Child shall acquire, except by Gift, inheritance or the dissolution of a trust, any Financial Interest in any business entity which the Trustee or Employee has reason to believe may be directly involved in decisions to be made by him or her which will create conflict between his or her duty in the public interest and his or her private interest. If a Trustee or Employee or Trustee or Employee's, Spouse or Dependent Child receives such a Financial Interest by Gift, inheritance, operation of an automatic dividend reinvestment plan or the dissolution of a trust, the interest shall be promptly sold or transferred. If a Trustee or Employee's Spouse or Dependent Child receives or retains such a Financial Interest in violation of the foregoing provisions, it will be deemed to be a violation of this provision.

~~11.12.~~ No Trustee or Employee or their Spouse or Dependent Child, or a Trustee or Employee's Independent Business shall (1) sell any goods or services having a value in excess of twenty-five dollars to LIPA, or (2) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by LIPA or any of its officers, unless such goods or services are provided pursuant to an award of contract let after public notice and competitive bidding. If a Trustee or Employee's Spouse or Dependent Child engages in the conduct described in the preceding sentence, it will be deemed to be a violation by the Trustee or Employee of this provision.

~~12.13.~~ (a) No Trustee or Employee or their Spouse or Dependent Child shall, directly or indirectly, solicit, accept or receive any Gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, hospitality, thing, discount, forbearance or promise, or in any other form, from an "interested source" defined as any person or entity which is (i) regulated by LIPA or (ii) does business or is seeking to do business with LIPA or (iii) a registered lobbyist who lobbies LIPA (or the spouse or emancipated child thereof), (iv) is involved in any ongoing official action or proceeding adverse to LIPA; or (v) has received or applied for funds from LIPA during the last 12 months. A gift from an interested source is presumed to be impermissible unless it is unreasonable to infer that the item or service was intended to influence or reward the Trustee for performing one's job.

(b) No Trustee or Employee or their Spouse or Dependent Child shall, directly or indirectly, solicit, accept or receive any Gift or gratuity of more than nominal value where the circumstances would permit the inference that: (i) the Gift was intended to influence the Trustee or Employee in the performance of official business; or (ii) the Gift constituted a tip, reward, or sign of appreciation for any official act by the Trustee.

(c) No Trustee or Employee or Spouse or Dependent Child shall (i) solicit, accept, or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to [section one-m of the legislative law](#) unless under the circumstances it is not reasonable to infer that the gift was intended to influence him, or (ii) permit the solicitation, acceptance or receipt of any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law to a

third party including a charitable organization, on such official's designation or recommendation or on his or her behalf, under circumstances where it is reasonable to infer that the gift was intended to influence him. A list of exclusions from the definition of gift is located at this [link](#). A Trustee or Employee may not solicit, accept or receive a Gift of any value if to do so would constitute a substantial conflict with the proper discharge of his or her duties in the public interest.

(d) If a Trustee or Employee's Spouse or Dependent Child engages in the conduct prohibited by paragraph (a), (b), or (c) above, it will be deemed to be a violation by the Trustee or Employee of such provisions.

Decisions Relating to a Relative

~~13.14.~~ (a) No Trustee or Employee may take part in any hiring or employment decision relating to a Relative including any decision to hire, promote, discipline or discharge a Relative, for any compensated position at, for or within LIPA. If such a Relative is hired, no Trustee or Employee shall be permitted to supervise such Relative. If a hiring or employment matter arises relating to a Relative, then the Trustee must advise the Chair of the Board of Trustee of the relationship and must be recused from all discussions or decisions relating to the matter. An Employee must advise LIPA's General Counsel and must be recused from all discussions or decisions relating to the matter.

(b) No Trustee or Employee may take part in any contracting decision: (i) relating to a Relative, (ii) relating to any entity in which a Relative is an officer, director or partner, or in which a Relative owns or controls 10% or more of the stock of such entity, (iii) involving the payment of more than \$1,000 dollars to the Trustee or Employee, any Relative of such persons, or any entity in which that Trustee, Employee or any Relative has a Financial Interest, or (iv) to invest public funds in any security of any entity in which that Trustee, Employee or any Relative thereof has a Financial Interest, is an underwriter, or receives any brokerage, origination or servicing fees. If a contracting matter arises relating to a Relative, then the Trustee must advise the Chair of the Board of Trustees of the relationship and must be recused from all discussions or decisions relating to the contracting matter. If a contracting matter arises relating to a Relative, then the Employee must advise LIPA's General Counsel and must be recused from all discussions or decisions relating to the contracting matter.

Campaign Contributions and Political Activity and Affiliations

~~14.15.~~ Trustees and Employees are prohibited from using LIPA's supplies, equipment, computers, personnel and other resources for non-Authority purposes, including for personal purposes or for outside activities of any kind. In addition, no Trustee appointed by the Governor may make campaign contributions to the Governor. [See Executive Order No. 7 "Prohibition of Personal Use of State Property and Campaign Contributions to the Governor" \(issued by Governor Paterson and continued by Governor Andrew M. Cuomo\)](#), incorporated herein by reference.

~~15.16.~~ (a) No Trustee or Employee involved in the awarding of grants or

contracts may ask a current or prospective grantee or contractor, or any officer, director or employee thereof, to disclose (i) the party affiliation of such grantee or contractor, or any officer, director or employee thereof; (ii) whether such grantee or contractor, or any officer, director or employee thereof, has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether such grantee or contractor, or any officer, director or employee thereof, cast a vote for or against any elected official, candidate or political party.

(b) No Trustee or Employee may award or decline to award any state grant or contract, or recommend, promise or threaten to do so, in whole or in part, because of a current or prospective grantee's or contractor's refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

~~16.17.~~ (a) No Trustee or Employee may during the consideration of an employment decision ask any applicant for public employment to disclose: (i) the political party affiliation of the applicant; (ii) whether the applicant has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether the applicant cast a vote for or against any elected official, candidate or political party.

(b) No Trustee or Employee may decline to hire or promote, discharge, discipline, or in any manner change the official rank or compensation of any state official or employee, or applicant for employment, or promise or threaten to do so, based upon a refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or for giving or withholding or neglecting to make any contribution of money or service or other valuable thing for any political purpose.

(c) No Trustee or Employee shall, directly or indirectly, use his or her official authority to compel or induce any other Trustee or Employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

~~17.18.~~ No Trustee or Employee holding a Policy-Making Position within LIPA, shall serve as an officer of any Political Party or Political Organization; or as members of any Political Party Committee, as those terms are defined in 19 NYCRR §932.2, including Political Party district leaders or as members of a Political Party national committee.

