



## ALL AGENCY GENERAL CONTRACT PROCUREMENT GUIDELINES

Adopted by the Board on March 21, 2018

These guidelines (the “**General Contract Guidelines**”) apply to the Metropolitan Transportation Authority (“**MTA**”), the New York City Transit Authority (“**NYCT**”), the Long Island Rail Road Company (“**LIRR**”), The Metro-North Commuter Railroad Company (“**MNR**”), Staten Island Rapid Transit Operating Authority (“**SIRTOA**”), Manhattan and Bronx Surface Transit Operating Authority (“**MaBSTOA**”), MTA Capital Construction (“**MTACC**”), MTA Bus Company (“**MTA Bus**”), First Mutual Transportation Assurance Co. (“**FMTAC**”) and to the Triborough Bridge and Tunnel Authority (“**Bridges and Tunnels**”) insofar as they are consistent with the provisions of law applicable to Bridges and Tunnels (each of which is referred to severally and together, as the “**Authority**”).

### Article I - Applicability of General Contract Guidelines

These **General Contract Guidelines** apply to

- i) purchase contracts for supplies, materials, equipment or other goods (“**Purchase Contracts**”);
- ii) public work contracts (“**Public Work Contracts**”); and
- iii) “**Miscellaneous Procurement Contracts**” (which are defined as leases of equipment with or without an option to purchase, computer software licenses including software as a service subscription, software maintenance agreements, printing contracts (where editorial services do not predominate), and any other contract which is not otherwise classified under these General Contract Guidelines or the All Agency Service Contract Procurement Guidelines (the “**Service Contract Guidelines**”, and collectively with these General Contract Guidelines, the “**Guidelines**”).

Purchase Contracts, Public Work Contracts and Miscellaneous Procurement Contracts are collectively referred to herein as “**General Contracts**”).

In the event a proposed contract contains elements of more than one type of General Contract and/or elements of either or both types of Service Contracts (as such term is defined in the Service Contract Guidelines), the elements of the type of contract that predominates shall determine whether the General Contract Guidelines or the Service Contract Guidelines apply and which type of contract within the applicable Guidelines shall apply.

### Article II - Delegation of Authority

The Chairman, the President of the respective Authority, or the designated representative or representatives thereof (each defined for purposes of these General Contract Guidelines as an “**Authorized Officer**”) are hereby empowered with respect to General Contracts to be entered into by the respective Authority acting on its own behalf or as agent for MTA, as follows:

- A. to implement these General Contract Guidelines.
- B. to establish procedures which shall be competitive to the extent deemed practicable by the Authorized Officer, for the award of Purchase Contracts, Public Work Contracts or Miscellaneous Procurement Contracts (including contracts for SBC, M/WBE and SDVOB ) estimated to involve the expenditure of \$100,000 or less;
- C. for Purchase Contracts and Public Work Contracts estimated to involve the expenditure of more than \$100,000:
  - 1. to determine the criteria for the evaluation of bids which may include but are not limited to unit or aggregate amount bid, life cycle costs or savings (including but not limited to costs or savings associated with installation, energy use, maintenance, operation, salvage and disposal), discounts and costs of maintenance and inspection services;
  - 2. to determine whether a Purchase Contract or Public Work Contract required to be advertised in the New York State Contract Reporter (“NYSCR”) is exempt from such requirement on the basis of a need to award such contract on an emergency or critical basis;
  - 3. to advertise for, solicit and open bids;
  - 4. to record the name of each bidder and the amount(s) bid;
  - 5. to determine the lowest responsive and responsible bidder, including, in the event two or more responsible bidders submit identical bids which are the lowest bids, to award the Purchase Contract or Public Work Contract to any of such bidders or obtain new bids from such bidders;
  - 6. to reject all bids when it is determined to be in the public interest to do so; and
  - 7. to award the Purchase Contract or Public Work Contract.
- D. to determine whether a bidder is responsible pursuant to the All-Agency Responsibility Guidelines.
- E. in addition to the other authorizations set forth elsewhere in this document, to establish guidelines governing the qualifications of bidders for General Contracts, and to fix the standards for the prequalification of bidders entering into such contracts for the East Side Access Project in accordance with Section 1265-a.2(c) of the Public Authorities Law.

