

GUIDELINES OF
THE NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY FOR THE USE, AWARD, MONITORING AND
REPORTING OF PERSONAL SERVICES CONTRACTS

(as amended November 17, 2023)

ARTICLE I Purpose and Applicability

- A. Authority. These Guidelines are adopted pursuant to Section 2879 of the Public Authorities Law ("PAL") and the provisions of PAL Title 6 -- The New York City School Construction Authority Act.
- B. Applicability. These Guidelines apply to the procurement by the Authority of services of any kind in an actual or estimated amount of \$10,000 or more.
- C. Title. Outside this document, these Guidelines may be referred to as the "Personal Services Contracts Guidelines."

ARTICLE II Definitions

- A. Definitions. For all purposes of these Guidelines, the terms listed below shall have the following meanings:
1. "Authority" shall mean the New York City School Construction Authority.
 2. "By-Laws" shall mean the By-Laws adopted from time to time by the Trustees of the Authority.
 3. "Contract" shall mean a written agreement of the Authority for personal, engineering and architectural, or professional services.
 4. "Personal Services Contractor" shall mean a supplier of personal, engineering and architectural, or professional services to the Authority pursuant to a Contract.
 5. "Emergency Contract" shall mean a Contract awarded without competitive procedures because the existence of an emergency-involving danger to life, safety or property requires immediate action and cannot await competitive bidding.
 6. "Guidelines" shall mean these Guidelines.

7. "RFP" shall mean a Request for Proposal which shall contain detailed information so as to enable recipients to determine the desirability of participating in the procurement process and to develop a competitive proposal.
8. "Sole Source Contract" shall mean a Contract awarded without competitive procedures as a result of a determination by the President and Chief Executive Officer that there is only one source for a required item, or that one firm has a unique advantage with respect to the provision of a particular item which would render competitive procedures futile.
9. "Negotiated Acquisition" shall mean a method of source selection under which procurements can be made through negotiation when competitive sealed bidding or RFP process is not practicable or advantageous to the SCA because of the existence of circumstances or conditions set forth in Article III B. 3.
10. "Minority Business Enterprise" shall mean any business enterprise, including a sole proprietorship, partnership, or corporation that is:
 - a. at least fifty-one percent owned by one or more minority group members or in the case of a publicly-owned business at least fifty- one percent of the common stock or other voting interests of which is owned by one or more minority group members;
 - b. an enterprise in which the minority ownership is real, substantial and continuing;
 - c. an enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
 - d. an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.
11. "Minority Group Member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
 - a. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
 - b. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
 - c. Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or
 - d. Native American persons having origins in any of the original peoples of North America.
12. "New York State Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers services which are sought by the Authority, and which are substantially performed within New York State.
13. "New York Resident" shall mean a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return.

14. "Women-Owned Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation that is:
- a. at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women or in the case of a publicly owned business at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
 - b. an enterprise in which the ownership interest of women is real, substantial and continuing.
 - c. an enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
 - d. an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.
- B. Any other capitalized term used herein shall have the meaning given in the By-Laws.

ARTICLE III Use and Selection of Personal Services Contractors

A. Types of Services.

1. The areas of responsibility requiring the use of Personal Services Contractors include, but are not limited to: architectural and engineering services; auditing and accounting; banking services; information technology consulting; construction management; surveying; testing; inspections; employee training; equipment maintenance; graphic design and printing; investment advisory services; legal services; management consulting; public relations services; real estate appraisal and market analysis; and other consulting, professional or technical services.
2. The reasons for the use of Personal Services Contractors include: the need for special expertise or independent judgment; the lack of sufficient in-house resources to perform the required services; the ability to achieve cost savings; or the need to have services performed at a distant or inconvenient location.