~~18.19.~~ An Employee interested in running for elective office shall give written notice of his or her intentions to the ~~President~~ and Chief Executive Office and General Counsel, so that it may be determined whether, and upon what conditions, the Employee would be permitted to seek elective public office.

~~19.20.~~ Employees shall not conduct political activities during work hours, whether for themselves or any other person or cause, or at any time from within the LIPA's headquarters or Authority-owned or leased locations.

~~20.21.~~ Consistent with this Code, Trustees and Employees are otherwise free to

participate in the political process on their own time, but there must be a clear separation between their political activities and the discharge of their duties as Trustees and Employees of LIPA.

Outside Employment

~~21.22.~~ Trustees and Employees may not hold outside employment that is in conflict with their LIPA duties. See Section II(D) above.

~~22.23.~~ Employees may hold outside employment as long as it is not in conflict with their LIPA duties, they meet the performance standards of their job with LIPA and have received prior, written approval from the Chief Executive Officer. An employee designated as a “Policy Maker” may also require approval from ~~the~~ New York State Joint Commission on Public Ethics.

~~23.24.~~ **Honoraria** - Employees must comply with the Commission’s regulations concerning limitations on the receipt of Honoraria from outside parties. A detailed statement of all of the circumstances under which an Employee may accept Honoraria from a third party are set forth in [Part 930 of the Joint Commission on Public Ethics](#). An Employee cannot accept an Honorarium for services related to his or her LIPA duties. The following is a summary of the rules relating to Honoraria:

Permitted Honoraria. An Employee may accept an Honorarium under certain circumstances, including where the individual or organization offering the Honorarium is not involved with LIPA in any context other than in ministerial matters.

Prohibited Honoraria. Honorarium is not to be received for services rendered for or on behalf of an individual who, or on behalf of an organization, or any of its officers or members of the board of directors, which: (i) is regulated by, or regular negotiates with, appears before in other than a ministerial manner, does business with or has contracts with either LIPA or the covered individual, or (ii) attempts to lobby or to influence action or positions on legislation or rules, regulation or rate making (iii) is involved in litigation adverse to LIPA; or (iv) has received or applied for funds from LIPA during the previous calendar year

Payment in Lieu of Honoraria. A payment in lieu of an Honorarium that is offered for services related to an Employee’s official duties cannot be accepted by the Employee and must be paid by the granting organization directly to the general fund of the State or to such fund as is appropriate for a public authority.

Disclosure. Each year LIPA is required to file a report with the Commission, which lists Honoraria received by its Employees. Therefore, every Employee who has received one or more Honoraria during the reporting period must file a report with LIPA’s Compliance Officer using the form provided by LIPA.

Annual Financial Disclosure Filing

~~24.25.~~ Section §73-a of the Public Officers Law requires the filing of an annual

statement of financial disclosure by Trustees and by Employees who hold Policy-Making Positions or who earn in excess of annual salary requirements set by the Joint Commission on Public Ethics each year. The disclosure statement is an annual disclosure of the financial holdings and associations of filers and their Spouses. The purpose of the financial disclosure is to highlight potential conflicts of interest. The Commission can assess penalties for late and delinquent filings.

Employee Post-Authority Employment

~~25-26.~~ (a) Employees may not solicit a post-government employment opportunity with any entity or individual that has a specific pending matter before the Employee; and only may, 30 days from the time a matter is closed or the Employee has no further involvement because of recusal or reassignment, solicit an employment opportunity.

(b) Employees who receive an unsolicited employment-related communication from such an entity or individual (i) cannot pursue employment with the entity or individual or (ii) must recuse themselves from the matter and any further official contact with the entity or individual and wait 30 days from such recusal before entering into post-government employment communications with the entity or individual.

(c) Employees must promptly notify their superiors and ethics officers of such employment-related communications whether or not they intend to pursue the employment opportunity.

IV. Restrictions on Post-Employment Activities of Former Employees

The post-employment activities of persons who are Former Employees are governed by the restrictions set forth in [Section 73\(8\) of the Public Officers Law](#). **These restrictions consist of a two-year bar and a lifetime bar and apply to virtually all Employees.**

Two Year Bar

Former Employees may not, within a period of two years after leaving State service, appear or practice before their former agency or receive compensation for any services rendered in relation to any case, proceeding, application or other matter before their former agency. The Joint Commission on Public Ethics defines “appear” to include making a telephone call, as well as sending a letter, fax or e-mail. For the two-year bar, the determining inquiry is whether the appearance is before the Former Employee’s former agency, regardless of the nature or subject of the appearance.

Lifetime Bar

Former Employees may not appear, practice, communicate or otherwise render services before any State agency, or receive compensation for such services in relation to any case, proceeding, application or transaction with which they were directly concerned and in which they personally participated while in public service,

or which was under their active consideration.

Exceptions

1. The government-to-government exception: Allows someone who goes to work for another government entity, at any level, to appear before the former agency, regardless of how much time has elapsed since the individual left State service.
2. Exception for “ministerial matters”: i.e. matters that the agency handles by the thousands, if not millions of times a day. For example, a former employee of the Department of Motor Vehicles may still renew his or her driver’s license.

Penalties

Individuals who violate certain provisions of Public Officers Law §73 are subject to a civil penalty not to exceed \$40,000, for each appearance. In lieu of a civil penalty, the Commission may refer violations to an appropriate prosecutor for prosecution as a Class A misdemeanor.

A. Applicable New York Law

These standards do not replace and are in addition to the requirements of law, particularly Sections 73, 73-a and 74 of the New York Public Officers Law, which, among other things, govern the business activities of Trustees, Employees and Former Trustees or Former Employees and set forth the State Code of Ethics. Sections 73, 73-a and 74 of the Public Officers Law are made a part of this Code. The violation of any ethics laws or regulations may also constitute violations of civil or criminal state and federal law.

V. Trading of Securities of Companies Providing Operations Services to LIPA and Certain Energy Companies

The acquisition or trading of securities issued by companies that provide Operations Services to LIPA, the parent corporations of such companies and other subsidiaries or affiliates of such parent corporations, if any, presents a possible Conflict of Interest for all Trustees and Employees.