**Article III - Award of General Contracts Without Competitive Bidding**

- A. A Miscellaneous Procurement Contract estimated to involve the expenditure of more than \$100,000, may be awarded after soliciting three or more bids or proposals, except for such contracts awarded pursuant to Article III (D) or (E) below. However, approval of a majority of the members of the Board in attendance at a meeting at which a quorum is present shall be required to approve the resolution authorizing award of a Miscellaneous Procurement Contract estimated to involve

the expenditure of more than \$100,000 that is not awarded pursuant to sealed competitive bidding and no Board approval shall be required for a ride of another qualifying contract.

- B. Except as otherwise provided in paragraphs C and D of this Article III, a Purchase Contract or a Public Work Contract estimated to involve the expenditure of more than \$100,000 may be awarded without competitive bidding under the circumstances set forth below, provided that the Authorized Officer recommends such an action and the Board adopts a resolution (i) declaring competitive bidding to be impractical or inappropriate because of the existence of any of the circumstances set forth in Articles III(B)(1) to (6), (ii) stating the reasons therefore, and (iii) summarizing any negotiations that have been conducted. Except in a situation specified in Article III(B)(1), such resolution shall be approved by two-thirds of the members of the Board then in office. A resolution under Article III(B)(1) shall require approval by a majority of the members of the Board in attendance at a meeting at which a quorum is present.
1. Emergency. The existence of an emergency involving danger to life, safety or property which requires immediate action and cannot await competitive bidding; or when the item to be purchased is essential to the efficient operation of or the adequate provision of service and, as a consequence of an unforeseen circumstance, such purchase cannot await competitive bidding. Competitive bidding is hereby declared to be impractical and inappropriate in any of the foregoing situations where an Authorized Officer must take appropriate action and cannot await action by the Board; provided, however, that notice of such action shall be given to the Board as soon as practicable, together with a statement of the reasons for such action and a request for ratification by the Board.
  2. Single Source. The item to be purchased is available only from a single responsible source provided, however, that a notice of the Authority's intent to purchase such item without competitive bidding shall be posted on the Authority's website, and, if bids have not been solicited for such item within the preceding twelve months, a notice must be published pursuant to Article V hereof. Any notices required by this paragraph shall set forth the Authority's intent to purchase the item without competitive bidding because the item is available from only one source and invites any firm which believes it can provide the item to so inform the Authority and to provide the Authority with additional information which confirms that it can supply the item.
  3. No Bids or One Responsive Bid. Competitive bids are solicited and
    - a. no responsive bid is received; or
    - b. only a single responsive bid is received, and the Authorized Officer rejects the bid.

4. Experiments, Tests and Evaluations. With respect to a product or technology, the Authority wishes to:
  - a. experiment with or test it;
  - b. experiment or test a new source for it; or
  - c. evaluate its service or reliability.

Such a contract may not be awarded until at least thirty days after the date the Board has declared competitive bidding to be impractical or inappropriate.

5. Riding an Existing Contract. The item is available through an existing General Contract between a vendor and any of the following and the resolution adopted by the Board includes a determination that, and the reasons, why, it is in the public interest to do so:
  - a. An Authority or any other public authority provided such General Contract had been awarded through a process of competitive bidding or a competitive request for proposals;
  - b. The State of New York, The City of New York, or (except for Transit and MaBSTOA) the County of Nassau.

It is hereby determined that competitive bidding is inappropriate and, because of the likelihood that a competitive process will not result in better commercial terms, that it is in the public interest to purchase an item through an existing General Contract of the State of New York, The City of New York, a different Authority, or any other public authority, where price and other commercial terms specified in such General Contract are satisfactory to the Authorized Officer. Such a determination shall be documented in writing by the Authorized Officer.

6. Request For Proposals. The Authority determines that it is in the public interest to award the General Contract through a competitive request for proposals ("**RFP**") process.
  - a. For purposes of this Article III(B)(6), a competitive RFP shall mean a method of soliciting proposals and awarding a General Contract on the basis of a formal evaluation of the characteristics which are deemed relevant to the Authority's operations, such as quality, cost, delivery schedule and financing, against stated selection criteria. Where the RFP involves the purchase or rehabilitation of rail cars, transit cars or buses, the selection criteria may also include the extent to which the performance of all or a portion of the contract will involve the use of sites within the State of New York or the use of goods produced or services provided within the State of New York.