B. Selection of Personal Services Contractors.

1. Except as otherwise provided in subsection 2 below, all Personal Services contractors shall be selected on a competitive basis using either competitive sealed bids or an RFP. If selection is made through an RFP process, evaluation criteria shall be established prior to opening proposals and shall be applied equally and uniformly in the evaluation of proposals. All firms responding to an RFP shall be notified as to whether they are successful or unsuccessful. After the selection of Personal Services Contractor on a competitive basis, the Authority may, when appropriate, further negotiate with the Personal Services Contractor regarding elements of its performance, including price.
2. Selection of Personal Services Contractors on a competitive basis is not required and the Trustees hereby waive competition, for the following:

- a. Contracts Not to Exceed \$10,000.
 - b. Subscriptions, including to research databases; paper or electronic subscriptions for magazines, and newspapers other periodicals, orders for or books and “off-the shelf” training videotapes, materials including, but not limited to, webcasts, courses, programs, videos, and assessments; and attendance at standard commercially available training seminars or subscriptions to organizations providing such seminars.
 - c. Sole Source Contracts: provided however, that any such Contract in an amount exceeding \$20,000 requires the approval of the Trustees of the Authority by resolution prior to its execution.
 - d. Emergency Contracts: provided however, that any such Contract in an amount exceeding \$20,000 requires the approval of the Trustees of the Authority by resolution either before the Contract is executed or as soon thereafter as practicable.
 - e. Negotiated acquisitions of Personal Services Contract procurements not to exceed \$250,000 under the circumstances and subject to the conditions and procedures set forth in section (B)(3) of this Article. Personal Services Contracts procured through Negotiated Acquisition in an amount exceeding \$250,000 require the approval of the Trustees of the Authority by resolution prior to execution regardless of the period of performance.
3. Negotiated Acquisitions.
- a. Subject to the authorization of the Senior Director of Contract Administration, who shall also serve as the Authority's Agency Chief Contracting Officer (ACCO), the SCA may engage in preliminary discussions with a Personal Services Contractor to explore the feasibility of a proposed negotiated acquisition.
 - b. The Senior Director/ACCO shall justify the use of negotiated acquisition method by making a determination that it is not practicable and/or advantageous to award a Personal Services contract by competitive bidding or RFP due to one or more of the following circumstances:
 - (1) There is a time-sensitive situation where a Personal Services Contractor must be retained quickly because:
 - (a) the SCA needs to respond to a legal proceeding.
 - (b) an existing-Personal Services Contract has been terminated or a Personal Services Contractor has withdrawn from or has repudiated a Contract or has become otherwise unavailable, or the SCA has decided not to renew or extend an existing Contract in the best interest of the SCA and requires a substitute or successor Personal Services
 - (c) a compelling need for services exists that cannot be timely met through competitive sealed bidding or competitive sealed proposals.

- (2) there are a limited number of Personal Services Contractors available and able to perform the work;
- (3) there is a compelling need to extend a Contract provided that the performance of the Personal Services Contractor is satisfactory or that any deficiencies have been addressed or are effectively addressed through a corrective action plan and the extension is for the minimum time necessary to meet the need;
- (4) there is a need to procure legal service or consulting services in support of current or anticipated litigation, investigative or confidential services:
 - (a) In the case of legal services or consulting services in support of current or anticipated litigation, unless otherwise provided by law, the Vice President and General Counsel shall make this determination;
 - (b) in the case of investigative or confidential services, the President & CEO, the Vice President and General Counsel or the Vice President and Inspector General, whichever is applicable, shall make this determination.
- c. The SCA shall negotiate with all qualified Personal Services Contractors that have expressed interest unless the Senior Director/ACCO determines for a particular procurement or a particular type of procurement that it is in the SCA's best interest to negotiate with fewer Personal Services Contractors.
- d. The President and CEO shall make a determination that award of the Contract is in the best interest of the SCA and the basis thereof.
4. Emergency Contracts and Sole Source Contracts in amounts exceeding \$20,000 and Personal Services Contracts in an amount exceeding \$250,000 procured through negotiated acquisition or more submitted to the Trustees for approval by resolution shall be accompanied by a statement from the Senior Director of Contract Administration that the procurement of such Contracts conforms with the requirements of the Personal Services Guidelines.
5. The Authority shall retain records documenting the methods of selection and the reasons for its decisions with respect to each Contract award.

C. Advertisement. The solicitation of proposals, or submissions of statements of qualification or offers for Contracts, shall be made by the Authority in a manner determined by the President and Chief Executive Officer or his designee to be the most cost effective in providing for reasonable competition for the Authority's Contracts. This solicitation may include advertisement in appropriate newspapers or trade journals, direct mailing to firms considered qualified, and such other procedures as are consistent with the policy of these Guidelines.