To protect against the potential of a Conflict of Interest with respect to Transactions involving companies that provide Operations Services to LIPA, it is LIPA’s policy that a Trustee or Employee, or a Trustee or Employee’s Spouse or Dependent Child may not Trade in or otherwise acquire securities in any companies, including parent corporations and other subsidiaries or affiliates of such parent corporations, if any, that provide Operations Services to LIPA. A Trustee or Employee, or a Trustee or Employee’s Spouse or Dependent Child who has acquired the securities, not including such securities that are included within a mutual fund or pension fund investment, of such companies must sell or transfer the securities within one year of (i) the Trustee or Employee’s date of appointment

with LIPA, or (ii) the date of such receipt, whichever is later.

No Trustee or Employee may Trade in or, except as permitted below, otherwise acquire securities in any company engaged in the generation, transmission or sale of electric energy or gas or the provision of fuel to generation facilities, if that Trustee or Employee's responsibilities include the (i) representing LIPA in Transactions involving such companies; (ii) participating in the evaluation of, or Authority decisions with respect to, Transactions with such companies, or (iii) representing LIPA before regulatory agencies or independent system operators (or their successors) on matters in which such companies have a potential financial interest. Excepted from this provision are those securities that are included within a mutual fund or pension fund investment.

There is no prohibition against the ownership or Trading of LIPA bonds and notes which are publicly held and traded subject to the limitations set forth below in Section V.

VI. Use of Material, Nonpublic and Confidential Information

It is the policy of LIPA to prohibit all Trustees and Employees, and Former Trustees and Former Employees from (1) Trading in securities based on material, nonpublic information derived from or relating to Authority activities and (2) disclosing Confidential Information to unauthorized third parties.

A. Trading of Securities Based on Material, Nonpublic Information

1. Trustees, Employees and Former Trustees and Former Employees shall not Trade in bonds or other securities issued by LIPA based on material, nonpublic information derived from any source and shall not disclose such information for the purpose of allowing third parties to profit from Trading in Authority securities.

2. Trustees, Employees and Former Trustees and Former Employees shall not Trade in stocks, bonds or other securities issued by other business entities based on material, nonpublic information obtained in the course of their duties for LIPA and shall not disclose such information for the purpose of allowing third parties to profit from Trading in securities issued by other business entities based on such information.

Information is material if there is a substantial likelihood that a reasonable investor would consider the information important in making his or her investment decision concerning the securities in question.

Information is nonpublic if, in the case of Authority securities, it has not been publicly disseminated by LIPA. Information is nonpublic if, in the case of securities issued by other business entities, it has not been publicly disseminated by those business entities.

B. Disclosure or Use of Confidential Information

Trustees, Employees and Former Trustees and Former Employees shall not disclose Confidential Information to any third party not authorized to receive such information and shall not profit from the use of such information or use such information to further his or her personal

interests of the interests of any Relative.

If a Trustee, Employee or Former Trustee or Employee has a question concerning the confidential status of any information, he or she should consult with the LIPA's General Counsel of regarding such information prior to disclosing it to a third party.

Trustees, Employees, Former Trustees and Former Employees who violate the provisions of this section may be subject to civil and criminal penalties under Federal and State laws, including fines and/or imprisonment. In addition, Trustees and Employees who violate the provisions of this section may be subject to disciplinary action, including removal and/or termination of employment, as appropriate.

VII. Annual Certification of Absence of Conflict of Interest

All Trustees and Employees are required to certify annually that they have read the Code, that they understand and agree to comply with the provisions thereof and that they have no known conflict of interest. LIPA shall supply the Annual Certification Form. These certifications shall be timely submitted to LIPA's General Counsel or Compliance Officer.

Any Trustee or Employee who knowingly fails to complete, sign and submit the required Annual Certification Form is in violation of the Code and may be subject to disciplinary action.

VIII. Requests for Interpretation, Clarification or Waiver of the Code

(b) Interpretation and Clarification

A Trustee or Former Trustee may submit a written request to LIPA's General Counsel of for an interpretation or clarification of one or more provisions of the Code.

(c) Waivers

A Trustee or Former Trustee may submit a written request to the Chair of the Board of Trustees for a waiver of any restriction contained in the Code, provided that the restriction is not otherwise required by State or Federal law. All waiver requests shall include a description of the nature of the restriction or prohibition for which waiver is sought; the nature of the Trustee's or Former Trustee's interest involved; the effect on the Trustee or Former Trustee or LIPA of the restriction or prohibition for which the waiver is sought; and the reasons why the waiver should be granted. A copy of the written request shall be provided to LIPA's General Counsel.

IX. Remedies for Breaches of the Code

In addition to any other remedies, civil or otherwise, which LIPA may have, a Trustee, Employee, Former Trustee or Former Employee who violates the Code may be disciplined under the Code. Remedies or disciplinary action may be imposed only upon the basis of a written statement of findings and recommendations by LIPA's General Counsel, and may include one or more of the following:

1. issuance of written warnings;
2. direction of corrective action to eliminate and/or ameliorate the conflict of interest;
3. restitution; and
4. in the case of an Employee, changes in assigned duties, suspension or termination of employment; provided, however, that solely the Chief Executive Officer or the Trustees, as applicable, may impose the remedies specified in this subdivision.

A Former Trustee or Employee found to have violated the Code is subject to one or more of the following in addition to any other remedies, civil or otherwise, that LIPA may have: warnings; termination of existing Transactions involving the individual in question to the extent permitted by law; disqualification or suspension from future Transactions of the Former Trustee or Employee and/or the person on whose behalf he or she is participating in Transactions with LIPA; and notification to appropriate persons that a conflict exists.

X. Reporting of Violations of the Code and Whistleblower Protection

Trustees, Employees, Former Trustees, and Former Employees are encouraged to promptly report any violations of the Code to the Chair of the Board of Trustees or LIPA's General Counsel and shall cooperate in any official investigation of such violations. LIPA shall also maintain an ethics hotline. Ethics complaints may currently be filed by calling (844) 915-1626 or online at lipower.ethicspoint.com.

The identify of a Trustee, Employee, Former Trustee, or Former Trustee who reports a violation of the Code and the substance of his or her allegations shall be kept confidential to the extent possible.

Retaliation against Trustees, Employees, and Former Trustees, and Former Employees who in good faith report violations of the Code, other provisions of law or policies, or the public trust, is prohibited.

LIPA's General Counsel will inform LIPA's Governance, Planning and Personnel Committee of the Board of Trustees about the status and disposition of official investigations and issues thereof raised under the Code.