- b. For those contracts awarded under this Article III(B)(6), (1) such contract may not be awarded until at least thirty days after the Board has declared competitive bidding to be impractical or inappropriate and (2) the Board's approval resolution must (i) disclose the other proposers and the substance of their proposals, (ii) summarize the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (iii) set forth the criteria upon which the selection was made. The Board's contract approval resolution may be adopted simultaneously with or subsequent to the Board's declaration that competitive bidding is impractical or inappropriate, provided that, if the Board's declaration and the Board's approval resolution are adopted simultaneously or within less than thirty days of each other, the subject contract may be executed by the Authority no less than thirty days after the adoption of the Board's declaration that competitive bidding is impractical or inappropriate.
- c. In addition to the information required under Article V(C), the public notice of an RFP must include a statement of the selection criteria. Such notice shall also be provided by mail or electronically to professional and other organizations, if any, that represent or regularly notify certified minority or women-owned business enterprises ("MWBEs") or a certified service disabled veteran owned business ("SDVOBs") of the type of procurement opportunity that is the subject of the RFP notice.
- d. The Authority may engage in a selection process involving multiple steps such as requests for qualifications, requests for technical proposals and requests for quotations. After the publication of the notice, any or all of the selection criteria specified in the advertisement may be changed, provided that, if the change is material, proposers and potential proposers who, prior to the deadline for the receipt of proposals, have expressed an interest in the RFP, shall be informed of the change and afforded the opportunity to modify their proposals.
- e. After receipt of the proposals, an Authority may:
  - 1. change the selection criteria provided that, if the change is material, all proposers that have not been eliminated from the competitive process prior to such change, are informed of the change and afforded the opportunity to modify their proposals;
  - 2. request that any of the proposers make a presentation. If it does so, it is not required to afford such opportunity to all proposers;
  - 3. negotiate with any of the proposers. If it does so, it is not required to negotiate with all proposers;

4. reject any proposal at any time; and
  5. reject all proposals, in which event the Authority may decide to take no further action, solicit new proposals or solicit bids.
- C. Under the MTA Small Business Mentoring Program (the “**SBMP**”), a non-federally funded Public Work Contract that is designated by the Authority as a small business mentoring program contract (“**SBMP Contract**”) within the meaning of Section 1265-b(1)(e) of the Public Authorities Law, may be awarded in accordance with the provisions of Section 1265-b of the Public Authorities Law, notwithstanding any other provision of law or these General Contract Guidelines. A Public Work Contract that is partially or wholly federally funded, subject to United States Department of Transportation regulations and estimated to involve an expenditure of not more than \$3 million, may be awarded pursuant to the MTA Small Business Federal Program (the “**SBFP**”) established under 49 CFR 26.39 in accordance with the competitive procedures established under the SBFP, notwithstanding any other provision of law or these General Contract Guidelines. The Chairman or his/her designee is authorized to designate which eligible Public Work Contracts shall be SBMP or SBFP Public Work Contracts.
- D. A Purchase Contract or a Miscellaneous Procurement Contract, in an amount not to exceed \$400,000, that is not federally funded, may be awarded pursuant to Section 2879(3)(b)(i) of the Public Authorities Law without competitive bidding or other formal competitive process, notwithstanding any other provision of law or these General Contract Guidelines, where either (i) the Purchase Contract or Miscellaneous Procurement Contract involves goods or technology that are recycled or remanufactured or (ii) the proposed award is to a small business concern (“**SBC**”), an MWBE or a SDVOB.

The relevant Authority Chief Procurement Officer or his/her designee (the “**CPO**”) shall determine which Purchase Contracts or Miscellaneous Procurement Contracts are appropriate for such types of procurements. In the case of Purchase Contracts or Miscellaneous Procurement Contracts that, pursuant to Section 2879(3)(b)(i), are eligible for award to SBCs, MWBEs or SDVOBs, the CPO may make a determination that any such Purchase Contract or Miscellaneous Procurement Contract may only be awarded to an MWBE, or only to an SDVOB, or only to an MWBE or an SDVOB. The basis for such a determination must be to promote participation of MWBEs and SDVOBs in Authority contracts, as mandated by Articles 15-A and 17-B of the Executive Law, and to assist the Authorities in achieving their MWBE and SDVOB goals. Notice of such procurements shall be placed on the Authority website inviting responsive proposals from qualified SBCs, MWBEs or SDVOBs. At least three bids or proposals must be solicited, and there must be a determination that the price is fair and reasonable. Awards pursuant to this process shall be made to the bidder or proposer determined to have submitted the bid or proposal that is most advantageous to the Authority, price and any other relevant factors considered. An award proposed to be made to a bidder or proposer other than the lowest responsible, responsive bidder or proposer shall require approval by a majority of the Board at which a quorum is present. The CPO may