D. Approval and Review of Contracts.

1. Any Contract involving services to be rendered over a period in excess of one year or supplemental agreement that will result in the extension of the Contract for a total period longer than one year shall require the approval of the Trustees of the Authority

by resolution prior to its execution and an annual review and approval of the Contract and/or supplemental agreement by the Trustees.

2. All Contracts shall be reviewed, approved, and executed by the President and Chief Executive Officer. The President may delegate such authority to such senior Officers as he or she may determine.
 3. All Contracts shall be presented to the Trustees in regular monthly reports. Contracts for more than \$1 million dollars, Emergency Contracts, Sole Source Contracts, Contracts for less than \$10,000, and supplements that will increase a Contract to a value in excess of fifteen (15%) percent of the original Contract amount shall be presented to the Trustees in specially identified sections of the regular monthly report.
- E. Contract Provisions. Contracts shall detail the scope of services to be performed and the time for performance, the monitoring or reviewing of that performance by personnel of the Authority, and where appropriate, any permitted use of supplies, facilities or personnel of the Authority. Such Contracts shall also state the compensation for the services; the method and time of payment, the pre-conditions for receiving payment from the Authority, procedures for termination of the Contract, and any other provisions deemed necessary or appropriate for each particular Contract by Vice President and General Counsel.

ARTICLE IV - Additional Provisions

- A. Equal Opportunity.
1. Minority Business Enterprises and Women-Owned Business Enterprises shall be encouraged to respond to proposals for all Contracts of the Authority, in order that the Authority may promote and assist participation by Minority Business Enterprises and Women-owned Business Enterprises and may award a fair share of Contracts to such enterprises.
 2. In order to assure compliance with applicable laws governing equal employment opportunity, each Personal Services Contractor or prospective Personal Services Contractor shall submit a statement of commitment to equal employment opportunity executed by the chief executive officer thereof, and each Contract shall require compliance with such laws.
 3. The Authority shall promulgate procedure which will assure compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261), as amended, by its Personal Services Contractors.
- B. Promotion of New York State Business Enterprises and New York Residents. The Authority shall promote and encourage the participation of New York State Business Enterprises and New York Residents in Contracts.
- C. Contracts with Former Officers and Employees. A former officer or employee shall not be permitted, following termination of employment with the Authority, to enter into a Contract with the Authority, either as an individual or as an officer or employee of a private business entity, for a one-year period or at any time in relation to any matter with respect to which such person had participated personally and substantially through decision, approval, recommendation, investigation, or other similar activities during the performance of official

duties. In addition to complying with applicable law and these Guidelines, any Contracts with persons who were formerly officers or employees of the Authority shall be approved by the Chairman of the Board of Trustees or by another Trustee designated by the Chairman.

ARTICLE V - Reports

Annual Report As soon as may be reasonably practicable after the close of each fiscal year, the Authority shall approve an annual report on Contracts which shall include these Guidelines. Such report shall also include the following: a summary of activity for the period of the report, including a listing of all 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 Foreign Business Enterprises and the subject matter and value thereof, the selection process used to select such Contractors, and the status of existing Contracts. After approval by the Authority, the annual report shall be transmitted to the Division of the Budget, with copies to the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee and the Assembly Ways and Means Committee, and as may otherwise be directed by law.

ARTICLE VI - Miscellaneous

- A. Powers of Amendment. Any modification or amendment of these Guidelines may be made by a resolution adopted at any duly constituted meeting of the Trustees; provided, however, that no such modification or amendment shall alter the terms or affect the validity of existing Contracts, the terms of which were established pursuant to these Guidelines.
- B. No Recourse under These Guidelines No provision of these Guidelines shall be the basis for any claim based on these Guidelines against any Trustee, officer, or employee of the Authority or the Authority itself.
- C. Effect Upon Existing Contracts. These Guidelines shall not alter, affect the validity of¹ modify the terms of or impair any Contract executed in violation of or without compliance with these Guidelines.