XI. Recusal Procedure for LIPA Trustees

If a Trustee has reason to believe he or she may have a Conflict of Interest, then the Trustee shall:

- (b) Promptly disclose the potential Conflict of Interest to the Chair of the Board of Trustees, or the Vice Chair if appropriate, and LIPA's General Counsel and describe all material facts concerning the potential Conflict of Interest known to

the Trustee. After such disclosure, the Chair of the Board of Trustees, in consultation with LIPA's General Counsel, shall make a record of such disclosure and advise appropriate staff that they are prohibited from communicating with such Trustee about such matter. Further, if after such disclosure such matter is on an agenda for, or is otherwise raised at a Board meeting, the Trustee shall recuse him/herself from all consideration and voting on such matter and such recusal and the reason therefore shall be recorded in the minutes of such Board meeting. As a best practice, the Trustee should leave the Board meeting while the other Trustees complete their discussion, consideration and vote.

(c) After full disclosure to the Chair of the Board of Trustees and LIPA's General Counsel, nothing contained herein shall be construed or applied to prohibit any firm, association, corporation or entity, in which the Trustee is a member, associate, retired member, of counsel, shareholder or owner, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with LIPA or its service provider where such Trustee does not participate in any way on behalf of the party conducting such business, does not participate in the decision to award the contract, and does not share in the net revenues resulting therefrom, or, acting in good faith, it is reasonably believed that such Trustee would not share in the net revenues therefrom, and where such Trustee otherwise complies with all other directives provided by LIPA's General Counsel.

**CODE OF ETHICS AND CONDUCT OF THE
LONG ISLAND POWER AUTHORITY**

February 17, 2022

Long Island Power Authority
333 Earle Ovington Boulevard
Uniondale, New York 11553

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LONG ISLAND POWER AUTHORITY CODE OF ETHICS AND CONDUCT

I. Introduction

The Long Island Power Authority (“LIPA”), as a public entity, has a responsibility for maintaining the highest level of honesty, ethical conduct, and public trust in all its activities. To meet this responsibility, LIPA adopted codes of ethics and conduct for its Trustees and Employees. This Code of Ethics and Conduct (the “Code”) addresses the ethical and professional standards of conduct expected of both LIPA’s Board of Trustees and its Employees.

The Code applies to LIPA's current Trustees and Former Trustees and current and Former Employees (hereafter Trustees and Employees) and states in specific form LIPA's position on Conflicts of Interest. Personal integrity is the cornerstone of the Code. Each Trustee and Employee has the primary responsibility for avoiding Financial Interests and Other Interests which might create a conflict with his or her position as a fiduciary of LIPA and LIPA property. As LIPA is a public entity, Trustees and Employees are responsible for conducting Authority business solely in the public interest.

The Code is not intended to address all situations or answer all questions related to daily ethical conduct. Trustees and Employees should inquire of LIPA’s General Counsel if they have questions as to any provision of the Code. In addition, Trustees and Employees who have questions as to whether a prospective personal or business Transaction or assumption of a position of responsibility or trust would violate the Code, may request in writing an advance determination on the matter from LIPA’s General Counsel pursuant to Section VIII of the Code.

Violations of the Code or applicable statutory provisions may subject a Trustee or Employee to discipline up to and including removal from the board by the appointing authority, termination of employment at LIPA and/or expose the Trustee or Employee to civil and/or criminal penalties.

The Code will be reviewed and updated by the Governance, Planning and Personnel Committee as necessary with a copy distributed to each Trustee and Employee.

II. Definitions

The following definitions apply to the Code.

A. “Benefit” means any gain or advantage to, or reduction in the liabilities of, the beneficiary and includes any gain or advantage to, or reduction in the liabilities of, a third person pursuant to the desire or consent of the beneficiary.

B. “Confidential Information” means information which is available to a Trustee only because of his or her status as a Trustee and is not a matter of public knowledge.

C. “Conflict of Interest” means a situation in which the financial, familial, or personal interests of a Trustee or Employee conflict, may conflict or could be perceived as conflicting with

their responsibilities to LIPA

D. “Dependent Child” means any son, daughter, stepson or stepdaughter of a Trustee or Employee who is under age eighteen, unmarried and living in the household of the Trustee; or a “dependent” of the Trustee or Employee within the meaning of section 152 of the Internal Revenue Code.¹

E. “Employee” means any person employed by or officer of LIPA.

F. “Financial Interest” means any of the following:

1. Ownership or control of 10 percent or more of the stock of any entity (or 1 percent in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity;

2. Ownership of an interest in a business or real property which interest (a) reflects a 10 percent or more ownership of the business, or (b) in the case of a Spouse or Dependent Child, constitutes 10 percent or more of the net worth of the person owning such interest, or the combined net worth of the Trustee and his or her Spouse and Dependent Child. In determining net worth, the value of any interest in the Trustee or Employee’s personal residence(s) shall be excluded. In determining the value of an interest, debts, mortgages, liens or other encumbrances thereon are to be disregarded; or

3. Liability or indebtedness to a person or business in excess of \$5,000, excluding liabilities owed to Relative(s) and excluding mortgages, liens or other encumbrances on or secured by real property which constitutes the Trustee or Employee’s personal residence(s) or furniture or appliances therein.

G. “Former Trustee” and “Former Employee” mean persons who are no longer Trustees or Employees of LIPA but were at any time following LIPA’s adoption of this Code or any predecessor code of ethics and conduct.

H. “Gift” means a payment, advance, forbearance, rendering, or deposit of money, or anything of more than nominal value, unless the donor receives consideration of equal or greater value. Nominal value means an item or service with a fair market value of \$15 or less.

I. Trustee’s or Employee’s “Independent Business” means, for the purposes of Section IV (B) (11) of the Code: (1) any entity, including but not limited to a firm, partnership or association of which a Trustee or Employee, or a Trustee’s or Employee’s Spouse or Dependent Child serves as an employee, consultant or contractor, or is entitled to receive income, dividends or anything of value; or (2) a corporation, 10% or more of the stock of which is owned or controlled directly or indirectly by a Trustee or Employee or a Trustee or Employee’s Spouse or Dependent Child.

¹ The definition of “Dependent Child” includes adopted children, who under New York State law have the same rights and privileges of biological children. See, *New York Estates, Powers and Trusts Law Section 2-1.3(a)*

J. “LIPA” means the Long Island Power Authority and its wholly owned subsidiary, the Long Island Lighting Company d/b/a LIPA and d/b/a Power Supply Long Island, as well as any other subsidiaries created by the Long Island Power Authority.

K. “Operations Services” means the management of the daily operation of LIPA’s electric transmission and distribution system and the management of LIPA’s power supply resources.