reject all offers and withdraw the designation of a contract as one to be awarded pursuant to this process if the CPO determines that an award will result in the payment of an unreasonable price or otherwise not be advantageous to the Authority.

- E. Pursuant to Article 17-B of the Executive Law, the Authority may determine that a non-federally funded General Contract procurement is appropriate for a set-aside contract for SDVOBs. A notice shall be placed on the MTA website and the NYSCR, stating that only SDVOBs are eligible for contract award. The MTA and its agencies will administer set-aside procurements pursuant to the laws, rules and procedures that govern contracting for each type of procurement.

#### **Article IV - Qualified Products Lists**

The Board hereby determines that for reasons of efficiency, economy, compatibility or maintenance reliability, there is a need for standardization as to various supplies, materials and equipment which are purchased by the Authorities and authorizes the establishment of a qualified products list ("QPL") identifying such supplies, materials and equipment as hereinafter provided. A purchase contract for an item which has been included on a QPL duly established and maintained by an Authority, may be entered into by that Authority as hereafter set forth:

- A. The Authorized Officer of the Authority determines as to a specific item that, for reasons of efficiency, economy, compatibility or maintenance reliability, there is a need for standardization.
- B. The QPL is reviewed no less than two times per year. The purpose of this review is to evaluate whether to add or delete items or vendors to or from the QPL.
- C. A notice is published by the Authority no less than one time per year in a general circulation newspaper and in the NYSCR which:
  - 1. advertises the existence of the QPL;
  - 2. states that the QPL is available for public inspection; and
  - 3. specifies the name and address of the Authority's office which may be contacted in regard to the procedure for the compilation of the QPL.
- D. A contract for an item on the QPL may be awarded:
  - 1. without competitive bidding if only one source for the item is specified on the QPL;
  - 2. by competitive sealed bidding but without advertising provided the invitation to bid is sent to all vendors listed on the QPL for the particular item;
  - 3. by competitive sealed bidding after advertising the bid pursuant to Article V(A) of these General Contract Guidelines.

- E. Two or more Authorities may utilize the same QPL provided that such Authorities jointly comply with the provisions of this Article.

### **Article V – Notice and Advertising**

Except as provided in Article V(D) and Article III(B)(2), in those instances where advertising is required under these General Contract Guidelines:

- A. For Purchase Contracts and Public Work Contracts in the actual or estimated amount in excess of \$100,000, an advertisement shall be published at least once in a newspaper of general circulation in the area served by the Authority and in the NYSCR provided that, if the Purchase Contract or Public Work Contract is to be awarded without the solicitation of competitive bids or RFP, the timing of the publication in the NYSCR shall be determined by an Authorized Officer.
- B. The notice in the NYSCR must contain, as applicable, a statement of: i) the name of the contracting Authority; ii) the contract identification number; iii) a brief description of the services sought, the location where services are to be provided and the contract term; iv) the address where bids or proposals are to be submitted; v) the date when bids or proposals are due; vi) a description of any eligibility or qualification requirement or preference; vii) a statement as to whether the contract may be fulfilled by a subcontracting, joint venture or co-production arrangement; viii) any other information which the Authority deems useful to potential contractors; ix) the name, address and the telephone number of the person to be contacted for additional information; and x) a statement as to whether the services sought had, in the immediately preceding three year period, been supplied by a foreign business enterprise as that term is defined in Article 4-C of the Economic Development Law. The first publication shall be no less than fifteen business days prior to the planned bid opening date and the second publication shall be within a reasonable period prior to the planned bid opening date.
- C. The advertisement must contain, as applicable, a statement of: (i) the time and place where bids received will be publicly opened and read; (ii) the name of the contracting Authority; (iii) the contract identification number; (iv) a brief description of the public work, supplies, materials, or equipment sought, the location where work is to be performed, goods are to be delivered or services provided and the contract term; (v) the address where bids or proposals are to be submitted; (vi) the date when bids or proposals are due; (vii) a description of any eligibility or qualification requirement or preference; (viii) a statement as to whether the contract requirement may be fulfilled by a subcontracting, joint venture or co-production arrangement; (ix) any other information which the Authority deems useful to potential contractors; and (x) the name, address, and telephone number of the person to be contacted for additional information. In addition, if a purchase contract is involved, the advertisement in the NYSCR shall also include a statement as to whether the goods sought had in the immediately preceding three year period been supplied by a foreign business enterprise as that term is defined in Article 4-C of the Economic Development Law



- D. Advertisement in a general circulation newspaper and in the NYSCR is not required if the Authority regularly purchases the particular supplies, material or equipment and bids are solicited from a list of potential suppliers for the item which has been established and maintained as set forth in Article VI hereof.
- E. In addition to the above advertisements, the Authority shall provide notice to professional and other organizations, if any, that regularly notify MWBEs and SDVOBs of the type of procurement opportunity that is the subject of the solicitation.

### **Article VI - Contractor Outreach**

The Authority shall encourage firms to be interested in competing for Authority contracts. The Authority shall do so in the following manner:

- A. Suppliers Lists for Purchase Contracts: The Authority shall compile a list of potential sources of supplies, materials, equipment, and other goods which it regularly purchases. Such list must be compiled in accordance with the following procedures:
  - 1. Advertisements must be periodically placed in one or more publications which are likely to be read by manufacturers, suppliers and others who deal in the item including firms which may be minority or woman owned businesses, which set forth a general description of categories of items which are regularly procured by the Authority and invites firms to advise the Authority in writing of their interest in being placed on the suppliers list for specific items or categories of items.
  - 2. A periodic effort:
    - i) must be undertaken to identify potential bidders for the item who are not on the list including minority or woman owned businesses and service disabled veterans. Such effort shall include the use of the Authorities' websites, use of appropriate publications, including those, if any, that serve minority and women's business communities, and service disabled veterans other sources of information, and cooperation with federal, state and local agencies and other Authorities. Where appropriate, a print or electronic letter shall be sent to a new potential supplier which invites it to request that it be added to the list and, if it does not wish to be added, requests that it indicate why.
    - ii) where appropriate, must be undertaken to identify firms which have not responded to bids or expressed an interest in remaining on a list. An effort should be made to contact such firms to determine why they have not bid, whether they are interested in remaining on the list and, if not, why not. A firm may be deleted from the list where it requests deletion, or where the

circumstances indicate that it is unlikely that the firm is interested in remaining on the list.

3. The Authority will maintain lists of qualified MWBEs and SDVOBs, including professional firms that have expressed an interest in doing business with the Authority and ensure that such lists are updated regularly. The Authority will also consult the lists of MWBEs maintained by the New York State Department of Economic Development (“**DED**”) and the lists of SDVOBs maintained by the New York State Office of General Services (“**OGS**”), Division of Service-Disabled Veterans’ Business Development
  4. An advertisement must be placed quarterly in the State Register and in the NYSCR.
  5. In the event it is not practicable to maintain a suppliers list for a specific item, such item shall be included in a broader category or other appropriate classification which reasonably includes the item, and a suppliers list shall be maintained with respect to the category or classification.
- B. Capital Program Purchase and Public Work Contracts: The Authority shall place an advertisement in the NYSCR no less than four times per year which sets forth a general list of anticipated capital program Purchase Contracts and Public Work Contracts, and the address of the Authority's office which may be contacted in order to be afforded the opportunity to compete for such contracts and for other Authority contracts. Advertisements will also be placed in publications that serve minority and women’s business communities.

**Article VII – Minority/Women Owned and Disadvantaged Business Enterprises and Service-Disabled Veteran-Owned Businesses:**

The potential exists for disadvantaged/minority/women owned business enterprise and SDVOB involvement in General Contracts. The Authority shall use its best efforts to maximize the utilization, as applicable, of certified disadvantaged business enterprises (“**DBEs**”) under the Authority's federal program, and MWBEs and SDVOBs under the New York State programs set forth in Public Authorities Law §2879, Article 15-A and 17-B of the Executive Law and these General Contract Guidelines.