L. “Other Interest” means holding a position in a business such as an officer, director, trustee, partner, proprietor, executor, employee, or a position of management, or acting as a consultant, agent or representative therefore in any capacity.

M. “Policy-Making Position” means Trustees and Employees in management and non-management positions designated as Policy-Making positions by LIPA, because the individual holding the position exercises responsibilities of a broad scope in the formulation of plans for the implementation of goals or policy for LIPA or acts as an advisor to an individual in such a position.

N. “Relative” shall mean a Trustee or Employee’s Spouse, domestic partner as defined by N.Y. Public Health Law § 2961(6-a), child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the Trustee or Employee, or of the Trustee or Employee’s Spouse.

O. “Spouse” shall mean the husband or wife of the Trustee or Employee unless living separate and apart from the Trustee with the intention of terminating the marriage or providing for permanent separation or unless separated pursuant to: (i) a judicial order, decree or judgment, or (ii) a legally binding separation agreement. Spouse also includes persons in legally recognized marriages as provided in New York’s Marriage Equality Act of 2011.

P. “Trading” means, in reference to securities, the buying and selling of securities, or the buying and selling of options, calls, puts, or any other right relating to a security.

Q. “Transaction” means buying, selling, renting (as lessor or lessee), or otherwise acquiring or disposing of services, materials, supplies, equipment, or property having a value of one hundred dollars or more or an interest having a value of one hundred dollars or more in such services, materials, supplies, equipment or property; borrowing or investment of money; preparing, requisitioning, ordering, approving, advising on, administering or otherwise acting in reference to a contract having a value of one hundred dollars or more; or the promulgation of rules and regulations affecting such activities.

R. “Trustee” means the Trustees of LIPA appointed pursuant to Public Authorities Law §§ 1020-d.

III. Standards and Principles of Conduct

The following standards and principles of conduct are to be followed to assure

compliance with the Code. A breach of these standards and principles constitutes a violation of the Code.

A. General Standards

1. Trustees and Employees are subject to New York State ethics laws including Public Officers Law Sections 73-a, 74 and the rules and regulations promulgated thereunder. Employees are further subject to Public Officers Law Section 73, and the rules and regulations promulgated thereunder.

2. Trustees and Employees should endeavor to pursue a course of conduct that will not raise suspicion among the public that he or she is likely to engage in acts that are in violation of the public trust.

B. Specific Standards and Principles

Personal or Financial Interests/Independence/Privileges

1. Trustees and Employees shall not have any interest or incur any obligation, financial or otherwise, direct or indirect, or engage in any business or Transaction or professional activity, which conflicts with the proper discharge of their duties in the public interest.

2. Trustees shall recuse themselves from all deliberations and decisions involving an entity that has, within the past 24-months, paid remuneration to their employer valued at more than fifteen thousand dollars for goods and services or for which their employer has received any other form of financial assistance valued at more than fifteen thousand dollars.

3. Trustees and Employees shall avoid any action, whether or not specifically prohibited by the Code, which might result in or create the appearance of:

- (a) using his or her official position for private gain;
- (b) giving preferential treatment to any person, including himself or herself or any Relative
- (c) lacking independence or impartiality;
- (d) affecting adversely the confidence of the public in the integrity of LIPA;
or,
- (e) violating any provision of the Code.

4. Trustees and Employees should abstain from making personal investments in enterprises that may require his or her direct involvement in decisions affecting LIPA or that will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.

5. (a) If any Trustee shall have a Financial Interest, either direct or indirect, in any Transaction to which LIPA is, or is to be, a party, such interest shall be promptly disclosed in writing to the Chair or Vice Chair of the Board of Trustees as well as the LIPA's General Counsel as provided in Section X of this Code.

(b) If any Employee shall have a Financial Interest, either direct or indirect, in any Transaction to which LIPA is, or is to be, a party, such interest shall be promptly disclosed in writing to LIPA's General Counsel.

6. No Trustee or Employee shall (1) accept other employment or engage in any business, professional or other activity which will impair his or her independence of judgment in the exercise of his or her official duties or which involves a matter in which LIPA has a substantial interest, or (2) receive or enter into any agreement for any compensation for the appearance or rendition of services against the interest of LIPA in relation to any case, proceeding, or matter.

7. No Trustee or Employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

Improper Influence/Lobbying

8. A Trustee or Employee shall not by his or her conduct give reasonable basis for the impression that any person may improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.

9. A Trustee or Employee shall report to LIPA's General Counsel any communication directed to him or her where a reasonable person would infer that the communication was intended to influence the consideration or outcome of an active procurement being conducted by LIPA or its service provider. Attempts by third parties to influence procurements are required to be collected and reported by LIPA and may result in Trustee or Employee's recusal from actions related to the procurement and disqualification of bidders from the procurement.

Transactions Involving a Trustee or Employee, Trustee's or Employee's Spouse, Dependent Child or Independent Business

10. No Trustee or Employee shall be involved in any Transaction as representative or agent of LIPA with, or be involved in any evaluation of, any business entity in which the Trustee or Employee or the Trustee or Employee's, Spouse or Dependent Child has a direct or indirect Financial Interest. Prior to becoming involved in any Transaction as representative or agent of LIPA with, or becoming involved in any evaluation of, a business entity in which the Trustee or Employee or Trustee or Employee's Spouse or Dependent Child holds a Financial Interest, the Trustee, Employee, Spouse or Dependent Child must sell or transfer such Financial Interest.

11. No Trustee or Employee's Spouse or Dependent Child shall acquire, except by Gift, inheritance or the dissolution of a trust, any Financial Interest in any business entity which the Trustee or Employee has reason to believe may be directly involved in decisions to be made by him or her which will create conflict between his or her duty in the public interest and his or her private interest. If a Trustee or Employee or Trustee or Employee's, Spouse or Dependent Child receives such a Financial Interest by Gift, inheritance, operation of an automatic dividend reinvestment plan or the dissolution of a trust, the interest shall be promptly sold or transferred. If a Trustee or Employee's Spouse or Dependent Child receives or retains such a Financial Interest in violation of the foregoing provisions, it will be deemed to be a violation of this provision.

12. No Trustee or Employee or their Spouse or Dependent Child, or a Trustee or Employee's Independent Business shall (1) sell any goods or services having a value in excess of twenty-five dollars to LIPA, or (2) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by LIPA or any of its officers, unless such goods or services are provided pursuant to an award of contract let after public notice and competitive bidding. If a Trustee or Employee's Spouse or Dependent Child engages in the conduct described in the preceding sentence, it will be deemed to be a violation by the Trustee or Employee of this provision.

13. (a) No Trustee or Employee or their Spouse or Dependent Child shall, directly or indirectly, solicit, accept or receive any Gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, hospitality, thing, discount, forbearance or promise, or in any other form, from an "interested source" defined as any person or entity which is (i) regulated by LIPA or (ii) does business or is seeking to do business with LIPA or (iii) a registered lobbyist who lobbies LIPA (or the spouse or emancipated child thereof), (iv) is involved in any ongoing official action or proceeding adverse to LIPA; or (v) has received or applied for funds from LIPA during the last 12 months. A gift from an interested source is presumed to be impermissible unless it is unreasonable to infer that the item or service was intended to influence or reward the Trustee for performing one's job.

(b) No Trustee or Employee or their Spouse or Dependent Child shall, directly or indirectly, solicit, accept or receive any Gift or gratuity of more than nominal value where the circumstances would permit the inference that: (i) the Gift was intended to influence the Trustee or Employee in the performance of official business; or (ii) the Gift constituted a tip, reward, or sign of appreciation for any official act by the Trustee.

(c) No Trustee or Employee or Spouse or Dependent Child shall (i) solicit, accept, or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to [section one-m of the legislative law](#) unless under the circumstances it is not reasonable to infer that the gift was intended to influence him, or (ii) permit the solicitation, acceptance or receipt of any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law to a third party including a charitable organization, on such official's designation or

recommendation or on his or her behalf, under circumstances where it is reasonable to infer that the gift was intended to influence him. A list of exclusions from the definition of gift is located at this [link](#). A Trustee or Employee may not solicit, accept or receive a Gift of any value if to do so would constitute a substantial conflict with the proper discharge of his or her duties in the public interest.

(d) If a Trustee or Employee's Spouse or Dependent Child engages in the conduct prohibited by paragraph (a), (b), or (c) above, it will be deemed to be a violation by the Trustee or Employee of such provisions.

Decisions Relating to a Relative

14. (a) No Trustee or Employee may take part in any hiring or employment decision relating to a Relative including any decision to hire, promote, discipline or discharge a Relative, for any compensated position at, for or within LIPA. If such a Relative is hired, no Trustee or Employee shall be permitted to supervise such Relative. If a hiring or employment matter arises relating to a Relative, then the Trustee must advise the Chair of the Board of Trustee of the relationship and must be recused from all discussions or decisions relating to the matter. An Employee must advise LIPA's General Counsel and must be recused from all discussions or decisions relating to the matter.

(b) No Trustee or Employee may take part in any contracting decision: (i) relating to a Relative, (ii) relating to any entity in which a Relative is an officer, director or partner, or in which a Relative owns or controls 10% or more of the stock of such entity, (iii) involving the payment of more than \$1,000 dollars to the Trustee or Employee, any Relative of such persons, or any entity in which that Trustee, Employee or any Relative has a Financial Interest, or (iv) to invest public funds in any security of any entity in which that Trustee, Employee or any Relative thereof has a Financial Interest, is an underwriter, or receives any brokerage, origination or servicing fees. If a contracting matter arises relating to a Relative, then the Trustee must advise the Chair of the Board of Trustees of the relationship and must be recused from all discussions or decisions relating to the contracting matter. If a contracting matter arises relating to a Relative, then the Employee must advise LIPA's General Counsel and must be recused from all discussions or decisions relating to the contracting matter.

Campaign Contributions and Political Activity and Affiliations

15. Trustees and Employees are prohibited from using LIPA's supplies, equipment, computers, personnel and other resources for non-Authority purposes, including for personal purposes or for outside activities of any kind. In addition, no Trustee appointed by the Governor may make campaign contributions to the Governor. [See Executive Order No. 7 "Prohibition of Personal Use of State Property and Campaign Contributions to the Governor" \(issued by Governor Paterson and continued by Governor Andrew M. Cuomo\)](#), incorporated herein by reference.

16. (a) No Trustee or Employee involved in the awarding of grants or contracts may ask a current or prospective grantee or contractor, or any officer, director or

employee thereof, to disclose (i) the party affiliation of such grantee or contractor, or any officer, director or employee thereof; (ii) whether such grantee or contractor, or any officer, director or employee thereof, has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether such grantee or contractor, or any officer, director or employee thereof, cast a vote for or against any elected official, candidate or political party.

(b) No Trustee or Employee may award or decline to award any state grant or contract, or recommend, promise or threaten to do so, in whole or in part, because of a current or prospective grantee's or contractor's refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

17. (a) No Trustee or Employee may during the consideration of an employment decision ask any applicant for public employment to disclose: (i) the political party affiliation of the applicant; (ii) whether the applicant has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether the applicant cast a vote for or against any elected official, candidate or political party.

(b) No Trustee or Employee may decline to hire or promote, discharge, discipline, or in any manner change the official rank or compensation of any state official or employee, or applicant for employment, or promise or threaten to do so, based upon a refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or for giving or withholding or neglecting to make any contribution of money or service or other valuable thing for any political purpose.

(c) No Trustee or Employee shall, directly or indirectly, use his or her official authority to compel or induce any other Trustee or Employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

18. No Trustee or Employee holding a Policy-Making Position within LIPA, shall serve as an officer of any Political Party or Political Organization; or as members of any Political Party Committee, as those terms are defined in 19 NYCRR §932.2, including Political Party district leaders or as members of a Political Party national committee.

19. An Employee interested in running for elective office shall give written notice of his or her intentions to the ~~President~~ and Chief Executive Office and General Counsel, so that it may be determined whether, and upon what conditions, the Employee would be permitted to seek elective public office.

20. Employees shall not conduct political activities during work hours, whether for themselves or any other person or cause, or at any time from within the LIPA's headquarters or Authority-owned or leased locations.

21. Consistent with this Code, Trustees and Employees are otherwise free to participate in the political process on their own time, but there must be a clear separation

between their political activities and the discharge of their duties as Trustees and Employees of LIPA.

Outside Employment

22. Trustees and Employees may not hold outside employment that is in conflict with their LIPA duties. See Section II(D) above.

23. Employees may hold outside employment as long as it is not in conflict with their LIPA duties, they meet the performance standards of their job with LIPA and have received prior, written approval from the Chief Executive Officer. An employee designated as a “Policy Maker” may also require approval from the New York State Joint Commission on Public Ethics.