- A. The MTA Chief Diversity Officer ("**Chairman’s Designee**") is responsible for overseeing the programs established by the MTA to promote and assist: i) the participation by MWBEs and SDVOBs in procurement opportunities and facilitation of the award of General Contracts to such enterprises; ii) the utilization of MWBEs and SDVOBs as subcontractors and suppliers to Authority prime contractors; and iii) the utilization of partnerships, joint ventures (“**JVs**”) or other similar arrangements between MWBEs, SDVOBs and prime contractors. The Chief Diversity Officer reports directly to the Chairman in connection with the

responsibilities set forth herein, and will participate in the procurement process either directly or through his or her designees.

- B. For contracts awarded pursuant to these General Contract Guidelines, the Authority shall establish appropriate goals for participation by MWBEs and SDVOBs and for the utilization by prime contractors of MWBEs and SDVOBs as subcontractors and suppliers. Statewide MWBE numerical participation target goals will be established by the Authority based on the findings of the New York State 2010 Disparity Study, or any subsequent New York State Disparity Study.
- C. The Authority will conduct non-federally funded procurements in a manner that enables the Authority to achieve the maximum feasible portion of the goals set pursuant to Article VII (B), including by taking the following actions:
  - i) establishing measures and procedures to ensure that MWBEs and SDVOBs are given the opportunity for maximum feasible participation in the performance of Authority contracts and to assist in the identification of those contracts that are best suited for which MWBEs and SDVOBs may best bid to actively and affirmatively promote and assist their participation in the performance of Authority contracts so as to facilitate the Authority's achievement of the maximum feasible portion of the MWBE and SDVOB goals;
  - ii) designating the New York State Division of Minority and Women-owned Business Development ("**DMWBD**") to certify and decertify MWBEs, and OGS Division of Service-Disabled Veterans' Business Development to certify and decertify SDVOBs, for purposes of these General Contract Guidelines;
  - iii) setting forth in each contract solicitation the expected degree of MWBE and SDVOB participation based on potential subcontracting opportunities and the availability of MWBEs and SDVOBs to respond competitively to those opportunities;
  - iv) providing to prospective contractors in writing, or by identifying a link to a specific web site, a current list of MWBEs and SDVOBs;
  - v) with regard to JVs, allowing a bidder to count toward meeting its MWBE and SDVOB participation goals, the MWBE or SDVOB portion of the JV;
  - vi) waiving a contractor's obligation relating to MWBE or SDVOB participation after a showing of good faith efforts to comply with the participation goal; and
  - vii) verifying that MWBEs and SDVOBs listed in a successful bid or proposal are actually participating to the extent listed in the project for which the bid or proposal was submitted.

The Authority will also consider, where practicable:

- a. the severability of construction projects and other bundled contracts;
- b. with respect to MWBEs, the implementation of a program that will enable the Authority to evaluate each contract to determine the

- c. appropriateness of the goal pursuant to the New York State 2010 Disparity Study, or any subsequent New York State Disparity Study; and
- c. compliance with the requirements of any federal law concerning opportunities for any DBEs, MWBES and SDVOBs which effectuates the purposes of this Article VII.

- D. The Chairman's Designee is responsible for ensuring compliance with all applicable laws and regulations with regard to the utilization of DBEs on federally funded General Contracts.

### **Article VIII - Change Orders**

- A. A change order to a General Contract which exceeds the lesser of \$750,000 or \$250,000 in the event such change order exceeds 15% of the adjusted contract value, may be entered into by an Authorized Officer, upon the approval of the Board pursuant to a resolution adopted in accordance with Article IX hereof. The submission to the Board shall include an explanation of the need for the change order. All other change orders shall be approved by an Authorized Officer; provided that a change order over \$250,000 must be approved by the Authority president or his or her designee. For purposes of this Article, the "adjusted contract value" shall mean the original amount of the contract plus the aggregate amount of all prior change orders (whether or not approved by the Board). This provision applies to all contracts subject to these General Contract Guidelines, including budget adjustments to estimated quantity contracts previously approved by the Board which exceed the threshold.
- B. Notwithstanding the foregoing, an Authorized Officer may enter into a change order in any of the following situations as determined by an Authorized Officer:
  - 1. The existence of an emergency; or
  - 2. There is a risk of a substantial increase in cost or delay if prompt action is not taken.
  - 3. The change order is for a Design-Build contract where the Board has previously declared (as described in Article III(B)(6)) that it is in the public interest to award the contract through a competitive RFP process, and such change order does not change the total contract price to exceed the project budgeted cost, including contingency.
- C. The Chief Operating Officer shall establish policies with respect to the delegation of responsibilities set forth in this Article.