24. **Honoraria** - Employees must comply with the Commission’s regulations concerning limitations on the receipt of Honoraria from outside parties. A detailed statement of all of the circumstances under which an Employee may accept Honoraria from a third party are set forth in [Part 930 of the Joint Commission on Public Ethics](#). An Employee cannot accept an Honorarium for services related to his or her LIPA duties. The following is a summary of the rules relating to Honoraria:

Permitted Honoraria. An Employee may accept an Honorarium under certain circumstances, including where the individual or organization offering the Honorarium is not involved with LIPA in any context other than in ministerial matters.

Prohibited Honoraria. Honorarium is not to be received for services rendered for or on behalf of an individual who, or on behalf of an organization, or any of its officers or members of the board of directors, which: (i) is regulated by, or regular negotiates with, appears before in other than a ministerial manner, does business with or has contracts with either LIPA or the covered individual, or (ii) attempts to lobby or to influence action or positions on legislation or rules, regulation or rate making (iii) is involved in litigation adverse to LIPA; or (iv) has received or applied for funds from LIPA during the previous calendar year

Payment in Lieu of Honoraria. A payment in lieu of an Honorarium that is offered for services related to an Employee’s official duties cannot be accepted by the Employee and must be paid by the granting organization directly to the general fund of the State or to such fund as is appropriate for a public authority.

Disclosure. Each year LIPA is required to file a report with the Commission, which lists Honoraria received by its Employees. Therefore, every Employee who has received one or more Honoraria during the reporting period must file a report with LIPA’s Compliance Officer using the form provided by LIPA.

Annual Financial Disclosure Filing

25. Section §73-a of the Public Officers Law requires the filing of an annual statement of financial disclosure by Trustees and by Employees who hold Policy-

Making Positions or who earn in excess of annual salary requirements set by the Joint Commission on Public Ethics each year. The disclosure statement is an annual disclosure of the financial holdings and associations of filers and their Spouses. The purpose of the financial disclosure is to highlight potential conflicts of interest. The Commission can assess penalties for late and delinquent filings.

Employee Post-Authority Employment

26. (a) Employees may not solicit a post-government employment opportunity with any entity or individual that has a specific pending matter before the Employee; and only may, 30 days from the time a matter is closed or the Employee has no further involvement because of recusal or reassignment, solicit an employment opportunity.

(b) Employees who receive an unsolicited employment-related communication from such an entity or individual (i) cannot pursue employment with the entity or individual or (ii) must recuse themselves from the matter and any further official contact with the entity or individual and wait 30 days from such recusal before entering into post-government employment communications with the entity or individual.

(c) Employees must promptly notify their superiors and ethics officers of such employment-related communications whether or not they intend to pursue the employment opportunity.

IV. Restrictions on Post-Employment Activities of Former Employees

The post-employment activities of persons who are Former Employees are governed by the restrictions set forth in [Section 73\(8\) of the Public Officers Law](#). **These restrictions consist of a two-year bar and a lifetime bar and apply to virtually all Employees.**

Two Year Bar

Former Employees may not, within a period of two years after leaving State service, appear or practice before their former agency or receive compensation for any services rendered in relation to any case, proceeding, application or other matter before their former agency. The Joint Commission on Public Ethics defines “appear” to include making a telephone call, as well as sending a letter, fax or e-mail. For the two-year bar, the determining inquiry is whether the appearance is before the Former Employee’s former agency, regardless of the nature or subject of the appearance.

Lifetime Bar

Former Employees may not appear, practice, communicate or otherwise render services before any State agency, or receive compensation for such services in relation to any case, proceeding, application or transaction with which they were directly concerned and in which they personally participated while in public service, or which was under their active consideration.

Exceptions

1. The government-to-government exception: Allows someone who goes to work for another government entity, at any level, to appear before the former agency, regardless of how much time has elapsed since the individual left State service.
2. Exception for “ministerial matters”: i.e. matters that the agency handles by the thousands, if not millions of times a day. For example, a former employee of the Department of Motor Vehicles may still renew his or her driver’s license.

Penalties

Individuals who violate certain provisions of Public Officers Law §73 are subject to a civil penalty not to exceed \$40,000, for each appearance. In lieu of a civil penalty, the Commission may refer violations to an appropriate prosecutor for prosecution as a Class A misdemeanor.

A. Applicable New York Law

These standards do not replace and are in addition to the requirements of law, particularly Sections 73, 73-a and 74 of the New York Public Officers Law, which, among other things, govern the business activities of Trustees, Employees and Former Trustees or Former Employees and set forth the State Code of Ethics. Sections 73, 73-a and 74 of the Public Officers Law are made a part of this Code. The violation of any ethics laws or regulations may also constitute violations of civil or criminal state and federal law.

V. Trading of Securities of Companies Providing Operations Services to LIPA and Certain Energy Companies

The acquisition or trading of securities issued by companies that provide Operations Services to LIPA, the parent corporations of such companies and other subsidiaries or affiliates of such parent corporations, if any, presents a possible Conflict of Interest for all Trustees and Employees.

To protect against the potential of a Conflict of Interest with respect to Transactions involving companies that provide Operations Services to LIPA, it is LIPA’s policy that a Trustee or Employee, or a Trustee or Employee’s Spouse or Dependent Child may not Trade in or otherwise acquire securities in any companies, including parent corporations and other subsidiaries or affiliates of such parent corporations, if any, that provide Operations Services to LIPA. A Trustee or Employee, or a Trustee or Employee’s Spouse or Dependent Child who has acquired the securities, not including such securities that are included within a mutual fund or pension fund investment, of such companies must sell or transfer the securities within one year of (i) the Trustee or Employee’s date of appointment with LIPA, or (ii) the date of such receipt, whichever is later.

No Trustee or Employee may Trade in or, except as permitted below, otherwise acquire securities in any company engaged in the generation, transmission or sale of electric energy or gas or the provision of fuel to generation facilities, if that Trustee or Employee's responsibilities include the (i) representing LIPA in Transactions involving such companies; (ii) participating in the evaluation of, or Authority decisions with respect to, Transactions with such companies, or (iii) representing LIPA before regulatory agencies or independent system operators (or their successors) on matters in which such companies have a potential financial interest. Excepted from this provision are those securities that are included within a mutual fund or pension fund investment.

There is no prohibition against the ownership or Trading of LIPA bonds and notes which are publicly held and traded subject to the limitations set forth below in Section V.

VI. Use of Material, Nonpublic and Confidential Information

It is the policy of LIPA to prohibit all Trustees and Employees, and Former Trustees and Former Employees from (1) Trading in securities based on material, nonpublic information derived from or relating to Authority activities and (2) disclosing Confidential Information to unauthorized third parties.

A. Trading of Securities Based on Material, Nonpublic Information

1. Trustees, Employees and Former Trustees and Former Employees shall not Trade in bonds or other securities issued by LIPA based on material, nonpublic information derived from any source and shall not disclose such information for the purpose of allowing third parties to profit from Trading in Authority securities.

2. Trustees, Employees and Former Trustees and Former Employees shall not Trade in stocks, bonds or other securities issued by other business entities based on material, nonpublic information obtained in the course of their duties for LIPA and shall not disclose such information for the purpose of allowing third parties to profit from Trading in securities issued by other business entities based on such information.

Information is material if there is a substantial likelihood that a reasonable investor would consider the information important in making his or her investment decision concerning the securities in question.

Information is nonpublic if, in the case of Authority securities, it has not been publicly disseminated by LIPA. Information is nonpublic if, in the case of securities issued by other business entities, it has not been publicly disseminated by those business entities.

B. Disclosure or Use of Confidential Information

Trustees, Employees and Former Trustees and Former Employees shall not disclose Confidential Information to any third party not authorized to receive such information and shall not profit from the use of such information or use such information to further his or her personal interests of the interests of any Relative.

If a Trustee, Employee or Former Trustee or Employee has a question concerning the confidential status of any information, he or she should consult with the LIPA's General Counsel of regarding such information prior to disclosing it to a third party.

Trustees, Employees, Former Trustees and Former Employees who violate the provisions of this section may be subject to civil and criminal penalties under Federal and State laws, including fines and/or imprisonment. In addition, Trustees and Employees who violate the provisions of this section may be subject to disciplinary action, including removal and/or termination of employment, as appropriate.

VII. Annual Certification of Absence of Conflict of Interest

All Trustees and Employees are required to certify annually that they have read the Code, that they understand and agree to comply with the provisions thereof and that they have no known conflict of interest. LIPA shall supply the Annual Certification Form. These certifications shall be timely submitted to LIPA's General Counsel or Compliance Officer.

Any Trustee or Employee who knowingly fails to complete, sign and submit the required Annual Certification Form is in violation of the Code and may be subject to disciplinary action.

VIII. Requests for Interpretation, Clarification or Waiver of the Code

(b) Interpretation and Clarification

A Trustee or Former Trustee may submit a written request to LIPA's General Counsel of for an interpretation or clarification of one or more provisions of the Code.

(c) Waivers

A Trustee or Former Trustee may submit a written request to the Chair of the Board of Trustees for a waiver of any restriction contained in the Code, provided that the restriction is not otherwise required by State or Federal law. All waiver requests shall include a description of the nature of the restriction or prohibition for which waiver is sought; the nature of the Trustee's or Former Trustee's interest involved; the effect on the Trustee or Former Trustee or LIPA of the restriction or prohibition for which the waiver is sought; and the reasons why the waiver should be granted. A copy of the written request shall be provided to LIPA's General Counsel.

IX. Remedies for Breaches of the Code

In addition to any other remedies, civil or otherwise, which LIPA may have, a Trustee, Employee, Former Trustee or Former Employee who violates the Code may be disciplined under the Code. Remedies or disciplinary action may be imposed only upon the basis of a written statement of findings and recommendations by LIPA's General Counsel, and may include one or more of the following:

1. issuance of written warnings;
2. direction of corrective action to eliminate and/or ameliorate the conflict of interest;
3. restitution; and
4. in the case of an Employee, changes in assigned duties, suspension or termination of employment; provided, however, that solely the Chief Executive Officer or the Trustees, as applicable, may impose the remedies specified in this subdivision.

A Former Trustee or Employee found to have violated the Code is subject to one or more of the following in addition to any other remedies, civil or otherwise, that LIPA may have: warnings; termination of existing Transactions involving the individual in question to the extent permitted by law; disqualification or suspension from future Transactions of the Former Trustee or Employee and/or the person on whose behalf he or she is participating in Transactions with LIPA; and notification to appropriate persons that a conflict exists.

X. Reporting of Violations of the Code and Whistleblower Protection

Trustees, Employees, Former Trustees, and Former Employees are encouraged to promptly report any violations of the Code to the Chair of the Board of Trustees or LIPA's General Counsel and shall cooperate in any official investigation of such violations. LIPA shall also maintain an ethics hotline. Ethics complaints may currently be filed by calling (844) 915-1626 or online at lipower.ethicspoint.com.

The identity of a Trustee, Employee, Former Trustee, or Former Trustee who reports a violation of the Code and the substance of his or her allegations shall be kept confidential to the extent possible.

Retaliation against Trustees, Employees, and Former Trustees, and Former Employees who in good faith report violations of the Code, other provisions of law or policies, or the public trust, is prohibited.

LIPA's General Counsel will inform LIPA's Governance, Planning and Personnel Committee of the Board of Trustees about the status and disposition of official investigations and issues thereof raised under the Code.

XI. Recusal Procedure for LIPA Trustees

If a Trustee has reason to believe he or she may have a Conflict of Interest, then the Trustee shall:

- (b) Promptly disclose the potential Conflict of Interest to the Chair of the Board of Trustees, or the Vice Chair if appropriate, and LIPA's General Counsel and describe all material facts concerning the potential Conflict of Interest known to the Trustee. After such disclosure, the Chair of the Board of Trustees, in

consultation with LIPA's General Counsel, shall make a record of such disclosure and advise appropriate staff that they are prohibited from communicating with such Trustee about such matter. Further, if after such disclosure such matter is on an agenda for, or is otherwise raised at a Board meeting, the Trustee shall recuse him/herself from all consideration and voting on such matter and such recusal and the reason therefore shall be recorded in the minutes of such Board meeting. As a best practice, the Trustee should leave the Board meeting while the other Trustees complete their discussion, consideration and vote.

(c) After full disclosure to the Chair of the Board of Trustees and LIPA's General Counsel, nothing contained herein shall be construed or applied to prohibit any firm, association, corporation or entity, in which the Trustee is a member, associate, retired member, of counsel, shareholder or owner, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with LIPA or its service provider where such Trustee does not participate in any way on behalf of the party conducting such business, does not participate in the decision to award the contract, and does not share in the net revenues resulting therefrom, or, acting in good faith, it is reasonably believed that such Trustee would not share in the net revenues therefrom, and where such Trustee otherwise complies with all other directives provided by LIPA's General Counsel.