### **Article IX - Form of Board Resolution**

- A. Except as otherwise required in Article III, the procedure for the adoption by the Board and the format of a resolution pursuant to these General Contract Guidelines shall be determined by the MTA Chairman and may be in the form of a staff

summary or a formal resolution. Provided, however, that any Board resolution or staff summary sought pursuant to these General Contract Guidelines shall (i) identify the contractor by name ; (ii) briefly describe the substance of the General Contract; (iii) specify all the information required under the applicable provisions of these General Contract Guidelines; and (iv) specify the estimated or actual cost to the Authority or that the estimated or actual cost shall be within the budget approved by the Board for that purpose.

- B. To the extent practicable, the recommendation of award and the associated resolution or staff summary shall first be submitted to the standing committee of the Board responsible for the Authority.
- C. The MTA Chairman may modify the procedures in this Article for all Authorities.

#### **Article X - Miscellaneous**

- A. Any provision of these General Contract Guidelines may be waived by the Chairman, an Authority President, or the Board, or such individuals as they may designate, except to the extent prohibited by law. A waiver may also be in the form of a ratification. If a contract is federally assisted, prior to issuing a waiver, consideration should be given to the steps which may be taken to assure that federal assistance is not jeopardized.
- B. No Board Committee action or Authority policy, other than one approved by the Chairman, shall be inconsistent with these General Contract Guidelines.
- C. An Authority may not divide or split any contract or series of contracts for the purpose of avoiding the requirements of these General Contract Guidelines provided that with regard to SBMP and SBFP contracts awarded under Article III(C) and discretionary contracts awarded under Article III(D), an Authority may divide requirements for the purpose of unbundling contracts to create SBMP, SBFP or discretionary contracting opportunities.
- D. If prior to the commencement of an Authority fiscal year, an Authorized Officer reasonably anticipates that, during the next fiscal year, the Authority will expend, in the aggregate, in excess of \$100,000 for a series of Purchase Contracts for the same or substantially similar good or for a series of Public Work Contracts for same or substantially the same type of public work: i) such requirement shall be met pursuant to a requirements contract awarded pursuant to the applicable provisions of these General Contract Guidelines; ii) each such Purchase Contract shall be awarded pursuant to the provisions of Article II(C), III, IV or Article VI of these General Contract Guidelines or iii) each such contract shall be awarded pursuant to the provisions of Article II(C) or III or a procedure determined by an Authorized Officer to be comparable to Article IV or VI.

- E. Nothing in these General Contract Guidelines shall preclude the Authority from accepting bids or proposals utilizing an electronic bidding system that may inform bidders whether their bid is the current low bid, and allow bidders to submit new bids before the date and time assigned for the opening of bids. Such procedure shall not constitute disclosure in violation of Section 2878 of the Public Authorities Law.
- F. A General Contract awarded by an Authority pursuant to these General Contract Guidelines may provide that the General Contract includes the requirements of one or more other Authorities.
- G. The Authority shall prepare a publicly available report no less frequently than annually, summarizing procurement activity by the Authority for the period of the report in accordance with the reporting requirements of Section 2879(6) of the Public Authorities Law.
- H. These General Contract Guidelines are intended for the guidance of officers and employees of the Authority 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.
- I. Nothing in these General Contract Guidelines shall preclude the Authority from offering stipends to proposers on Design-Build contracts as part of an RFP process. The request for Board approval to use the RFP process for a specific Design-Build contract may include a request for approval of the use of stipends in connection with such RFP.
- J. Nothing contained in these General Contract Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these General Contract Guidelines.
- K. Where applicable federal, state or local laws, ordinances, codes, rules or regulations contain requirements which are in conflict with or which impose greater obligations upon the Authority than these General Contract Guidelines, then such requirements shall take precedence over those contained herein.